

E-FILED: 8/12/09

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

v.

MATTHEW CRIPPEN

Defendants.

CR 09-703-PSG

**CRIMINAL MOTION AND
TRIAL ORDER**

This matter is set for trial before the Honorable Philip S. Gutierrez, United States District Judge, Courtroom 790, Roybal Federal Building, 255 E. Temple St., Los Angeles California, 90012.

A. PRETRIAL AND TRIAL DATES AND MOTIONS

1. Pretrial motions shall be filed on or before **08-17-09** (Monday preceding four weeks before status conference/motion hearing). Motions expected to take more than one hour of court time must include a time estimate beneath the

1 hearing date on the face page of the motion.

2 Oppositions (or notices of non-opposition) shall be filed on **08-24-09**.
3 (Monday preceding three weeks before status conference/motion hearing.)

4 Replies (optional) shall be filed on **09-04-09**. (Preceding Monday is a
5 holiday).

6 Local Rule 7-12 will apply to papers not timely filed by a party.

7 Adherence to these timing requirements is essential to chambers'
8 preparation of motion matters.

9 2. Memoranda of Points and Authorities in support of or in opposition
10 to motions shall not exceed 25 pages. Replies shall not exceed 12 pages. Only in
11 rare instances and for good cause shown will the Court grant an application to
12 extend these page limitations. No supplemental brief shall be filed without prior
13 leave of court. **Typeface shall comply with Local Rule 11-3.1.1. (Civil).**

14 **NOTE: If Times Roman font is used, the size must be no less than 14; if**
15 **Courier is used, the size must be no less than 12.** Footnotes shall be in typeface
16 no less than one size smaller than text size and shall be used sparingly.

17 3. Filings that do not conform to the Local Rules and this Order may not
18 be considered.

19 4. Before filing any motion for discovery, a party shall consult with
20 opposing counsel to ascertain whether the requested discovery will be provided.
21 All discovery motions shall state with particularity what is requested, the basis for
22 the request, whether the discovery has been requested from opposing counsel, and
23 whether the discovery has been declined, in whole or in part. Motions made
24 without prior consultation with opposing counsel or that fail to include the above
25 information may not be heard.

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28 5. **A Status Conference/Motions Hearing is set for 09-14-09 at 10:00**

1 **a.m.**

2 6. **Trial is set for Tuesday, 09-29-09 at 9:00 a.m.**

3 7. All documents shall be e-filed and served on opposing counsel at
4 approximately the same time.

5 8. Mandatory chambers copies of all filed motions, oppositions or notice
6 of non-opposition, and replies must be delivered to Judge Gutierrez' chambers on
7 the seventh floor not later than 12:00 noon the following business day. For
8 security reasons, courtesy copies should be removed from envelopes or folders
9 before placing them on the table.

10 9. All Counsel are to list e-mail addresses, facsimile transmission
11 numbers, along with street address (no Post Office box numbers) and telephone
12 numbers, on all papers submitted to the Court.

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14 **B. DISCOVERY & NOTICE**

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16 Counsel shall comply promptly with discovery and notice pursuant to Rules
17 12, 12.1, 12.2, 12.3, 12.4, 15, and 16 of the Federal Rules of Criminal Procedure.
18 On government counsel's discovery of any evidence within the scope of Brady v.
19 Maryland, 373 U.S. 83 (1963), such evidence shall be produced forthwith to
20 counsel for the defendant. Counsel for the government shall also disclose to
21 counsel for defendant the existence or non-existence of : (1) evidence obtained by
22 electronic surveillance; and (2) testimony by a government informer.

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28 **C. TRIAL REQUIREMENTS**

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2 1. **No later than one week before trial**, counsel for the government
3 shall file with the Court:

4 a. In camera (under seal) all statements of all witnesses to be called
5 by the Government in its case-in-chief;

6 b. A Trial Memorandum setting forth a factual summary of the
7 government's case, a statement of the charges and the elements of each charge, an
8 estimate of the length of the government's case in chief, including anticipated
9 cross-examination, the names of witnesses the government intends to call, and a
10 discussion of relevant legal and evidentiary issues as applied to the facts of the
11 particular case. Counsel for the government shall attempt to obtain defense
12 counsel's agreement to the factual summary, statement of the charges, time
13 estimate for cross-examination of the government's witnesses, and legal and
14 evidentiary issues.

