

## **ORDER SETTING JURY TRIAL IN CRIMINAL CASES and STIPULATED DISCOVERY ORDER**

### ***IT IS ORDERED:***<sup>1</sup>

**I. TRIAL DATE:** This case has been placed on the calendar of United States District Court Judge Donald E O'Brien for a jury trial scheduled to commence in the third floor courtroom of the Federal Courthouse in Sioux City, Iowa, beginning on the **^C day of ^C, 200^C**.

**II. FINAL PRETRIAL CONFERENCE:** Unless a final pretrial conference ("FPTC") is set by separate order, the FPTC in this case will be held in the chambers of Judge O'Brien beginning **promptly at 8:30 a.m.** on the day scheduled for the commencement of trial. All counsel and parties are expected to be present for the FPTC at the scheduled time, prepared fully to proceed with the trial of the case.

**III. MONTHLY CRIMINAL CASE MANAGEMENT CONFERENCE:** At **3:00 p.m.** on the **first Friday of each month**, a status/scheduling conference for certain pending criminal cases will be held at the Federal Courthouse in Sioux City, Iowa. **All attorneys (both prosecution and defense) handling criminal trials scheduled on the following month's trial docket must attend the conference or, by no later than 5:00 p.m. on the preceding Thursday, file an appropriate status report or motion.** Any such filing should contain a statement that the case will be ready for trial as scheduled, with an estimate of the number of days required for trial, or should be a motion to continue the trial, citing appropriate grounds for continuance under the Speedy Trial Act, 18 U.S.C. § 3161.

### ***IV. MOTIONS, NOTICES, AND REQUESTS:***

**A. Nontrial-Related Motions.** All motions not directly related to trial issues, including motions challenging the extent to which the government is providing discovery, motions to suppress, motions to dismiss, and motions for severance, must be served and

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<sup>1</sup>This Order was revised on October 10, 2002. **The parties are alerted to the fact that their duties and responsibilities have changed from what was required by earlier trial setting orders.**

filed within **28 days** after the date of the arraignment.<sup>2</sup> See LCrR 12.1(a). This deadline controls even if the trial date established in this order is continued. Resistances to these motions must be served and filed within **5 court days** after the filing of the motion. See LCrR 47.1(a).

B. Trial-Related Motions. All trial related motions, including motions in limine, must be served and filed as soon as practicable, but at least **14 days** before the commencement of trial. This deadline applies to the original trial date, or if the trial date is continued, to the subsequent trial date. Resistances to these motions must be served and filed within **5 court days** after the filing of the motion. See LCrR 47.1(a). Unless ordered otherwise, the court will take up these motions at the FPTC.

The parties are required to notify the court by motion in limine or by motion under Federal Rule of Evidence 104(a) of all novel, unusual, or complex legal, factual, or procedural issues reasonably anticipated to arise at trial.

C. Notices. All notices referenced in Local Criminal Rule 12.1(a) must be given within **28 days** after the date of the arraignment.

D. Requests. All requests referenced in Local Criminal Rule 12.1(a) must be made within **28 days** after the date of the arraignment.

Requests for **subpoenas** and **writs of habeas corpus ad testificandum** must be submitted in accordance with the deadlines in Local Criminal Rule 17.1. These requests will be handled by United States Magistrate Judge Paul A. Zoss; a courtesy copy should be delivered to Judge Zoss to ensure prompt processing of these requests.

All **requested voir dire questions** and **trial briefs** must be served and filed at least **2 court days** before the commencement of trial.

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<sup>2</sup>Any reference in this Order to “the arraignment” is to the defendant’s *first* arraignment. If a superseding indictment is returned and the defendant wants an extension of a deadline, then the defendant should file a motion promptly requesting such an extension. See LCrR 12.1(b).

The deadlines in this subsection apply to the original trial date, or if the trial date is continued, to the subsequent trial date.

**V. JURY INSTRUCTIONS:** It is the practice of the court to read to the jury a set of Preliminary Jury Instructions immediately before opening statements, and a set of Final Jury Instructions before arguments. At least **5 court days** before the commencement of trial, the parties must serve and file any written proposed instructions. At least **1 court day** before the commencement of trial, the parties must serve and file any objections to the opposing party's proposed instructions.

