Voir Dire Practices in U.S. Courts

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State-of-the-States Survey of Jury Improvement Efforts

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National Center for State Courts

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JUSTICE FOR ALL

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Introduction

The phrase “voir dire” is a legal term of art referencing the procedures employed in state and federal courts to select jurors who can serve fairly and impartially. The precise translation of this 14th Century Anglo-Norman expression is not entirely clear. Most often it is understood as “to speak the truth” in reference to prospective jurors speaking candidly about their ability to serve impartially. Other translations appear to focus on judges and attorneys’ perspectives of voir dire “to see the truth” or “to see them say” as they determine the capacity of prospective jurors to serve. Whatever its original meaning, voir dire has become an umbrella term that encompasses an immensely wide range of legal procedures and practices that vary not only from state to state, but also from court to court within states, and even from judge to judge within courts.

Some of this variation derives from the structural conditions imposed on jury service in each jurisdiction. Eligibility criteria for jury service became somewhat more standardized in the 1960s, but many states maintain idiosyncratic requirements for age, residency, criminal history, and English fluency and literacy that restrict who is presumptively qualified to serve. Statutorily prescribed requirements can affect the pool of prospective jurors by maintaining barriers to service, such as lengthy terms of service or inadequate juror compensation that create financial hardship for many citizens. The legal criteria for assessing juror impartiality and the number of peremptory challenges allotted to each side in the case affect both the number of prospective jurors needed to populate the venire and the mechanics of winnowing that number down to the required minimum.

In addition to these structural conditions, judges have a great deal of individual discretion for how they manage jury selection in their own courtrooms. Unless a consensus approach has been adopted by statute or court rule, most judges retain authority to decide who may pose questions to prospective jurors, the form and content of the questions, and the length of jury selection. Judges also control whether jurors are questioned collectively in open court or individually in private, and how jurors should respond to questions (by raising hands, by speaking individually in response to questions, or in written answers to a voir dire questionnaire). Absent an abuse of discretion, the judge has the final say on whether a juror can or cannot serve impartially.

This issue of the 2023 *State-of-the-States Survey of Jury Improvement Efforts* (2023 SOS Survey) focuses on voir dire practices in state and federal courts based on 5,681 reports of jury trials in the Judge & Lawyer Survey component of the study. Forty percent (40%) of the survey respondents were judges,

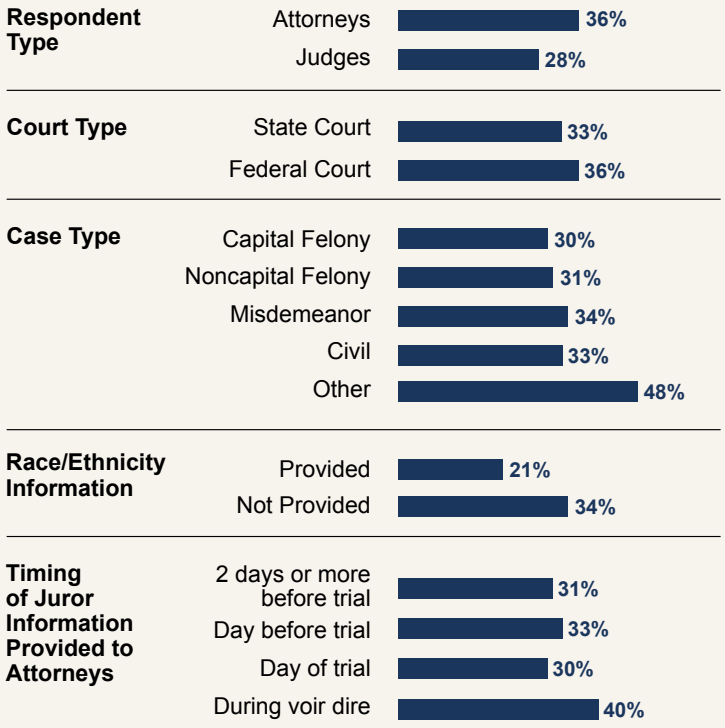
57% were attorneys, and 3% described themselves as "other legal practitioners" who described voir dire and trial practices in their most recent jury trial. The overwhelming majority of judges (82%) were state general jurisdiction trial court judges; state limited jurisdictional trial court judges (10%), federal trial court judges (5%), municipal court judges (3%), and 5 tribal court judges comprised the remaining judicial respondents. Attorney respondents reflected the breadth of the practicing trial bar, including civil plaintiff (28%), civil defense (25%), prosecutors (14%), criminal defense (24%), mixed civil and criminal practitioners (3%), and other or not reported (10%). More than half of the jury trials were criminal cases (4% capital felony, 36% noncapital felony, 16% misdemeanor); 41% were civil cases, 2% were other case types (mainly domestic relations, probate, and mental health). For additional information about the 2023 SOS Survey data and methods, see 2023 State-of-the-States Survey of Jury Improvement Efforts: Project Overview, Data, and Methods (2024) at **strengthenthesixth.org**.

