

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON, KENTUCKY

UNITED STATES OF AMERICA,)
) Lexington Criminal
) Action No. 15-87
)
 Plaintiff,)
) At Lexington, Kentucky
-vs-)
) February 22, 2017
) 9:00 a.m.
SAMUEL A. GIROD,)
)
)
 Pro Se Defendant.)

TRANSCRIPT OF FINAL PRETRIAL CONFERENCE PROCEEDINGS
BEFORE THE HONORABLE DANNY C. REEVES
UNITED STATES DISTRICT JUDGE

Appearances of Counsel:

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 (Whereupon, the Final Pretrial Conference hearing
2 proceedings commenced on Wednesday, February 22, 2017, at
3 9:00 a.m., on the record in open court, as follows.)

4 THE COURT: Thank you.

5 Good morning everyone.

6 Madam Clerk, if you would call the matter
7 scheduled for 9 o'clock, please.

8 THE CLERK: Yes, Your Honor.

9 Lexington Criminal Action Number 15-87,
10 United States of America versus Samuel Girod, called for
11 final pretrial conference.

12 THE COURT: Thank you.

13 And if counsel could state their appearances,
14 please.

15 MS. SMITH: Kate Smith and Todd Bradbury on
16 behalf of the United States.

17 THE COURT: Thank you.

18 MR. BRADBURY: Good morning.

19 THE COURT: Good morning.

20 And Mr. Fox, stand-by counsel.

21 MR. FOX: Yes, sir. Good morning, Your Honor.

22 THE COURT: Thank you.

23 And Mr. Girod is also present.

24 This matter is scheduled for a pretrial
25 conference this morning.

1 What I would like to do is go through our
2 procedures, our schedule for next week, and then I'll
3 entertain any questions that the parties may have about
4 those procedures.

5 Now, we're currently scheduled to begin trial
6 on Monday with the parties at 9 o'clock, and the jury to
7 be present at 9:30.

8 What I'm going to do for the trial is I'm going
9 to reserve a row in the back of the courtroom for
10 spectators and for the press, and I'll make that
11 available for the jury selection as well.

12 Of course, after we select the jury, there will
13 be more space that will be available in the courtroom.

14 For our CSOs, we'll use the jury box, and we'll
15 also put 10 chairs in front so we'll have enough room to
16 move folks around in the courtroom during the jury
17 selection process.

18 In terms of our schedule, we'll start again
19 with the parties on Monday at 9 o'clock, with the jury at
20 9:30, but then thereafter we'll commence at 9 o'clock
21 every day, and we'll go until between 4:30 to 5:00.
22 We'll take a break about that time for the evening.

23 Generally, I'll take two breaks, one in the
24 morning about halfway through the morning session, and
25 the same for the afternoon session.

1 I will ask the parties to observe the decorum
2 order in terms of movement in the courtroom. If you wish
3 to question witnesses from the podium, you can certainly
4 do that, or you can use counsel table.

5 In terms of using exhibits, if you would please
6 ask the security officers to show any exhibits to the
7 witnesses that will be testifying in the case.

8 Mr. Girod, if you have -- if your family would
9 like to bring you different clothes to wear for the
10 trial, those would be made available to you, and you'll
11 have time to change before we begin the morning sessions.

12 DEFENDANT GIROD: Thank you.

13 THE COURT: You won't have any cuffs or
14 anything for the trial itself.

15 DEFENDANT GIROD: Thank you.

16 THE COURT: We will make sure you have adequate
17 time to change your clothes.

18 Let me go through the jury selection, and what
19 I would like to do is I want to go through the selection
20 process, and then I'll stop at that point and then answer
21 any questions that the parties may have, and then we'll
22 go through some other procedures after that.

23 We have approximately 50 jurors that are
24 scheduled to appear for jury selection. I think we have
25 maybe 54, but we'll have a few that will not -- will not

1 appear the first day. So I do anticipate we'll have
2 approximately 50. I think we have a few new jurors that
3 this will be their first appearance and so they'll need
4 to be questioned and -- to determine that they're
5 eligible to serve.

6 I'm going to do the voir dire for this trial.
7 And the way we'll proceed is I'm going to question the
8 full panel. After I've gone through my questions for the
9 full panel, I'll ask the parties if they have any
10 additional questions they'd like to submit. So if you
11 have those in writing, you can either pass those up to
12 me, or you can advise me of any additional questions that
13 you have for the jury.

