

Pre-Summation Instructions

Members of the jury, you will now hear the summations of the lawyers. Following the summations, I will instruct you on the law, and then you will begin your deliberations.¹

Under our law, defense counsel must sum up first, and the prosecutor must follow. The lawyers may not speak to you after that.

Summations provide each lawyer an opportunity to review the evidence and submit for your consideration the facts, inferences, and conclusions that they contend may properly be drawn from the evidence.²

If you find that a lawyer has accurately summarized and analyzed the evidence, and if you find that the inferences and conclusions the lawyer asks you to draw from that evidence are reasonable, logical and consistent with the evidence, then you may adopt those inferences and conclusions.

Members of the jury, bear in mind the following points:

First, you are the finders of fact and it is for you and you alone to determine the facts from the evidence that you find to be truthful and accurate. Thus, whatever the lawyers say, and however they say it, you should remember that what the lawyers say is simply argument submitted for your consideration.

Second, remember the lawyers are not witnesses in this case. So, if a lawyer asserts as fact something that is not based on the evidence, you must disregard it. Remember, nothing the lawyers say at any time is evidence.³ So, nothing the lawyers say in their summations is evidence.⁴ You have heard the evidence

and must decide this case on the evidence as you find it and the law as I explain it.

Third, during the summations, one lawyer's recollection of the evidence may in good faith differ from the recollection of the other lawyer(s) or from your own recollection, and the lawyers will undoubtedly differ with each other on the conclusions to be drawn from the evidence.⁵ It is your own recollection, understanding and evaluation of the evidence, however, that controls, regardless of what the lawyers have said or will say about the evidence.⁶ You, and you alone, are the judges of the facts in this case. If during your deliberations you need to have your recollection of the testimony refreshed, you may have all or any portion of the testimony read back to you.⁷

Fourth, remember, under our law, I am responsible for explaining the law, not the lawyers.

[Now, prior to the summations, the lawyers were permitted to read the instructions on the law that I will deliver to you after their summations; and the lawyers are permitted to refer briefly to portions of those instructions in their summations if they wish. However, even though a lawyer may refer to portions of those instructions, you must listen carefully to all the instructions that I will give you after the summations.]

If you think there is any difference between what the lawyers may have said, and what I say the law is, your sworn duty as jurors is to follow my instructions on the law, [as you have promised me that you would].⁸

Fifth, if during the summations, I sustain an objection to a comment of a lawyer, that comment will be stricken from the record, and you must disregard it as if it were never said. If I

overrule an objection, the comment will stand. Whether I sustain or overrule an objection, or on my own indicate that a comment must be disregarded, my ruling indicates only that the comment does, or does not, violate one of the rules of law set down for lawyers to follow during a summation.⁹ It is not an attempt to indicate that I have an opinion on what is said, or of the facts of the case, or of whether the defendant is guilty or not guilty. Remember, under our law, you and you alone judge what facts, if any, are proven, and whether the defendant is guilty or not guilty; not I, and not the lawyers.

We turn now to the summations.

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1. See CPL § 260.30(8), (9), (10).
 2. See *People v. Galloway*, 54 N.Y.2d 396 (1981).
 3. See *People v. Barnes*, 80 N.Y.2d 867 (1992); *People v. Davis*, 58 N.Y.2d 1102 (1983).
 4. See *People v. Roche*, 98 N.Y.2d 70 (2002).
 5. See *Galloway*, *supra*.
 6. See *People v. Marks*, 6 N.Y.2d 67 (1959).
 7. See CPL § 310.30; *People v. Almodovar*, 62 N.Y.2d 126 (1984).
 8. See *People v. Jenman*, 296 N.Y. 269 (1947).
 9. See *People v. DeJesus*, 42 N.Y.2d 519 (1977).