Characteristics of Jury Venires

The venire is the panel of prospective jurors that is sent to a courtroom for jury selection. A threshold question that is often raised before judges and attorneys begin questioning individual jurors is whether the jury pool, from which the venire was selected, reflects "a fair cross section of the community." The fair cross section guarantee derives from the Sixth Amendment right to an impartial jury and requires that distinctive demographic groups (primarily defined by race, ethnicity and gender) are not systematically excluded and underrepresented in jury pools. To preserve the issue on appeal, attorneys must challenge the makeup of the jury venire during voir dire. Respondents in the 2023 SOS Survey reported that a fair cross challenge was raised in one-third (32.7%) of the trials in the Judge & Lawyer Survey.

Figure 1 shows selected characteristics of the trials involving fair cross section claims. There was no statistical difference between state and federal courts in the rate of fair cross section challenges, but there were significant differences in the types of cases in which they were raised. Although "other" case types comprised only 2% of the trials in the Judge & Lawyer Survey, the highest rate of fair cross section claims (48%) took place in these cases, including in mental health (67%), juvenile and domestic relations (50% each), probate (40%), and other miscellaneous trials (38%). The frequency of fair cross section claims was both lower and less variable in the more numerous criminal and civil trials.

FIGURE 1 | Frequency of Fair Cross Section Challenges



Attorney respondents were significantly more likely than judges to report fair cross section challenges. Of particular interest, however, was the relationship between the likelihood of a fair cross section claim and the timing and content of information about prospective jurors provided to attorneys during voir dire. Most courts collect very limited information about prospective jurors in advance of voir dire, but a small proportion administer written questionnaires that document basic information about prospective jurors, including employment, marital status, education, previous jury service. Overall, the more information provided to attorneys and the earlier it was provided, the less likely a fair cross section challenge would be raised.[1] When the information provided to attorneys included jurors' self-reported race/ethnicity, the difference was even more dramatic: 21% of trials compared to 34% of trials when attorneys were not given information about jurors' race/ethnicity.[2]

Regardless of whether a fair cross section challenge was raised, respondents to the Judge & Lawyer Survey were generally confident that the jury pool or venire reflected the demographic and attitudinal characteristics of the community. On a scale of 1 (very doubtful) to 7 (very confident), respondents' average rate was 5.37, with more than three-quarters of respondents (79%) saying they were moderately or very confident that the jury pool reflected the demographic and attitudinal characteristics of their communities. Judges were more confident on average

1 Pearson Chi-Square (3, N=4,969) = 40.666, p<.001. The average number of juror information data elements provided to attorneys in cases involving fair cross section claims was 1.4 compared to 2.8 for cases that did not involve fair cross section claims, F (1, 5140) = 196.217, p<.001.