15 2. Counsel shall arrive at the Courtroom no later than 8:30 a.m. on the
16 first day of trial.

17 3. Counsel for the government shall present the courtroom deputy clerk
18 (CRD) with the following documents on the first day of trial:

19 a. Three copies of the government's witness list;

20 b. Three copies of the government's exhibit list in the form
21 specified in Local Rule 16-5 (Civil);

22 c. A bench book containing a copy of the indictment/ information,
23 a copy of all exhibits that can be reproduced, and a copy of the witness list. Each
24 exhibit shall be tabbed with the exhibit number for easy referral;

25 d. All of the government's exhibits, with official exhibit tags
26 attached and bearing the same number shown on the exhibit list.
27 Exhibit tags may be obtained from the receptionist in the Public
28 Intake Section, located on the Main Street level of the

1 courthouse at 312 North Spring Street, Room G-19. Exhibits
2 shall be numbered 1, 2, 3, etc., NOT 1.1, 1.2, etc. If a “blow-
3 up” is an enlargement of an existing exhibit, it shall be
4 designated with the number of the original exhibit followed by
5 an “A.”

6 4. The Court orders that exhibits such as firearms, narcotics, etc., remain
7 in the custody of a law enforcement agent during the pendency of the trial. It shall
8 be the responsibility of the agent to produce any such items for court, secure them
9 at night and guard them at all times while in the courtroom.

10 5. Defense counsel need not deliver defense exhibits to the CRD on the
11 first day of trial; however, defense counsel is responsible for affixing completed
12 exhibit tags with the case name and case number to all exhibits to be used in
13 Defendant's case.

14 6. Defense counsel shall provide a three ring binder, if possible, tabbed
15 with numbers to correspond to the exhibits counsel expects to introduce. Defense
16 counsel shall provide the Court with a copy of defense exhibits as they are
17 introduced during trial.

18 7. Defense counsel shall provide the CRD and the court reporter with the
19 defense witness list and defense exhibit list.

20 8. A copy of the exhibit list with all **admitted exhibits** will be given to
21 the jury during deliberations. Government and defense counsel shall review and
22 approve the exhibit list with the CRD before the list is given to the jury.

23 9. If any counsel wishes to arrange for the use of additional equipment,
24 such as video monitors, overhead projectors, etc., counsel shall notify the CRD no
25 later than 4:00 p.m. at least one week before trial so that the necessary
26 arrangements may be made.

27 10. Counsel shall not attempt to display or use any charts or enlargements
28 of exhibits unless all counsel have agreed to their use or objections have been

1 heard and a ruling has been made by the Court

2 11. On the day of jury selection, trial will begin at 9:00 a.m. Counsel will
3 appear at 8:30 a.m. Thereafter, trial days are Tuesday through Friday, 9:00 a.m. to
4 4:30 p.m., with two fifteen-minute breaks during the morning and afternoon
5 sessions. If counsel contemplate that this schedule will be problematic due to the
6 unavailability of witnesses, counsel should provide details to the Court at the
7 Status Conference.

8 12. Before trial begins, the Court will give counsel an opportunity to
9 discuss administrative matters and anticipated procedural or legal issues. Before
10 trial begins, and as soon as the information becomes available to counsel, counsel
11 should advise the court of any concerns or accommodations that are requested for
12 parties or witnesses. During trial, if there are any matters to be discussed outside
13 the presence of the jury, counsel shall advise the CRD of the request. The Court
14 discourages sidebars during trial.

15 13. On the day of jury selection, the Court reserves the time from 8:30
16 a.m. to 9:00 a.m. to handle legal and administrative matters. Jury selection will
17 commence promptly at 9:00 a.m. or as soon as jurors are available. Thereafter,
18 legal and administrative matters shall be addressed between 8:30 a.m. and 9:00
19 a.m. All counsel are urged to anticipate matters that may need to be addressed
20 outside of the presence of the jury and to raise them during this period, during
21 breaks, or at the end of the day. The Court does not make jurors wait while
22 counsel discuss matters that should have been addressed previously. Counsel are
23 urged to consider any unusual substantive or evidentiary issues that may arise, and
24 to advise the Court of such issues. Short briefs addressing such disputed issues are
25 welcome.

