

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

KENNETH JOE MAY; MARY ANN MAY;
STEVE SNOWDEN; and CINDY SNOWDEN PLAINTIFFS

v. No. 4:13-cv-494-DPM

BHP BILLITON PETROLEUM
(Fayetteville) LLC DEFENDANT

Voir Dire Outline

A. Preliminaries

1. Thank you for serving. Echo "Called to Serve."
2. A morning of speaking the truth, *voir dire* [**vor-dyer**]
= twelve people good and true.
3. In trial all week.
4. Urgent or extraordinary obligations this week?

5. Rules of the Road:

- Can I be completely fair and impartial?
- Can I decide the case based solely on the evidence seen and heard in this courtroom, the law as explained by the Court, and my common sense?
- Questions and answers. You = you and your immediate family.
- Raise your hand, state your name, and answer.
- Eighteen, but all – Notepads.
- Questionnaires. Summary. Confirm lawyers have.

- Case Sketch – Not Evidence, Just Background.

Steve and Cindy Snowden own minerals in White County, Arkansas. Kenneth and Mary Ann May do too. All their minerals are within the Fayetteville Shale, which contains natural gas. Mr. and Mrs. Snowden and Mr. and Mrs. May leased the rights to develop their minerals through three separate oil and gas leases. BHP Billiton Petroleum (Fayetteville) LLC holds an interest in each of these leases. Arkansas law implies a promise in each lease called the covenant of reasonable development. This promise requires BHP to reasonably and prudently develop the minerals for the mutual benefit of both parties—the mineral owners and BHP. There is one well producing natural

gas in paying quantities related to each lease. BHP operates these three wells. And the Snowdens and the Mays are getting some royalties from these wells. The mineral owners contend, however, that BHP should have drilled more wells on each lease. The Mays and the Snowdens say that BHP has broken the promise to reasonably and prudently develop their minerals. BHP responds that, considering all the circumstances, it has developed all these leases appropriately. The company says it has kept its promise and been a reasonable and prudent operator.

- Introductions
 - **Plaintiffs** Kenneth Joe May, Mary Ann May, Steve Snowden, and Cindy Snowden. **Lawyers** = Richard Mays, and Melanie Ann Beltran. Richard Mays Law Firm?
 - **Defendants** BHP Billiton Petroleum (Fayetteville) LLC, Corporate representative Steve Mahaney. **Lawyers** = Steven Quattlebaum, Quattlebaum Grooms & Tull, Julie Greathouse, and PPGMR?

Witnesses	
James Williams	David Henderson
George Hite	Robert McGowan
Rohan Goudge	Greg McCain
Spencer Clearley	Jeff O'Bryant
Joe Chandler	Cheryl White

- Know Parties? Lawyers? Witnesses?

B. Call **Eighteen, But All – Notepads**

C. General Background Questions

- Legal training or experience?
- Know other panel members?
- Prior jury service?
- Prior court experience? Sued or been sued?

Witness?

- Prior or current litigation involving BHP?
- Religious convictions against sitting in judgment?

- Negative feelings about civil justice system?
 - Too many lawsuits?
 - If sue, then win?

D. Case-Specific Questions

Remember, answer about you and your immediate family

- Any involvement or experience with mineral rights? Family?
- Leased mineral rights? Any discussions or negotiations about leasing rights? Drilling? Exploration? Family?
- Ever received royalties from mineral rights? Rental payments? Family?
- Mineral lease with BHP? Chesapeake? SEECO? XTO? Any company?

- Ever sued, or been sued by, BHP? By any oil & gas company? Result?
- Mineral rights dispute of any kind?
- Opinions about the oil and gas industry?
- Do you have strong opinions about hydraulic fracturing, also called fracking? Positive or negative?
- Read or heard news about natural gas production in Arkansas? Fayetteville Shale? Anything about BHP specifically?
- Worked for an oil & gas company? Worked in the oil & gas industry in any way?
- Do you have training in Geology? Mining? Engineering? Finance? Oil and gas development? Land management? Statistics?

- E. Juror Question Time
- F. The Unasked Question?
- G. Lawyer's thoughts on Follow-Up Questions. F.R.C.P.
47(a)
- H. Allow lawyer's follow-up. Mays (10 minutes).
Quattlebaum (10 minutes).

I. Strikes for Cause. FRCP 47(c).¹

¹ **Rule 47. Selecting Jurors**

(a) EXAMINING JURORS. The court may permit the parties or their attorneys to examine prospective jurors or may itself do so. If the court examines the jurors, it must permit the parties or their attorneys to make any further inquiry it considers proper, or must itself ask any of their additional questions it considers proper.

(b) PEREMPTORY CHALLENGES. The court must allow the number of peremptory challenges provided by 28 U.S.C. § 1870.

(c) EXCUSING A JUROR. During trial or deliberation, the court may excuse a juror for good cause.

Allen v. Brown Clinic, PLLP, 531 F.3d 568, 572 (8th Cir. 2008)

“To challenge a juror for cause, a party must show actual partiality growing out of the nature and circumstances of the case. A district court is required to strike for cause any juror who is shown to lack impartiality or the appearance of impartiality, and, absent abuse of discretion, we will not interfere with the district court’s determination of juror qualifications. The district court is given broad discretion in determining whether to strike jurors for cause because it is in the best position to assess the demeanor and credibility of the prospective jurors.” (quotations omitted)

J. Peremptory Challenges. FRCP 47(b).²

- Three each side

² **28 U.S.C. § 1870**

“In civil cases, each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

All challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the Court.”

- Challenging Strikes. Race or Gender? Of *Batson*.³
- Seat and Swear Jury

“You and each of you do solemnly swear or affirm to well and truly try the matter now on trial and render a true verdict according to the law and the evidence, so help you God.”

- Thanks and Goodbye *venire* [**ven-ire-e**]

³ **Three-part test.**

“In order to succeed on a *Batson* challenge, a party must satisfy a three-part test. First, an objecting party must make a *prima facie* showing that a peremptory challenge was made on the basis of race. Second, if a *prima facie* showing has been made, the party striking the juror must offer a race-neutral basis for striking the juror in question. Third, the trial court must determine whether the objecting party has proven the ultimate question of purposeful discrimination.” *Cook v. City of Bella Villa*, 582 F.3d 840, 854 (8th Cir. 2009) (quotations omitted).

“We . . . strongly urge the district courts to make on-the-record rulings articulating the reasoning underlying a determination on a *Batson* objection.” *Ibid.* (quotation omitted).