14 After I've gone through all of the appropriate
15 questions, I will excuse the jury, members of the jury,
16 prospective jurors, to the jury assembly room, and then
17 I'll entertain any challenges for cause from the parties.
18 The parties may request that certain jurors be excused
19 for cause, and I'll entertain any challenges for cause.

20 After I have determined the jurors that will be
21 excused for cause, we'll bring the panel back into the
22 courtroom. I'll keep the jury box empty initially when
23 we come back.

24 Then I'll ask the clerk to call two groups of
25 jurors. The first group will be 28 prospective jurors.

1 The second group would be four. The second group is for
2 the alternates to be seated in the case.

3 By rule, the defendant has 10 what's called
4 peremptory challenges to use to challenge any of those
5 prospective jurors. The United States has six. And the
6 first 12 jurors that were called from that main panel and
7 not stricken by the peremptory challenges would be the
8 primary panel that will be seated in the case.

9 So we have the 28. We have 10 strikes, six
10 strikes. That gets us down to the 12.

11 Now, again, if you strike the same people, we
12 just call the first 12 called but not stricken. So the
13 first 12 jurors that will be identified by number and not
14 stricken will be the first 12 jurors to be seated.

15 From the last four, that would be the second
16 panel, that's for our alternate jurors. I'll seat two
17 alternates in the case. And for that panel of four
18 alternates, each side gets one challenge, one peremptory
19 challenge. The first two alternates called but not
20 stricken will be the two alternates to be seated in the
21 case.

22 So, again, let me just quickly go through this
23 procedure again.

24 We'll go through questions of the jury, the
25 full panel. All members of the jury will be questioned

1 by the Court. I'll then take any additional questions
2 that the parties may have. I'll ask those that are
3 appropriate. At that point I'll ask the full panel to be
4 excused from the courtroom, and I'll entertain any
5 challenges for cause.

6 After I've excused jurors for cause, or after
7 I've heard their challenges for cause, I'll make that
8 determination. We'll bring all the jurors back in. I
9 will excuse those that have been excused for cause. I'll
10 then ask the clerk to call the numbers of 28 prospective
11 jurors, plus four prospective jurors for the panel of
12 alternates, total of 32.

13 What we'll do is we will -- as those numbers
14 are called, we'll keep the jury box open initially.
15 We'll fill up the first 14 prospective jurors in the jury
16 box. Then we'll fill up these chairs that are in front,
17 and we'll need that first row as well when we do that.

18 So we'll have at that point, 28 plus four with
19 32 prospective jurors, then take about a 20-minute recess
20 to allow the parties to exercise peremptory challenges.
21 The defendant gets 10, the government gets six against
22 that first panel. Each side gets one strike against the
23 panel of alternates.

24 So after we've gone through that process, we'll
25 bring the jurors back. I ask the clerk to call the

1 number of the first 12 from that first panel, called but
2 not stricken, and the first two alternates from the
3 second panel, called but not stricken. And that would be
4 the jury that will be seated to try the case.

5 Now, let me stop for a moment and see if we
6 have any questions about the procedure.

7 Ms. Smith.

8 MS. SMITH: No, Your Honor.

9 THE COURT: Mr. Bradbury, I know you've done
10 this before a few times.

11 MR. BRADBURY: No questions.

12 THE COURT: All right. Thank you.

13 DEFENDANT GIROD: I do.

14 THE COURT: Yes, sir.

15 DEFENDANT GIROD: I need a little more time to
16 get ready for the trial. The reason is I'm not at home
17 to where I should be, and then with the new charge, I
18 need some time to get ready. It's a lot slower to get
19 ready where I'm at than when I'm at home.

20 THE COURT: Mr. Girod, I believe the Magistrate
21 Judge addressed this at the time that you appeared for
22 the superseding indictment that was filed in the case.

23 In looking at the minute sheet from that
24 proceeding, it does appear that he discussed this matter
25 with the parties, and they both indicated that they would

1 be ready to proceed on the date that's currently
2 scheduled on the 27th. Of course, you were in custody at
3 that time, and you could have raised that issue with the
4 Magistrate. You then filed your motion to continue the
5 proceedings, and I denied the motion.

6 So is there anything different now than when
7 you filed your motion, or when you appeared before the
8 Magistrate Judge?

9 DEFENDANT GIROD: Yes, Your Honor. What --
10 I've got to stand up.

11 THE COURT: That's all right.

12 DEFENDANT GIROD: I'm sorry.

13 THE COURT: That's fine.

14 DEFENDANT GIROD: You know, I'm not -- I'm all
15 new to this.

16 THE COURT: Yes, sir.

17 DEFENDANT GIROD: Everything is new. The
18 superseding indictment when I got the second indictment
19 and everything, I'm not prepared to go to trial. I need
20 a little more time.

