

Instructions to Counsel Concerning Jury Selection

The following is a general description of the struck panel method by which the jury will be selected in proceedings before Judge Swain. The circumstances of individual cases may require variations as a result of factors such as the need for larger panels or the need for more individual questioning in the robing room.

The Court will conduct a *voir dire* of a number of panelists computed as follows in a criminal case: the number of jurors to be selected (twelve in a criminal case), the number of alternates (generally two), and the number of peremptory challenges. See Fed. R. Crim. P. 24(b) and (c). Thus, in a single defendant criminal case in which the defendant has ten and the Government six peremptory challenges, plus one challenge each with respect to alternates, we will *voir dire* 32 panelists.

In a civil case, the Court will *voir dire* a sufficient number of jurors to provide for the number of jurors to be selected (generally eight), and the number of peremptory challenges (generally three for each side), for a total number of fourteen. See Fed. R. Civ. P. 47(b) and 48, and 28 U.S.C. § 1870.

During *voir dire*, some jurors may be excused by the Court for cause. If any prospective jurors are removed for cause, they will be replaced as necessary so that there is a full panel before any peremptory challenges are exercised.

After we have *voir dired* the requisite panelists, the judge and counsel will adjourn to the side bar. (The defendant(s) in a criminal case and the parties in a civil case are permitted to be present unless their presence is waived.) The first order of business will be to determine whether the parties believe there are any additional challenges for cause. If there are any challenges for cause, any one removed will be replaced by another panelist being placed in that slot, so that there is a full panel before any peremptory challenges are exercised.

All peremptory challenges are exercised in the robing room and the consequence of challenging any panelist is that all other panelists on the list move up one spot.

In a civil case, plaintiff exercises the first challenge and then the defendant, and the parties proceed in that fashion until all the peremptories are exhausted. In a single defendant criminal case, the defendant exercises two challenges and the Government one for four rounds, then each side exercises one challenge for two rounds, making a total of ten and six.

A party may waive its right to challenge, but may not reserve. You may not say, “Well, we will pass this time and take two the next time.”

If both parties pass on any one round, the selection process is at an end.

Challenges may be made to any of the panelists regardless of where that panelist appears in the array.

When both sides have exhausted their peremptory challenges, the first 8 (in a civil case) or 12 names (in a criminal case) unchallenged constitute the jury.

After that, in a criminal case, each side has one additional challenge which is exercisable only with respect to the alternates, who are selected from the remaining unchallenged panelists after the jury has been selected.

Attorneys sometimes say that they would like more of an opportunity to match a name in their notes with a face. That is perfectly understandable. If during the course of the exercise of the challenges you wish to return to the courtroom, we will all go back to the courtroom to enable this to be done.

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