

TRIAL PROCEDURES
THE HON. KIMBA M. WOOD
UNITED STATES DISTRICT JUDGE

(Updated October 1, 2019)

Chambers

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Courtroom

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Southern District of New York
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Unless otherwise ordered by Judge Wood, trials before Judge Wood shall be conducted as follows:

A. Schedule. Trials will generally be conducted Monday through Friday from 9:00 a.m. to 2:30 p.m., with one short break from approximately 11:30 a.m. to noon.

B. Jury Selection. Jurors will be selected by the struck panel method, as described in Attachment A.

C. Pre-Trial Issues. Pre-trial issues previously raised, but not disposed of, will be resolved at trial. However, it is the responsibility of counsel to bring them to the attention of the Court.

D. Trial Practices. Counsel shall abide by the following rules and practices with respect to witnesses, the handling of exhibits, and making objections:

- i. **Do not run out of witnesses.** Witnesses will be taken out of order if the next witness is unavailable. Failure to have witnesses available during trial may result in preclusion of their testimony.
- ii. The day before any trial day, by 3:00 p.m., counsel shall exchange witness lists for the next day, with two copies to the Court showing the sequence of the witnesses and the estimated time for direct examination.
- iii. Any document that counsel wishes to have the Court examine must first be served on opposing counsel.
- iv. Exhibits must be pre-marked. Each party must provide the Court two copies of its final exhibit list and two identical tabbed notebooks containing copies of the pre-marked exhibits, assembled sequentially. Notebooks may not be wider than two inches.
- v. Each party must keep track of its own exhibits. While an exhibit is being used, it may be left in the possession of the Courtroom Deputy.

- vi. Exhibits that contain inadmissible extraneous matter should be redacted prior to trial. Surplus writing on the back of photographs, etc., should be obscured.
- vii. Neither counsel nor a witness may read from exhibits not in evidence. Upon obtaining leave of the Court, counsel may pass to the jury or read from exhibits that are in evidence. Enlarged copies may be used with prior permission.
- viii. At the end of the trial, all exhibits received in evidence, except for dangerous items such as narcotics, will be sent into the jury room at the commencement of jury deliberations. Counsel are responsible to see that the items sent to the jury are genuine and actually have been received in evidence. Counsel must also, at the close of the evidence, make sure that all exhibits received in evidence are arranged in number order, in a cart to be taken into the jury room. In a criminal trial, a redacted copy of the Indictment containing only those matters being submitted for verdict will be sent into the jury room. Copies of the Jury Charge will also be sent into the jury room. If counsel wish to review those copies before they are sent in, they should ask to do so.
- ix. Only one lawyer may make objections at any one time. Co-counsel may whisper or pass notes regarding how to conduct an examination and when to object.
- x. Objections are to be limited to “objection” and the number of the Federal Rule of Evidence relied upon (*e.g.*, “Objection; Rule 403.”). Counsel should not state or argue grounds of objections in the presence of the jury unless asked to by the Court. If counsel is not satisfied with the ruling, he or she should raise it at the next recess. If the matter cannot wait for a recess, then counsel should send a note to the Courtroom Deputy stating the objection and why it needs to be resolved before the next recess.
- xi. The Court strongly disfavors side bar conferences; counsel should save for a recess any matters that do not require immediate resolution.

E. Conduct of Counsel during Trial. Unless excused by the Court or incapable on account of disability, all counsel (including, where the context applies, all persons at counsel table) shall abide by the following rules and practices:

- i. Attorneys speaking on the record must stand.
- ii. Decorum should be observed at all times. Rudeness and shouting are not tolerated.
- iii. There is to be no cross-discussion on the record. Any attorney is free at any time, without asking leave, to walk to opposing counsel’s table to confer privately with opposing counsel. Such discussion shall not be audible to the jury.
- iv. Offers to stipulate shall not be made in the presence of the jury, unless they have previously been agreed to by the attorneys in the absence of the jury. Stipulations may be oral, but preferably should be in writing and received as an exhibit.

