



ARKANSAS JUDICIARY

Published on *Arkansas Judiciary* (<https://courts.arkansas.gov>)

What is Evidence?

Evidence is what the judge allows the jury to hear and consider. Evidence might be physical exhibits, such as photographs, bullets, or a scarred face. A witness's testimony is evidence, whether that testimony is given in court or in a deposition.

There are, however, many things that must not be considered as evidence. For example, what a lawyer says or claims to have proven is not evidence. Nor is testimony that the jury has heard but that the judge has ordered stricken from the record and disregarded. The jury must treat all such testimony as though it had never been given. Similarly, matters that a lawyer offers to prove, but that the judge will not allow to be presented, are not to be considered as evidence.

A juror is not to consider any information about the witnesses, parties, or lawyers or anything connected with the case other than the evidence seen and heard in the courtroom. Do not read media accounts of the trial. If the case involves a thing or a place, such as the location of a stop sign at an intersection or a flight of masonry steps, a juror must not make an inspection of the site unless the judge sends the jury as a group for that specific purpose.

There are rules the judge and lawyers must follow and fairness demands that you only hear certain evidence. The lawyers are not being stubborn and the judge is not acting arbitrarily; each is merely applying the rules of evidence as he or she understands them. Do not let objections or the court's rulings influence your deliberations. Your job is to decide if the evidence you are allowed to consider is believable and how much weight to give it.

Generally, the following are admissible and may be considered by you in reaching your verdict:

- A witness's answer to a question asked by the lawyers or the judge;
- A deposition from an unavailable witness;
- Any exhibit admitted by the judge such as contracts, documents, court records, or physical objects;
- Stipulations such as agreements reached by each party as to a certain fact which may be considered without actual proof of the fact (e.g., a particular date or time).

The following are NOT evidence and may not be considered by you in reaching your verdict:

- A witness's statement which is stricken from the record, either by order of the judge or by agreement of the lawyers. The judge will tell you to disregard the statement;
- Statements by lawyers about what they expect to prove or have proven. The opening statements and closing arguments and any remarks made during the trial are only made to help you better understand the evidence, but they are not evidence themselves;
- Anything you learn about the case outside the courtroom either by obtaining personal

information, reading newspapers, or listening to radio or television broadcasts. The judge will instruct you to avoid these sources and you must follow his instructions;

- Any remarks made by another in your presence, even the remarks of a bystander. The person who makes the remark may be trying to influence your thinking. If someone tries to talk to you about the trial, you must report this to the bailiff or judge.

Important: The information on this website is not intended to take the place of the instructions given by the judge in any case. Should you see a conflict, the trial judge's instructions will prevail.

Note: The pronouns, he, him, his, refer to both the male and female gender.

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