

I.2 PRETRIAL CHECKLIST

PRETRIAL CHECKLIST

- | | |
|--|--|
| <input type="checkbox"/> 1. Investigation | <input type="checkbox"/> Other |
| <input type="checkbox"/> Investigator Memos | |
| <input type="checkbox"/> Witness Interviews | |
| <input type="checkbox"/> View Scene | |
| <input type="checkbox"/> Review Seized Evidence | |
| <input type="checkbox"/> Weigh/Test Drugs | |
| <input type="checkbox"/> Character Witnesses | |
| <input type="checkbox"/> Defendant's Family | |
| <input type="checkbox"/> 2. Discovery | |
| <input type="checkbox"/> Letters to Prosecutor | |
| <input type="checkbox"/> Omnibus Form | |
| <input type="checkbox"/> Motions | |
| <input type="checkbox"/> Compliance Dates | |
| <input type="checkbox"/> Reciprocal Discovery | |
| <input type="checkbox"/> 3. Pretrial Motions | |
| <input type="checkbox"/> 4. Demonstrative Evidence | |
| <input type="checkbox"/> Opening | |
| <input type="checkbox"/> Testimony | |
| <input type="checkbox"/> Closing | |
| <input type="checkbox"/> 5. Exhibits | |
| <input type="checkbox"/> Tags | |
| <input type="checkbox"/> List | |
| <input type="checkbox"/> Review Gov't Exhibits | |
| <input type="checkbox"/> Copies for Court/Prosecutor | |
| <input type="checkbox"/> 6. Stipulations | |
| <input type="checkbox"/> Chemist/Chain of Custody | |
| <input type="checkbox"/> Foundations | |
| <input type="checkbox"/> 7. <u>Motions In Limine</u> | |
| <input type="checkbox"/> Bad Act Evidence | |
| <input type="checkbox"/> Prior Convictions | |
| <input type="checkbox"/> <i>Prejudicial v. Probative</i> | |
| | <input type="checkbox"/> 8. Subpoenas |
| | <input type="checkbox"/> Out of District |
| | <input type="checkbox"/> Duces Tecum |
| | <input type="checkbox"/> Writs |
| | <input type="checkbox"/> Parole Letters |
| | <input type="checkbox"/> 9. Prosecutors Trial Memo |
| | <input type="checkbox"/> 10. Witness Preparation |
| | <input type="checkbox"/> Direct |
| | <input type="checkbox"/> Cross |
| | <input type="checkbox"/> Witness Statements |
| | <input type="checkbox"/> Impeachment |
| | <input type="checkbox"/> Documents |
| | <input type="checkbox"/> Tapes |
| | <input type="checkbox"/> Transcripts |
| | <input type="checkbox"/> Reports |
| | <input type="checkbox"/> 11. Jury Instructions |
| | <input type="checkbox"/> Standard |
| | <input type="checkbox"/> Theory of Case |
| | <input type="checkbox"/> Modified |
| | <input type="checkbox"/> 12. <u>Voir Dire</u> |
| | <input type="checkbox"/> For Court |
| | <input type="checkbox"/> Attorney Questions |
| | <input type="checkbox"/> Jury List |
| | <input type="checkbox"/> Juror Information Cards |
| | <input type="checkbox"/> Other Information on Jurors |
| | <input type="checkbox"/> 13. Review Court File |
| | <input type="checkbox"/> 14. Clothes for Defendant |

I.6 TRIAL CHECKLIST

| TRIAL CHECKLIST | |
|---|---|
| <input type="checkbox"/> VOIR DIRE | <input type="checkbox"/> MOVE EVIDENCE IN |
| <input type="checkbox"/> Challenges to Venire | <input type="checkbox"/> OFFERS OF PROOF |
| <input type="checkbox"/> Additional Peremptory | <input type="checkbox"/> RULINGS ON EVIDENCE |
| <input type="checkbox"/> Challenges | <input type="checkbox"/> JURY INSTRUCTION |
| <input type="checkbox"/> Challenges for Cause | <input type="checkbox"/> CONFERENCE |
| <input type="checkbox"/> Batson/Pavers | <input type="checkbox"/> POLL JURY |
| <input type="checkbox"/> EXCLUDE WITNESSES PRIOR TO OPENINGS | <input type="checkbox"/> EXTEND TIME FOR POST-TRIAL MOTIONS |
| <input type="checkbox"/> JENCKS | |
| <input type="checkbox"/> RULE 29 (Motion for Judgment of Acquittal) | |
| <input type="checkbox"/> Close of Government Case | |
| <input type="checkbox"/> Close of Case | |