21 THE COURT: When you say you need a little more
22 time, how much more time do you feel like you need?

23 DEFENDANT GIROD: Well, I put in for 90 days.
24 The reason I did is there's so much -- I'm so tied up
25 where I'm at. If I was at home, I could probably be

1 ready, but I'm not at home. And so it's a slow process
2 for me to learn and all that.

3 THE COURT: All right. Well, you can't learn
4 to be an attorney in 90 days or 30 days --

5 DEFENDANT GIROD: No, I know that.

6 THE COURT: -- or any extension.

7 DEFENDANT GIROD: I know that.

8 THE COURT: You will have to follow the rules
9 of procedures, and that's one of the reasons I wanted to
10 have this hearing today to make sure that everyone is on
11 the same page in terms of the procedures that have to
12 followed in court.

13 What is the -- what is the position of the
14 United States with respect to this most recent request?

15 MS. SMITH: The United States opposes the
16 request. Just a few things I would like to mention. We
17 have had more trial dates in this case than I can count,
18 and we've had numerous continuances at the defendant's
19 request, particularly when he had counsel.

20 And the most recent trial date that we had was
21 in July, and we got to within less than three weeks of
22 that trial date before it was moved.

23 So in terms of preparing for particularly the
24 first 12 counts, the defendant has already been within
25 three weeks of the trial date and didn't raise issues

1 that he's raising now.

2 In terms of the new count, it's fairly basic.
3 The elements of the crime are fairly basic. The amount
4 of discovery was very minimal. And really the defendant
5 has already put forth what his defense is to that charge
6 at the bond revocation hearing.

7 I don't see any particular need to go and
8 interview additional witnesses, given that the witnesses
9 for that charge are government employees.

10 THE COURT: And you provided discovery with
11 respect to the case?

12 MS. SMITH: Yes. Yes, Your Honor. It was
13 provided a week-and-a-half ago.

14 THE COURT: All right. And the discovery
15 related to Count 13, essentially as the defendant failed
16 to show for a hearing that was scheduled by the Court and
17 then did not -- basically absconded.

18 MS. SMITH: Yes, Your Honor, failed to appear.
19 And so the discovery was various court documents with
20 which he had already had notice and then the
21 United States Marshal's memorandum of investigation,
22 which were -- there were just a handful, less than half a
23 dozen, so just a few pages to go through.

24 And the prejudice here is very severe. I mean,
25 we have a trial date that is in less than a week. The

1 United States has made accommodations for witnesses to
2 travel from Maryland, Missouri, Wisconsin, Ohio, Indiana,
3 and Illinois. And, frankly, these are mostly witnesses
4 who do not want to come here in the first place, who were
5 very frustrated at the delay in July, and I'm concerned
6 that if we move this trial again, I'm going to lose half
7 of them. You know, obviously, we can go and arrest them,
8 but we don't want to do that. Right now I have the
9 witnesses confirmed to be here for next week.

10 THE COURT: And these are not government
11 witnesses. These are individuals who would have
12 purchased product from the defendant, or things of that
13 nature?

14 MS. SMITH: Half of the -- half of the people
15 traveling from those states that I mentioned are people
16 who purchased the defendant's product, yes. But some of
17 the ones traveling are government witnesses who I know
18 are -- is the government's time and expense there, but
19 particularly the expert witness who is traveling from
20 Maryland has been very difficult to secure her time next
21 week.

22 THE COURT: All right.

23 MS. SMITH: So the prejudice there, and then in
24 terms of the delay, I just want to mention just the
25 conflicts of counsel that I have another trial starting

1 two weeks from Monday that's expected to last three weeks
2 in Frankfort.

3 THE COURT: All right. Thank you.

4 Mr. Girod, as the United States indicates, the
5 matter has been scheduled several times, and there was
6 one count that was added to the superseding indictment.
7 I believe it's a relatively straightforward charge in the
8 case. All of the discovery has been provided, and, of
9 course, you've certainly known about the charges in the
10 original indictment for some period of time.

11 The government does outline pretty compelling
12 case in terms of prejudice, and so I'll deny the motion,
13 the oral motion for a continuance for the reasons that
14 have been stated.

15 Now, let's get back to the jury selection
16 process itself, and I'll entertain any questions that the
17 parties may have about the selection process.

