

New as of April 2009

GENERAL OBSERVATIONS ABOUT CRIMINAL JURY TRIALS BEFORE JUDGE KOPF

Revision Note: Judge Kopf has changed his practice in three respects. First, counsel may remain seated to question witnesses. Second, each lawyer will be allotted 20 minutes rather than 10 minutes to conduct voir dire. Third, Judge Kopf uses digital audio rather than a court reporter.

Trial hours: 9:00 a.m. to noon and 1:30 p.m. to 4:30 p.m. with 15 minute breaks in morning and afternoon.

Jury selection: Court conducts limited examination. See the attached sample of voir dire questions often asked by the court. Counsel are also given 20 minutes a party to conduct voir dire. Deputy clerk times each party and will interrupt if you go over time.

Opening statements: 20 minutes a party. Deputy clerk times each party and will interrupt if you go over time. No movement about the courtroom.

Closing argument: 30 minutes a party. Plaintiff may reserve 15 minutes for rebuttal, but it must be true rebuttal and should not raise new issues or points of argument not addressed in the first argument. No movement about the courtroom. Final instructions are given before closing arguments, except that a "housekeeping" instruction is given after argument. Deputy clerk times each party and will interrupt if you go over time.

Preliminary jury instructions: The court gives a standard set of preliminary jury instructions after voir dire and before opening statements. See the attached sample standard preliminary jury instructions.

Final jury instructions: Please provide final jury instructions no later than the start of trial. An informal (off the record) conference will be held on final jury instructions sometime during the trial. A formal (on the record) conference will follow after Judge Kopf has considered the remarks made at the informal conference.

Digital audio: Judge Kopf does not use a court reporter. He uses a digital audio recording system and the standard procedure is to upload all recordings to CM/ECF as soon as possible after each day's trial session. *Please remember that it is important to use a microphone whenever counsel speaks.* If counsel fails to do so, the judge or court clerk will interrupt counsel and remind counsel to use the microphone.

Objections: No speaking objections. For foundation objections, state what foundation is lacking. If you desire a bench conference, state your request. If you want the bench conference recorded, state your request and wait to speak until the digital audio recording system is turned on at the bench.

Table microphone: There are table microphones which should be pulled directly in front of counsel and about six inches away from counsel. Note that the microphones can be muted for client conferences by pushing the button on the base of the microphone.

Courtroom audio: What is spoken in the courtroom during trial and during breaks is broadcast to Judge Kopf's chambers. *Be aware that during a recess what is being said in the courtroom can be heard in chambers.*

Number of jurors: Counsel shall be prepared to state whether they desire that alternate jurors be seated. If no alternate is seated, counsel should be prepared to stipulate that a jury of 11 persons may render a verdict no matter when the 12th juror is excused.

Placement of counsel at counsel tables: For security purposes, the defendant(s) and defense counsel must use the table next to the east wall and not the table next to the jury box.

Exhibits: To the extent practical, exhibits are to be pre-marked and listed on forms approved by the court. Once an exhibit has been received, it is to be given to the courtroom deputy. Exhibits identified on the exhibit list, but not offered, or if offered and not received, are to be delivered to the courtroom deputy at the close of trial. Before the exhibits are delivered to the jury, counsel shall confer with each other in the presence of the courtroom deputy about which exhibits should go to the jury room. *Please provide Judge Kopf with a copy of each exhibit.*

Video Presenter: Counsel are encouraged to use the video presenter when displaying exhibits. *There is a microphone at the presenter and questions may be propounded to a witness from that microphone if it is also necessary to use the presenter during that questioning.*

Dealing with jury after submission: Counsel shall be available for return to the courtroom on short notice, until after the jury has returned its verdict. Counsel shall keep the courtroom deputy advised of where they can be reached at all times. Jury questions will normally be taken up on the record in the courtroom with counsel and the defendant(s) present.

No recross examination: Judge Kopf does not normally permit recross examination. The cross examination should be limited to the scope of the direct examination, and redirect examination limited to the scope of the cross examination.

Note taking but no juror questions: Judge Kopf allows jurors to take notes. Judge Kopf does not permit jurors to ask questions during trial.

BACKGROUND QUESTIONS FOR PROSPECTIVE JURORS

During the process of selecting a jury Judge Kopf may ask that each prospective juror give the court and counsel for the parties a brief summary of the juror's background. If Judge Kopf asks for background information he generally would like you to give the following information.

- A. Please state your name (this helps with pronunciation).
- B. Please state name of the city where you live.
- C. Please state your marital status and number of children if any.
- D. Please state, if employed, where you have worked during the last five years.
- E. Please briefly describe what types of things you did at work during the last five years.
- F. If married, please state where your spouse has worked during the last five years.
- G. If your spouse worked during the last five years please briefly describe what type of things your spouse did at work.

STANDARD VOIR DIRE QUESTIONS IN CRIMINAL CASES

Ladies and Gentlemen, you have been handed a document entitled "BACKGROUND QUESTIONS FOR PROSPECTIVE JURORS" (a copy is attached). Starting with the first prospective juror, please answer those questions for us. You may remain seated as you give your answers.

