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Civil Justice Reform Initiative



The National Center for State Courts launched its Civil Justice Reform Initiative to set the agenda for civil justice reform in the state courts. CJRI projects include studies of how complex litigation procedure—including mass torts and class actions—can be improved and how state trial judges can be prepared to handle complex cases. Other projects examine best practices in civil case management, including discovery. NCSC will also continue its substantial jury reform activities and address contemporary issues of science and the law.

1 Civil Jury Trials in State and Federal Courts

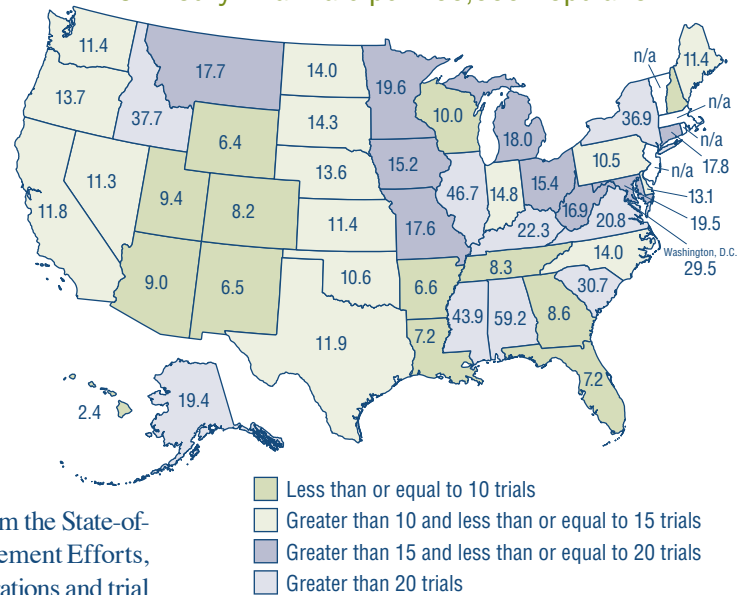
Over the past two decades, the legal community, researchers, and the broader American public have become increasingly interested in the jury system. Studies show that the rate of civil jury trials has steadily declined in recent years, eclipsed by non-trial dispositions such as settlements and summary judgments. Yet trial by jury continues to play a critical role in the civil justice system in resolving intractable disputes and in promoting public trust and confidence in the courts.

The findings in this issue come from the State-of-the-States Survey of Jury Improvement Efforts, a comprehensive study of jury operations and trial procedures conducted by the NCSC Center for Jury Studies. The State-of-the-States Survey compiled information from 1,396 state and local courts representing approximately 70 percent of the U.S. population. It also collected trial reports from more than 5,800 civil jury trials from state and federal courts in all 50 states, the District of Columbia, and Puerto Rico. The full report of the State-of-the-States Survey of Jury Improvement Efforts is available at the NCSC Center for Jury Studies website at http://www.ncsconline.org/D_Research/cjs/state-survey.html.

Frequency of Civil Jury Trials

State courts conduct an estimated 46,200 civil trials annually and federal courts conduct an additional 2,100 civil jury trials. Combined, these comprise slightly less than one-third (31%) of all jury trials in U.S. courts each year. The number of civil jury trials in state courts has declined in recent years, albeit not as precipitously as that for federal courts. In fact, this estimate of civil jury trials in state courts is 40 percent higher than previous NCSC estimates, which were based on figures reported by state general jurisdiction courts. Limited jurisdiction courts in 30 states have the authority to conduct jury trials, and the State-of-the-States Survey estimate includes these trials.