2 F (1, 5140) = 40.800, p<.001.

than attorneys (Figure 2).[3] Among attorneys, prosecutors were the most confident (5.34) followed by civil defense attorneys (5.11), civil plaintiff attorneys (5.07), mixed civil and criminal practice attorneys (4.77), and criminal defense attorneys (4.62) (Figure 3).[4] Ironically, respondents were significantly more confident in trials that had fair cross section challenges (5.49) than those that did not (5.32).[5]

FIGURE 2

Judges & Attorneys

How confident or doubtful were you that the jury pool or panel of prospective jurors reflected the demographic and attitudinal characteristics of the community?

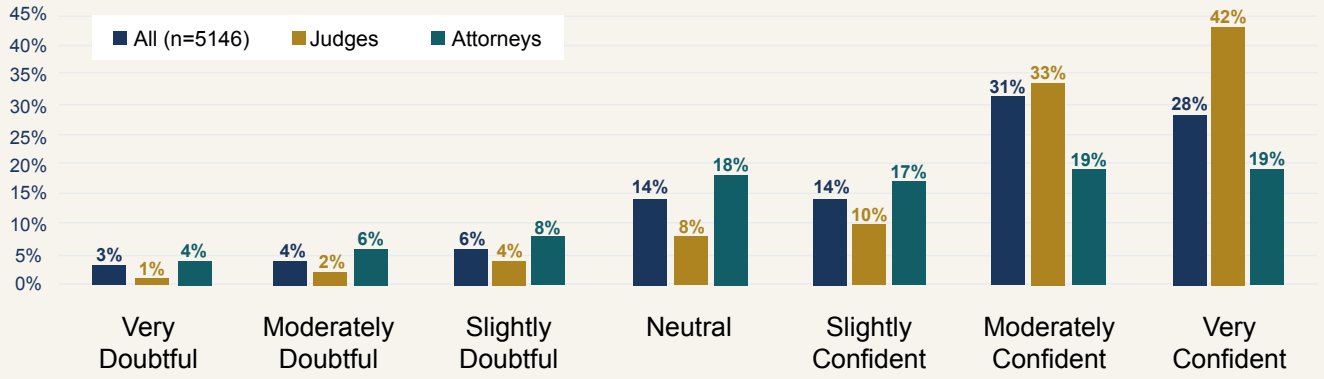
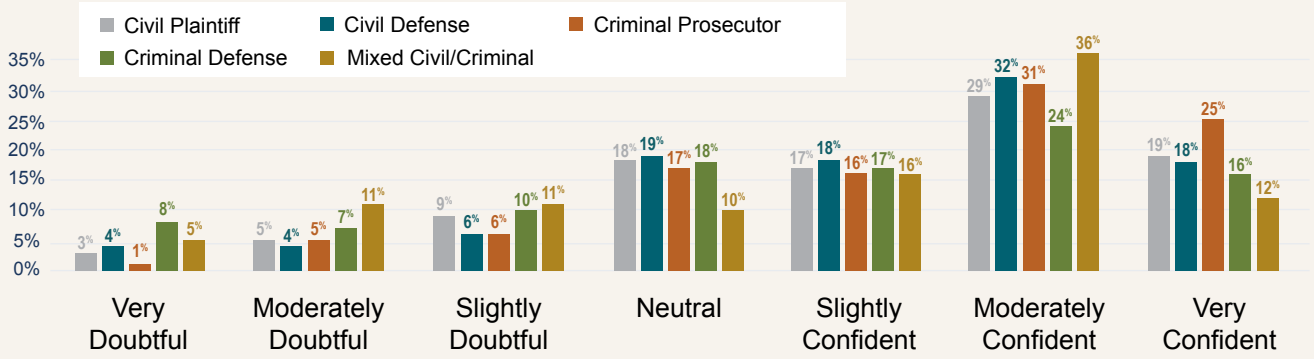


FIGURE 3

Attorneys By Practice Type

Attorneys' confidence that the jury pool or panel of prospective jurors reflected the demographic and attitudinal characteristics of the community.