26 14. Should counsel for the government wish to order transcripts, they
27 shall provide agency authorization to the court reporter at the time the request is
28 made.

1 D. JURY INSTRUCTIONS, VERDICT FORMS & QUESTIONNAIRES

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3 1. **No later than one week before trial**, counsel shall submit both
4 general and substantive jury instructions in the form described below. If possible,
5 all instructions should be taken from the *Manual of Model Criminal Jury*
6 *Instructions for the Ninth Circuit* (West Publishing, current edition). In those cases
7 where a special verdict is requested, counsel shall submit a proposed verdict form
8 with the jury instructions. Counsel shall submit a compact disc, compatible with
9 Word Perfect 9.0 or 11.0, containing the proposed instructions and a “clean” set of
10 such instructions, as set forth below.

11 2. The parties must submit JOINT jury instructions and a JOINT
12 proposed verdict form (if a special verdict is requested). In order to produce these
13 joint instructions, the parties shall meet and confer sufficiently in advance of the
14 required submission date, with the goal of agreeing on instructions and verdict
15 forms. Where the parties cannot agree, disputed instructions shall be submitted
16 one week before trial as follows: 1) JOINT jury instructions (those instructions
17 agreed to by all parties), and 2) DISPUTED jury instructions (those instructions
18 propounded by a party to which another party objects). On a separate page
19 following each disputed jury instruction, the party opposing the instruction shall
20 briefly state the basis for the objection, any authority in support thereof and, if
21 applicable, an alternative instruction. On the following page, the party proposing
22 the disputed instruction shall briefly state its response to the objection, and any
23 authority in support of the instruction. Each requested jury instruction shall be
24 numbered and set forth in full on a separate page, citing the authority or source of
25 the requested instruction.

26 3. Jury instructions should be modified as necessary to fit the facts of the
27 case (*e.g.*, inserting names of defendant(s) to whom instruction applies). Where
28 language appears in brackets in the model instruction, counsel shall select the

appropriate text and eliminate the inapplicable bracketed text. Where no applicable Ninth Circuit model instruction is available, counsel are directed to use the instructions from O'Malley, Grenig & Lee (formerly Devitt, et al.), *Federal Jury Practice and Instructions* (West Publishing Co., current edition).

4. An index page shall accompany all jury instructions submitted to the Court. The index page shall indicate the following:

- a. The number of the instruction;
- b. A brief title of the instruction;
- c. The source of the instruction; and
- d. The page number of the instruction.

EXAMPLE:

Number	Title	Source	Page Number
#1	Conspiracy-Elements	9th Cir.8.5.1	1

5. One or more copies of the instructions will be given to the jury during deliberations. Accordingly, on the diskette submitted with jury instructions, counsel shall include a "clean" set of all instructions, containing only the text of each instruction, set forth in full on each page, with the caption "Court's Instruction No. ____" (eliminating titles, supporting authority, indication of party proposing, etc.)

6. If counsel wish to submit a written questionnaire to prospective jurors, a motion shall be made in writing, with the proposed questionnaire attached, no later than eight weeks before the trial date. The Court does not routinely use questionnaires. Counsel should attempt to discuss this issue and reach a proposed agreement before submitting the motion to the Court.

7. At least one week before trial, each counsel must file with the CRD and serve on opposing counsel any proposed questions to be asked of prospective jurors. Counsel shall also file a Joint Statement of the Case which the Court will read to prospective jurors prior to the commencement of voir dire. The statement

1 shall not exceed one page.

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3 E. INSTRUCTIONS GOVERNING PROCEDURE DURING TRIAL
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5 1. Counsel shall not refer to any witness -- including a client -- over 14
6 years of age by his/her first name during trial.

7 2. Counsel shall not discuss the law or argue the case in opening
8 statements.

