

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HONORABLE JOHN C. SHABAZ
ORDER SCHEDULING PRELIMINARY PRE-TRIAL CONFERENCE

The enclosed notice refers to a case which has been scheduled for a preliminary pre-trial conference.

Each party shall prepare a report to be filed not later than three days prior to the scheduled pre-trial conference. The original is to be filed with the Clerk's office, a copy mailed directly to the Court, and a copy served upon opposing counsel, or party where applicable.

The written report shall address itself to the following:

1. Briefly stated, the nature of the case.
2. Issues of jurisdiction or venue, if any.
3. Those pleadings to be amended.
4. Those motions either pending or contemplated.
5. The date upon which discovery shall be completed.
6. Recommended dates for final pre-trial conference and trial.

At the preliminary pre-trial conference, dates will be scheduled to ensure the completion of discovery, the hearing and briefing of motions, final pre-trial conference, and trial.

This report must be filed as directed to avoid dismissal and to secure the just, speedy and inexpensive determination of the action as is directed by Rule 1, Federal Rules of Civil Procedure.

Rules 26(a)(1) and 26(f), Federal Rules of Civil Procedure, effective December 1, 1993, shall also apply to those written reports submitted for this scheduled pre-trial conference.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Plaintiff,

PRELIMINARY PRE-TRIAL
CONFERENCE ORDER

v.

Defendants.

Preliminary pre-trial conference was held by telephone in the above entitled matter on _____ the plaintiff having appeared by _____ defendants _____
_____. The Hon. John C. Shabaz, District Judge, presided.

ORDER

IT IS ORDERED that all dispositive motions to be filed during the pendency of this matter, to include motions for summary judgment, shall be accompanied by memoranda of law; opposing party being given 20 calendar days to respond; and the moving party 10 calendar days to reply.

IT IS FURTHER ORDERED that all motions for summary judgment and other dispositive motions shall be served and filed not later than March 1, 1998; motions for summary judgment in accordance with local rule, a copy of which is enclosed.

IT IS FURTHER ORDERED that nondispositive motions, to include procedural motions, may be heard upon five days notice on any Wednesday morning by telephone at 7:45 A.M., moving party to initiate the telephone conference to 608-264-5504.

IT IS FURTHER ORDERED that discovery shall be completed and all depositions taken not later than April 1, 1998.

IT IS FURTHER ORDERED that the following discovery materials will not be filed with the Court unless they concern a motion or other matter under consideration by the Court: interrogatories; responses to interrogatories; requests for documents; responses to requests for documents; requests for admission; and responses to requests for admission. Depositions, however, will be filed with the Court promptly.

IT IS FURTHER ORDERED that final pre-trial conference is scheduled for April 2, 1998 at 1:15 P.M., pursuant to the provisions of Order Prior to Final Pre-trial Conference, a copy of which is also enclosed.

IT IS FURTHER ORDERED that jury selection is scheduled to commence April 20, 1998 at 9:00 A.M. and bifurcated trial to a seven-person jury, where the issue of liability is to be determined prior to the determination of any damage, is scheduled to commence April 22, 1998 at 9:00 A.M., counsel to meet with the Court at 8:30 A.M. on each of said days to discuss voir dire and other issues related to trial.

Entered this _____ day of January, 1998.

BY THE COURT:

JOHN C. SHABAZ
District Judge

THIS PROCEEDING IS BEING ELECTRONICALLY RECORDED

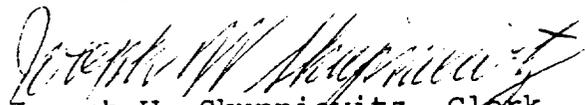
The official record of this proceeding is being taken by electronic sound recording (audiotape). Official typewritten transcripts of these proceedings are available at per page rates. For further information regarding transcripts see the Court Recorder Operator, LuAnn Kampen, 120 North Henry Street, Room 320, telephone 608-264-5156.

FOLLOW THESE INSTRUCTIONS TO PRODUCE A CLEAR RECORD

- 1) **MICROPHONES:** The microphones are quite sensitive and will pick up all of what you say. They are placed properly and do not need adjustment. Please do not play with the microphones.
- 2) **APPEARANCES:** Give one of your business cards to the Court Recorder Operator. At the beginning of the proceeding identify yourself at a microphone and spell your name for the record.
- 3) **SPEAKING:** When speaking on the record make certain that you talk directly in front of a microphone. Conversely, if speaking off the record, to your client or co-counsel, turn and face away from the microphone and lower your voice. We want only that which is intended for the record on the tape.
- 4) **WITNESSES:** Before the proceeding begins give the Court Recorder Operator a complete list of witnesses you will be calling during the proceeding. Make certain that all witnesses you call also identify themselves clearly and spell their names for the record.
- 5) **RESPONSES:** Make certain that verbal responses are elicited from all witnesses, or that some audible indication of their answer be made by you through the microphone.
- 6) **VOCABULARY:** If any of your witnesses will present testimony containing unusual or technical vocabulary, prepare a list of such names and terms for the Court Recorder Operator.

Your cooperation on these points is necessary to prepare an accurate record of proceedings.