3 Judges=5.9, Attorneys=5.0, F(1, 4993) = 414.982, p<.001.

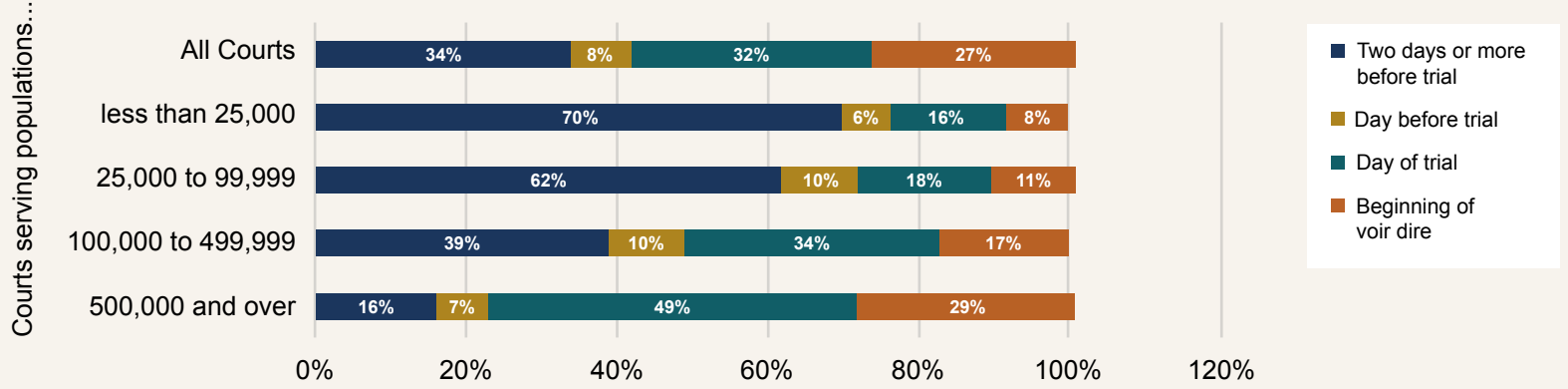
4 Pearson Chi-Square (30, N=2896) = 114.860, p<.001.

5 F (1, 5135) = 13.250, p<.001.

Beginning Jury Selection

One of the key differences in voir dire practices from court to court is the amount of information the judge and attorneys know about prospective jurors in advance of trial. In about one-third of jury trials, attorneys are given the list of jurors assigned to the venire two or more days before trial and another 8% receive that information the day before trial, giving attorneys an opportunity to conduct background checks on jurors using criminal databases, court records, and, increasingly, social media. More than half the time, attorneys are not given the venire list until the day of trial (32%) or even until jurors are filing into the courtroom for voir dire (27%).[6] See Figure 4.

FIGURE 4 | When was the list of jurors provided to attorneys?



6 Pearson Chi-Square (9, N=4388) = 855.909, p<.001.

Some differences in the timing of providing juror information to attorneys are purely pragmatic. Urban courts often use a shared pool of jurors who are randomly assigned to venires only after they report for service in the morning and the court confirms the number of trials starting that day. Rural courts, in contrast, often summon and qualify jurors for a specific case, which may be the only trial on the court's calendar that week (or month or even year). Consequently, the names of qualified jurors are known well in advance of trial. There are also philosophical considerations, particularly concerning courts' obligation to protect the privacy of prospective jurors and the integrity of the trial from the risk of juror tampering or intimidation. The *Standards Relating to Juror Use and Management,* first promulgated in 1983 by the Judicial Division of the American Bar Association (ABA), recommended that "background information about panel members should be made available in writing to counsel for each party on the day on which jury selection is to begin."[7] In commentary, the Standards were even more explicit that voir dire should only take place in the courtroom under the supervision of the trial judge: "No independent investigation by attorneys or any others is contemplated, nor should it be countenanced by the court."[8] Although the standard did not survive the subsequent synthesis of standards of different ABA sections and divisions that was published as the ABA *Principles for Juries and Jury Trials* in 2005*,* the rationale underlying the old standard lives on in many courts.

