

TRIAL PROCEDURE ORDER - CRIMINAL TRIAL

**TIMOTHY S. BLACK
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
AT DAYTON AND CINCINNATI**

I. TRIAL DATE

The case will be set for trial **BETWEEN 59 AND 70 DAYS INTO SPEEDY TRIAL** at 9:30 A.M. The final pretrial conference will be scheduled about **1 WEEK BEFORE TRIAL**. All trial counsel must appear in person at the final pretrial conference.

II. DISCOVERY AND INSPECTION

The attorney for the defendant is directed to contact promptly the Assistant U.S. Attorney in charge of the prosecution of this case, if prior contact has not been made, and arrange a meeting for the purpose of resolving all requests for discovery provided for under the Federal Rules of Criminal Procedure, including Rule 16, and by law. *See, e.g., Brady v. Maryland*, 373 U.S. 83 (1963). Upon request for discovery by the attorney for the defendant, pursuant to Fed. R. Crim. P. Rule 16, the government shall make the required disclosure of evidence discoverable under the terms and conditions of Rule 16(a). The government shall provide a response within one week of delivering defendant's request.

The discovery meeting shall be held as promptly as possible and prior to **ONE WEEK AFTER ARRAIGNMENT**. If at any time during the course of these proceedings after the initial request, any party fails to comply with Fed. R. Crim. P. 16, such failure shall be brought to the attention of the Court by a specific motion to compel discovery. Motions to compel shall be filed one week from the date of a party's denial of the initial request.

III. MOTIONS

All motions shall be briefed according to S.D. Ohio Civ. R. 7.2(a)(2).

IV. PLEA NEGOTIATIONS AND PLEA AGREEMENT

Plea agreement discussions between the Assistant U.S. Attorney and the attorney for the defendant, pursuant to Fed. R. Crim. P. Rule 11(e), shall be commenced as soon as practicable. The parties shall notify the Court promptly if a plea agreement is reached and a change of plea will be scheduled.

V. MOTIONS FOR CONTINUANCE

Any motions for a change of the trial date shall be in writing, shall be made at least 10 days prior to the scheduled trial date, and shall set forth those factors listed in Title 18, U.S.C. § 3161(h)(8)(B) which the movant contends support the motion.

VI. CRIMINAL ORDER OF PROCEDURE

The following procedures are designed to deal with your case promptly and efficiently, without impeding your ability to present your case fully and fairly.

IT IS ORDERED:

A. COUNSEL TABLES

The parties will occupy the counsel table assigned before the first trial session.

B. TRIAL SCHEDULE

Under ordinary circumstances, trials of no more than two weeks duration will be held Monday through Friday.

The morning session begins at 9:30 a.m. and recesses for approximately 15 minutes, once in the morning and once in the afternoon. Counsel and the parties are to be available in the courtroom at 9:00 a.m. daily, in order to resolve any problems that might arise. Lunch recess will be at approximately 12:00 noon. The afternoon session begins at 1:30 p.m. Court will adjourn for the day at approximately 4:30 p.m.

The parties and all counsel must be present at the counsel tables before the jury is brought into the courtroom. Counsel and the parties must remain at counsel tables until after the jury leaves the courtroom at the close of all sessions. The parties and counsel will stand when the jury enters or exits the courtroom.

C. ADDRESSES BY COUNSEL

Counsel will address the Court and the jury in the following manner:

- (1) Voir dire examination, opening statements and closing arguments will be made from the lectern facing the jury.
- (2) Counsel should address the Court either from the lectern facing the Court or by standing at counsel table.

(3) Counsel will stand when addressing the Court for any reason.

D. EXAMINATION OF WITNESSES

Counsel will conduct their examination of witnesses from the lectern.

In advance of trial, counsel will instruct their witnesses to answer questions with courtesy. Evasive answers, answering a question with a question, or disrespect to opposing counsel will not be permitted.

