

Honesty is Such a Lonely Word

Erika Birch and Guy Hallam
SBHT



1

Voir Dire

“to speak the truth”



2

I can always find someone
To say they sympathize
If I wear my heart out on my sleeve
But I don't want some pretty face
To tell me pretty lies
All I want is someone to believe

Honesty is such a lonely word
Everyone is so untrue
Honesty is hardly ever heard
And mostly what I need from you



—Billy Joel



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Tools

to get Jurors in Federal Court to “Speak the Truth”



Limited Voir Dire



Questionnaires



Social Media Research



Implicit Bias Video



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Voir Dire in Federal Court

District Local Rule Civ 47.1 (Civil) [v. 2]

Print PDF

VOIR DIRE OF JURORS

(a) The jury box must be filled before examination on voir dire. The Court will examine the jurors as to their qualifications and, if permitted, will direct the order and manner of examination by counsel. **Not less than seven (7) days before trial, attorneys may submit written requests for voir dire questions.**

(b) The Court, after reviewing the complexity and possible length of the case, will determine the number of trial jurors necessary. This number of jurors, **not less than six (6) nor more than twelve (12)**, plus a number of jurors equal to the total number of peremptory challenges which are allowed by law, must be called in the first instance. These jurors constitute the initial panel. As the initial panel is called, the Clerk must assign numbers to the jurors in the order in which they are called. If any juror in the initial panel is excused for cause, an additional juror must be immediately called to fill out the initial panel. A juror called to replace a juror excused must take the number of the juror who has been excused. When the initial panel is qualified, the parties must exercise their peremptory challenges secretly and alternately, with plaintiff exercising the first challenge. When peremptory challenges have all been exercised or waived, the Court must call the names of the selected jurors having the lowest assigned numbers. These jurors must constitute the trial jury.

(c) **All jurors selected will deliberate on the verdict.**

RELATED AUTHORITY

[Fed. R. Civ. P. 47](#)
28 U.S.C. § 1870

Varies by Judge

Some give very little; some are more flexible

Depends on the Case

And on the issues

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Judges

Judge	Questionnaires?	Length	# Jurors	For Cause	Dismiss Alternates?	Additional Information
Nye	No (as a matter of course nor has it happened yet)	20 mins, after standard questions and litany	7	Usually in open court unless sensitive or necessary to take up in chambers	No consider all 7 part of the jury	Judge will vet your proposed voir dire for anything he won't allow (tell ahead of time); judge may interrupt if thinks getting into facts of the case
Winmill*	Yes if jointly proposed and appropriate	20 mins, after court's voir dire	7	At the time, side-bar or after jurors excused if necessary	No	
Dale	Yes (especially if stipulated) pretrial publicity; sensitive topics not readily addressed in voir dire; lengthy trials. At least 60 days	30-40 mins, after court (incorporate many proposed by parties)	6-8 (extra pre-emptory if more than 8)	During court's exam; otherwise – at the time (unless reason to take up individually); pass the panel for cause before pre-empts.	Yes, although only done once per stipulation to allow 1 of 8 go, but parties jointly withdrew stipulation	One of her favorite parts; tries to open the dialogue; believes attorneys need to develop rapport; don't waste it; don't preview evidence
Patricco	Yes if appropriate (complex, sensitive, controversial, high profile) and agreed upon. At least 30 days.	20-30 mins after court's	7	Typically at the time (utilizing side-bars if needed) unless individual voir dire is necessary	No, unless for good cause	Call in about 25 jurors; 13 are in the box (7 + 3 preempts per side); important for all jurors to listen in case there are for cause challenges
Grasham	Generally No, but if appropriate to flush out a particular concern – jointly proposed. At least 45 days	15-20 minutes after court's (incorporate many proposed by parties), more depending on responses	7 (unless longer than 1 week, then maybe more)		No, unless for good cause	Questions should be geared toward ferreting out possible bias or other reasons a juror may not be suitable (NOT to lay the seeds or argue your case)

*This is based on our most recent trial experience. Judge Winmill's clerk did not have time to respond to our inquiries

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Amount of Voir Dire

<p>All after Court's Voir Dire</p> <p>Judges will want to review/vet proposed voir dire</p> <p>None will let you argue case in voir dire</p>	<p>15 – 20 Minutes</p> <p>Grasham Nye Winmill</p>	<p>20-30 Minutes</p> <p>Patricco</p>	<p>30-40 Minutes</p> <p>Dale</p>
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How do you get to know your jurors
in 15 – 40 minutes?

8

Questionnaires

Get to know them before they are seated



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Grasham	Generally No , but if appropriate to flush out a particular concern – jointly proposed. At least 45 days



Factors

Need to be jointly proposed



Some Sensitive or Controversial Issues



Complex or High-Profile Case

Timing Matters!

Likely need to submit 30-60 days in advance of trial

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Forms

01

Standard Questionnaire

02

Motion for Additional Questionnaire / Extended Voir Dire

03

Nye's Stock Voir Dire

(Images will link you to the documents)

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District Local Rule Civ 47.2 (Civil)

SOCIAL MEDIA JUROR INQUIRIES

(a) Attorneys may use websites available to the public, including social media websites, for juror or prospective juror research, so long as:

- (1) The website or information is available and accessible to the public;
- (2) The attorney does not send an access request to a juror's electronic social media;
- (3) No direct communication or contact occurs between the attorney and a juror or prospective juror as a result of the research, including, but not limited to Facebook "friend" requests, Twitter or Instagram "follow" requests, LinkedIn "connection" requests, or other forms of internet and social media contact;
- (4) Social media research is done anonymously. For example, a search on a social media site must not disclose the name of the attorney or the name of the firm, and the search must be on available and accessible to the public and not the result of an attorney's account on said social media site; and
- (5) Deception is not used to gain access to any website or to obtain any information.

(b) Third parties working for the benefit of or on behalf of any attorney must comply with all the same restrictions as set forth above for attorneys.

(c) If an attorney becomes aware of a juror's or prospective juror's conduct that is criminal or fraudulent, IRPC 3.3(b) requires the attorney to take remedial measures including, if necessary, reporting the matter to the Court.










(d) If an attorney becomes aware of a juror's posting about the case on a social media site, the attorney shall report the posting to the Court.

Advisory Committee Notes

Jurors will be advised during the orientation process that their backgrounds will be of interest to the litigants and that the attorneys in the case may investigate their backgrounds, including a review of internet websites and social media.

If there is not a method of conducting the internet research in a manner which prevents the juror or prospective juror from discovering who is doing the research, the research shall not be done because it would constitute an inappropriate communication. Attorneys must be familiar with the technology and internet tools they use to be able to do searches, including automatic, subscriber-notification features so as to maintain anonymity in any search.

research

Can't friend request or "access request" a prospective juror's socials

No direct communication

Must be anonymous research

Can't ask jurors about socials in voir dire

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Implicit Bias Video

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How do you get honest answers to hard questions from jurors (in 15 minutes)?

