



**UNITED STATES DISTRICT COURT
Southern District of California**

Ruth Bermudez Montenegro, U.S. District Judge

CRIMINAL TRIAL PROCEDURES

Please Note: The Court provides this information for general guidance to counsel. The Court may, however, vary these procedures as appropriate in any case.

- A. Trial Dates.** After consultation with the parties, the Court will set a trial date. Trial will be conducted before Judge Ruth Bermudez Montenegro in Courtroom 5B. Trial will normally be conducted each day from 9:00 a.m. to approximately 4:30 p.m., with one longer break for lunch (from approximately 11:45 a.m. to 12:45 p.m.) and two shorter breaks, one in the morning and one in the afternoon. This schedule may be modified at the discretion of the Court. Counsel are expected to be in the courtroom by no later than 8:15 a.m. each day of trial. A Final Status Conference will be set and held close to the trial date to review any trial-related matters.
- B. Motions in Limine.** At the pretrial motions date, the Court will generally schedule a hearing date for motions in limine in advance of trial. Motions in limine are due three (3) weeks before the hearing, with any opposition due two (2) weeks before the hearing. The Court generally does not permit reply briefs for motions in limine. A party may seek leave from the Court to file any necessary reply brief.
- C. Jury Instructions.** The parties must file proposed jury instructions **fourteen (14)** days prior to the date of trial, unless otherwise ordered by the Court ***and email a copy in Word to efile_Montenegro@casd.uscourts.gov***. Counsel must meet and confer and submit a joint set of agreed instructions. Counsel must also submit a separate set of any instructions they propose to which there is an objection. Supplemental instructions must be filed and served as soon as the need for them becomes apparent.

Jury instructions are to be arranged in a logical sequence, including any form preliminary instructions to be read at the beginning of trial, general instructions to be read at appropriate times during trial, proposed instructions on substantive issues of law, and concluding instructions. The parties are encouraged to work cooperatively and keep disputed instructions to a minimum.

With respect to form preliminary instructions, general instructions, or concluding instructions, counsel shall include in their joint packet the full text of these instructions with citation to the Ninth Circuit Manual of Model Jury Instructions (Criminal). If the form instructions contain bracketed language or blanks, the parties should provide the Court with the appropriate language from the brackets, and all blanks should be completed.

With respect to instructions on substantive issues of law: If the instruction is undisputed, the instruction shall be identified as “Stipulated Instruction No. ____ Re _____.” Even if the parties stipulate to the instruction, each instruction should be accompanied by a citation to the Ninth Circuit Manual of Model Jury Instructions and/or other authority. If the instruction is disputed, each party’s version of the instruction shall be submitted together in their logical place in the overall sequence of jury instructions. Each disputed instruction shall be identified as “Disputed Instruction No. ____ Re _____ Offered by _____,” with the blanks and brackets filled in as appropriate. All disputed versions of the same instruction shall bear the same number. If the parties modify any form instruction, whether stipulated or disputed, they must clearly identify such modifications in either **bold** or **redlined** format, or in some other manner that makes it clear to the Court what modifications are proposed. If one party offers an instruction and the opposing party does not have a counter version to that instruction (and simply contends that no such instruction in any version should be given), that party should so state on a separate page inserted in logical sequence in lieu of an alternate version.

The Court prefers to use the Ninth Circuit Criminal Jury Instructions whenever possible. The Court will accept other proposed jury instructions, but any proposed modification of an instruction from statutory authority or the Ninth Circuit Models must state specifically the modification and the authority supporting the modification. The parties should consult Criminal Local Rule 30.1 regarding proper form and content.

As the trial progresses and the evidence is heard, the Court will fashion a comprehensive set of jury instructions to cover all issues actually being tried. Prior to the close of the evidence, the Court will provide proposed final jury instructions to the parties. It is each party’s responsibility to carefully review the instructions and make suggestions to the Court if modifications appear necessary. After a reasonable period for review, the Court may hold one, or more, charging conferences, at which each party may object to any passage, ask for modifications, or ask for additions. If the Court does not hold a formal charging conference, it will permit the parties to make any objections to the jury instructions in writing or on the record. If a party wishes to request an instruction that the Court has chosen to omit, it must affirmatively re-request it either on the record or in writing in order to give the Court a fair opportunity to correct any error.