Thank you for your cooperation


Joseph W. Skupniewitz, Clerk
United States District Court
Western District of Wisconsin

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PROCEDURE TO BE FOLLOWED ON MOTIONS FOR SUMMARY JUDGMENT

- I. A motion for summary judgment made pursuant to Rule 56 of the Federal Rules of Civil procedure shall be served and filed in the following form:
 - A. The motion itself together with such materials permitted by Rule 56(e) as the movant may elect to serve and file; and
 - B. Either (1) a stipulation of facts between or among all the parties to the action, or (2) a statement of the findings of fact proposed by movant, or (3) a combination of (1) and (2).
 1. Whether a movant elects a stipulation or a statement of proposed findings, or both, it is movant's obligation to present no more and no less than the set of factual propositions which movant considers necessary to judgment in movant's favor, and as to which movant considers there is no genuine issue.¹
 2. Such factual propositions shall be set forth in numbered paragraphs, the contents of each of which shall be limited as far as practicable to the statement of a single factual proposition.
 3. At the close of each numbered paragraph shall be set forth one or more references to the PLEADINGS, DEPOSITION TRANSCRIPTS, ANSWERS TO INTERROGATORIES, ADMISSIONS on file or AFFIDAVITS² supporting movant's contention there is no genuine issue as to that factual proposition.
 4. References to the record shall include:
 - a. in the case of a pleading, the numbered paragraph of that pleading;
 - b. in the case of a deposition transcript, the name of the witness and the page of the transcript;

¹ The factual propositions should include all of the "basic" facts necessary to a decision on the motion, including those going to jurisdiction, to the identity of the parties, and to the background of the dispute.

² Affidavits must be made on personal knowledge setting forth such facts as would be admissible in evidence, and showing affirmatively the affiant is competent to testify to the matters stated therein.

- c. in the case of an answer to an interrogatory, the number of that interrogatory and the identity of the party to whom it was directed;
 - d. in the case of an admission in response to, or resulting from a failure to respond to, a request for admission made pursuant to Rule 36, Federal Rules of Civil Procedure, the number of the requested admission and the identity of the party to whom it was directed;
 - e. in the case of an admission on file which is not in response to, or resulting from a failure to respond to, a request for admission made pursuant to Rule 36, the form such admission takes and the page or paragraph of the document in which that admission is made. Admissions made solely for the purpose of the motion for summary judgment should be so designated.
- C. A statement of the conclusions of law proposed by movant, in numbered paragraphs.
 - D. A motion for summary judgment in the form required by I., above, shall be served and filed together with a supporting brief.
- II. When a motion and supporting brief have been served and filed in compliance with I., above, the court shall issue a schedule for the procedures described in III. and IV., below, unless a briefing schedule has already been established by the court.
- III. RESPONSE: On or before the date specified in the schedule issued by the court, any party who elects to oppose the motion for summary judgment shall serve and file the following:
- A. Such materials permitted by Rule 56(e) which said party may elect to serve and file in opposition to said motion.
 - B. A response to the movant's statement of proposed findings of fact.
 - 1. With respect to each numbered paragraph of the movant's proposed findings of fact, the said response shall state clearly whether there is a genuine issue as to the whole or a part of the said factual proposition; if it is contended that there is a genuine issue only as to a part of the said factual proposition, the response shall identify precisely the said part of the numbered paragraph.
 - 2. With respect to any paragraph or part of a paragraph of the movant's proposed findings of fact as to which it is contended that a genuine issue exists, the response shall refer to the PLEADINGS, DEPOSITION TRANSCRIPTS, ANSWERS TO

INTERROGATORIES, ADMISSIONS on file, or AFFIDAVITS complying with Rule 56(e), which respondent believes give rise to said genuine issue.

3. The said references to the record shall be made with that specificity required by I.B.4., above.
 4. If an opposing party believes the motion for summary judgment must fail because of material facts not stated by the movant and as to which it is considered there is no genuine issue, the said opposing party may present such other factual propositions either by means of:
 - a. a stipulation of facts between or among all of the parties to the action; or
 - b. a statement of the findings of fact proposed by said opposing party; or
 - c. a combination of "a" and "b."
 5. With respect to such presentation of factual propositions not stated by the movant, the said opposing party shall comply with the requirements set forth in I.B., above.
- C. A response to the movant's statement of proposed conclusions of law.
1. With respect to each such numbered proposed conclusions, the said response shall state clearly whether the said conclusion is agreed to or disputed in whole or in part; if the dispute is partial, the response shall state precisely which portion of the proposed conclusion is disputed.
 2. If an opposing party believes the motion for summary judgment must fail because of conclusions of law not stated by movant, that party may state such other conclusions of law.
- D. The response in the form required by III., above, shall be served and filed together with a brief in opposition to the motion for summary judgment.
- IV. **REPLY:** On or before the date specified in the schedule issued by the court, the movant may, but is not required to, serve and file in rebuttal any or all of the following items:
- A. Such materials permitted by Rule 56(e) which movant may elect to serve and file in rebuttal.

- B. A statement in rebuttal to the response or responses to any numbered paragraph of movant's initially proposed findings of fact, and a statement in rebuttal to any numbered paragraphs of findings of fact initially proposed in the response or responses. To the extent that said statement in rebuttal requires record references not earlier made by movant, the said references shall be made with that specificity required by I.B.4., above.
- C. A statement in rebuttal to the response or responses to any numbered conclusion of law initially proposed by the movant, and a statement in rebuttal to any numbered conclusion of law initially proposed in the response or responses.
- D. With the rebuttal described in IV., above, the movant may, but is not required to, serve and file a rebuttal brief.