In addition to names of prospective jurors, some courts collect background information and provide it to attorneys in advance of voir dire to expedite the jury selection process (Figure 5). The information is generally collected from jurors when they respond to the jury summons to confirm their eligibility for jury service and their contact information (telephone numbers, email addresses). Basic voir dire information typically includes employment, marital status, ages and occupations of children, education, military experience, and previous jury service.[9] More recently, courts have begun to collect demographic data (gender, race/ethnicity) from jurors.[10] The 2007 SOS Survey did not document as much detail about the types of information provided to attorneys, but it did report that 64% of courts provided attorneys with access to jurors' full street address (compared to only 15% in the 2023 SOS Survey) while only 13% limited the information to the jurors' Zip Code (compared to 21% in the 2023 SOS Survey). The trend toward more restrictive access to background information may reflect increased efforts on the part of courts to protect personally identifiable information from data breaches.[11]

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7 ABA Judicial Division, Standards Relating to Juror Use and Management Standard 7 (1983).

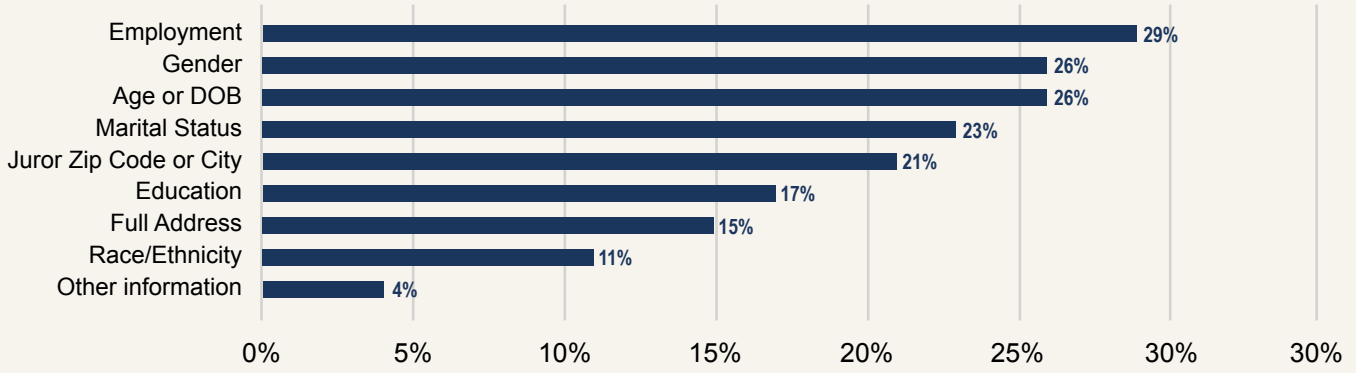
8 *Id.* at Commentary to Standard 7(a).

9 Paula L. Hannaford, *Safeguarding Juror Privacy: A New Framework for Court Policies and Procedures,* 85 Judicature 9 (July-Aug. 2001).

10 Elisabeth Semel, Willy Ramirez, Yara Slaton & Casey Jang, *Guess Who's Coming to Dinner? How the Failure to Collect Juror Demographic Data Contributes to Whitewashing the Jury* (Berkeley Law Death Penalty Clinic forthcoming Jan. 2024).

11 Joint Technology Committee, JTC Resource Bulletin: Cybersecurity Basics for Courts (v. 3, adopted Sept. 15, 2021) at https://www.ncsc.org/__data/assets/pdf_file/0037/68887/JTC-2021-05-Cybersecurity-QR_Final-Clean.pdf.

FIGURE 5 | Background information about jurors provided to attorneys



The Mechanics of Jury Selection: Who Asks Questions and How are Questions Asked

The primary objective of voir dire is to solicit candid information from jurors about their knowledge of the case and likely trial participants, and their life experiences, attitudes, and opinions, which judges and lawyers use to assess jurors' suitability to serve. A secondary objective is to solicit the information as quickly as possible so the selected jurors and alternates can be sworn and the actual trial can get underway. Obviously, these two objectives are in tension with each other. Some methods of voir dire encourage greater candor from jurors, but take more time. Others are very expedient, but judges and attorneys may miss important information about potential juror biases. Different methods of conducting voir dire can be used in combination, creating considerable variations on the tradeoff between information gathering and expediency.