- v. Questions and arguments are delivered from the lectern.
- vi. Witnesses should receive respect and common courtesy.
- vii. If counsel is standing near the witness for the purpose of pointing something out on an exhibit, opposing counsel may also approach the witness (without asking the Court's permission) to observe first-hand what is being pointed out. Counsel should not stand between the witness and the jury.
- viii. Questions that constitute speeches on the part of counsel are forbidden.
- ix. Questions that begin with "Didn't you testify" or "You testified" or "I believe you testified" are usually inappropriate. Whatever the witness testified to, the jury has already heard, and such questions will usually violate Fed. R. Evid. 403. Only after an inconsistent answer has been given is it permissible to remind the witness of his or her prior testimony.
- x. Counsel are not to comment on the substance or validity of the witness's answer. All such comments should be reserved for summation.
- xi. Compound questions should be avoided.
- xii. An opening statement should be a concise representation to the jury of the facts that your side of the case expects to prove, or the position as to facts that the other side has undertaken to prove, unless the Court has approved a particular statement of the law. It is not a time for an appeal to emotion or prejudice. The contemporaneous objection requirement applies to opening and closing statements.
- xiii. A closing argument should be limited to the evidence and the ultimate factual conclusions or inferences that the speaker wished to have the jury accept or reject. As required by Fed. R. Crim. P. 30 or Fed. R. Civ. P. 51, the Court will explain its proposed jury charge to counsel before closing arguments. The Court reserves the right to comment on any improper or unfounded red herring argument made during summation, when the jury is charged.
- xiv. The Court usually permits the jurors to select the foreperson; counsel should thus refrain from addressing juror number 1 as "Mr. Foreman" or "Madam Forewoman."

F. Court Reporter. Please respect the Court Reporter's function.

- i. Counsel must provide the Court Reporter with a list of witnesses at the start of trial. In addition, if the spelling of people, places, or things is unusual, counsel must provide a list of such words to the Court Reporter.
- ii. Speak distinctly; do not speak while someone else is speaking. Do not speak so fast that the Court Reporter has difficulty keeping up with the speaker.

- iii. When referring to an exhibit, counsel should identify the exhibit by number or letter so that the record is clear as to what is being discussed.
- iv. Answers given by a witness relating to distances in the Courtroom, or objects before the witness, should be clarified by counsel for the record, so that the transcript will convey a clear report of what took place at trial.
- v. If a document is to be read, the proponent of the document should hand the Court Reporter a copy of the document before having it read into the record. The reader should proceed slowly enough for the court reporter to record what is being said. Depositions are to be read by stating the word “Question” and then reading the question, then stating the word “Answer” and reading the answer.

G. Post-Trial Procedures. Post-verdict motions must be made within the time permitted by the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure, whichever apply.

STRUCK PANEL JURY SELECTION

The following is a description of the struck panel method by which the jury will be selected in all proceedings before Judge Wood. There are many variations on this basic technique and it is important that counsel understand exactly what procedure will be followed. The procedure requires counsel to take more careful notes and observe more panelists than under the traditional jury selection method, and hence, this memorandum.

Jurors will be seated initially in the order previously selected at random by the Jury Clerk.

In a **civil** case, the Court will ask counsel how many jurors (between six and twelve) they believe are appropriate. *See* Fed. R. Civ. P. 48(a). Each side has three peremptory challenges. 18 U.S.C. § 1870. The Court will generally *voir dire* fifteen to twenty-five panelists.

In a **criminal** case, there is a twelve-person jury (with up to six alternates). Fed. R. Crim. P. 24. In selecting the twelve-person jury, the Government has six peremptory challenges and the defendant has ten peremptory challenges. Fed. R. Crim. P. 24(b)(2). If both parties challenge the same juror, any unchallenged juror remains in the pool from which jurors are selected. For everyone to two alternate jurors impaneled, each side is permitted one additional peremptory challenge from the pool of alternates. The same will be true if there is a third or fourth alternate. Fed. R. Crim. P. 24(c)(4). The Court will generally *voir dire* 32–50 panelists.

From time to time, jurors may be questioned out of the hearing of other jurors. Counsel will present to the Court any proposed questions for the Court to ask jurors, and any challenges for cause, outside the hearing of the jury panel. Any jurors excused for cause will leave, and an equal number of substitutes will be *voir dired*. The same procedure will then be repeated until the requisite number of panelists have been seated after the exercise of challenges for cause. The consequence of excusing any panelist is that all the remaining panelists on the list move up one slot.

The Court will then adjourn to sidebar. All remaining challenges are exercised at sidebar. Counsel must exercise all their peremptory challenges at the same time, and simultaneously with one another. Each counsel shall write on a piece of paper the names or numbers of the panelists he or she wishes to challenge, which papers will then be handed to Judge Wood.

The jurors will elect their own foreperson.

This selection method has a number of virtues. First, when a peremptory challenge is exercised, counsel know the consequences: i.e., who will replace the challenged panelist. The second principal virtue is that the jurors who sit never know who challenged the other panelists, and you thus avoid speculation as to why one party challenged certain panelists. Besides making the selection process more informed and less of a gamble, this system has also proved to be expeditious. In a multi-party case, it facilitates counsel conferring without awkward courtroom huddling.