NOTE PARTICULARLY:

- V. In deciding the motion for summary judgment:
 - A. The court will conclude that there is no genuine issue as to any proposed finding of fact initially proposed by the movant, except to the extent an opposing party's response asserts that a genuine issue exists; and
 - B. The court will conclude there is no genuine issue as to any finding of fact initially proposed in a response, except to the extent that movant's rebuttal asserts a genuine issue exists.
 - C. As to any finding of fact, whether initially proposed by the movant or in a response, as to which it is asserted a genuine issue exists, the court will make a determination as to the existence or non-existence of such genuine issue.
 - D. The court is not required to give any weight to a piece of evidence unless it is set forth in the manner described.
 - E. The court does not consider it is under any obligation to search the record for factual matters that might support either the grant or the denial of the motion. It is the duty of the parties to bring to the court's attention by specific reference to the record as outlined in paragraphs I.B., III.B., and IV.B., all factual and legal matters material to the resolution of the issues in dispute.
- VI. All motions for summary judgment shall be considered as submitted for ruling without oral argument, unless the court otherwise directs.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DOCKET
NUMBER

10
U.S. DISTRICT COURT
WEST DIST. OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

FILED
JOSEPH W. SKUPNIEWITZ, CLERK

CASE
NO. 97-10
SCHEDULING ORDER

v.

Defendant.

At the October 14, 1997 arraignment, this court set the following schedule:

- 1) Discovery from the government already has been provided.
- 2) Defendant's pretrial motions are due December 8, 1997. Briefs need not accompany the motions. If defendant wants an evidentiary hearing on a motion, he must ask for it and provide a factual basis for holding such a hearing by way of a sworn affidavit or something similar.
- 3) The preliminary pretrial conference and any evidentiary hearing shall be held at 10:30 a.m. on December 11, 1997. Briefs on any remaining motions will be set at the preliminary pretrial conference.
- 4) Submissions for the final pretrial conference, namely proposed voir dire questions, proposed jury instructions and any motions *in limine* are due from both sides by January 12, 1998.
- 6) The final pretrial conference shall be held at 1:30 p.m. on January 14, 1998.

7) The final hearing before Judge Shabaz shall be held at 3:00 p.m. on January 23, 1998.

8) Jury selection and trial shall be held at 9:00 a.m. on January 26, 1998. The estimated length of trial is two days. The parties are to advise the clerk of court immediately if they determine that a jury will not be needed in this case.

Entered this 14th day of October, 1997.

BY THE COURT:



STEPHEN L. CROCKER
Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DOCKET NUMBER	23
U.S. DISTRICT COURT WESTERN DISTRICT OF WISCONSIN	
DEC 11 1997	
JOSEPH W. CROCKER	
CASE NUMBER	

UNITED STATES OF AMERICA,

Plaintiff,

PRELIMINARY PRETRIAL
CONFERENCE ORDER

v.

Defendant.

On December 11, 1997, this court held the preliminary pretrial conference. Defendant was present with her attorney. The government was represented by Assistant U.S. Attorney Grant Johnson.

Prior to the hearing, defendant filed a group of discovery related motions, docketed by the Clerk of Court as 11-21. After discussing these motions with the parties, I granted the motions docketed as 14 and 21, and denied the rest. No motions remain for briefing. The parties had no other matters to bring to the court's attention.

Entered this 11th day of December, 1997.

BY THE COURT:



STEPHEN L. CROCKER
Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

STATEMENT OF THE CASE
AND VOIR DIRE

v.

Defendant.

1. Statement of the Case:

2. Have any of you ever heard of this case before today? Would this affect your ability to be impartial in this case?

3. This trial is scheduled to begin today and end tomorrow. Are any of you actually unable to sit as jurors because of this schedule?

4. The court reads from the Criminal Jury Instructions of the Seventh Circuit:

2.06 (para. 1) Presumption of Innocence. The defendant is presumed to be innocent of the charges. This presumption remains with the defendant throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty.

2.06 (para. 2) Burden of Proof. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the government throughout the case. The defendant is not required to prove her innocence or to produce any evidence.

2.01 Indictment Not Evidence. The indictment in this case is the formal method of accusing the defendant of a crime and placing the defendant on trial. It is not evidence against the defendant and does not create any implication of guilt.

3.14 Failure of The Defendant to Testify. The defendant has an absolute right not to testify. The fact that the defendant might choose not to testify cannot be considered by you in any way in arriving at your verdict.

Would any of you be unable or unwilling to follow these instructions?

5. Ask counsel to introduce themselves, the defendant, and the case agent. Ask whether jurors know any of these people.

6. Invite each juror, in turn, to rise and provide the following information:

Name and home town.

Current occupation and employer (former if retired).

If married, spouse's current or former occupation.

Occupation of any adult children.

Level of education and major areas of study, if any.

Military service, if any, along with rank, branch of service, and approximate date of discharge.

Participation in any groups or organizations.

Favorite leisure time activities.

7. Do any of you in the jury box know each other from before today?

8. Do any of you know from personal experience what a comchek is? Have any of you ever used or been presented with comcheks? Please explain. Would those experiences affect your ability to be impartial in this case?

9. Other than what you have already told us, have any of you or members of your immediate family or close friends ever worked in any business where you or they encountered forged or counterfeited checks, currency, or other financial instruments? Would this affect your ability to be impartial in this case?

10. Have any of you, your relatives or close friends ever been employees of a law enforcement agency, any prison or jail or any private or governmental investigative agency or security agency? Would this affect your ability to be impartial in this case?

