REVOCATION OF SUPERVISED RELEASE

1. [Establish that the probation officer is in the courtroom.]

2. [Explain the purpose of the hearing.]

3. **[To the defendant]** Do you understand that you have the right to be represented by a lawyer [and indeed that [attorney] is representing you] [If no lawyer, the right to have a lawyer appointed]?

4. **[To the defendant]** Did you receive written notice of the charged violation(s)?

5. **[To the defendant]** Have you discussed the charges with your lawyer?

6. **[To the defendant]** Do you understand the charges?

7. [Ask the prosecutor to disclose the evidence against the defendant.]

8. **[To the defendant]** Do you understand that you have the opportunity to present evidence on your own behalf?

9. **[To the defendant]** Do you understand that you have the right to question any adverse witnesses?

10. **[To the defendant]** Do you wish to have a hearing on whether you committed the violation(s) or do you wish to concede that you committed them? Understand that if you

concede that you committed them, the only issue remaining will be what punishment to impose.

11. **[If the decision is not to waive the hearing, ask the prosecutor to present the evidence and proceed as in a bench trial. The Rules of Evidence do not strictly apply. The standard of proof is preponderance. So far as hearsay is concerned, Fed R. Crim P. 32.1(b)(2)(C) "entitle[s]" a defendant to "an opportunity to … question any adverse witness unless the court determines that the interest of justice does not require the witness to appear…." The 2002 Advisory Committee Note states that "the court should apply a balancing test at the hearing itself when considering the releasee's asserted right to cross-examine adverse witnesses. The court is to balance the person's interest in the constitutionally guaranteed right to confrontation against the government's good cause for denying it." See United States v. Rondeau, ___ F.3d ___, 2005 WL 3116577 (1st Cir. Nov. 23, 2005) (applying the balancing test); United States v. Taveras, 380 F.3d 532, 536 & n.7 (1st Cir. 2004) ("[a]n important element of the good cause analysis is the reliability of the evidence that the Government seeks to introduce"; "[t]he Government's burden in producing the witness for cross-examination is also frequently cited as part of the 'good cause' analysis"). Crawford v. Washington, 541 U.S. 36 (2004), does not apply in revocation proceedings. Rondeau, 2005 WL 3116577, at *2.]**

12. [If one or more of the charges are conceded, make a finding that the waiver was knowingly and voluntary, then inquire whether the prosecutor and the defense lawyer have received the revocation report and whether there are any challenges to its contents]

13. [If there are no challenges, adopt the Guideline calculations of the revocation report.]

14. [Invite the lawyers to address the court on what the sentence should be.]

15. [Invite the defendant to speak on his/her own behalf.]

16. [Impose sentence.]

17. [Advise defendant of the right to appeal and to proceed *in forma pauperis*.]

NOTE: I have based this script almost entirely on Fed. R. Crim. P. 32.1(b)(2) and United States v. Correa-Torres, 326 F.3d 18, 22-23 (1st Cir. 2003). See also United States v. Tapia-Escalera, 356 F.3d 181, 184 (1st Cir. 2004) ("The principal requirements laid down by Rule 32.1 for the merits hearing are notice of the alleged violation, right to counsel, an opportunity to appear and present evidence and a (qualified) right on request to question adverse witnesses. . . . [T]his court has insisted that before the defendant forgoes the opportunity in a revocation case to contest the charges, the defendant must understand his procedural rights and choose not to exercise them.") It is a different format than that used in the Bench Book at pp. 138 et seq. Note also that the treatment of the Guidelines is in ch. 7 of the Manual. The authority for waiving a hearing is contained in Rule 32.1(c)(2)(A) and Correa-Torres.