



UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Plan for the Reinstitution of Jury Proceedings

Revised: July 27, 2020

The plan that follows is the result of an intensive collaboration between the Office of the United States Attorney and Office of the Federal Defender for the Middle District of Pennsylvania. I am incredibly thankful for the substantial, personal commitment of U.S. Attorney David Freed and Federal Defender Heidi Freese, who in consultation with me, as well as other Court personnel, fashioned this creative and comprehensive plan. While it will not be the subject of a standing order, it is my hope that all judicial officers will carefully consider it as an appropriate, innovative, and worthy template for criminal trials. Moreover, its contents are clearly applicable to civil trials as well.

John E. Jones, III, Chief Judge
United States District Court
Middle District of Pennsylvania

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1. Scheduling of Jury Trials

- A jury trial may be scheduled in any case only if two courtrooms on the same floor in the same courthouse will be open and available throughout the anticipated length of the trial.
- A jury trial may not be scheduled to commence within 3 days of the date that any other trial is scheduled to commence in the same courthouse.
- The clerk will maintain and make available to all judges of the court a calendar listing all scheduled jury trials and their anticipated length.

Comment: These requirements will limit the number of jurors in the courthouse at any single time, and ensure that sufficient space is available (i.e., two courtrooms) for voir dire and trial proceedings with appropriate distancing in place.

2. Juror Summons and Drawing of Jury Pools

- Pools of 52 qualified jurors shall be drawn for each jury trial, unless otherwise directed by the Chief Judge or the Chief Judge's designee.
- The clerk will include with the materials sent to each drawn juror:
 - A health screening questionnaire, which shall ask the following:
 - Have you been diagnosed with, or had close contact with, anyone who has been diagnosed with COVID-19 within the last 14 days?
 - Have you experienced any cold or flu-like symptoms in the last 14 days (including fever, cough, sore throat, respiratory illness or difficulty breathing)?
 - A letter from the court, which shall:
 - Explain the procedures and protocols adopted by the court to protect against transmission of COVID-19 (including that face covering/mask must be worn at all times, except as directed by the presiding judge) and provides a link to a video presentation on the court's website illustrating these protocols and explaining the juror selection and trial processes (if a video is created);
 - Indicate that upon arrival at the courthouse jurors should maintain safe distancing from others and will be provided with a face covering upon entry;
 - Direct that, if the juror experiences symptoms consistent with COVID-19 or is exposed to an individual diagnosed with COVID-19,

the juror must notify the clerk immediately – using a specific email address or telephone number dedicated for that purpose – and must not report for service at the courthouse.

- Once a pool is drawn, the clerk shall (i) exclude from the pool any juror who reports symptoms consistent with COVID-19 or recent exposure to an individual diagnosed with COVID-19, (ii) notify the juror by letter that he or she is excluded and must not report for service, and (iii) notify the Chief Judge and presiding judge of the juror’s exclusion.

Comment: An additional number of qualified jurors will likely need to be drawn to account for those dismissed for COVID-related reasons. The goal is to ensure that the pool available for selection, after dismissal of those individuals, is approximately 32 jurors.

Drawing 52 qualified jurors serves that end. It seems likely that around 20% of those drawn will be either excluded or dismissed, either because they are essential to COVID treatment or recovery efforts or they report symptoms or exposure. It has been reported (by FiveThirtyEight) that around 30% of the population says that they are “very” worried about COVID, and – applying that figure to the pool – it might be assumed that some number, perhaps another 20%, will request and secure dismissal based on severe anxiety over the virus. The result would be a pool of about 32 jurors.

It may be helpful for the court to develop a video presentation – perhaps hosted by the Chief Judge – explaining the procedures and protocols adopted by the court to protect against transmission of COVID, including specifics on all preliminary safety planning, and providing a step-by-step guide for jurors from the moment they enter the building. The video could be placed on the court’s website, and shown to jurors later, at the time of voir dire. A “frequently asked question” segment could be included in the video, or else included on the website in written form.

The COVID safety information should be communicated to prospective jurors as early as possible, and at every opportunity including in communications from the court and on the court’s website. If the court is able to agree on global requirements regarding personal protective equipment, then that decision should be similarly communicated.