11. Do any of you, by virtue of past dealings with the federal government, or for any reason, have any bias for or against the government in a criminal case?

12. Would any you tend to judge the credibility of a witness who was a law enforcement officer or government employee differently from other witnesses solely because of his or her position?

13. If the defendant were to choose to testify, would any of you tend to judge her testimony differently from other witnesses solely because he is the defendant?

14. Have any of you, or any of your relatives or close friends ever been the victim of any crime? Would this affect your ability to be impartial in this case?

15. Have any of you, your relatives, or close friends ever been accused or convicted of a crime? [Side bar if necessary] Would this affect your ability to be impartial in this case?

16. Have any of you, your relatives, or close friends ever been a witness in a trial? Would this affect your ability to be impartial in this case?

17. How many of you have served previously as members of a trial jury? Please tell us in which court, approximately when, the types of cases, whether you were foreperson, and the verdicts.

18. If at the conclusion of the trial you were to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of guilty?

19. If at the conclusion of the trial you were not to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of not guilty?

20. The court will instruct you on the law to be applied in this case. You are required to accept and follow the court's instructions in that regard, even though you may disagree with the law. Are any of you unable to accept this requirement?

21. Do you know of any reason whatever, either suggested by these questions or otherwise, why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

JURY INSTRUCTIONS

v.

Defendants.

Members of the jury, the evidence and arguments in this case have been completed, and I will now instruct you as to the law applicable to this case. It is your duty to follow all of the instructions.

You must not question any rule of law stated by me in these instructions. Regardless of any opinion you may have as to what the law ought to be, you must base your verdict upon the law given by me.

It is your duty to determine the facts from the evidence in this case. You are to apply the law given to you in these instructions to the facts and in this way decide the case.

Neither by these instructions, nor by any ruling or remark which I have made, do I mean to indicate any opinion as to the facts or as to what your verdict should be. You are the sole and exclusive judges of the facts.

You should decide this case solely on the evidence presented here in the courtroom. You must completely disregard any press, television or radio reports which you may have read, seen or heard. Such reports are not evidence; therefore, you must not be influenced in any manner whatever by such publicity.

Opening statements of counsel are for the purpose of acquainting you in advance with the facts counsel expect the evidence to show. Closing arguments of counsel are for the purpose of discussing the evidence. Opening statements, closing arguments and other statements of counsel should be disregarded to the extent they are not supported by the evidence.

During the course of trial it often becomes the duty of counsel to make objections and for me to rule on them in accordance with the law. The fact that counsel made objections should not influence you in any way.

It is proper for an attorney to interview any witness in preparation for trial.

The evidence consists of the sworn testimony of the witnesses, the exhibits received in evidence, and stipulated, admitted, or judicially noticed facts.

A stipulation is an agreed statement of facts between the parties, and you should regard agreed statements as true.

I have taken judicial notice of certain facts which I regard as matters of common knowledge. You may, but are not required to accept those facts as proved.

You are to consider only the evidence received in this case. You should consider this evidence in the light of your own observations and experiences in life. You may draw such reasonable inferences as you believe to be justified from proved facts.

You are to disregard any evidence to which I sustained an objection or which I ordered stricken. Anything you may have seen or heard about this case outside the courtroom is not evidence and must be entirely disregarded. You should not be influenced by sympathy, prejudice, fear or public opinion. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

There are two types of evidence: direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

The weight to be given to any particular evidence is not necessarily determined by the number of witnesses testifying on behalf of each side. You are to consider all the evidence in the case in determining the credibility of witnesses. You may find that the testimony of a smaller number of witnesses for one side is more credible than the testimony of a greater number of witnesses for the other side.

You are the sole judges of the credibility of the witnesses, and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account the witness's intelligence, the witness's ability and opportunity to observe, the witness's age, memory, manner while testifying, any interest, bias or prejudice the witness may have, and the reasonableness of the witness's testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

The defendant has an absolute right not to testify. The fact that the defendant did not testify cannot be considered by you in any way in arriving at your verdict.

Evidence that a witness has been convicted of a crime is to be considered by you only insofar as it may affect the witness's credibility.

Evidence that on some former occasion a witness made a statement inconsistent with the witness's testimony in this case may be considered by you only in determining the credibility of the witness and not to establish the truth of the matters contained in that prior statement.

You have heard testimony that _____ has received benefits from the government in connection with this case. You may give his testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

_____ has admitted [been convicted of] lying under oath. You may give his testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

You have heard testimony from _____ who stated that he was involved in the commission of the alleged crime charged against the defendant. You may give his testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

The witness _____ has pled guilty to a crime arising out of the same occurrence for which the defendant is now on trial. You may give his testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care. Moreover, his guilty plea is not to be considered as evidence against the defendant.

Evidence has been introduced of the character trait of the witness, _____, for truthfulness. You should consider this evidence in deciding the weight that you will give to this witness's testimony.

You have heard testimony from a witness who received immunity; that is, a promise from the government that any testimony or other information he provided would not be

used against him in a criminal case. You may give his testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

You have heard evidence of acts of the defendant other than those charged in the indictment. Specifically, _____. You may consider this evidence only on the question of _____. This evidence is to be considered by you only for this limited purpose.

Evidence has been received concerning a statement said to have been made by the defendant on _____ (Date). It is for you to determine whether the defendant did in fact make the statement. If you find that he did, then you must determine what weight, if any, you think the statement deserves. In determining what weight, if any, should be given the statement, you should consider all matters in evidence having to do with the statement, including those concerning the defendant's personal characteristics and the conditions under which the statement was made.