**VI. READING OF JURY INSTRUCTIONS:** The court does not require the court reporter to report the reading of the jury instructions, and considers the instructions read as published in the final written version. The parties should make a record as to any misreads of the instructions at the conclusion of the reading of the instructions.

**VII. ACCEPTANCE OF RESPONSIBILITY:** The parties are advised that the additional 1-level decrease for acceptance of responsibility provided for under United States Sentencing Guidelines § 3E1.1(b) may not be granted unless notice is given to the court by **no later than the close of business 10 days before the commencement of trial** that the defendant has entered into a plea agreement or has entered a plea of guilty resolving all pending charges.

**VIII. DISCLOSURE OF WITNESSES, EXHIBIT LISTS AND JENCKS MATERIAL:** At least **5 court days** before the commencement of trial, the parties must confer and exchange the following:

A. A witness list<sup>3</sup> which sets forth the anticipated order of the calling of each witness;

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<sup>3</sup>The defendant is not required to include on the witness list the defendant; the defendant is always a possible witness in every criminal trial, and the final decision as to whether to call the defendant as a witness often is not made until just prior to the defendant resting his or her case in chief.

B. All materials required to be disclosed under the Jencks Act for each witness identified on the witness list<sup>4</sup>; and

C. An exhibit list identifying all exhibits which the party anticipates attempting to introduce into evidence at trial, together with a copy of all documentary exhibits.

At this conference, the parties are encouraged to reach an agreement on the admissibility of exhibits so that all exhibits to which there are no objections may be admitted upon stipulation of the parties at the commencement of the trial.

At least **2 court days** before the commencement of trial, the parties each must file an exhibit list in the following format:

<b>(Government's)(Defendant's) Exhibits</b>	Objections [Cite Fed. R. Evid.]	Offered	(A) - (NA)
[1.][A.] <i>[describe exhibit]</i>		*	*
[2.][B.] <i>[describe exhibit]</i>			
[3.][C.] <i>[describe exhibit]</i>			
[4.][D.] <i>[describe exhibit]</i>			
[5.][E.] <i>[describe exhibit]</i>			

*[\*These columns are for use by the trial judge at trial. Nothing should be entered in these columns by the parties.]*

**IX. JURY INVESTIGATION:** If any party does any type of jury investigation, the party must disclose to the court and all opposing counsel the name of any potential juror

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<sup>4</sup>These materials may not be photocopied, and must be returned at the conclusion of the trial.

who has been determined to have a criminal conviction for an offense more serious than a simple misdemeanor.

**X. JURY SELECTION PROCEDURES:** The following are Judge O'Brien's jury selection procedures:

A. Approximately 50 randomly-selected potential jurors will be notified to appear at the courthouse at 8:30 a.m. on the first day of trial. About a week before trial, the attorneys will receive from the Clerk of Court a list of the potential jurors, together with copies of their juror questionnaires. The attorneys also will receive a list of the first 30 potential jurors<sup>5</sup> in the order in which they were randomly drawn. The court will be provided with a separate list of all of the potential jurors in the order in which they were randomly drawn.

B. The first 30 of the preselected potential jurors who appear for jury selection will be seated in order in the jury box,<sup>6</sup> and will be the potential jurors first considered for impanelment on the jury.

C. At 9:00 a.m., the Clerk of Court will open court.

D. Judge O'Brien will greet the jury, counsel, and the parties; announce the name of the case to be tried; and ask counsel if they are ready to proceed.

E. The Clerk of Court will swear in the entire jury panel.

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<sup>5</sup>Thirty is the number of potential jurors needed, after 16 peremptory challenges, to produce 12 jurors and 2 alternates. One additional potential juror will be seated for each additional peremptory challenge and for each additional alternate juror required to try the case. Any request for additional peremptory challenges or alternate jurors, must be served and filed at least **3 court days** before the commencement of the trial.

<sup>6</sup>If any of the first 30 preselected potential jurors does not appear for jury selection or is excused from jury service after arriving at the courthouse, that potential juror will be replaced with the next potential juror on the judge's list of preselected potential jurors, and the attorneys will be provided with an updated list.