3. Voir Dire

a. Preparation for Voir Dire

- In advance of the date on which voir dire is scheduled to commence:
 - Sanitizer stations shall be placed in appropriate locations throughout the courthouse, including entrances to the building and individual courtrooms, and personal protective equipment – including facial coverings/masks, gloves, and personal hand sanitizer – shall be ordered in a number sufficient to disburse to each juror during each day of voir dire and trial.
 - Two courtrooms on the same floor shall be selected for voir dire and trial proceedings, and each courtroom will be designated – with appropriate signage – as either “Courtroom A” or “Courtroom B.”
 - Markers shall be affixed to 21 seats in the courtrooms, indicating places where jurors should sit and allowing for at least six feet of separation:
 - Microphones shall be placed or installed in the juror box and in the gallery at points equidistant from the seating markers.
 - Counsel tables should be realigned to allow, to the extent possible, counsel for the parties to have an unobstructed view of the judicial bench, the jury box, and the gallery.
 - Video recording devices with closed circuit capacity shall be installed in the courtrooms (or one mobile device shall be set up in “Courtroom A,” to be moved to “Courtroom B” as necessary), and a separate courtroom or other room on a different floor of the courthouse shall be designated as the “Public Courtroom” and made available for broadcast or replay of the proceedings.
 - A video screen visible to the gallery and jury box shall be installed or placed in the courtrooms.
 - A separate room on the same floor as the courtrooms shall be selected and designated as the “Colloquy Room.”
 - The rooms shall be fully cleaned and disinfected.
- On the date voir dire is scheduled to commence, courthouse staff shall be assigned to each courtroom, to assist and direct jurors.

Comment: Designation of the courtrooms and seating will allow the jurors to be grouped and seated more quickly and easily,

while ensuring that safe distancing is maintained. The video recording device will allow the proceedings to be taped and/or transmitted simultaneously to another room, so that the proceedings may be viewed by those who cannot be physically present.

The seating markers will ensure that jurors are assigned specific seats that are a safe distance from one another. The specific placement of the markers will necessarily differ in each courtroom, but as an example in courtroom 1 of the Harrisburg courthouse, the markers would be placed as follow: (i) in the juror box, to the second, fourth, and sixth seats in the back row; (ii) in the gallery, to the benches in the first, third, and fifth rows, at a point one foot from the courtroom wall, a point one foot from the courtroom aisle, and a point equidistant from the other two points. The layout is illustrated in the attached diagram.

The recommendations regarding placement of parties, jurors, and equipment within the courtrooms are based on an assessment of the space by the Office of the Federal Public Defender and after discussion with the Office of the United States Attorney. Representatives of the court and both offices should conduct a physical inspection or walk-through of the relevant areas prior to any final placement decisions.

b. Processing of Jurors

- Courthouse staff shall (i) ensure that jurors maintain safe distancing from others while waiting to enter the courthouse and after entry into the courthouse, (ii) provide each juror upon arrival with a protective facial covering/mask and gloves, (iii) instruct each juror upon arrival to wear a facial covering/mask at all times within the courthouse except as directed by the presiding judge.
- Courthouse staff shall ask all jurors upon arrival to state whether they are experiencing any symptoms of illness and to confirm their responses to the health screening questionnaire, instruct them to leave if they are experiencing such symptoms, and advise the clerk of the name of the juror.
- Each juror will have an assigned number, 1 through 52.

- Courthouse staff shall, consistent with their juror number, instruct jurors to report to either “Courtroom A” or “Courtroom B.”
- Courthouse staff on the appropriate floor shall direct each juror to a marked seat consistent with their juror number in the juror’s designated courtroom.
- Courthouse staff on the appropriate floor shall advise each juror that a facial covering/mask is required at all times.
- Courthouse staff shall, if the court has created a video presentation illustrating the procedures and protocols adopted by the court to protect against transmission of COVID-19 and explaining the juror selection and trial processes, display the presentation for jurors as they are seated.

Comment: This process is intended to get the jurors in the courthouse and to their seats as quickly as possible, without compromising safety or exposure unnecessarily. Courthouse staff may also consider directing jurors to arrive at the courthouse at staggered times, to avoid (so far as possible) large congregations outside the courthouse.

c. Commencing Voir Dire

- Voir dire may proceed once all jurors in both courtrooms have been seated.
- Before questioning commences, any juror(s) not assigned a seat in either courtroom shall be dismissed by the presiding judge.
- Questioning shall commence in the courtroom designated “Courtroom A,” and shall continue in the courtroom designated “Courtroom B” after the conclusion of questioning in “Courtroom A,” unless the presiding judge directs otherwise.
- Attorneys and their staff, courtroom personnel, jurors, and parties must wear facial coverings/masks at all times, except while speaking, or as otherwise permitted by the presiding judge.