Civil Jury Trial Rate per 100,000 Population



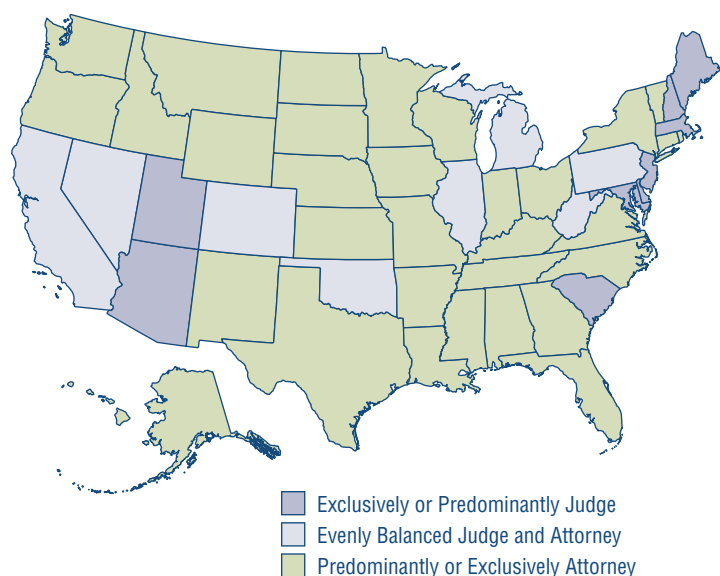
In most states, criminal jury trials outnumber civil jury trials by a ratio of 3 to 2. In a few states, however, this ratio is reversed, sometimes by a wide margin. New York State, for example, conducts more than 5 times as many civil jury trials as criminal jury trials and in Connecticut the ratio is 5 civil trials for every 2 criminal trials. In both states, the total number of civil cases disposed also exceeds the number of criminal cases disposed, so the ratio reflects the underlying caseload composition rather than a higher civil trial rate compared to criminal trials. Illinois and South Carolina also conduct more civil than criminal jury trials.

Controlling for state population, the map above shows the rate of civil jury trials ranged from a low in Hawaii of 2.4 to a high in Alabama of 59.2 per 100,000. Overall, the civil and criminal jury trial rates are strongly correlated, which suggests that state court rules, local court practices, and the prevailing legal culture in each state do not disproportionately encourage or discourage civil jury trials relative to criminal trials in most states.

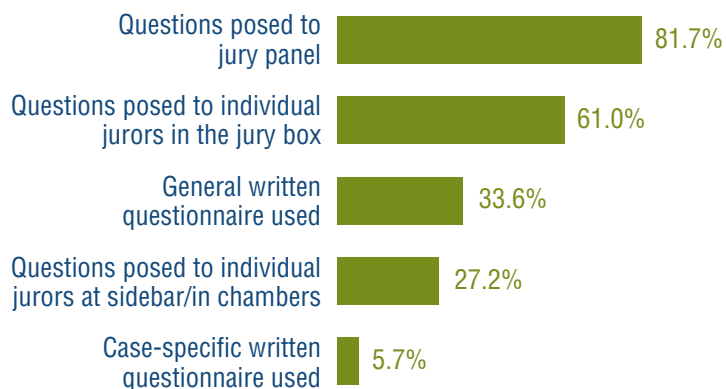
2 Voir Dire in Civil Jury Trials

The process and mechanics of selecting a jury differ substantially depending on the type and complexity of the case, prevailing state law and local practices, and other factors. One of the most frequently debated issues is the extent to which attorneys are routinely permitted to question jurors directly during voir dire. The predominant practice in federal court is judge-conducted voir dire, but the map below shows the practice in state courts is considerably more varied. Voir dire in nine states and the District of Columbia is characterized as exclusively or predominantly judge-conducted. In eight states, juror questioning is evenly shared by judges and attorneys, while 33 states are characterized as predominantly or exclusively attorney-conducted voir dire. As a general rule, attorneys in civil trials have greater latitude to question jurors compared to their criminal trial counterparts.

Who Questions Jurors During Voir Dire?



Civil Voir Dire Practices (% of Trials)



The bar chart shows judges and attorneys reported a number of techniques that were used individually or collectively to question prospective jurors. Compared to voir dire in criminal trials, jurors were significantly less likely to be questioned collectively in the jury box or to be questioned individually at sidebar or in chambers. However, the proportion of jurors questioned individually in the jury box and the frequency of general or case-specific voir dire questionnaires were comparable to those in criminal trials.

The use of some of these techniques correlates significantly with who dominates juror questioning during voir dire, which may suggest a general orientation toward more expansive or restrictive voir dire. For example, even after controlling for factors related to case and local legal culture (e.g., legal and evidentiary complexity, trial notoriety, and prevailing local practice), trials in which judges dominated the voir dire process were significantly more likely to question jurors en masse in the jury box. Trials in which attorneys dominated voir dire, in contrast, were significantly more likely to question jurors individually in the jury box or at sidebar or in chambers.

A Compromise in Jury Selection?