I.8 OBJECTIONS CHECKLIST

OBJECTIONS CHECKLIST

I. OBJECTIONS TO THE FORM OF THE QUESTION

- Ambiguous
- Argumentative
- Assumes facts not in evidence
- Compound
- Confusing
- Harassing the Witness
- Leading
- Misstating the Evidence
- Narrative
- Unintelligible
- Vague

II. OBJECTION TO THE ANSWER SOUGHT

- Asked and Answered
- Best Evidence
- Beyond the scope
- Cumulative
- Conclusion
- Foundation
- Hearsay
- Immaterial
- Improper Impeachment
- Irrelevant
- Narrative
- Opinion
- Personal Knowledge
- Prejudicial

- Privileged
- Speculation
- Vouching

III. OBJECTIONS TO PROSECUTOR'S CLOSING

- Comment on defendant's failure to testify, direct or indirect, e.g., "Evidence uncontradicted" or "evidence unchallenged"
- Comment on exercise of right to counsel
- Misstates burden of the government, e.g., arguing that to acquit the jury must find the government witnesses committed perjury
- Shifting burden, e.g., "we saw no evidence that . . ."
- Personal opinion
- Facts not in evidence
- Inflammatory/Prejudicial
- Improper characterization of defense, e.g., "total fabrication," "a lie," "cock and bull story"

IV. LIMITING INSTRUCTION**IV. MOVE TO STRIKE****V. MOTION FOR MISTRIAL**

I.9 COMMON FOUNDATIONS

COMMON FOUNDATIONS

I. BUSINESS RECORDS (FRE 803)

1. Memorandum, report, record, data compilation
2. Of acts, events, condition, opinions or diagnoses
3. Made at or near time
4. By, or from information transmitted by
5. A person with knowledge
6. Kept in course of regularly conducted business activity
7. Regular practice to keep such records

II. CHAIN OF CUSTODY

- A. Not Readily Identifiable
 1. W received object at certain time/place
 2. W safeguarded object
 3. W ultimately disposed of object
 4. Exhibit is object previously handled
 5. Exhibit in same condition as when initially received
- B. Readily Identifiable Object
 1. Object has unique characteristic
 2. W observed characteristic on prior occasion
 3. W identifies exhibit as object
 4. W rests identification on present recognition of characteristic
 5. Exhibit in same condition as when initially received

III. CHARACTER TESTIMONY

- A. Reputation
 1. W is a member of same community (residential, business, or social) as D
 2. W has resided there a substantial time
 3. D has a reputation for a specific relevant character trait
 4. W knows the reputation
 5. W states the reputation
- B. Opinion
 1. W personally acquainted with D
 2. W knows D well enough to have formed a reliable opinion of a specific relevant character trait of D
 3. W has opinion of this character trait of D
 4. W states opinion

IV. COMPETENCY

- A. Personal Knowledge of Lay Witness
 1. W in position to perceive event
 2. W actually perceived event
- B. Voir Dire of Child
 1. Capacity to observe
 2. Capacity to remember
 3. Capacity to relate
 4. Child recognizes duty to tell truth

COMMON FOUNDATIONS (Continued...)