Verdict Forms. The parties must file proposed verdict forms **fourteen (14)** days prior to the date of trial, unless otherwise ordered by the Court ***and email a copy in Word to efile_Montenegro@casd.uscourts.gov***. If the parties intend to use a special verdict form, they should meet and confer in an effort to submit a joint proposed special verdict form. If the parties cannot agree on a proposed special verdict form, they may submit separate proposals. The parties shall also email the verdict form in Word format to the Court’s email address at efile_montenegro@casd.uscourts.gov.

D. Trial Briefs. Pursuant to Criminal Local Rule 23.1, the parties may, no later than five (5) Court days before the date of trial, serve and file briefs on all significant disputed

issues of law, including foreseeable procedural and evidentiary issues with citation of relevant statutes, ordinances, rules, cases and other authorities.

- E. Witness and Exhibit Lists.** The Government must file a witness list and an exhibit list due on the date of the motions in limine hearing.
- F. Evidence and Exhibits.** Government counsel must provide a list of exhibits and give it to the Courtroom Deputy on the first day of trial. All exhibits must be pre-marked on the first day of trial. Exhibit stickers may be obtained from the Clerk of the Court or from the Courtroom Deputy, in advance of trial, or exhibits may be marked electronically with the case number and exhibit numbers.

Government counsel should provide the Court **one** exhibit binder at least 5 days before trial and must simultaneously provide **two** thumb-drives of the exhibits.

All exhibits must be numbered, not lettered. Counsel may agree to number ranges (e.g., Government has 1–100 and Defendant has 101–200) for their respective uses. A single exhibit should be marked only once. If one party has marked an exhibit, then another party should not re-mark the exact document with another number. Different versions of the same document, e.g. a copy with additional handwriting, must be treated as different exhibits with different numbers. Counsel should both label and describe exhibits in a neutral, non-argumentative manner (e.g., Exhibit 37 - Cell Phone Video, not Exhibit 37 - Murder Video).

Counsel should waive authentication evidence of documents where authentication is not at issue.

Hard copy exhibits may not be passed among the jury during trial. If counsel wish the entire panel to examine a particular exhibit prior to deliberations, they should either provide blow-ups or use the Court's visual equipment.

Annotations may be made on exhibits or illustratives presented on the Court's equipment, but those annotations are unable to be printed.

All exhibits to be entered by the parties into evidence must be submitted on a thumb drive and will be reviewed with the Courtroom Deputy prior to jury deliberations. Digitized exhibits must be branded with an exhibit tag and number, which shall be placed at the bottom right-hand corner of each exhibit. Each exhibit tag will ideally be in a color that stands out, such as bright yellow. Should the parties have logistical questions about the marking or format of exhibit numbers, the parties are instructed to contact the Courtroom Deputy for further instructions. Counsel must also prepare and submit on a thumb drive an index of all exhibits admitted into evidence. Such index should include the exhibit number and a brief, nonargumentative description of each exhibit (e.g., January 2, 2024 Cell Phone Video). Counsel are also jointly responsible for creating a thumb drive of all exhibits marked for identification but not received in evidence, along with demonstrative only exhibits.

At the end of each trial day, counsel are expect to confer with each other and with the

courtroom deputy regarding which exhibits are in evidence and any limitations with respect to any admitted exhibits. Any disputes must be promptly brought to the Court's attention.

Before publishing an exhibit to the jury, counsel must either move for admission of the exhibit or allow the Court to inquire whether the opposing side has any objection to publication.

When referring to an exhibit, counsel should refer to its exhibit number whenever possible to keep a complete record.

If an exhibit is being used and counsel's view is obstructed, counsel may relocate for better viewing without requesting permission from the Court.

Pursuant to Local Criminal Rule 1.1(e) and Local Civil Rule 79.1, all exhibits will be returned to the party who produced them at the end of trial.

G. Witnesses. All witnesses must be present at the start of trial or readily available to take the stand. It is not acceptable for a jury to wait while counsel attempts to locate a witness. It is also counsel's responsibility to instruct witnesses and parties not to discuss their testimony or discuss the case outside of court in the presence of any jurors or in any location where jurors or in any location where jurors may overhear. Other than when testifying, all witnesses (other than the defendant, the Government's designated case agent(s), and the defense investigator) are excluded from the courtroom throughout the duration of the trial proceedings excluding closing argument. At the close of each trial day, counsel shall inform the other party and the courtroom deputy of the witnesses to be called for the next day.

H. Proposed Voir Dire Questions. Counsel may serve and file proposed voir dire questions on the day set for the hearing on motions in limine.