I will now ask the lawyers to introduce themselves, state who they represent, to name the witnesses who might be called to testify in this case, and in the case of the government to state the name of any representative of the government who will sit at counsel table. We will start with government's counsel.

Ladies and Gentlemen, I will now ask the panel as a group a series of questions. If your answer would be "yes" to any question please raise your hand as I may have further questions of you.

Do any of you know the government's representative?

Do any of you know the defendant(s)?

Do any of you know any of the lawyers?

Do any of you know any of the witnesses who might be called?

Do any of you know anything about this case aside from what you have been told in this courtroom?

Have any of you ever served on a criminal or civil jury in state or federal court?

Have any of you, or any close personal family member, ever participated in a civil or criminal lawsuit as a party or a witness?

Do any of you disagree with the legal principle that the charges of the government are nothing more than mere accusations and not evidence of a crime?

Do any of you disagree with the legal principle that a defendant in a criminal case is presumed innocent until and unless the government has proven the defendant guilty beyond a reasonable doubt by the unanimous agreement of all 12 of the jury members?

This case is expected to take about (stating the expected time), will the length of the case cause any of you extreme hardship?

Do any of you disagree with the legal principle that as jurors you must follow the law as I give it to you even if you think the law is wrong?

Is there anything about the nature of the government's charges that causes any of you to think that you could not be fair and impartial

to the government or to the defendant?

Can any of you think of anything which should be called to my attention which might have some bearing on your ability to act as a fair and impartial juror?

I will now allow the lawyers an opportunity to ask questions. We will start with counsel for the government.

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Preliminary Jury Instructions for Use in Criminal Cases
Introduction

Ladies and gentlemen: I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed.

Serving as a Juror on this Criminal Case

This is a criminal case, brought against the defendant[s] by the United States government. You should understand that the government's charges are simply accusations. They are not evidence of anything. The defendant[s] [has] [have] pleaded not guilty, and [is] [are] presumed to be innocent unless and until proved guilty beyond a reasonable doubt to the unanimous satisfaction of all the members of the jury.

It will be your duty to decide from the evidence whether [the] [each] defendant is guilty or not guilty of the crime[s] charged. From the evidence, you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

Please remember that only [this defendant] [these defendants], not anyone else, [is] [are] on trial here, and that [this defendant] [these defendants] [is] [are] on trial only for the crime[s] charged and not for anything else.

Elements of the Offense

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crime[s] charged, which the government must prove beyond a reasonable doubt to make its case. Please refer to Exhibit A which is attached to these instructions. I will read Exhibit

A to you at this time.

You should understand, however, that what I have just given you is only a preliminary outline. At the end of the trial I will give you final instructions on these matters. If there is any difference between what I just told you, and what I tell you in the instructions I give you at the end of the trial, the instructions given at the end of the trial must govern you.

What Testimony to Believe

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, or only part of it, or none of it.

In deciding what testimony to believe, consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an earlier time, the general reasonableness of their testimony and the extent to which their testimony is consistent with other evidence that you believe.

No Sympathy or Prejudice

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you. You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

What Is and Is Not Evidence

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses; documents and other things received as exhibits; any facts that have been stipulated, that is, formally agreed to by the parties; and any facts that have been judicially noticed--that is facts which I say you may accept as true.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions and comments by lawyers are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.

4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

5. Exhibits that are identified by a party but not received in evidence are not evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used. You should also pay particularly close attention to such an instruction, because it may not be available to you in writing later in the jury room.

Some of you may have heard the terms "direct evidence" and "circumstantial evidence." You should not be concerned with those terms. The federal law makes no distinction between the weight to be given to direct and circumstantial evidence.

No Transcript Available But Note-Taking Allowed

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it is not feasible to play back lengthy testimony. You must pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you so that you do not hear other answers by the witness. When you leave at night, your notes will be secured and not read by anyone.

Jurors Not Allowed to Question Witnesses

I do not permit jurors to ask questions of a witness whether orally or in writing. Moreover,

I do not allow jurors to give me a question for presentation to the witness. In other words, you will not be allowed to question witnesses directly or indirectly.

Conduct of the Jury

You must strictly obey the following rules during all recesses and throughout the trial:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk or correspond with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors. In particular, do not “blog, tweet or twitter” or post anything on “My Space,” “Facebook” or “You Tube” or similar sites about this case or about your service as a juror until this trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it. If someone should try to talk to you about the case please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case--you should not even pass the time of day with any of them.

Fifth, if there is news coverage of this case, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it.

Sixth, do not do any research or make any investigation about the case on your own. Do not conduct research on the Internet about this case or about anyone involved with it. Do not consult any books such as dictionaries or similar references about this case or about anyone involved with it.

Seventh, do not make up your mind during the trial about what the verdict should be. On the contrary, keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Eighth, if you need to communicate with me do so only in writing by giving the courtroom deputy a note which is signed by you and dated. Please do not ask the courtroom deputy questions about the law or the evidence. The courtroom deputy is not allowed to answer such questions.

Richard G. Koff
United States District Judge

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