Counsel are expected to extend equal courtesy to all witnesses. Counsel will wait until the witness has finished answering before asking the next question. Counsel may not, by any action, inflection or expression, indicate disbelief of any answer. Counsel shall admonish their clients and witnesses to refrain from such conduct.

When a party has more than one attorney, only one attorney may conduct the direct or cross-examination of a given witness.

Counsel may not approach a witness without first asking the Court's permission. When permission is granted for the purpose of working with an exhibit, counsel should return to the lectern when finished with the exhibit. In most cases, the courtroom deputy will place exhibits before the witness.

Counsel should inform the Court when he or she has completed the examination of a witness, so the Court can advise opposing counsel to proceed.

During examination of a witness, counsel first must ask the Court for permission to confer with co-counsel.

E. OBJECTIONS

Counsel will stand when making an objection and will make objections directly to the Court, not to opposing counsel.

When objecting, counsel should rise and simply state, "I object." Then, if requested by the Court, counsel should state the grounds. Objections may not be used for the purpose of making speeches, repeating testimony, or attempting to guide a witness or to influence the jury.

Argument upon an objection will not be heard unless permission is given or argument is requested by the Court. Either counsel may request a bench conference.

F. DECORUM

Counsel shall address the Court as “Judge” or “Your Honor”.

Colloquy, or argument between counsel, is not permitted. All remarks should be addressed to the Court.

Counsel should maintain a professional and dignified atmosphere throughout the trial.

Appearances, mannerisms or habits that are designed to arouse the sympathy or prejudice of the jury are an impediment to an impartial trial and will not be permitted.

During a trial, counsel should not exhibit familiarity with witnesses, jurors or opposing counsel and should not address anyone by first name.

During opening statements and final arguments, all persons at counsel tables shall remain seated and be respectful so as to not divert the attention of the Court or the jury.

Do not ask the court reporter to mark testimony. All requests for re-reading of questions or answers shall be addressed to the Court.

G. WITNESS LISTS

The United States will submit to the Court's chambers a copy of its witness list three business days before the scheduled trial date. Defendant may submit a copy of his/her witness list three business days before the scheduled trial date. Witness lists are not pleadings and should not be filed with the Clerk of Courts or served on opposing counsel.

H. TRIAL BRIEFS

The parties may file trial briefs but shall do so at least one day before trial commences. Counsel also shall serve their trial briefs on opposing counsel. Each trial brief should include a statement of facts. Counsel also should identify difficult evidentiary matters that might arise and argue the subject, complete with case law.

I. EXHIBITS

Each party intending to offer exhibits will mark the exhibits prior to the commencement of the trial. Both sides will submit to the Court's chambers three copies of a typed list of the proposed exhibits three business days before the date of trial. This list will state the proposed exhibit number and description of the exhibit. Exhibit lists are not pleadings and should not be filed with the Clerk of Courts or served on opposing counsel.

Exhibit lists should be three-hole punched.

The United States shall identify its exhibits with Arabic numbers preceded by "USA", and the defendant shall identify his/her exhibits with Arabic numbers preceded by "D" (or "D2", etc.).

Counsel should provide the original and two copies of exhibits to the Court and one copy to opposing counsel, three business days prior to the commencement of trial. The two copies of exhibits to the Court should be three hole punched and placed in notebooks, along with a copy of the exhibit lists.

Counsel may not approach a witness to tender an exhibit. Rather, the courtroom deputy typically will place each exhibit before each witness.

In formulating a question to a witness, counsel should specify the exhibit number or designation involved, so the record will be clear.

Exhibits which are introduced for the first time during trial, as in the case of exhibits used for impeachment, should be tendered to the courtroom deputy for marking and then displayed to opposing counsel. Copies must be provided to opposing counsel, the Court and the Court's law clerk.

J. STIPULATIONS

Stipulations must be signed by both counsel and the defendant. Stipulations shall be submitted to the Court at any time before or during the trial.

K. VOIR DIRE EXAMINATION

Counsel will be provided with a list of the prospective jurors prior to the

commencement of trial. Counsel can contact the Jury Commissioner¹ the week before trial to obtain the juror questionnaire forms.