- V. COMPUTER RECORDS
--Validity of underlying theory and reliability of instrument
1. Business uses computer
 2. The computer is reliable
 3. The business has developed a procedure for inserting data into the computer
 4. The procedure has built-in safeguards to ensure accuracy and identify errors
 5. The business keeps the computer in a good state of repair
 6. W had the computer read out certain data
 7. W used the proper procedures to obtain the readout
 8. The computer was in working order at the time W obtained the readout
- ID 9. W recognizes the exhibit as the readout
10. W explains how he or she recognizes the readout
11. W explains symbols or terms
- VI. DIAGRAM
1. W familiar w/scene represented by diagram
 2. W familiar w/scene at relevant date
 3. Diagram useful in helping W
 4. Diagram reasonably accurate
- VII. DRAWINGS BY WITNESSES
1. W familiar w/scene on relevant date
2. Drawing useful to W
 3. Drawing reasonably accurate
- VIII. MODELS
1. W needs visual aid
 2. Aid shows certain scene/object
 3. W familiar with scene/object
 4. W explains basis for familiarity
 5. Aid is accurate model of scene/object
- IX. TAPE RECORDINGS
1. Operator qualified
 2. Operator recorded conversation--time/place
 3. Operator used certain equipment
 4. Equipment in good working order
 5. Operator used proper procedures
 6. Tape is good reproduction of conversation
 7. Operator accounts for tapes' custody
- ID 8. Operator recognizes exhibit as tape
9. Tape is still good reproduction
- X. ORAL STATEMENTS
1. Time and place W heard voice
 2. W recognized voice as that of certain person
 3. W familiar with voice
 4. W explains basis for familiarity
 5. Person made statement

COMMON FOUNDATIONS (Continued...)

XI. PHOTOGRAPHS

1. W familiar with scene or object -basis for familiarity
2. W familiar with scene or object at relevant date/time
3. Photo accurately shows scene as it appeared

XII. PRIOR INCONSISTENT STATEMENTS

1. Commit W to direct testimony
2. Direct W to:
 - (a) Date
 - (b) Time
 - (c) Place
 - (d) Persons Present of prior inconsistent statement
3. Reliability of prior statement
4. Show/read prior to W and ask W to admit to it
5. Prove it up if no admission

XIII. PRIVATE WRITING

A. W Familiar

- ID 1. W recognizes author's

handwriting on document

2. W familiar with author's handwriting style
 3. W has sufficient basis for familiarity
- B. W Observed
1. Where W observed document execution
 2. When W observed document execution
 3. Who was present
 4. What happened--writing's execution
- ID 5. W recognizes exhibit as document previously executed
6. How W recognizes document
 - What characteristics are you relying on?
- C. Signed documents
1. Call W who observed signature
 2. Call W familiar with signature
 3. Call signing party as adverse W to admit
 4. Call handwriting expert

I.10 CROSS-EXAMINATION CHECKLIST

CROSS-EXAMINING INFORMANTS AND OTHERS: A CHECKLIST

I. INVESTIGATION

- Prior Record
- Probation/Parole
- Aliases
- Drug Use
- Witness Protection
- Prior Testimony
- Extent of Cooperation
- Specific Instances of Conduct
- Relationship with Accused
- Assets
- Tax Returns
- Loan Applications
- Employment Applications
- Business Applications
- Legitimate Income
- Present Environment
- Promises
- Money
- Interview Informant
- Consequences of Conviction or Testimony

II. MOTIVATION

- A. Fear
 - The Initiation of Criminal Proceedings
 - Conviction
 - Sentence
 - Modification
 - Forfeiture
- B. Revenge
 - The Defendant
 - The Defendant's Family
 - The System
 - The Informant's Family
- C. Ego
- D. Financial
 - Expenses
 - Rewards
 - Needs
- E. Other

III. COMMON INCENTIVES

- A. No Prosecution
- B. Immunity
- C. Witness Protection
- D. Dismissal
- E. Plea/Sentencing
- F. Expenses, Reward

IV. THE "DIRTY DOZEN" AREAS OF CROSS-EXAMINATION

A. The Oath

- Prior Perjury
- Tax Returns
- Driver's License Applications
- Immigration Applications
- Guilty Pleas
- Bail Hearings

B. Perception

- Voir Dire on Competency
- Alcohol
- Drug History
- Mental Problems/Medical Treatment

C. Memory

- Details Remembered v. Not Remembered

D. Ability to Communicate

- Tape Recordings

E. Prior Inconsistent Statements

- Agent's Reports
- Grand Jury Transcript
- Motion Hearings
- Guilty Pleas
- Bail Hearings
- Preliminary Hearings

F. Prior Convictions

- G. Other Bad Acts Bearing on Truthfulness