18 Mr. Girod, do you have questions about the
19 process in terms of how we're going to select the jury?

20 DEFENDANT GIROD: Your Honor, I don't
21 understand the process.

22 THE COURT: Okay.

23 DEFENDANT GIROD: I have to study it.

24 THE COURT: All right. Well, I'll explain --

25 DEFENDANT GIROD: This is all new to me.

1 THE COURT: All right. Well, I'll go through
2 it one more time with you.

3 DEFENDANT GIROD: I really -- can I have it in
4 writing?

5 THE COURT: I'm sorry?

6 DEFENDANT GIROD: Could I have it in writing
7 what happens?

8 THE COURT: No, I'm not going to give you an
9 outline. I'll just explain it to you, and I'll ask the
10 court reporter to transcribe the hearing and provide you
11 a copy of the transcript.

12 DEFENDANT GIROD: Okay. Good.

13 THE COURT: Okay. I'll do that.

14 But, again, basically what we do in terms of
15 the jury selection is on the morning of trial at 9:30 we
16 bring the jury in, and we ask -- or the clerk identifies
17 all of the jurors by number, by jury numbers.

18 At that point I'll come into the courtroom, and
19 I'll go through questions for the jury to determine that
20 the jury is qualified to serve in the case.

21 My -- most of my questions relate to the issue
22 of whether they know anything about the case and to
23 ensure that they're otherwise qualified.

24 After I've gone through that process of
25 questioning the jury panel, I'll ask the parties if they

1 have supplemental questions that they would like to
2 submit.

3 Again, it's not argumentative, but it's just to
4 find out if the jury knows anything about the case and to
5 ensure that they are qualified to serve as jurors.

6 So after I've gone through my questions and
7 I've considered any questions that the parties have, I'll
8 excuse the full panel, all of the jurors. They'll go out
9 of the courtroom. They will go to the jury assembly
10 room, and I will hear from the parties, from you and from
11 the United States, for any challenges for cause.

12 In other words, if you believe that a juror has
13 indicated some degree of bias or some knowledge of the
14 case that would prevent that juror from being fair and
15 impartial, then I will entertain what's called a
16 challenge for cause. So if there's a reason to excuse a
17 juror based upon the responses to my questions, I'll
18 consider that.

19 I'll then bring the jury back into the
20 courtroom after I've heard from the parties as to
21 challenges for cause, and I would ask the clerk to call
22 two panels of prospective jurors, a panel of 28 and a
23 panel of four.

24 From the first panel, that's the panel that
25 will be the main panel in the case, by rule the defendant

1 gets to exercise 10 challenges, what's called peremptory
2 challenges. You don't have to have a reason for the
3 challenges. They can't be based upon race. They can't
4 be based upon improper motive, for example. But you're
5 allowed to exercise 10 peremptory challenges, and the
6 United States can exercise six challenges.

7 And so from that panel of 28, the parties
8 exercise their peremptory challenges, and then from that
9 panel the first 12 called by number but not stricken
10 would be the panel that would be seated in the case.

11 The second panel of four prospective jurors
12 would be for our alternates. In other words, if we were
13 to lose a juror, if a juror were to become sick during
14 the course of trial, and we had to replace a juror, we do
15 it from those alternates that are seated in the case.

16 If they're not used, at the end of the trial
17 they're excused, but they're there just in case we have a
18 problem, if we have a sickness or something else that
19 would prevent the juror from attending, then we have
20 those two alternates.

21 So from that panel of four each side gets one
22 challenge, and the first two called but not stricken will
23 be the alternates that would be seated in the case.

24 Now, after the jury selection, the next
25 procedure that we follow is I'll give the jury what's

1 called preliminary jury instructions. It's basically
2 straightforward, and on the morning of trial you will
3 have a copy of it on your table. You will have a copy of
4 the preliminary jury instructions on your table.

5 It's essentially intended to tell the jury what
6 the elements of each of the charges are that the
7 government would be required to prove in the case. So
8 they'll know what the elements of the crimes that have
9 been charged will be.

10 So I give the jury preliminary jury
11 instructions, and then at that point we have what's
12 called opening statements.

13 Opening statements are not argument. They're
14 not intended to argue the case but essentially to allow
15 the parties to explain to the jury what they believe the
16 evidence will be in the case. So the United States will
17 go first, and they'll stand up, and they'll get -- is
18 30 minutes sufficient for the United States?