F. Judge O'Brien will make some introductory remarks to the jury about the jury selection process.

G. Judge O'Brien will ask the entire jury panel if they are aware of any circumstance that might prevent their service on the jury, and may excuse anyone for whom he believes jury service would be an undue burden.

H. Judge O'Brien will read a statement of the case.

I. Judge O'Brien will ask the attorneys to identify themselves, the members of their firm, their clients, and the witnesses they expect to call at trial.

J. Judge O'Brien will engage the potential jurors in the jury box in voir dire. This voir dire may include questions for the panel requested by a party who has served and filed a timely pretrial request for voir dire.

K. After Judge O'Brien has completed his questions, each side will be permitted to conduct up to forty minutes of jury voir dire. A request for additional time for attorney voir dire because of the complexity or unusual nature of a case, or in multi-party cases, should be made at or before the FPTC.

L. The parties will be permitted to challenge any potential juror for cause. These challenges may be made at the sidebar. If a potential juror is excused for cause, he or she will be replaced by the next potential juror on the judge's list of preselected potential jurors, who then will undergo the same questioning as the other potential jurors. There will be 30 potential jurors remaining in the jury box at the conclusion of voir dire.

M. The Clerk of Court will give counsel for the United States a list of the names of the 30 remaining potential jurors and a "strike sheet." Counsel for the United States is to indicate on the strike sheet the name of its first strike and then state aloud "exercised," and return the sheet to the Clerk of Court. The Clerk of Court then will give counsel for the defendant(s) the list potential jurors and the strike sheet. Counsel for the defendant(s) is/are to indicate on the strike sheet the names of the defendant's first set of strikes and

then state aloud “exercised,” and return the sheet to the Clerk of Court. This procedure will be repeated until the United States has exercised 6 peremptory challenges and the defendant(s) has/have exercised 10 peremptory challenges, and 14 jurors remain in the jury box.

N. The names of the 14 remaining jurors will be announced by the Clerk of Court, in the numerical order in which they are seated on the Clerk of Court’s seating chart. The rest of the panel will be excused. The first 12 names announced will be the jury, and the last 2 names announced will be the alternates. The alternates will not be advised that they are alternate jurors.

O. The Clerk of Court will swear in the jury.

Any objection to Judge O’Brien’s procedure for selecting jurors and alternate jurors and must be served and filed at least **3 court days** before the commencement of the trial.

***XI. CONDUCT OF TRIAL:*** It is anticipated that each day of trial will last from **9:00 a.m. to 5:00 p.m.** The parties are expected to have witnesses available so the court can take testimony throughout the full trial day with no undue delays in the receipt of evidence. **The parties and their attorneys are expected to be at the courthouse and available in the court’s chambers by no later than 8:30 a.m. on each morning of trial.** The time between 8:30 a.m. and the start of testimony is to be used to review exhibits which the parties anticipate introducing into evidence during that trial day, to set up any audiovisual equipment, and to take up any evidentiary or other issues which need to be addressed outside the presence of the jury. In the event any party believes there may be particularly difficult issues that may require more than 5 or 10 minutes to resolve, that party must advise the court and opposing counsel so an earlier time can be set to meet with counsel and the parties outside the presence of the jury and still start the receipt of evidence at 9:00 a.m.

**Defense counsel are advised that a defendant is entitled to participate in sidebar conferences, and this right is waived by a defendant who does not attend such a conference.** All defendants should be advised by counsel of this right before the commencement of trial.

***XII. OPENING STATEMENTS; ARGUMENTS:*** Opening statements are limited to **30 minutes** and arguments are limited to **one and one-half hours**. A request for additional time for opening statements or arguments must be made no later than the commencement of trial.

***XIII. DEMONSTRATIVE AIDS:*** A party using a demonstrative aid during trial must, before the demonstrative aid is displayed to the jury, show the demonstrative aid to a representative of all other parties participating in the trial. Any disputes concerning a demonstrative aid must be brought to the attention of the court promptly. The term “demonstrative aid” includes charts, diagrams, models, samples, and computer presentations, but does not include exhibits admitted into evidence.

