

Second Circuit Rejects Judge Rakoff's Long-Standing Practice of Abbreviated Voir Dire

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On January 26, the Second Circuit rejected U.S. District Judge Jed S. Rakoff's typical *voir dire* process and vacated a defendant's criminal conviction, remanding the case for a new trial (*United States v. Nieves*, 2d Cir. Jan. 26, 2023). The Circuit found that Judge Rakoff's self-described "long standing practice" of an extremely abbreviated *voir dire* process failed to protect against a significant "risk of juror prejudice arising from bias." Given the risk of juror bias based on defendant Nieves' alleged gang association, "it was outside of the [district] court's discretion to altogether decline to protect against that risk."

Judge Rakoff has long engaged in a uniquely brief *voir dire* – a practice that some other judges in the

district have emulated to some extent. The Second Circuit made its disapproval of this practice clear, remarking, "[I]t is difficult for us, sitting in review, to imagine what less [the district court] could have done to guard against potential bias." Indeed, the Second Circuit reaffirmed that a "district court must 'permit at least some questioning.'" Noting that there is a range of options for engaging in *voir dire*, the Second Circuit found that Judge Rakoff's "failure on *voir dire* to explore, or to take other steps to specifically counter" potential prejudice constituted an abuse of discretion. This rejection of Judge Rakoff's *voir dire* practice will change attorneys' approach to the process at trial, giving them more opportunity to vet jurors.

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