



## JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

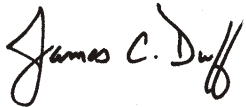
THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

JAMES C. DUFF  
*Secretary*

April 22, 2009

## MEMORANDUM

To: Chief Judges, United States District Courts

From: James C. Duff 

RE: PROTECTING PRIVACY INTERESTS IN *VOIR DIRE* TRANSCRIPTS  
(**INFORMATION**)

At its March 2009 session, the Judicial Conference considered guidance to the courts for handling *voir dire* transcripts in the context of electronic case filing.

Electronic transcripts of court proceedings, including *voir dire*, are now routinely made available to the public through the Judiciary's Internet-based Public Access to Court Electronic Records system. Rule 5.2 of the Federal Rules of Civil Procedure and Rule 49.1 of the Federal Rules of Criminal Procedure require that filers omit certain sensitive data from filings, and the Conference has previously adopted a policy to apply those provisions to transcripts. Electronic transcripts of *voir dire* proceedings, however, present unique challenges. They may, for example, reveal information about the potential jurors not covered by the rule provisions, but which may still be personal, sensitive, or embarrassing. In addition, many members of a jury venire may be unaware of their ability to request a sidebar conference to discuss sensitive issues. Additionally, they may be unaware that a transcript of their responses could someday be available on the Internet.

Because the federal courts rely on the jury system, we need to ensure that *voir dire* is conducted in a fair manner that does not unduly subject those called for jury service to public scrutiny. The attached guidance focuses on both the *voir dire* proceeding itself and the transcripts made thereof, and suggests methods to balance the public nature of the jury selection with protections for the privacy of the participants.

If you have any questions or concerns, please contact Abel J. Mattos, Chief of the Court Administration Policy Staff, or Susan Del Monte. Both can be reached at 202-502-1560 or via email at [Abel.Mattos/DCA/AO/USCOURTS](mailto:Abel.Mattos/DCA/AO/USCOURTS) or [Susan.Del.Monte/DCA/AO/USCOURTS](mailto:Susan.Del.Monte/DCA/AO/USCOURTS).

Attachment

cc: Chief Judges, United States Courts of Appeals  
Judges, United States District Courts  
District Court Executives  
Clerks, United States District Courts

## GUIDANCE ON PROTECTING PRIVACY INTERESTS IN ELECTRONIC TRANSCRIPTS OF *VOIR DIRE* PROCEEDINGS<sup>1</sup>

In all *voir dire* proceedings in civil and criminal cases,<sup>2</sup> courts are asked to:

1. Examine the manner in which they conduct *voir dire* proceedings. The Court Administration and Case Management (CACM) Committee suggests that judges
  - (A) inform jurors that they have the right to approach the bench to share personal information in an on-the-record *in camera* conference with the attorneys; and
  - (B) make efforts to limit references on the record to potential jurors' names by, for example, referring to them by their juror number.
2. Remind court reporters or other transcript preparers that, in accordance with existing provisions of the *Guide to Judiciary Policies and Procedures (Guide)*, transcripts of trials are to include only those sections of the trial specifically requested. Transcripts of *voir dire* proceedings are to be transcribed only if the appropriate section of the transcript request form is completed. See the *Guide*, Volume 6, Chapter 17, Section 17.5.3.a.
3. Once a transcript of a *voir dire* proceeding is created, the judge should balance the right to public access to transcripts with the jurors' right to privacy – consistent with applicable circuit case law – and only if appropriate, seal the transcript. The Committee specifically recommends sealing a transcript – a CM/ECF access level setting of 256 – over other forms of restricting access<sup>3</sup> to ensure the information is securely held. The Committee also recommends that the parties be required to seek permission of the court to use the transcript in any other proceeding. Additionally, the judge should consider which part of the transcript to seal:
  - (A) the transcripts of the entire *voir dire* proceeding, which would be docketed separately from the rest of the trial transcript; or
  - (B) the transcripts of the bench conferences with potential jurors, docketed separately from the rest of the transcripts of *voir dire*. The latter option would, however, require additional work for the court reporters in creating and docketing a separate transcript of the bench conferences held during *voir dire*.

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<sup>1</sup> This guidance is not intended to speak to the propriety of using anonymous juries in cases.

<sup>2</sup> The Judicial Conference's Privacy Policy requires courts to maintain "identifying information about jurors or potential jurors" outside of the public case file in **criminal** cases – but not in civil. The Advisory Committee Notes to Fed. R. Crim. P. 49.1 provide similar guidance. The CACM Committee felt, however, that guidance regarding *voir dire* transcripts should not be limited to criminal case files, because sensitive juror information is elicited in both civil and criminal cases.

<sup>3</sup> The Committee recommends that courts do not, as a general practice, bifurcate public access to transcripts of *voir dire* by allowing access only at the courthouse, and prohibiting access over the Internet. This practice – with respect to filings in general – was specifically rejected by this Committee in developing the Conference's Privacy Policy in 2001, because of concerns that it would result in the creation of a cottage industry that would get copies of documents from courthouses and post them online outside of the judiciary's system. Those concerns remain valid today, as evidenced by the fact that they are also a component of the Rules Committee's Note to Fed. R. Civ. P. 5.2 and Fed. R. Crim. P. 49.1.