The extent to which the judge or the attorneys conduct the voir dire examination of jurors is critical to this tradeoff. A large body of empirical research shows that attorney-conducted voir dire is more effective at soliciting candid information from jurors. Jurors are less intimidated by attorneys and are less likely to respond to questions with socially desirable answers.[12] Yet the 2007 SOS Survey found that when attorneys dominated the voir dire examination, the length of voir dire increased by an average of 25 minutes compared to trials in which the judge and attorneys participated equally in voir dire.[13] When attorneys exclusively conducted voir dire, the length of voir dire increased by an average of 105 minutes. In contrast, the length of jury selection decreased by an average of 14 minutes when judges primarily led voir dire compared to when judges and attorneys participated equally, and by 47 minutes when judges exclusively conducted voir dire.[14]

Table 1 shows the breakdown of who led the examination of prospective jurors in state and federal courts in the 2023 SOS Survey and compares it to the breakdown in 2007. Two findings are immediately apparent. First, voir dire in state courts is much more heavily dominated by attorneys compared to voir dire in federal courts. In the 2023 SOS Survey dataset, attorneys dominated voir dire primarily or exclusively in nearly half (49%) the jury trials in state courts compared to only 17% in federal courts. There was also a slight decline in the percentage of exclusive-attorney voir dire without the judge present, a practice mostly confined to civil trials in New York City and parts of Pennsylvania. In contrast, judges dominated voir dire in only 21% of trials in state courts compared to 63% in federal courts. This pattern existed in the 2007 SOS Survey as well.

The second notable finding is the shift toward more equal voir dire participation by judges and attorneys in the 2023 SOS Survey compared to 2007 in both state and federal courts. In state courts, judge-dominated voir dire declined from 26% to 21% and attorney-dominated voir dire declined from 55% to 49% in the 2007 and 2023 SOS Surveys, respectively.[15] The shift was not as pronounced in federal courts, but was still in the same direction away from the extremes and toward more equal judge-attorney participation.

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12 Massachusetts Supreme Judicial Court Committee on Juror Voir Dire, Final Report to the Justices (July 12, 2016); Susan E. Jones, *Judge versus Attorney-Conducted Voir Dire,* 11 L. & Human Behav. 131 (1987).

13 Gregory E. Mize, Paula Hannaford-Agor & Nicole L. Waters, The State-of-the-States Survey of Jury Improvement Efforts: A Compendium Report 29-31 (April 2007).

14 *Id.*

15 Some of this shift was undoubtedly due to a 2015 statutory change in Massachusetts, in which voir dire was historically dominated almost exclusively by judges, that gave trial lawyers the right to question prospective jurors during voir dire. In the 2007 SOS Survey, voir dire in Massachusetts state courts was conducted exclusively by the judge in 75% of trials and primarily by the judge with limited attorney follow-up in 24% of trials. In the 2023 SOS Survey, the percentage of exclusive and primarily judge-conducted voir dire decreased to 20% and 60%, respectively, and equal judge-attorney participation in voir dire increased to 18% in 2023 from 1% in 2007.

TABLE 1
Who conducted voir dire?

	State Court		Federal Court	
	2007 *(n=10395)*	**2023** *(n=4935)*	**2007** (n=884)	**2023** (n=286)
Judge exclusively	8%	5%	24%	24%
Judge primarily	18%	16%	45%	39%
Judge and attorney equally	19%	30%	14%	20%
Attorney primarily	42%	36%	14%	15%
Attorney exclusively	13%	13%	3%	2%
Attorney exclusively, no judge present	*9%*	*7%*	*1%*	*0%*

In addition to whether the judge or attorneys dominate, voir dire methods differ with respect to how questions are posed to prospective jurors and how jurors are expected to respond. Table 2 compares state and federal courts on the most common methods. The first and most common method is simply to pose questions to the entire venire and ask prospective jurors to respond by raising their hands in response to questions (e.g., do you know any of the witnesses who might testify at trial?).