I. Jury Selection. The Courtroom Deputy will provide counsel with a numerical list of the jury panel ("strike sheet") at the start of voir dire. After the jury panelists are sworn, the Court will question the panelists to determine each individual's suitability for jury service, including whether each panelist can remain fair and impartial. Attached is the Court's general criminal jury trial questionnaire that is distributed to all prospective jurors during jury selection as **Exhibit A**. On a case-by-case basis, the Court will permit follow-up voir dire conducted by the attorneys. If voir dire by counsel is permitted, ten (10) minutes per side on non-complex cases generally will be allowed.

The Court will generally select two alternates. The Court will add peremptory challenges of one per side per alternate.

After each counsel has completed examination of the panel and hardships and challenges for cause have been presented and ruled on by the Court outside the presence of the panel, the parties may exercise their peremptory challenges. The Court uses a double-blind strike format. The peremptory challenges are directed to all panelists remaining after the

disposition of challenges for cause. A challenge sheet is passed to each party (side) and each party (side) will record their peremptory challenges. After the challenges have been exercised, the lists will be shared with all counsel. The first twelve panelists remaining, in the order in which they were seated, will constitute the jury. The next remaining one to two jurors will become the alternate(s). After all challenges and objections, the Court will announce those selected, and will then thank and excuse the remaining prospective jurors. Once a jury is empaneled, the Courtroom Deputy will provide the parties with a seating chart of the jurors.

J. Presentation of Evidence. Please abide by the following rules:

- Do not enter the well, except during voir dire, opening statement and closing argument.
- Conduct all examinations of witnesses from the podium.
- Feel free to approach witnesses during examination, but first seek permission from the Court. Please keep your visit to the witness stand brief, e.g., by quickly orienting a witness with an exhibit and returning to the podium.
- Where a party has more than one (1) lawyer, only one (1) lawyer may conduct the examination of a given witness and that lawyer alone may make objections concerning that witness.
- When objecting, state only the legal ground for the objection; e.g., “Objection, hearsay.” Speaking objections are not permitted, unless the Court requests further information from counsel.
- Refrain from talking to each other in the presence of the jury. If clarification on a matter is needed, please seek clarification from the Court and not directly from counsel.

K. Bench Conferences. Sidebar conferences are disfavored. If counsel desire to speak to the Court outside the jury’s presence, counsel may request to do so at the start of a recess or at the end of the day. Requests to see the Court outside the presence of the jury when the Court is about to begin the day of trial or reconvene following a recess generally will not be granted. These matters usually can wait until the next recess. If there are issues that must be addressed outside the presence of the jury, the Court shall address those issues either during a break, in the morning before the jury arrives, or once the jury departs at the end of the day.

L. Opening Statements. Counsel must cooperate and meet and confer to exchange any visuals, graphics or exhibits to be used in opening statements, allowing for time to work out objections and any reasonable revisions.

M. Interpreters. If an interpreter is needed for a witness, please make arrangements in advance of trial.

N. Audio/Visual Equipment. The parties are encouraged to schedule a time to visit the courtroom prior to trial to ensure familiarity and compatibility with all audio and visual equipment. Counsel may contact the courtroom deputy to schedule a time to visit the courtroom for such purpose.

Exhibit A - Criminal Jury Trial Questionnaire

Please answer the following questions when directed to do so by the Court. **Do not write on this paper.**

1. State your name.
2. State your city of residence and how long you have lived there.
3. State how long you have lived in California.
4. State your occupation. **(If retired or unemployed, state your previous occupation(s).)**
5. State your marital status.
6. If married, state your spouse's occupation. **(If separated, divorced, widowed, or retired, please state what is/was his/her occupation. If self-employed, please state what type of employment.)**
7. If you have children, state their ages and the occupation of any adult children.
8. Have you, or any member of your immediate family or close friend ever been involved in law enforcement?
9. Have you, or any member of your immediate family or close friend ever been involved in law, such as a lawyer or judge?
10. If you have had previous jury service, including grand jury service, **state where and when you were a juror.** Also state whether the case(s) was civil or criminal. Did the jury return a verdict? **Do not state what the verdict was.**
11. Have you, any immediate family member, or close friend ever been involved in a criminal matter of any kind, either as a defendant, a witness, or a victim?
12. Will you follow the law as given to you by the Court?
13. Is there any reason why you could not be fair and impartial in a case of this nature?