A perennial tension between judges and lawyers in every jurisdiction involves obtaining sufficient information from prospective jurors about their ability to be fair and impartial in a reasonably efficient manner. Lawyers generally want as much information as possible and would prefer to ask their own questions of prospective jurors, taking as much time as necessary to do so. Judges, on the other hand, often believe that lawyers spend too much valuable time on seemingly irrelevant issues and prefer to question jurors themselves to keep the trial on schedule. As discussed above, some voir dire methods are better suited to attorney questioning than judge questioning and vice versa.

Two factors that appear to complicate this process are the number of jurors to be impaneled (6-12) and the number of peremptory challenges available to each party (2-8), both of which tend to increase the amount of time needed to select a jury. After controlling for other relevant factors, we find that as the size of the jury increases, attorneys tend to control more of the questioning during voir dire, but as the number of peremptory challenges increases, judges control more of the questioning. Perhaps this reflects an inherent compromise that has developed over time in which judges permit greater attorney participation in voir dire as the number of jurors to be impaneled increases, but restrict participation when the attorneys have greater latitude to act on hunches and remove jurors with peremptory challenges.

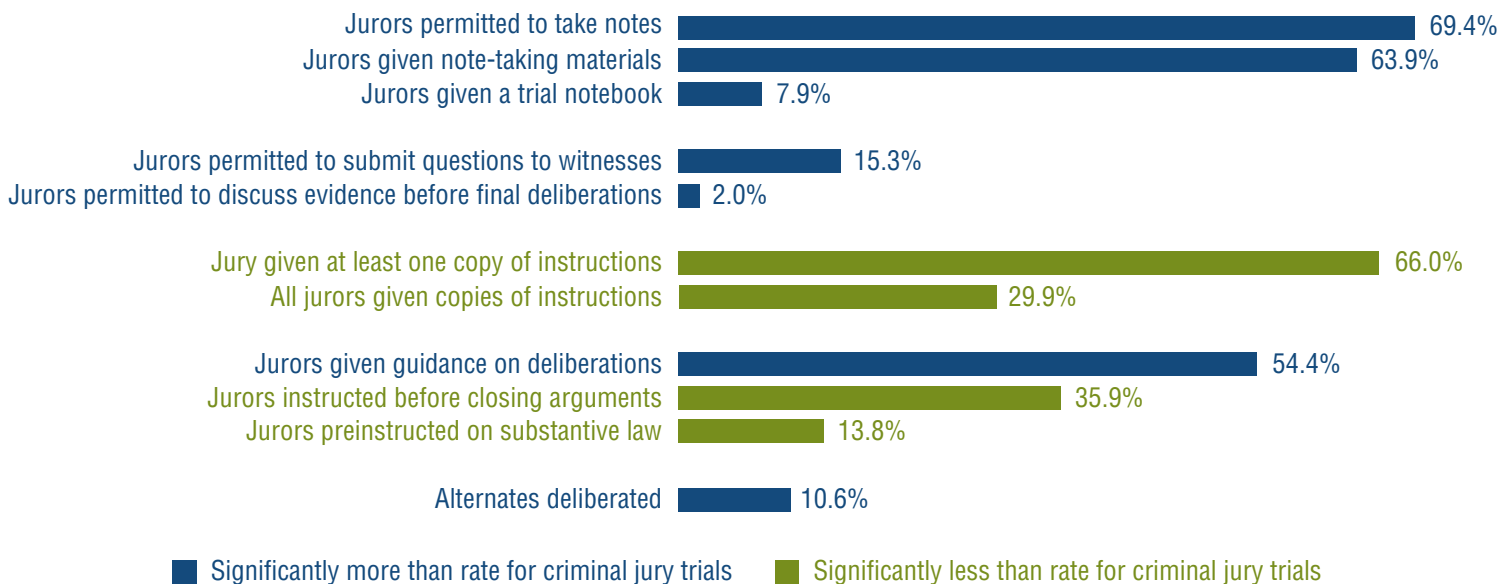
A major focus of recent jury trial improvement efforts in both civil and criminal trials has involved providing jurors with adequate tools with which to make fair and informed verdicts. Some techniques, such as permitting jurors to take notes, to submit questions to witnesses, and to discuss evidence before the start of final deliberations, are designed to improve juror comprehension of trial evidence. Other techniques focus on juror comprehension of the applicable law. In the State-of-the-States Survey, both the trial evidence and the applicable law were rated significantly more complex in civil trials than in criminal trials, which would suggest a greater need for the use of these types of techniques.