The defendant has introduced evidence of her character. More specifically the defendant has introduced (reputation and/or opinion) evidence about a character trait for (truthfulness, peacefulness, etc.).

You should consider character evidence together with and in the same manner as all the other evidence in this case.

The government also has introduced (reputation and/or opinion) evidence about the defendant's character trait for (truthfulness, peacefulness, etc.).

You should consider character evidence together with and in the same manner as all the other evidence in the case.

You have heard evidence that the defendant has been convicted of _____. You may consider this evidence insofar as it may affect the defendant's credibility as a witness. You cannot consider this evidence for any other purpose.

You have heard testimony of expert witnesses. This testimony is admissible where the subject matter involved requires knowledge, special study, training, or skill not within ordinary experience, and the witness is qualified to give an expert opinion.

However, the fact that an expert has given an opinion does not mean that it is binding upon you or that you are obligated to accept the expert's opinion as to the facts. You should assess the weight to be given to the expert opinion in the light of all the evidence in this case.

THE INDICTMENT

The defendants are charged in the indictment as follows:

[COURT READS THE INDICTMENT]

The defendant has entered a plea of not guilty to this charge.

The indictment in this case is the formal method of accusing the defendant of crimes and placing the defendant on trial. It is not evidence against the defendant and does not create any implication of guilt.

The defendant is presumed to be innocent of the charge against her. This presumption remains with the defendant throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty.

The defendant is not on trial for any act except those contained within the scope of the charge in the indictment.

The government has the burden of proving the defendant's guilt beyond a reasonable doubt, and this burden remains on the government throughout the case. The defendant is not required to prove his or her innocence or to produce any evidence.

The indictment charges that the offenses were committed "on or about" certain dates. Although the evidence need not establish with certainty the exact date of the alleged offense, it must establish that the offense was committed on a date reasonably near the date charged.

ELEMENTS OF THE CHARGE

The defendant is charged in Count 1 with unlawfully uttering and possessing a specific forged security. In order to prove this charge the government must prove the following propositions beyond a reasonable doubt:

- 1) The defendant knowingly uttered or possessed the forged security of an organization as described in Count 1;
- 2) The defendant knew at the time that this security was forged; and
- 3) The defendant uttered or possessed this security with intent to deceive another organization.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find that defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you must find that defendant not guilty of that count.

The term "forged " means a document that purports to be genuine but is not, because it has been falsely made or manufactured in its entirety.

The term "security" means _____ [The parties should suggest which terms from 18 U.S.C. § 513(3) should be included here].

The term "organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, society, union, or any other association of persons which operates in or the activities of which affect interstate or foreign commerce.

When the words "knew" or "knowingly" are used in these instructions, they mean that a defendant realized what he or she was doing and was aware of the nature of his or her conduct, and did not act through ignorance, mistake, accident or other innocent reason.

Knowledge may be proved by a defendant's conduct, and by all the facts and circumstances surrounding the case.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

A form of verdict has been prepared for you.

[Form of verdict read.]

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in, date, and sign the form.

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WISCONSIN
OFFICE OF THE CLERK
POST OFFICE BOX 432
MADISON, WISCONSIN 53701

MEMO TO COUNSEL

If a case is settled on the weekend before trial, the court should be notified immediately by calling at home either Clerk of Court Joseph W. Skupniewitz, (608) 273-0047 or Chief Deputy Clerk Warren H. Nelson, (608) 222-8476. This notification will enable the Clerk to call off unneeded jurors and to advise the trial judge to discontinue working on the case. The same procedure should be followed to report last minute emergencies which might affect the start of the trial.



Joseph W. Skupniewitz
Clerk, U. S. District Court

Order Governing Final Pretrial Conference

VOIR DIRE AND JURY INSTRUCTIONS

1. The court's voir dire questions for this case and a list of standard instructions are attached and, unless inapplicable, will be asked or given as a matter of course. **THE PARTIES NEED NOT DUPLICATE THESE QUESTIONS AND INSTRUCTIONS.** The parties may object to voir dire questions in the court's packet.

2. Not later than the date set in the Scheduling Order, the parties shall file and serve, in accordance with Rule 30, Federal Rules of Criminal Procedure all proposed additional questions for voir dire examination and all proposed additional jury instructions.

3. **NOTE WELL:** Jury instructions presented other than as prescribed herein will be deemed not to have been properly requested within the meaning of Rule 30, F.R.Cr.P. unless the subject of the request is one arising in the course of trial which could not reasonably have been anticipated prior to trial from the pleadings, discovery or nature of the case. This requirement does not apply to theory-of-defense instructions.

4. *Proposed instructions must be submitted as follows:*

(a) Each non-pattern instruction shall treat a single subject and shall be set forth at length, double-spaced, on a separate sheet. At the bottom of the sheet shall appear:

(i) the number of the instruction

(ii) the party presenting it, and

(iii) the citation of the decision, statute, regulation, or other authority supporting the proposition stated.

(b) Pattern instructions (numbered separately) may be requested by reference to the source, caption and paragraph number of either Federal Criminal Jury Instructions of the Seventh Circuit (Bauer Instructions, 1980 ed.) or Federal Jury Practice and Instructions (Devitt & Blackmar, 4th ed.). **THERE IS NO NEED TO SET FORTH THE TEXT OF AN UNMODIFIED PATTERN INSTRUCTION.** This court uses the Bauer Instructions whenever applicable absent a showing that a particular instruction is an inaccurate statement of the law in this Circuit.