19 MS. SMITH: Yes, Your Honor, 30, 35 minutes.

20 THE COURT: All right. So I'll give the
21 parties 35 minutes, each side gets the same amount of
22 time to present their opening statement, which is
23 essentially a road map for the jury so they can
24 understand the evidence as it's presented.

25 Again, it's not argument. And so if the

1 parties begin to argue the case, then they essentially
2 are not allowed to present further opening statements.
3 So you're allowed to present what you believe the
4 evidence in the case will show. Each side, again, gets
5 the same amount of time.

6 If you wish, a defendant has the opportunity in
7 a case to reserve opening statement. So you can either
8 present your opening statement at that point after the
9 government has presented its opening statement, or you
10 can reserve it until they've closed all of their proof,
11 and then you can present your opening at the beginning of
12 your case. So that's one option that the defendant has
13 that the government does not have, to reserve opening.

14 Yes, sir.

15 DEFENDANT GIROD: Your Honor, I -- what about
16 witnesses, when do they step in?

17 THE COURT: I'm just about to get to that.

18 DEFENDANT GIROD: I'm sorry.

19 THE COURT: That's fine. That's fine.

20 DEFENDANT GIROD: I'm sorry.

21 THE COURT: I understand that you're not
22 familiar with all the courtroom procedures and --

23 DEFENDANT GIROD: Never been through this.

24 THE COURT: -- it does not bother me if you
25 bump into a microphone or if you forget about standing up

1 at certain times. I may remind you of that, but it
2 won't -- it doesn't offend me. So I do understand that
3 you're proceeding pro se, that you have chosen not to
4 proceed with your attorney, but you do have stand-by
5 counsel. And so if you do have questions about the
6 procedures, you can ask your stand-by counsel about those
7 procedures.

8 DEFENDANT GIROD: Thank you.

9 THE COURT: It's up to you in terms of how much
10 you want to consult with stand-by counsel. It can be a
11 little bit, it can be a lot. It's really up to you. But
12 if you have questions about procedures, that's usually a
13 good way to handle that is to ask your attorney about
14 what do we do next, that kind of thing.

15 Now, after we have proceeded with the opening
16 statements, at that point the government is required to
17 present its witnesses. It goes through the witnesses
18 that it intends to call in the case. It goes through
19 direct examination first. So the government asks its
20 witnesses questions that related to the charges in the
21 case. It has to be relevant to the case, and there are
22 certain exceptions, and they're outlined in the rules of
23 evidence in terms of what the exceptions are.

24 But at that point after the government has
25 called a witness and has questioned the witness, you have

1 the opportunity for cross-examination. So you can then
2 question the witnesses.

3 Now, there are some limitations on your ability
4 to question witnesses. Primarily the rules of evidence
5 provide that you can ask questions about matters that
6 were just covered on the direct examination.
7 Cross-examination is limited really to two matters. It's
8 limited to matters covered on direct examination and
9 matters that go to the credibility of witnesses. So if
10 there's an issue that goes to a witness's credibility,
11 and you're entitled to ask questions about that challenge
12 the credibility. Otherwise, your cross-examination is
13 limited to the matters that were covered on direct
14 examination.

15 I do allow what's called some redirect and
16 recross, and so if you bring matters up on
17 cross-examination that hasn't been covered in direct,
18 then I will let the government then follow up with the
19 questions that you just asked on. I'll let you do the
20 same thing with the questions that they ask on redirect.
21 And so each side essentially gets a couple of
22 opportunities to question witnesses.

23 Now, after the government has gone through all
24 of their witnesses in the case, they call the witnesses
25 that they intend to call, present the evidence that they

1 want to offer in the case, we'll have a proceeding
2 outside the presence of the jury, and at that point you
3 can argue, if you wish, why you believe that certain
4 counts or perhaps all counts should be dismissed on legal
5 grounds.

6 For example, if you believe that the government
7 has not presented sufficient proof to meet one or more
8 elements of a particular charge in a case, you can ask
9 that that particular charge be dismissed for that reason.
10 So you have the opportunity at that point to argue for
11 dismissal of any counts that you believe would be
12 appropriate.

13 If counts are not dismissed, then at that point
14 you get to put on your case. So if you reserved your
15 opening statements, you can then make your opening
16 statement at that point. If you didn't, if you went
17 ahead and presented your opening statement after the
18 government made its opening at the beginning of the case,
19 then you can proceed with your witnesses.

20 And, again, subject to limitations there are
21 certain areas, of course, that the rules of evidence that
22 you would have to follow. For example, evidence has to
23 be relevant to the offenses that are charged in the case.