As the bar chart below indicates, civil jurors were more likely to be provided with tools with which to manage evidentiary complexity, however they were actually less likely to be provided with tools to deal with legal complexity. For example, jurors in civil trials were more likely than their criminal counterparts to be permitted to take notes and be given note-taking materials, to be given a trial notebook, to be permitted to submit written questions to witnesses, to be permitted to discuss evidence before final deliberations, and to be given guidance about conducting deliberations. But they were less likely to be pre-instructed on the substantive law applicable to the case, to be instructed before closing arguments, or to be given written copies of the final instructions.

Some of these differences can be explained by individual trial characteristics as well as statewide rules and local practices. For example, jurors serving in trials characterized by evidentiary complexity were consistently more likely to be permitted to take notes, to be given trial notebooks, and to be permitted to submit written questions to witnesses. Similarly, state rules mandating, encouraging, or prohibiting these techniques had a significant impact, as did the prevailing local practice where the trial was conducted. Nevertheless, the type of case (civil or criminal) continued to be a factor in their use at trial.

On average, civil jurors took just over 4 hours to reach a verdict, which was shorter than deliberations in felony trials, but longer than those in misdemeanor trials. Some predictable factors tended to prolong deliberations. For example, jurisdictions with larger civil juries (e.g., twelve versus six-person juries) and those in which the jury is required to reach a unanimous verdict tended to have longer deliberations. Trials involving evidentiary and legal complexity or trial notoriety also had longer deliberations. Some techniques also contributed to longer deliberations, especially note taking materials, judicial guidance on conducting deliberations, and copies of jury instructions. Sequestering the jury, on the other hand, tended to reduce the length of deliberations, as did pre-instructing jurors on the applicable law.

Civil Jury Trial Practices (% of Trials)



Although civil jury trials are declining in state courts, the State-of-the-States Survey shows that they continue to make up a sizeable portion of jury trials nationally and even the majority of jury trials in some states. Limited jurisdiction courts are also the venue for a great many more civil jury trials than previously recognized. Possibly because the monetary stakes in these cases are lower than for those in state general jurisdiction courts and in federal district courts, the costs associated with pretrial and trial procedures may be commensurately less, thus placing fewer financial disincentives for proceeding to trial. What does this suggest about the relationship between improved pretrial management, enhanced discovery proceedings, and the trend of vanishing trials?

A perennial topic between the trial bench and bar is how to conduct voir dire in a way that elicits meaningful information about jurors' ability to judge fairly and impartially in a reasonable period of time. This study suggests some new directions for those discussions. For example, the correlation among different voir dire practices raises the question of what practices trial attorneys would be willing to trade in exchange for practices that elicit more detailed and candid information from jurors. If judges were willing to question jurors individually at sidebar or in chambers more frequently, would civil trial attorneys accept some restrictions on their ability to question those jurors directly? Would they be willing to forego some of their peremptory challenges? Conversely, what compromises would trial judges consider in exchange for a more efficient voir dire and greater respect for juror privacy?

Another topic is the contrast in the willingness of judges and lawyers to employ techniques that improve juror comprehension of evidence versus those that focus on juror comprehension of law. The legal instructions that jurors are required to apply are more complex in civil trials than in criminal trials. Moreover, there are typically fewer legal restrictions (statutes, court rules, and case law) on the use of these techniques in civil trials. So why have some of these techniques been overlooked while others are embraced? Do judges and attorneys believe that juror comprehension of evidence is the more serious problem and have focused all of the attention on techniques to address it? Or do civil jury trials have some intrinsic characteristics that impede the timely and effective use of tools to improve juror comprehension of the law? Answers to these and other questions are of increasing importance to the future of civil jury trials in the American justice system.

A bench or jury trial usually signals the final disposition of a civil trial. Yet a surprisingly large proportion of cases involve substantial post-trial and appellate activity, which typically receives less management attention. For example, just under one-third of litigants file post-trial motions seeking a judgment notwithstanding the verdict, a new trial, or a modified award, and 15% of litigants file a notice of appeal following a bench or jury trial. Approximately one-third of those appeals will result in a formal decision on the merits. In the next issue of *Civil Action*, the NCSC Civil Justice Reform Initiative describes what subsequently happened to 8,311 civil bench and jury trials that were conducted in large, urban courts in 2001. The post-trial and appellate findings from the Civil Justice Survey of State Courts examine how these cases are ultimately resolved, the legal and evidentiary issues that are most frequently raised on appeal, and how appellate courts approach those issues.



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