Comment: Dismissal of the unassigned jurors will mean that no more than 42 jurors – a sufficient number, and likely the maximum that can be seated safely – are in the initial pool for questioning. Members of the public will not be allowed into the courtrooms, although the proceedings will be videotaped. There may be some seating available in the

trial courtroom for members of the public identified by the government or the defense, and such determinations shall be made at the discretion of the trial judge.

The Office of the Federal Public Defender and Office of the United States Attorney discussed the issue of use of space thoroughly through this process and considered other alternatives, including a staging or assembly area and bringing smaller groups into a single courtroom for voir dire. The recommended process seeks to eliminate the staging area and, with appropriate safety precautions, should achieve social distancing and time-limit goals.

d. Conducting Voir Dire

- Questioning of jurors shall be conducted by the presiding judge and attorneys, in the discretion of the presiding judge.
- If any juror responds to any question regarding ability to serve by reference to his or her experience with or concern over COVID-19, the judge should (i) remind jurors of the procedures and protocols adopted by the court to protect against transmission of COVID-19 precautions, (ii) advise jurors that fear over transmission – while legitimate – is not a ground for dismissal, and (iii) ask the juror(s) who responded to explain whether and how the experience or concerns constitute a physical or mental condition that would impact ability to serve, giving the juror(s) an opportunity to speak to the judge individually if necessary.
- When a juror’s response invites or requires an individual colloquy with the juror, whether on issues related to COVID-19 or other sensitive matters, the colloquy shall be conducted in the “Colloquy Room,” and may be conducted immediately or at a later time – with other colloquies – in the discretion of the presiding judge.

Comment: The “standard” questions concerning physical and mental conditions and ability to serve should invite any responses regarding concerns over COVID, and asking specifically about such concerns might encourage jurors to raise those fears as a basis for dismissal when they might not otherwise do so. Even then, it seems likely that a number of jurors will object to service on grounds of a generalized fear of transmission, which should not itself support dismissal – since anyone could credibly claim to have such

fears. Having the judge address this subject in response, and ask any jurors who identify a concern of this type to explain why it rises to the level of a condition affecting ability to serve (for example, severe anxiety) provides some assurance that the jurors will not be unnecessarily dismissed. The presiding judge would retain discretion to do otherwise, including allowing the attorneys to ask questions about COVID, but doing so may appear to jurors inappropriate, given the somewhat sensitive nature of the issue.

The Office of the Federal Public Defender and Office of the United States Attorney thoroughly discussed the use of an expanded jury questionnaire and a collaborative process to exclude jurors by agreement, with the goal of eliminating unnecessary entry into the building for jurors likely to be excused. The Offices concluded that the general questionnaire and health questionnaire will suffice to identify jurors who must be excluded for health, work, or family reasons and that, with the recommended safety protocols, standard voir dire questioning would best serve the interests of the parties and the court.

e. Concluding Voir Dire

- Once all jurors in both courtrooms have been questioned, selection of jurors shall be conducted in the manner prescribed by the presiding judge.
- Generalized concerns over exposure to or transmission to COVID-19 should not, without more, generally warrant dismissal of a juror for cause.
- Selection shall continue until a total of 15 jurors have been selected, representing 12 principal jurors and 3 alternate jurors.
- It is anticipated the attorneys may need to move between the two courtrooms during the jury selection process in order to consider the preemptory strikes.
- The remaining jurors shall be dismissed, and directed out of the courtrooms individually by courthouse staff, ensuring to maintain safe distancing from others.

- The selected jurors shall be advised of their responsibilities, in the discretion of the presiding judge, and then directed out of the courtrooms individually by courthouse staff.

Comment: A total of 15 jurors will be selected, including 3 alternates – one more than usual. An additional alternate could be selected, but if a trial features dismissal of more than 3 jurors it is likely already set for mistrial.