24 And, again, you'll need -- if you wish, you
25 will need to consult with your attorney about any rules

1 of evidence that might apply to your particular
2 witnesses. I don't know who your witnesses might be so I
3 can't speculate about whether their testimony might or
4 might not be relevant in the case.

5 After you've presented your witnesses, the
6 government has the opportunity then to present what's
7 called rebuttal testimony. You have the opportunity to
8 present what's called sur rebuttal in response to their
9 rebuttal, their witnesses.

10 So it's kind of like direct examination where
11 they go first, you get to cross-examine, they get a few
12 questions if you've raised new matters, and then you get
13 a few questions based on what they've just asked.

14 So if they decide to present some rebuttal
15 testimony or evidence at the close of your case, you have
16 a chance to question the witnesses. And then if there's
17 what's called sur rebuttal that you want to present, or
18 responsive to what they just presented, then you have the
19 opportunity to do that.

20 After all of the testimony and evidence has
21 been presented, we then have closing arguments. Now,
22 again, after the close of all the proof, you can also
23 renew your motions to dismiss counts.

24 But at the close of all those proceedings, we
25 have closing arguments where the parties have the

1 opportunity to summarize the evidence, what they believe
2 the evidence has shown in the case, and that's where you
3 have the opportunity to argue the case, what you believe
4 the evidence has shown or has not shown in a particular
5 case.

6 I generally will put time limits on closing
7 arguments, but I wait until I've seen the case to make a
8 determination as to how much time the parties really need
9 for their closing arguments.

10 I would anticipate in this particular matter
11 that the government will take maybe two days or
12 two-and-a-half days to present its case and with a
13 similar amount of time if you choose to use it, we should
14 be able to complete the case in a week's time. So we
15 should be able to have the case submitted by Friday of
16 next week. That's my intention.

17 That's kind of a skeletal outline of the way
18 the trial proceeds.

19 Now, again, if you like, we'll go back and talk
20 about any one of these elements of the trial; the jury
21 selection, the opening statements, presentation of proof,
22 cross-examination, closing arguments. Any of these
23 issues that I've talked about, we can certainly cover.
24 And if you have questions, I'll try to answer your
25 questions for you.

1 DEFENDANT GIROD: Your Honor, I've got one
2 question.

3 THE COURT: Yes, sir.

4 DEFENDANT GIROD: How many witnesses am I
5 allowed to have?

6 THE COURT: There is a limitation in terms of
7 witnesses, and it really depends upon the issues. It
8 can't be cumulative. In other words, you can't call
9 let's say seven or eight witnesses basically to say the
10 same thing. At a point it becomes cumulative, and if
11 there's an objection, then I would have to decide whether
12 it's relevant or whether it's just additional evidence
13 that's piled on other evidence.

14 But I'll certainly give you some latitude in
15 terms of calling your witnesses. However, you still have
16 to follow the rules of evidence. The evidence that you
17 present has to be relevant to the case, and it can't be
18 subject to objections. It can't be subject to, for
19 example, hearsay. You can't present hearsay evidence
20 unless it's subject to an exception.

21 So there are certain rules and restrictions
22 that you will be required to follow. They are outlined
23 in the rules of evidence.

24 Again, I can't go through all of those with
25 you now, but I've talked to you about one, which is

1 Rule 611(b), which indicates that on cross-examination
2 you're limited to matters that were covered on direct
3 examination, plus matters that go to the credibility of
4 the witnesses, for example. That would be one rule you
5 would be required to follow.

6 Another -- and let me just mention this because
7 I know we have got a number of spectators here, and we
8 will have several that will be attending trial.

9 One of the rules of evidence is Rule -- it's
10 called 615(b). And it basically provides for exclusion
11 of witnesses. And so if you anticipate that you'll be
12 calling a particular witness in the case, that person
13 can't sit in on other witnesses' testimony. They're
14 excluded from the courtroom, and they can't be told
15 directly or indirectly what the testimony has been in the
16 case.

17 So if you have certain people that are in the
18 courtroom now, for example, that you would be -- that you
19 intend to call as witnesses in the case, if they were to
20 sit in some of the testimony of other witnesses, or if
21 they were to hear about the testimony of other witnesses,
22 at some point you relayed it to them directly or
23 indirectly, then they would be excluded from testifying
24 in the case.

25 So, for example, if you had a friend or a

1 family member that sat in court with you and listened to
2 the testimony in the government's case, and then you
3 decided you wanted to call that person as a witness in
4 your case, and if the government were to object to that
5 and say, this particular witness either participated or
6 has been in the courtroom or has received information
7 from other persons about testimony in the case, the
8 person that you wanted to call would be excluded.

