

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT  
Hon. Geoffrey W. Crawford**

JURY SELECTION PROCEDURE

The jury will consist of 12 jurors and two alternates. The defendant will have ten peremptory challenges to exercise against the main jury of 12 and one peremptory challenge with respect to the alternates. The Government will have six peremptory challenges against the main jury and one peremptory for the alternate round.

Opening Remarks from the Judge

The judge will welcome the panel and make a few remarks. These will include an identification of the case as a criminal case brought by the Government against the defendant. The remarks will include an explanation that the Government has the burden of proof in a criminal case and that the burden is beyond a reasonable doubt. The court will describe the number of counts charged and the nature of the charges.

Calling up the first group of jurors

28 jurors will be called and seated. The court will discuss the trial dates and excuse any jurors who cannot reasonably attend. Any juror excused will be replaced at this stage.

Brief Openings

With a voir dire panel of 28 jurors in place, each side will be allowed up to five minutes for a brief factual outline of the case. The purpose of this outline is to give the jurors some understanding of the nature of the charge and the evidence.

Court Voir Dire

The judge will ask basic voir dire questions. Proposed questions from the parties must be submitted through CM/ECF not less than two business days before jury selection. If not previously provided, the parties must submit lists of potential witnesses by the same deadline so that the judge can ask whether any witness is known to the prospective jurors. The areas typically covered will include:

- a. any knowledge of the alleged offense;
- b. any knowledge of the parties, counsel, or the likely witnesses;
- c. any person, including a family member or close friend, who is employed by law enforcement;

d. any person, including a family member or close friend, who has been charged with a crime and who believes that the charge may affect his or her ability to sit as a neutral juror in this type of case.

e. any person, including a family member or close friend, who has had some other contact with law enforcement or the judicial system which may affect his or her ability to sit as a neutral juror.

f. any person, including a family member or close friend, who has been the victim of a crime.

g. prior jury service.

Jurors will be advised that answers which are highly personal in nature may be provided at side bar or, if warranted, on the record in chambers. This is rare.

The court welcomes additional questions which may be more tailored to the facts of the particular case.

#### Attorney Voir Dire

After questioning from the court, both sides may ask follow up or additional questions. The court will confer with counsel and determine in advance how long a time to allow and both sides will receive equal time. Questions which are argumentative or which do not result in the flow of information from jurors will bring the attorney questioning to an end. Examples of such questions would include, “would you agree to convict [or acquit] if I demonstrate the following to you at trial: \_\_\_\_.”

#### Challenges for Cause

Upon completion of questioning of jurors, counsel will come to the bench. The court will take challenges for cause for the entire panel of 28. Subject to peremptory challenges, the “jury” will consist of the first 12 jurors selected who remain after challenges for cause. The court will excuse the jurors struck for cause and fill the box of 12 in order of selection.

#### Exercise of Peremptory Challenges

The first peremptory round will then begin. Because of the uneven distribution of challenges between the defense (10) and the Government (6), the defense will exercise two challenges for each challenge by the Government for the first four rounds. After that the parties will exercise one challenge each until satisfied or until the challenges are used up.

Challenges shall be exercised against the jurors in the first 12 seats. As jurors are struck from this group, new jurors will move up in order of selection from those remaining on the panel to fill the empty seats. This movement will occur on paper on the seating chart until the pool of

potential jurors is exhausted. In other words, the court will not move jurors physically into the first 12 seats until there are no remaining potential jurors. At that point, the court will excuse those jurors who have been the subject of peremptory challenge and move their replacements into the first 12 seats.

The court will call up new jurors from the entire voir dire panel to fill the empty seats in the group of 28. These jurors will be asked the same voir dire questions by the court and some time for follow up questions from counsel will be allowed.

### Passing on Peremptory Challenges

If a challenge is passed, that challenge is lost and counts against the total allowed to that side. It cannot be saved for a later round. This system is sometimes called, "Use it or Lose it."

If one side passes and then the other side passes also, the peremptory challenges will be at an end. In other words, if each side states one after the other that it does not wish to exercise a challenge, then the Court will understand that both sides are content with the composition of the jury.

If one side passes and the other then exercises a challenge, the side which passed is free to resume exercising its remaining challenges without limitation. There is no restriction on "back strikes" which is the practice of challenging a juror despite previously passing or otherwise accepting his or her presence on the jury.

If there are more than 12 jurors available at the end of the peremptory challenges, the next two jurors will become the alternates. Each party shall have the right to challenge one juror. If an alternate is challenged, then the next juror in order becomes a potential alternate.