***XIV. PROTOCOL FOR WITNESSES:*** An attorney who may call a witness to testify at trial must, before the witness testifies, advise the witness of the accepted protocol for witnesses testifying in this court. This advice should include the following information: (A) the location of the witness box; (B) the proper route from the courtroom door to the witness box;<sup>7</sup> (C) the fact that the witness will be placed under oath; (D) where the witness should stand while the oath is being administered; (E) that the witness should adjust the witness chair and the microphone so the microphone is close to and directly in front of the witness’s mouth; (F) that the witness should speak only in response to a question; (G) that the witness should wait for a ruling on any objections before proceeding to answer a

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<sup>7</sup>A map displaying this route is attached to this order. A copy of this map should be provided to each witness who is unfamiliar with the layout of the courtroom by the attorney calling the witness to testify.

question; (H) that the witness should answer all questions verbally; and (I) that substances such as food, beverages, and chewing gum should not be brought into the courtroom.

The attorney also must advise the witness of proper dress for the courtroom. Proper dress does not include blue jeans, shorts, overalls, T-shirts, collarless shirts, shirts with printed words or phrases on the front or back, tank tops, or the like.

**XV. RESTRICTIONS ON WITNESSES:**

A. Exclusion of Witnesses. A witness who may testify at the trial or at an evidentiary hearing shall not be permitted to hear the testimony of any other witnesses before testifying, and is excluded from the courtroom during the trial or hearing until after the witness has completed his or her testimony, unless exclusion of the witness is not authorized by Federal Rule of Evidence 615 or unless the court orders otherwise. A witness who is excluded from the courtroom pursuant to this paragraph also is prohibited from reviewing a verbatim record of the testimony of other witnesses at the trial or hearing until after that witness has completed his or her testimony at the trial or evidentiary hearing, unless the court orders otherwise.

B. Restrictions on Communications with Witnesses. Unless the court orders otherwise, after the commencement of the trial or an evidentiary hearing and until the conclusion of the trial or hearing, a witness who may testify at the trial or hearing is prohibited from communicating with anyone about what has occurred in the courtroom during the trial or hearing. If the witness does testify at the trial or hearing, after the witness is tendered for cross-examination and until the conclusion of the witness's testimony, the witness is prohibited from communicating with anyone about the subject matter of the witness's testimony. A witness may, however, communicate with his or her attorney about matters of privilege, and may communicate with anyone if the right to do so is guaranteed by the United States Constitution.

C. Parties. The restrictions on witnesses in paragraphs (A) and (B) of this section do not apply to the government's case agent, any defendant in the case, or any investigator employed by a defendant in the case.

D. Uniformed Witnesses. No person who testifies at trial on behalf of any party in this case, and no defendant, government case agent, or investigator, shall appear in court in the presence of the jury wearing a law enforcement uniform. Any such person shall, at all times while in the presence of the jury, wear appropriate civilian clothing that does not identify the person as a representative of a law enforcement agency. The testimony of any witness appearing in court before a jury in attire prohibited by this order may be barred.

E. Duties of Counsel. An attorney who may call a witness to testify at the trial or evidentiary hearing must, before the trial or hearing, advise the witness of the restrictions in this section.

**XVI. COURTROOM TECHNOLOGY:** Before the commencement of trial, attorneys and witnesses who intend to utilize the technology available in the courtroom must familiarize themselves with the proper manner of operation of the equipment. Instruction and training on the proper use of the equipment may be obtained from Rick Hunt or Sue Young of the court's automation staff by calling 712-233-3845 or 3844 to schedule an appointment. Information also may be obtained from the court's website at the following web address: *www.iand.uscourts.gov*.

**XVII. STIPULATED DISCOVERY ORDER:** At the time of arraignment, the following discovery obligations were agreed to by the parties, and the Court **ORDERS** compliance with the same.

A. The United States will include in its open discovery file or otherwise make available law enforcement reports (excluding evaluative material of matters such as possible defenses and legal strategies), grand jury testimony, and evidence or existing summaries of evidence in the custody of the United States Attorney's Office, which provide the basis

for the case against the defendant. The file will include Rule 16, *Brady*, and Jencks Act materials of which the United States Attorney's Office is aware and which said Office possesses. Should the defendant become aware of any *Brady* material not contained in the open discovery file, the defendant will notify the United States Attorney's Office of such materials in order that the information may be obtained.