9 3. Counsel shall not use objections for the purpose of making a speech,
10 recapitulating testimony, or attempting to guide the witness. When objecting,
11 counsel shall stand, state only the legal ground of the objection, *e.g.*, hearsay,
12 irrelevant, etc. Counsel shall not argue an objection before the jury. Requests to
13 approach sidebar to further argue an objection should be made sparingly, and may
14 not be granted.

15 4. Counsel shall not make facial expressions, nod, or shake their heads,
16 comment or otherwise exhibit in any way any agreement, disagreement or other
17 opinion or belief concerning the testimony of a witness. Counsel shall admonish
18 their clients and witnesses not to engage in such conduct.

19 5. Counsel should not talk to jurors at all, and should not talk to co-
20 counsel, opposing counsel, witnesses or clients where the conversation can be
21 overheard by jurors. Each counsel should admonish counsel's own clients and
22 witnesses to avoid such conduct.

23 6. Counsel shall question witnesses from the lectern. Counsel shall not
24 approach the witness box or enter the well without the Court's permission, and
25 shall return to the lectern when counsel's purpose has been accomplished.

26 7. Counsel should speak clearly when questioning witnesses, making
27 objections, etc.

28 8. No document shall be placed before a witness unless a copy has been

1 provided to the Court. Counsel may consider such devices as overhead projectors,
2 jury notebooks for admitted exhibits, or enlargements of important exhibits. The
3 Court has an Elmo and other equipment available for use during trial. Call the
4 CRD if you wish to visit when the Court is not in session to practice using the
5 equipment. The Court does not permit exhibits to be “published” by passing them
6 up and down the jury box. Exhibits may be displayed using the screen in the
7 courtroom.

8 9. Water will be provided at counsel table. Water cups are not to be
9 brought to the lectern. No other beverages are permitted in the courtroom. Food is
10 not permitted in the courtroom.

11 10. Counsel shall rise when addressing the Court. In jury trials, counsel
12 and the defendant shall rise when the jury enters or leaves the courtroom. [Special
13 procedures or exceptions may apply when the defendant is in custody or
14 restrained.]

15 11. In trial, all remarks shall be addressed to the Court. Counsel shall not
16 directly address the CRD, the court reporter or opposing counsel. All requests for
17 re-reading of questions or answers, or to have an exhibit placed in front of a
18 witness, shall be addressed to the Court

19 12. Counsel should not offer a stipulation without having conferred with
20 opposing counsel and having reached an agreement. Any stipulation of fact will
21 require defendant’s personal concurrence and shall be submitted to the Court in
22 writing for approval. A proposed stipulation should be explained to defendant in
23 advance.

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25 13. While court is in session, counsel shall not leave counsel table to
26 confer with investigators, secretaries, or witnesses unless permission is granted in
27 advance.

28 14. When a party has more than one lawyer, only one lawyer may conduct

1 the examination of a given witness, and only that same lawyer may handle
2 objections during the testimony of that witness.

3 15. If a witness was on the stand at a recess or adjournment, counsel who
4 called the witness shall ensure the witness is back on the stand and ready to
5 proceed when court resumes.

6 16. Counsel are directed to have witnesses available throughout the court
7 day. If no witnesses are available and there is more than a brief delay, the Court
8 may deem counsel to have rested.

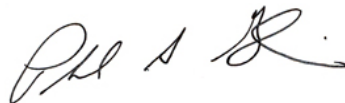
9 17. The Court attempts to cooperate with expert witnesses and other
10 professionals, and will, except in extraordinary circumstances, accommodate them
11 by permitting them to be called out of sequence. Counsel are urged to anticipate
12 any such possibility and to discuss it with opposing counsel. If there is an
13 objection, counsel shall confer with the Court in advance.

14 18. Counsel must notify the CRD in advance if any witness should be
15 accommodated based on the Americans with Disabilities Act or for other reasons.

16 19. Counsel are advised to be on time, as the Court makes every effort to
17 start promptly.

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19 IT IS SO ORDERED.

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21 Dated: August 13, 2009



22 PHILIP S. GUTIERREZ
23 United States District Judge
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