9 In other words, you can't call witnesses that
10 have received information about the testimony of other
11 witnesses. Their testimony has to be their own
12 testimony. It can't be influenced by the testimony of
13 other witnesses.

14 One of the rules -- I'll just direct your
15 attention, and I believe its Rule 602, it is a rule of
16 relevancy, and it basically says that witnesses who
17 testify have to have personal knowledge. In other words,
18 they can't base their testimony on speculation or hearsay
19 or information that comes from third parties.

20 Now, there are certain exceptions to that, such
21 as for expert witnesses in the case, but for the most
22 part a person who testifies has to testify based upon
23 personal knowledge in the matter.

24 One other matter that I will mention to you
25 now, and, Mr. Girod, I do want to make sure that you

1 understand the procedures. And so if you're not sure
2 about the procedures during the trial, if you'll let me
3 know that, we can either come up to what's called a
4 sidebar conference, and I can talk with you about that.
5 Or if we need to excuse the jury from the courtroom and
6 discuss the procedures, then I'll do that. We'll take
7 the time that's necessary.

8 One important issue in cases, in criminal
9 cases, is whether a defendant chooses to testify. You're
10 not required to testify. You're certainly allowed to
11 testify, but that's a decision that ordinarily you would
12 make -- if you're represented by counsel, ordinarily you
13 would make that after you consulted with your attorney.
14 But ultimately the decision is yours as to whether you
15 would want to testify in a case.

16 There are some limitations in terms of
17 testimony, and one limitation is that witnesses who
18 testify have to testify subject to an oath or
19 affirmation. And generally the oath that's given
20 requires that you either swear unto God, or affirm
21 subject to the pains and penalties of perjury. In other
22 words, you don't have to take an oath where you would
23 swear unto God, but you could affirm.

24 So when the clerk asks the question, do you
25 swear or affirm, if you affirm, you can say, yes, I

1 affirm that I will tell the truth subject to the pains
2 and penalties of perjury.

3 In other words, you don't have to swear that
4 you will testify, but you're essentially affirming that
5 if you were to testify falsely, you could be charged
6 with perjury. So you're essentially acknowledging that
7 fact.

8 The rules require that we give an oath or
9 affirmation to witnesses who testify.

10 So if you call a witness, and that person says
11 I'm not going to take the oath, and I'm not going to
12 affirm, the person can't testify in the case.

13 I point that out now because I would not want
14 you to call a witness, have that person come in on the
15 witness stand, or come up before the clerk to be sworn,
16 and then refuse to testify because that would give a
17 negative image toward you, and I would not want that to
18 happen in front of the jury. So I do want to make sure
19 that you know that if you do call witnesses, they would
20 be subject to taking an oath or an affirmation.

21 Do you have any questions about that?

22 DEFENDANT GIROD: No, I'm aware of that.

23 THE COURT: All right.

24 DEFENDANT GIROD: Thank you.

25 THE COURT: Again, if you do -- if you do want

1 to question witnesses, Mr. Girod, typically I ask the
2 attorneys when they address witnesses, when they address
3 the jury, or when they address the Court, that they need
4 to stand up. That's the decorum that we follow in the
5 courtroom.

6 If you have problems with your back -- do you
7 have any health issues that --

8 DEFENDANT GIROD: Not much.

9 THE COURT: -- would be a problem for you?

10 DEFENDANT GIROD: Not much.

11 THE COURT: All right. Well, if you do I'll
12 give you an accommodation if you feel like you need to
13 sit down or use your notes when you question witnesses.
14 You just need to let me know that.

15 DEFENDANT GIROD: Thank you.

16 THE COURT: If you want to use the podium,
17 we'll make sure the podium is moved around so that it's
18 toward the jury in opening statement or toward the
19 witness when the witnesses are testifying in the case.

20 But, again, if you do have any problems, any
21 physical problems, just let me know that, and I will make
22 whatever accommodations we need to make in the case.

23 DEFENDANT GIROD: Thank you.

24 THE COURT: All right. Now, do you have any
25 other questions about the procedures that we will be

1 following?

2 DEFENDANT GIROD: Again, I'm just still worried
3 about that I'm not quite ready for trial.

4 THE COURT: I understand that.

5 DEFENDANT GIROD: Because an attorney gets --
6 gets 30 days, and we had two weeks ago Monday, I think,
7 when we had that arraignment. At that time I wasn't
8 thinking about the superseding thing, but whatever.