B. The United States may redact or withhold information from the open discovery file for security concerns or to protect an ongoing investigation. This does not preclude the defendant from requesting *in camera* review of such material by the court, upon proper showing, in order to determine whether or not it should be disclosed in accordance with Federal Rule of Criminal Procedure 16. Where the United States withholds information from the open discovery file, notice of the withholding along with a general description of the type of material withheld will be included in the open discovery file. The open discovery file will also not contain evidence which the United States has decided to use for impeachment of defense witnesses or rebuttal evidence. It will not include evaluative material of matters such as possible defenses and legal strategies or other attorney work product. The United States is authorized to disclose any defendant's tax information in its file to co-defendants for use consistent with this Order.

C. The information in the United States's discovery file may only be used for the limited purpose of discovery and in connection with the above-captioned federal criminal case now pending against the defendant. The information provided in discovery shall not be disclosed to or used by any person other than that defendant and his or her counsel, and may not be used or disclosed in any proceeding not part of the pending criminal case. This paragraph does not prohibit the sharing of information by co-defendants in this federal criminal case between or among counsel who are subject to this Order. No information obtained through discovery shall be shared with other defendants or their counsel who are

not subject to this Order except through motion pleading, or the offer of trial and sentencing exhibits.

D. Grand jury testimony, Jencks Act statements, and any transcription, summary, notes or dictation of discovery material will remain in the sole custody of the party's attorney or the agent working on behalf of the attorney and shall not be left with the defendant. This prohibition on leaving materials with the defendant shall not apply to items discoverable under Federal Rule of Criminal Procedure 16; specifically, the defendant's statements, the defendant's criminal record, and, to the extent they are intended for use by the government as evidence in chief at trial, copies of documents, tangible objects, and reports of examinations and tests. The defense shall not photocopy or reproduce grand jury transcripts, Jencks Act statements or exhibits. If the attorney for the defendant is subsequently allowed to withdraw from this case, and a new attorney is appointed or retained, upon agreement by the United States Attorney's Office, the withdrawing attorney may provide copies of transcriptions, summaries, notes or dictations of discovery material to the new attorney. The new attorney, however, shall be subject to the terms of this Order.

E. Any summary, notes, transcripts or dictation of discovery material, including copies thereof, and copies of all discovery material, must be returned to the parties or certified as destroyed at the conclusion of the trial, sentencing or appeal, whichever is later.

F. Upon disclosure of the United States's discovery file, the defendant shall immediately provide, and shall be under a continuing obligation to provide, disclosure of statements as defined in 18 U.S.C. §3500(e)(1) & (2) and reciprocal discovery under Federal Rule of Criminal Procedure 16(b) and 26.2.

G. Dictation of discovery materials is permissible, but duplication of materials by video, photography, copy machine, computer scanner or other means may not be used unless the party providing the discovery specifically agrees to such method.

H. The United States's open discovery file generally satisfies its notice obligations pursuant to Federal Rule of Criminal Procedure 12(d) and Federal Rule of Evidence 404(b) and 609(b). If the defendant identifies specific evidence in the open discovery file, however, and asks the United States whether it intends to introduce such evidence pursuant to Federal Rule of Criminal Procedure 12(d) or Federal Rule of Evidence 404(b) and 609(b), the United States will specify whether it intends to use such evidence and if offered pursuant to Federal Rule of Evidence 404(b), will identify the purpose for which it will be offered under the rule without further motion or order.

I. The parties will exchange a list of prospective witnesses and a list of prospective exhibits no later than 5 working days before the commencement of trial. For witnesses for whom there existed no statements or reports that were subject to disclosure through discovery, the party listing the witness shall also note next to the witness's name on the list the general purpose of his or her expected testimony.

J. This section imposes a continuing duty to disclose on all parties.

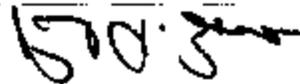
**IT IS SO ORDERED.**

**DATED** October 16, 2002.

UNITED STATES DISTRICT COURT

MAGISTRATE JUDGE

PAUL A. SOZZI



MAP OF THE THIRD-FLOOR COURTROOM  
FEDERAL BUILDING, SIOUX CITY, IOWA