(c) NOTE WELL: If a pattern instruction must be tailored to the facts or circumstances of this case, it is the obligation of the party proposing that instruction to submit the full text of the instruction in its final, tailored form. If alternative versions of the same instruction are necessary in this case, it is the proposing party's obligation to submit all applicable alternatives.

(d) NOTE WELL: Any modification of a pattern instruction must be disclosed. In order to minimize unnecessary work, a party presenting a modified or tailored pattern instruction may submit the final version of each such proposed instruction accompanied by a photocopy of that instruction on which all deviations from the pattern are identified by handwritten notations.

5. Each party shall be represented at the Final Pretrial Conference by the attorney who will actually conduct the trial. The defendant must be present in person. **THE DEFENDANT MAY WAIVE HIS OR HER PRESENCE IN WRITING IF NO ISSUES OTHER THAN JURY INSTRUCTIONS AND VOIR DIRE ARE TO BE DISCUSSED.**

6. NOTE WELL: At the Final Pretrial Conference, each party shall submit, *ex parte* and under seal: (1) a list of its exhibits in the order in which they are marked for trial; and (2) a list of the witnesses (other than the defendant him or herself) it intends to call in its case-in-chief. The contents of these submissions should not be served upon, and will not be disclosed to, the opposing party; their purpose is to assist the court in trial management. The submissions do not become a part of the Clerk's file.

NOTICE OF INTENT TO OFFER EVIDENCE

1. Certain Types of Evidence

To avoid unnecessary delay during trial, counsel shall:

a. Serve written notice, in advance of the Final Pretrial Conference, if the party intends to offer the following evidence at trial:

- (1) Prior felony conviction, for any purpose;
- (2) Other crimes, wrongs or acts under Fed. R. Evid. 404(b);
- (3) Statements of a co-conspirator (Fed. R. Evid. 801(d)(2)(E));
- (4) Matter that may be subject to a claim of privilege under Fed. R. Evid. 501;

OR

b. Serve and file, in advance of the Final Pretrial Conference, counsel's written objection to furnishing such information and the grounds therefor.

2. Out of Court Statements

If counsel wishes to introduce at trial statements of a witness made prior to the trial (see particularly Fed. R. Evid. 801(d)) or statements pursuant to Fed. R. Evid. 803(24) or 804(b)(3) and (5), counsel must file a motion *in limine* prior to the final pretrial conference advising the court and opposing counsel of the statement(s) and the basis for their admission.

3. Tapes and Transcripts

Not later than 21 days prior to the final pretrial conference, the government shall give notice of its intent to offer into evidence all or designated portions of any audio or video recordings and provide defendant with a copy of any transcript it intends to show the jury. Not later than 14 days later, defendant shall file and serve any objections to the admissibility of any portion thereof and shall identify with particularity any portion defendant claims to be unintelligible or to have a meaning different from that advanced in the government's transcript. In the event the parties are unable to agree to the contents of the tape, transcripts of the disputed portion shall be prepared which reflect the interpretation of each party.

Unresolved objections to the use of the tape or transcript must be raised in a written motion *in limine* prior to the final pretrial conference. The motion must be accompanied by the transcripts of the disputed portion and the tape with the disputed portion appropriately marked.

WITNESSES: SUBPOENAS AND WRITS

Subpoenas

If a defendant intends to subpoena witnesses at government expense, he or she *must* file the *ex parte* motion required by Rule 17(b), Fed. R. Crim. P., *not less than twelve (12) working days prior to trial*. The motion must state the name and personal service address of each witness to be subpoenaed, the nature of the testimony the witness will give and why that witness is necessary to an adequate defense. The motion shall be accompanied by a draft order listing the names and addresses of the witnesses and stating that the subpoenas shall be issued by the clerk and served by the marshal at no cost to the defendant. Actual subpoenas must be prepared and furnished by defendant to the office of the United States Marshal *not later than ten (10) working days prior to the trial date, together with a copy of the signed order*.

Incarcerated Witnesses

If a witness is incarcerated, counsel shall submit a motion under Rule 17(b) as set forth above except that no subpoena is required. Instead, counsel must present both a request for a writ of *habeas corpus* and a completed draft form of the writ *not later than fifteen (15) working days in advance of the trial*. Appropriate forms may be obtained from the Clerk of Court.

FAILURE TO COMPLY WITH THESE REQUIREMENTS MAY RESULT IN THE DENIAL OF WITNESS REQUESTS AS UNTIMELY. EVEN IF LATE REQUESTS ARE ALLOWED, THE COURT WILL NOT ORDER THE MARSHAL ACTUALLY TO SERVE SUBPOENAS OR WRITS NOT REQUESTED WITHIN THESE DEADLINES; THE MARSHAL NEED ONLY MAKE BEST EFFORTS TO SERVE UNTIMELY SUBPOENAS OR WRITS BASED ON TIME AND STAFF AVAILABLE.

NOTICE AND ORDER ON SEALED DOCUMENTS

Keeping documents under seal after the conclusion of a case is an administrative burden on the Clerk of Court. In most criminal cases in this court, there is no need after a case is concluded to maintain the confidentiality of documents such as *ex parte* requests under the CJA for funds to pay investigators or experts. Accordingly, the Clerk of Court is hereby authorized to unseal all sealed documents in this case (including any transcripts of *ex parte* hearings) following entry of judgment by the district court.