The whole panel of prospective jurors (those in the jury box and seated in the back of the courtroom) will be examined in one continuous examination.

Each prospective juror will be assigned a number by the Clerk's office. Counsel will receive a listing of the jurors' names and numbers prior to jury selection.

The Court will conduct a preliminary voir dire examination tailored to the issues in the case. An outline of the Court's typical voir dire questioning is attached as "Appendix A".

Counsel may supplement the Court's examination. Counsel, however, may not repeat in some other form the same questions the Court already has put to the panel.

Counsel must address their questions to the whole panel. Counsel may not question an individual juror, unless the answer of a specific juror justifies further inquiry.

Counsel will not be permitted to question jurors individually regarding background information. This information is contained in juror questionnaire forms, which are on file in the Clerk's office. Counsel should examine these questionnaires prior to the commencement of trial. Counsel may inquire regarding any omission in a juror's answer to the juror questionnaire or, after obtaining the Court's permission, regarding any inquiry justifiably elicited by information contained in the juror questionnaire.

L. CHALLENGES FOR CAUSE

Challenges for cause and peremptory challenges will be heard outside the jury's presence. First the Court will consider challenges for cause and when that is completed, the Court will consider peremptory challenges. The entire panel (i.e., jurors seated in the jury box and in the back of the courtroom) shall be challenged for cause and peremptorily challenged in a continuous sequence without reseating prospective jurors. It is counsel's responsibility to determine the current makeup of the jury by reference to the seating plan.

¹ The Jury Commissioner in Dayton is James Tosto, 937-512-1414. The Jury Commissioner in Cincinnati is Maria Welker, 513-564-7514.

M. PEREMPTORY CHALLENGES

Peremptory challenges will be exercised as follows:

1. United States exercises its first challenge
2. Defendant exercises his/her first and second challenges
3. United States exercises its second challenge
4. Defendant exercises his/her third and fourth challenges
5. United States exercises its third challenge
6. Defendant exercises his/her fifth and sixth challenges
7. United States exercises its fourth challenge
8. Defendant exercises his/her seventh and eighth challenges
9. United States exercises its fifth challenge
10. Defendant exercises his/her ninth challenge
11. United States exercises its sixth challenge
12. Defendant exercises his/her tenth challenge

If either party "passes," (i.e., forgoes to exercise a challenge in the order prescribed), that party has thereby "used" the challenge(s).

After the regular 12 jurors have been selected, the peremptory challenges as to the alternate juror(s) will then be exercised in the same manner.

N. JURY INSTRUCTIONS

Counsel should submit proposed, substantive jury instructions, which indicate the filing party, the supporting authority and shall be numbered and indexed. The proposed instructions shall be filed with the Clerk's office at least six business days before the scheduled trial date. Counsel are also required to submit a copy of their instructions by email to Black_Chambers@ohsd.uscourts.gov formatted in Word.

Supplemental requests for instructions during the course of the trial or at the conclusion of the evidence will be granted solely as to those matters that cannot be reasonably anticipated at the time of presentation of the initial set of instructions. Copies also should be served upon opposing counsel.

O. SUMMARY OF DEADLINES

Counsel for the government and defendant are responsible for submitting to the Court copies of the following:

1. Witness lists (3 business days before trial)

2. Exhibit lists (3 business days before trial)
3. Stipulations (any time before or during trial)
4. Proposed jury instructions (6 business days before trial)

Counsel should refer to this Order to determine whether the above items must be filed with the Clerk's office and served on opposing counsel or should be submitted to the Court's chambers only.

Parties are reminded that all deadlines set forth in this Order and in any other Order issued by this Court are firm deadlines. The parties **SHALL** file or submit to the Court's chambers (as appropriate) all required documents by the dates set forth in these orders unless prior approval of the Court for filing on a later date has been obtained from the Court.

APPENDIX A

VOIR DIRE QUESTIONS BY THE COURT
Criminal Jury Trial Procedures

The Court will first conduct a preliminary examination, typically using questions such as the following. After the Court has finished its examination of the jury panel, counsel may elect to supplement the Court's examination with questions that do not repeat, in substance, any question the Court already has put to the panel.