4. Trial

a. Preparation for Trial

- In advance of the date on which trial is scheduled to commence:
 - In the two courtrooms selected for trial proceedings, each courtroom will be designated – with appropriate signage – as either “Trial Courtroom” or “Jurors Courtroom.”
 - Markers shall be affixed to seats in the “Trial Courtroom,” indicating places where jurors and others should sit, as follows:
 - In the juror box, to the middle seat in the front row.
 - In the gallery, to points allowing for at least six feet of separation.
 - A microphone with disposable coverings shall be installed in front of the middle seat of the juror box, and connected to the courtroom audio system.
 - Wireless headphones connected through the courtroom audio shall be placed on the counsel tables, the judicial bench, and the court reporter’s desk (unless the presiding judge decides that neither is to be used in conducting sidebars).
 - Projection equipment, connected to the video screen in the courtroom, shall be installed.
 - The courtrooms shall be fully cleaned and disinfected.
- In advance of the date on which trial is scheduled to commence, the defendant(s) shall be tested by appropriate staff of the federal marshal’s service (or an appropriate designee) for symptoms of or exposure to COVID-19, and the results shall be reported to the presiding judge.

- On the date trial is scheduled to commence, courthouse staff shall be assigned to each courtroom, to assist and direct jurors.
- On every day after trial has commenced, until it has concluded, the rooms shall be fully cleaned and disinfected following proceedings on that day.

Comment: The trial courtroom will be set up so that the 12 principal jurors sit in the first and third rows of the gallery, with the 3 alternates in the fifth row. Witnesses will testify from the middle seat in the front row of the juror box. The witness should be visible to all jurors, as well as the presiding judge and court reporter, and the testimony will be picked up by the microphone (with a disposable cover, to replace after each witness).

The video recording device should remain installed from voir dire, and should remain connected to a television in another courtroom. This will allow members of the public to view the proceedings without being present.

The projector will be available for use by attorneys, and lessen (if not eliminate) the need to pass papers and exhibits to witnesses.

The sound-blocking headphones and wireless headphones will be available for use if and when the presiding judges asks for a “sidebar” with attorneys.

As noted above, the recommendations regarding placement of parties, jurors, and equipment within the courtrooms are based on an assessment of the space by the Office of the Federal Public Defender and after discussion with the Office of the United States Attorney. Representatives of the court and both offices should conduct a physical inspection or walk-through of the relevant areas prior to any final placement decisions.

b. Processing of Jurors and Other Individuals

- Courthouse staff shall ask any person seeking to attend the trial whether the person is a juror or otherwise.
- If the person is a juror, and the person’s status is confirmed, courthouse staff shall:

- Provide each juror upon arrival with a protective facial covering/mask and gloves and instruct each juror upon arrival to wear a mask at all times within the courthouse except as directed by the presiding judge.
 - Ask each juror upon arrival whether he or she is experiencing any symptoms of illness, instruct them to leave if so, and advise the clerk of the name of the juror.
 - Direct each principal juror to a marked seat in the first or third rows of the gallery in the trial courtroom, and shall direct each alternate juror to a marked seat on one side of the fifth row of the gallery.
 - Advise each juror that a facial covering/mask is required to be worn at all times.
- If the person is a witness or other participant in the trial, and the person’s status is confirmed (including by an attorney for a party), courthouse staff shall:
 - Provide the person with a protective facial covering/mask and gloves and instruct the person wear a mask at all times within the courthouse, except as directed by the presiding judge.
 - Direct the person to the trial courtroom, to be seated in accord with the directions of the presiding judge, and instruct the person to maintain safe distancing from others.
 - If the person is neither a juror, a witness, nor another participant in the trial, courthouse staff shall:
 - Instruct the person wear a facial covering/mask at all times within the courthouse.
 - Direct the person to the “Public Courtroom,” advise the person that the proceedings may be viewed as broadcast, and instruct the person to maintain safe distancing from others.

Comment: This process is intended to direct trial participants to the trial courtroom, while members of the public – if they wish to view the proceedings – may do so from a separate courtroom, in which the proceedings will be broadcast (or replayed).

The jurors will be directed to the trial courtroom, with the principal jurors sitting in the first and third rows and the

alternates in the fifth row, on one side of the gallery. The remaining seats in the fifth row will be available for witnesses or others, in the discretion of the presiding judge.

