

## 2.03 Trial outline (criminal case)

1. Have the case called for trial.<sup>1</sup>
2. Jury is selected (see 2.05: Jury selection—criminal).
3. Give preliminary instructions to the jury (see 2.07: Preliminary jury instructions in criminal case).
4. Ascertain whether any party wishes to invoke the rule to exclude from the courtroom witnesses scheduled to testify in the case. [But see 18 U.S.C. § 3510 re victims.]
5. Government counsel makes opening statement.
6. Defense counsel makes opening statement (unless permitted to reserve).
7. Government counsel calls witnesses.
8. Government rests.
9. Motion for judgment of acquittal. Fed. R. Crim. P. 29(a) (see 2.10: Trial and post-trial motions).
10. Defense counsel makes opening statement if he or she has been permitted to reserve.
11. Defense counsel calls witnesses for the defense.
12. Defense rests.
13. Counsel call rebuttal witnesses.
14. Government rests on its entire case.
15. Defense rests on its entire case.
16. Motion for judgment of acquittal. Fed. R. Crim. P. 29(a), (b) (see 2.10: Trial and post-trial motions).
17. Out of hearing of the jury, rule on counsel's requests for instructions and inform counsel as to the substance of the court's charge. Fed. R. Crim. P. 30.
18. Closing argument by prosecution, closing argument by defense, rebuttal by prosecution. Fed. R. Crim. P. 29.1.

---

1. Fed. R. Crim. P. 43 prohibits trial in absentia of a defendant who is not present at the beginning of trial. *Crosby v. United States*, 506 U.S. 255 (1993).

Section 2.03: Trial outline (criminal case)

19. Charge the jury (see 2.08: General instructions to jury at end of criminal case). Fed. R. Crim. P. 30. In the court's discretion, the jury may be instructed before closing arguments.
20. Rule on objections to the charge and make any appropriate additional charge. Fed. R. Crim. P. 30.
21. If you are going to discharge the alternate jurors, excuse and thank them. If you plan to retain the alternate jurors, ensure that they do not discuss the case with any other person unless they replace a regular juror. If an alternate juror replaces a juror after deliberations have begun, instruct the jury to begin its deliberations anew. Fed. R. Crim. P. 24(c).
22. Instruct the jury to go to the jury room and commence its deliberations.
23. Determine which exhibits are to be sent to the jury room.
24. Have the clerk give the exhibits and the verdict forms to the jury.
25. Recess court during the jury deliberations.
26. Before responding to any communications from the jury, consult with counsel on the record (see 2.08: General instructions to jury at end of criminal case).
27. If the jury fails to arrive at a verdict before the conclusion of the first day's deliberations, provide either for their overnight sequestration or permit them to separate after admonishing them as to their conduct and fixing the time for their return to resume deliberations. Provide for safekeeping of exhibits.
28. If the jury reports that they cannot agree on a verdict, determine by questioning whether they are hopelessly deadlocked. Do not inquire as to the numerical split of the jury. If you are convinced that the jury is hopelessly deadlocked, declare a mistrial. If you are not so convinced, direct them to resume their deliberations. Consider giving your circuit's approved *Allen*-type charge to the jury before declaring a mistrial.

*Section 2.03: Trial outline (criminal case)*

29. When the jury has agreed on a verdict, reconvene court and take the verdict (see 2.09: Verdict—criminal).
30. Poll the jurors individually on the request of either party (see 2.09: Verdict—criminal). Fed. R. Crim. P. 31(d).
31. Thank and discharge the jury.
32. If the verdict is “not guilty,” discharge defendant.
33. If defendant has been found guilty, determine whether defendant should be committed to the custody of the U.S. marshal or released on bail (see 2.11: Release or detention pending sentence or appeal).
34. Fix a time for post-trial motions.
35. Adjourn or recess court.

**Other FJC sources**

Donald S. Voorhees, *Manual on Recurring Problems in Criminal Trials* (4th ed. 1996)

For a discussion of case-management techniques in civil trials, some of which may also be helpful in the management of criminal trials, see *Manual for Litigation Management and Cost and Delay Reduction* 141–47 (1992)

For discussions of trial management in complex civil and criminal litigation, see *Manual for Complex Litigation*, Third 127–63, 286–97 (1995)