A document shall remain under seal after this time only if a party makes a specific written request that the document remain sealed. This request may be made at the time the document is submitted or at any time thereafter prior to entry of judgment. The burden is on the party seeking continued confidentiality of the document to make the request.

STANDARD JURY INSTRUCTIONS--CRIMINAL

1. THE FUNCTIONS OF THE COURT AND THE JURY (Federal Criminal Jury Instructions of the 7th Circuit, William Bauer Comm. Chrmn., 1.01)

Members of the jury, the evidence and arguments in this case have been completed, and I will now instruct you as to the law applicable to this case. It is your duty to follow all of the instructions.

You must not question any rule of law stated by me in these instructions. Regardless of any opinion you may have as to what the law ought to be, you must base your verdict upon the law given by me.

It is your duty to determine the facts from the evidence in this case. You are to apply the law given to you in these instructions to the facts and in this way decide the case.

2. JURY IS THE SOLE JUDGE OF THE CREDIBILITY OF THE WITNESS (Bauer 1.02)

You are the sole judges of the credibility of the witnesses, and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account the witness's intelligence, the witness's ability and opportunity to observe, the witness's age, memory, manner while testifying, any interest, bias or prejudice the witness may have, and the reasonableness of the witness's testimony considered in the light of all the evidence in the case.

[You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.]

3. ADDITIONAL INSTRUCTION REGARDING JURY AS SOLE JUDGE OF THE FACTS (Bauer 1.03)

Neither by these instructions, nor by any ruling or remark which I have made, do I mean to indicate any opinion as to the facts or as to what your verdict should be. You are the sole and exclusive judges of the facts.

4. ARGUMENTS AND STATEMENTS OF COUNSEL (Bauer 1.05)

Opening statements of counsel are for the purpose of acquainting you in advance with the facts counsel expect the evidence to show. Closing arguments of counsel are for the purpose of discussing the evidence.

Opening statements, closing arguments and other statements of counsel should be disregarded to the extent they are not supported by the evidence.

During the course of trial it often becomes the duty of counsel to make objections and for me to rule on them in accordance with the law. The fact that counsel made objections should not influence you in any way.

5. EVIDENCE IN THE CASE--STIPULATIONS--JUDICIAL NOTICE INFERENCES PERMITTED (Bauer 1.07)

The evidence consists of the sworn testimony of the witnesses, the exhibits received in evidence, and stipulated, admitted, or judicially noticed facts.

A stipulation is an agreed statement of facts between the parties, and you should regard agreed statements as true.

I have taken judicial notice of certain facts which I regard as matters of common knowledge. You may, but are not required to accept those facts as proved.

You are to consider only the evidence received in this case. You should consider this evidence in the light of your own observations and experiences in life. You may draw such reasonable inferences as you believe to be justified from proved facts.

You are to disregard any evidence to which I sustained an objection or which I ordered stricken. Anything you may have seen or heard about this case outside the courtroom is not evidence and must be entirely disregarded. You should not be influenced by sympathy, prejudice, fear or public opinion. [You should not be influenced by any person's race, color, religion, national ancestry, or sex.]

6. PUBLICITY (Bauer 1.09)

You should decide this case solely on the evidence presented here in the courtroom. You must completely disregard any press, television or radio reports which you may have read, seen or heard. Such reports are not evidence; therefore, you must not be influenced in any manner whatever by such publicity.

7. INFORMATION--INDICTMENT NOT EVIDENCE (Bauer 2.01)

The indictment in this case is the formal method of accusing the defendant of a crime and placing the defendant on trial. It is not evidence against the defendant and does not create any implication of guilt.

8. THE CHARGE AGAINST THE DEFENDANT (Bauer 2.02)

The defendant is charged with the crime of _____* [which includes the crime of _____]. The defendant has denied being guilty of the charge.

* Briefly describe the crime charged in nontechnical language.

9. PRESUMPTION OF INNOCENCE-REASONABLE DOUBT-BURDEN OF PROOF
(Bauer 2.06)

The defendant is presumed to be innocent of the charge. This presumption remains with the defendant throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty.

The government has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the government throughout the case. The defendant is not required to prove his or her innocence or to produce any evidence.

10. DATE OF CRIME CHARGED (Bauer 3.01)

The indictment charges that the offenses were committed "on or about" dates I will read to you later in these instructions. Although the evidence need not establish with certainty the exact date of the alleged offenses, it must establish that the offenses were committed on dates reasonably near the dates charged.

11. DEFINITION OF DIRECT AND CIRCUMSTANTIAL EVIDENCE (Bauer 3.02)

There are two types of evidence: direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

12. NUMBER OF WITNESSES (Bauer 3.28)

The weight to be given to any particular evidence is not necessarily determined by the number of witnesses testifying on behalf of each side. You are to consider all the evidence in the case in determining the credibility of witnesses. You may find that the testimony of a smaller number of witnesses for one side is more credible than the testimony of a greater number of witnesses for the other side.

13. SELECTION OF FOREPERSON -- GENERAL VERDICT (Bauer 7.01)

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

A form of verdict has been prepared for you.

[Form of verdict read.]

(Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in, date, and sign the form.)

14. COMMUNICATION INSTRUCTION (Bauer 7.05)

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

15. DISAGREEMENT AMONG JURORS (Bauer 7.06)

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.