c. Conducting Trial

- Trial may proceed once all jurors have been seated, at the discretion of the presiding judge.
- Courthouse staff shall ask each juror upon arrival, on every day of trial, whether he or she is experiencing any symptoms of illness, instruct them to leave if so, and advise the clerk of the name of the juror.
- The presiding judge shall instruct all persons in the courtroom to notify the clerk (or other designated judicial officer or courthouse employee) immediately if the person experiences symptoms consistent with COVID-19 or is exposed to an individual diagnosed with COVID-19, with assurance that the person's identity will be kept confidential.
- Attorneys and their staff, courtroom personnel, jurors, and parties must wear facial coverings/masks at all times, except while speaking, or as otherwise permitted by the presiding judge.
- Attorneys and their staff shall remain at or near their assigned counsel table throughout trial, except as directed by the presiding judge.
- When a witness is called to testify:
 - The witness shall approach the jury box, while wearing a mask, and sit in the marked seat, after which the witness shall remove the facial covering/mask.
 - The witness shall testify by speaking into the microphone installed in front of the seat.
 - Attorneys shall make every effort to present exhibits to the witness through the use of projection equipment; otherwise, if the presiding judge permits the exhibit to be passed to the witness, both the witness and attorney must wear a facial covering/mask and gloves while handling the exhibit.
 - Upon conclusion of the witness's testimony, the disposable cover of the microphone shall be immediately replaced by courthouse staff, and the area disinfected.

- When a “sidebar” is called by the presiding judge:
 - The presiding judge may direct that the sidebar be conducted in the courtroom through the use of technology which will permit the parties to communicate privately with the court. (The court is in the process of procuring equipment to be worn by the presiding judge, counsel for the parties, and the court reporter which allows for those individuals to communicate privately while “white noise” is projected throughout the courtroom.)
 - The presiding judge may also direct that the sidebar be conducted in a separate room, including the “Colloquy Room,” in which case either jurors may be instructed to remain in the courtroom or a recess may be called.
- When a recess is called:
 - Courthouse staff shall direct jurors to leave their seats, beginning with those closest to the courtroom door, and to enter the juror courtroom, the doors of which will remain open.
 - Courthouse staff shall instruct jurors to stay in the juror courtroom until recalled, to maintain safe distancing from others, and to signal courthouse staff if a need arises.
 - Once the recess is concluded, and jurors are recalled by the presiding judge, courthouse staff shall direct jurors to return to their seats in the trial courtroom, beginning with those farthest from the courtroom door.
- If at any time during trial a juror, or other participant or attendee who has intermingled with jurors, experiences symptoms consistent with COVID-19 or is exposed to an individual diagnosed with COVID-19:
 - The presiding judge shall cease trial proceedings, dismiss jurors for a period of at least 14 days (the “quarantine period”), and direct that jurors be notified that trial proceedings have been stopped because an attendee notified the court that the person experienced symptoms consistent with COVID-19 or was exposed to an individual diagnosed with COVID-19. It is anticipated that some parties may ask for a mistrial at that point.
 - The clerk shall contact each juror individually and instruct each juror to notify the clerk immediately if he or she experiences symptoms consistent with COVID-19 or is exposed to an individual diagnosed with COVID-19 during the quarantine period.

- The presiding judge shall decide, after consultation with counsel, whether trial may be resumed after the quarantine period or whether a mistrial should be declared.

Comment: The sidebar procedures are designed to limit contact among the attorneys and witnesses, and to provide a means to conduct sidebars while maintaining a reasonably safe distance between the judge and attorneys. An admonition that sidebars will be disfavored in this environment could be added, but seems unnecessary as it is obvious.

It will be necessary to cease all trial proceedings if any juror – or someone working in proximity to jurors – exhibits symptoms or is exposed to COVID. The presiding judge will have discretion to decide whether trial may resume after the period (assuming there are no further reports of illness or exposure) or whether a mistrial should be declared.

d. Deliberations

- Once the parties have concluded their presentations, the jurors shall be instructed to commence deliberations in the manner prescribed by the presiding judge.
- Courthouse staff shall direct jurors to leave their seats, beginning with those closest to the courtroom door, and to enter the juror courtroom, the doors of which will thereafter be closed.
- Courthouse staff shall instruct jurors to stay in the juror courtroom until recalled, to maintain safe distancing from others, and to signal courthouse staff if a need arises (including if the jury has a question or reaches a verdict).
- Jurors will be provided meals and drinks, as appropriate, in disposable containers to the extent possible.
- Whenever jurors are recalled by the presiding judge, including for the purpose of returning a verdict, courthouse staff shall direct jurors to return to their seats in the trial courtroom, beginning with those farthest from the courtroom door.

Comment: It seems unnecessary, and unhelpful, to dictate where the jurors should sit in the courtroom, although the courtroom

should be inspected beforehand so any sensitive materials or equipment are removed or sealed.

e. Concluding Trial

- Once trial has concluded, the jurors shall be dismissed, and directed out of the courtrooms individually by courthouse staff, ensuring to maintain safe distancing from others.

Comment: Not needed.