1. I am now going to read the names of the parties and the witnesses that you may be hearing from in this case. Please listen to the list carefully as I will be asking you whether you know any of these people.

First, as I just told you, the government is represented by _____. Seated at the counsel table with _____ is _____.

At the next table is the Defendant in this case _____. He [or she] is represented by _____ of _____.

The United States may call the following persons as witnesses:

The Defendant in this case may call the following persons as witnesses:

Is any panel member related by blood or marriage to any of the individuals that I have just named?

Are you personally acquainted with these persons, or do you have any knowledge of them, directly or indirectly, through your social, business, or professional lives?

2. Has any panel member ever heard of or been involved with any of the following entities or persons: [List any businesses or non-witness entities that will be important in this case.] Are any of these names familiar to any panel member?

3. **OUTLINE THE OFFENSE PER INDICTMENT OR INFORMATION**

Does any panel member have prior knowledge or information about the offense(s) the defendant(s) is/are charged with, which I have just explained to you? This includes knowledge gained from personal contacts or from the media.

Follow-up Questions for Any Affirmative Responses:

- i. From what source did you hear about this case (newspaper, TV, radio, conversation with others)?
- ii. How many times did you hear or read about it?
- iii. Do you remember specifically what you heard or read?
- iv. Did what you heard or read cause you to have any feeling concerning the merits of the parties' claims?
- v. Did what you heard or read cause you to have a favorable or an unfavorable impression concerning the parties?

- vi. Do you today have any impression or even tentative opinion as to the probable outcome of this case?
4. Does any panel member have any personal interest of any kind in this case, or in the defendant(s)?
5. If any panel member has served as a juror in the federal or state court -- either in a civil or criminal case -- and regardless of the outcome of such case(s), would your prior experience have any effect or influence on your ability to serve as a fair and impartial juror in this case?
6. Does any panel member have any feeling -- thought -- inclination -- premonition -- prejudice -- religious belief or persuasion -- or bias -- which might influence or interfere with your full and impartial consideration and which might influence you either in favor of or against either the defendant(s) or the government?
7. Is there any reason in your mind why you cannot hear and consider the evidence and render a fair and impartial verdict?
8. Can you take the law as the Court instructs you, without any reservation whatsoever, and apply the facts to the Court's instructions on the law? If you cannot do this, please hold up your hand.
9. Do you recognize and accept the proposition that jurors are the sole judge of the facts and the Court is the sole judge of the law? If you cannot do this, please hold up your hand.
10. If you are selected as a juror in this case can you extend the presumption of innocence to this defendant(s); that is, can you presume the defendant(s) is/are innocent of the charge(s) unless and until guilt is established by proof which convinces you beyond a reasonable doubt? If you cannot do this, please hold up your hand.
11. Are you -- or is any member of your immediate family -- a member of a law enforcement agency, i.e., municipal police, county sheriff, state highway patrol, or any federal law enforcement agency, either at the present time or in the past?
12. Does any panel member feel bias -- or prejudice -- because the defendant(s) has (have) been charged by indictment (information) with an offense(s) against the United States?
13. Has any panel member formed or expressed any opinion as to the guilt or innocence of the defendant(s)?
14. Does any panel member have:
- a. Any transportation problem? For example, does anyone have difficulty getting to or from the courthouse?
- b. Any medical or disability problems, such as difficulty hearing, walking or seeing? Does any other medical problem exist which could affect your service on the jury?
15. The Court and counsel estimate this trial will last ____ days. Does any panel member have any immediate family or personal reason or situation which persuades you that you cannot serve as a juror during this period and give your undivided attention to this case?
16. Finally, can any of you think of any matter that you should call to the Court's attention that may have some bearing on your qualifications as a juror, or that -- even to the slightest degree -- may prevent your rendering a fair and impartial verdict based solely upon the evidence and my instructions as to the law?