9 Thank you.

10 THE COURT: All right.

11 MR. FOX: Your Honor --

12 THE COURT: Yes, sir.

13 MR. FOX: -- might I ask could you explain how
14 you would like the parties to handle challenges for cause
15 with the jury?

16 THE COURT: Yes. Mr. Fox, what I'm going to do
17 is after I've gone through my questions and then after
18 I've taken any supplemental questions from the parties --
19 in other words, I'll be doing all the voir dire, and I
20 finish with all those questions, I'm going to excuse the
21 full panel of jurors, and we'll be able to take up the
22 challenges in open court.

23 In other words, we won't have the jurors in the
24 courtroom to listen to the parties' arguments about who
25 should be excused for cause. I'll then make rulings on

1 those requests of challenges for cause.

2 And then when we bring the jury back, I will go
3 ahead and excuse those jurors that have been challenged
4 successfully for cause.

5 At that point we will then pick our 28, plus
6 our four jurors, and at that point -- or following that,
7 we will take a longer recess for peremptory challenges.
8 So we'll have to move folks in and out a couple times,
9 but I think that's probably the best way to handle it
10 because I'm afraid that Mr. Girod won't have enough
11 time. And if he wants to consult with you, he may not
12 be able to do that if we have to do this at sidebar while
13 the jury is all in the courtroom, and we will have a
14 couple rows over here. So that's -- it will take a
15 little longer to follow that procedure, but I believe it
16 would be in everyone's best interest to handle it that
17 way.

18 MR. FOX: Thank you, Judge.

19 THE COURT: All right. Also, I will just
20 remind all of our spectators that it's really important
21 that you not attempt to interfere with the jury selection
22 process and that you not try to talk with any of the
23 jurors. Sometimes jurors can take things the wrong way
24 if you say something.

25 Even if you're being friendly, a juror may take

1 it the wrong way, and I would certainly hate for that to
2 affect the outcome of the proceedings if someone said
3 something to a juror and the juror thought that you were
4 attempting to be intimidating or do something improper in
5 a particular case.

6 And so I will just remind everyone not to
7 attempt to influence or to talk with the jury.

8 And when I give an admonition to the jury, I
9 tell them that I've certainly instructed the parties and
10 the attorneys that they can't speak with them, and they
11 should not take that in a negative way.

12 But if you would, please -- I know that you
13 will all be respectful in the case. This is an important
14 matter for both the government and for Mr. Girod, and I
15 know that everyone will be very respectful as we move
16 through the trial itself.

17 Mr. Girod, I want to make sure I have your
18 name -- I' pronouncing your name correctly.

19 DEFENDANT GIROD: Samuel is my name.

20 THE COURT: All right.

21 DEFENDANT GIROD: Girod is my last name.

22 THE COURT: Is it Girod?

23 DEFENDANT GIROD: Yes.

24 THE COURT: I've said it Girard, but it's
25 Girod, isn't it?

1 DEFENDANT GIROD: Girod.

2 THE COURT: All right. All right. Well, I'll
3 try not to mess it up. If I do, you can remind me
4 though, and I'll ask you to do that because it's
5 certainly not my intention to do that, but sometimes I
6 do mispronounce names. And if I do, I apologize in
7 advance.

8 All right. Let's see if we have any other
9 issues we need to take up in the case.

10 Anything from the government?

11 MS. SMITH: No, Your Honor.

12 THE COURT: All right. Let me ask our court
13 reporter when she believes she can have the transcript
14 done.

15 COURT REPORTER: Tomorrow morning.

16 THE COURT: I'm sorry?

17 COURT REPORTER: Tomorrow morning.

18 THE COURT: Tomorrow morning?

19 COURT REPORTER: Or maybe this afternoon.

20 THE COURT: Perhaps this afternoon, but we'll
21 try to get that transcript available to you so you can
22 review the procedures that have been outlined.

23 DEFENDANT GIROD: Thank you.

24 THE COURT: All right. Thank you.

25 If we don't have anything else to take up in

1 the matter, we will be in recess.

2 (Whereupon, the Final Pretrial Hearing proceedings
3 concluded at 9:40 a.m.)

4 C E R T I F I C A T E

5 I, Peggy W. Weber, certify that the foregoing is a
6 correct transcript from the record of proceedings in the
7 above-entitled matter.

8

9

10 February 22, 2017
DATE

s/Peggy W. Weber
PEGGY W. WEBER, RPR

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