**PROCEDURES FOR TRIAL EXHIBITS
IN THE WESTERN DISTRICT OF WISCONSIN**

All exhibits that may be offered at trial are to be labeled prior to trial. Before the start of trial, counsel are to provide the deputy clerk with a list of all exhibits.

1. All exhibits are to be labeled with labels provided by the clerk's office.

2. If more than one defendant will be offering exhibits, an initial identifying the particular defendant should be added to the label.

3. The exhibits are to be listed on the yellow exhibit sheet provided by the clerk's office. The list should state to whom the exhibits belong, the number of each exhibit, and a brief description. (See attached sample.)

4. The original exhibit list and a copy of each exhibit that may be offered should be provided for the judge's use.

5. Counsel should check with the clerk's office to obtain the numbers to be used for exhibits.

6. Counsel are to maintain custody of their own exhibits throughout the trial.

7. Counsel should be aware that once reference is made to an exhibit at trial, the exhibit becomes part of the record, even though the exhibit might not be formally offered or might not be received. All exhibits that become a part of the record will be retained by counsel at the end of trial. It is counsel's responsibility to maintain the exhibits for appeal and to make arrangements with the clerk's office for inclusion of the exhibits in the appeal record, if there is an appeal.

Any questions concerning these instructions may be directed to the clerk's office at 608 264-5156.

Entered this 21st day of September 1993.

BY THE COURT:

Barbara B. Crabb
BARBARA B. CRABB
Chief Judge

EXHIBITS

USA

vs.

Jones

CAUSE NO.

87 CR 10-S

1987

DATE

Identification

No.

Witness

DESCRIPTION

OFFERS

OBJECTIONS

RULINGS

EXCEPTIONS

11-10

1

Smith

photograph

11-10

2

Ace

letter dated 11-10-87

This date should reflect date that exhibit is offered.

SAMPLE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JUDGE JOHN C. SHABAZ
ORDER PRIOR TO FINAL PRE-TRIAL CONFERENCE

IT IS ORDERED that in preparation for trial counsel for the parties shall:

1. Confer not later than ten days before the date of the final pre-trial conference scheduled in the action to which this order refers.

2. Prepare a joint final pre-trial report to be filed with the Court not later than three days before the final pre-trial conference. The principal burden for the composition of the report shall be on counsel for the plaintiff. The report must be signed by counsel for all parties and must contain the following:

(a) Date of the pre-trial conference and appearances for the parties.

(b) An agreed statement of all uncontested facts. In the absence of objection to the admissibility of any uncontested facts the statement will become part of the record. No proof will be received at trial on the matters covered by the statement.

(c) An agreed statement of major factual issues.

(d) The names and addresses of all prospective witnesses for each party. It is contemplated that witnesses not listed will not be permitted to be called except upon a showing of good cause.

(e) The names and addresses of all prospective expert witnesses for each party, together with a narrative statement of each expert's back-

ground and experience. If the case is to be tried to a jury, the statement will be read to them and no proof will be received on the matters covered unless objection to the narrative statement is noted in the report.

(f) An itemized statement of special damages if such special damages are an element of a claim.

(g) A schedule of all exhibits to be offered at trial, designating those to which objection will be made, with a brief statement as to the grounds for objection. Objections based on relevancy need not be noted.

(h) A list of depositions, or portions thereof, to be offered at trial. Extensive (i.e., more than 5 pages) reading from depositions will not be permitted. Rather, the proponent of a deposition must prepare a written narrative summary of a deposition the party intends to offer. Any other parties desiring to make use of the same deposition must also prepare a narrative summary. Summaries not filed at least ten days prior to trial (seven days for a responsive summary) may not be used during the trial absent a showing of good cause.

3. Mark and number all exhibits prior to the final pre-trial conference. Exhibits should be numbered serially without designating the offering party; plaintiffs to begin numbering with 1, defendants with 201.

(a) File all formal discovery documents, to include depositions and contested exhibits at final pre-trial conference.

4. If trial to Court, as follows:

Counsel for parties will submit to the Court by noon of the Thursday before trial the following:

(a) Trial briefs on all contentions of parties filing the brief, including references to special evidentiary problems.

(b) Proposed findings of fact, conclusions of law and order of judgment.

If trial by jury, as follows:

Counsel for parties will submit to the Court not later than noon ten days before trial or as otherwise directed the following:

(a) Trial briefs on all contentions of parties filing the brief, including references to special evidentiary problems.

(b) Proposed voir dire questions.

(c) Proposed jury instructions, with citations or references of authority; instruction conference to be held the Friday prior to trial.

(d) Proposed verdict forms, special verdict forms, and proposed special interrogatories to jury, if applicable.

(e) Instruction conference to be held the Friday prior to trial.

5. Submit separate reports or partial separate reports at time of final pre-trial conference if counsel cannot agree on the contents of a joint report, and certify that after making diligent effort agreement could not be reached on joint report.

6. The following paragraph shall be included in each pre-trial order:

Hereafter this order will control the course of the trial and may not be amended except by consent of the parties and the Court to prevent manifest injustice. In the event of ambiguity in any provisions of this order, references may be made to the records of this conference to the extent recorded by notes and to the pleadings.

7. Estimated trial time and other items which may be pertinent thereto.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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ORDER
Case No.

The court having been advised by counsel for the parties that the above-entitled action has been settled, this case is hereby dismissed. Any party may move to reopen for good cause shown.

Entered this _____ day of _____, 19____.

BY THE COURT:

United States District Judge