The judge and attorneys then follow-up individually with jurors for more details. This method was used in 75% of the state court trials and 84% of the federal court jury trials in the 2023 SOS Survey, which was lower than the rate for this method in the 2007 SOS Survey (86% for both state and federal courts).

TABLE 2
Voir dire methods

	State Court		Federal Court	
	2007 *(n=10395)*	**2023** *(n=4935)*	**2007** (n=884)	**2023** (n=286)
Oral questions posed to the entire venire	86%	75%	86%	84%
Oral questions posed to jurors individually in the jury box	63%	52%	52%	56%
Oral questions posed to jurors individually at sidebar	31%	36%	31%	24%
Standardized written questionnaire	34%	12%	33%	9%
Case-specific written questionnaire	5%	2%	10%	3%

A similar method is to ask prospective jurors individually to respond to questions. Questions may be posed as a short list of basic background information. E.g., “Juror #1, please tell us your name, the city in which you live, your occupation, your marital status, whether you have minor children, your education, your military experience, and whether you have ever served as a juror in the past.” Each juror answers these questions and then responds to follow up questions by the judge or attorneys; the process then begins again with the next juror. In jurisdictions in which attorneys pose questions directly to prospective jurors, some attorneys will randomly select a juror to ask a question, wait for an answer, and then skip to another juror to ask them to react to the first juror’s response. This technique often feels more engaging for prospective jurors since they do not necessarily know whether they will be the next juror selected. The attorney questions also tend to solicit opinions about trial-relevant details (e.g., “Juror #8, one of the witnesses will be testifying through an interpreter. Do you have any opinions about people living in the United States who do not speak English well?”). The use of this method decreased in state courts in the 2023 SOS Survey from 63% in 2007 to 52% in 2023, but increased slightly in federal court from 52% to 56%.

Understandably, some jurors are reluctant to disclose personal information in open court, particularly information about sensitive topics (e.g., prior involvement with the criminal justice system as a crime victim or accused, prior experience with substance abuse or mental health disorders). In cases involving defendants accused of violent crimes, prospective jurors are sometimes unwilling to share information about the location of their home, their employment, or that of close family members out of concern for personal safety. Media representatives often attend as spectators in high-profile trials, raising concerns by prospective jurors about whether their personal information will be published or broadcast to the wider public. In these situations, many judges offer prospective jurors the opportunity to disclose sensitive information in the relative privacy of a sidebar or in-chambers conference in which the juror answers questions with just only judge, the attorneys, and the court reporter hearing the response. The use of this method increased in state courts from 31% to 36%, but decreased in federal courts from 31% to 24%.

Finally, some courts solicit juror information in writing through standardized or case-specific juror questionnaires. Standardized questionnaires are typically provided to prospective jurors with the juror qualification questionnaire and the juror responses are entered onto the jury automation system and printed out for the judge and attorneys for jury selection. As the name implies, case-specific questionnaires are drafted by the attorneys with judicial oversight to solicit detailed information from jurors about personal knowledge of the case, and life experiences and opinions about case-relevant topics. Because they solicit written rather than oral responses, jurors are often more likely to disclose information than they might in open court or even in a side-bar conference. This technique is especially useful in high-profile cases, in which the judge and attorneys wish to know about the jurors' exposure to pretrial publicity as well as in cases involving controversial topics. Interestingly, the use of standardized and case-specific questionnaires decreased substantially in the 2023 SOS Survey in both state and federal courts. In cases in which they were used, however, survey respondents rated both types of questionnaires helpful for voir dire.[16]

16 On a scale of 1 (very unhelpful) to 7 (very helpful), the average rating for standardized questionnaires was 5.3 and for case-specific questionnaires was 6.8.

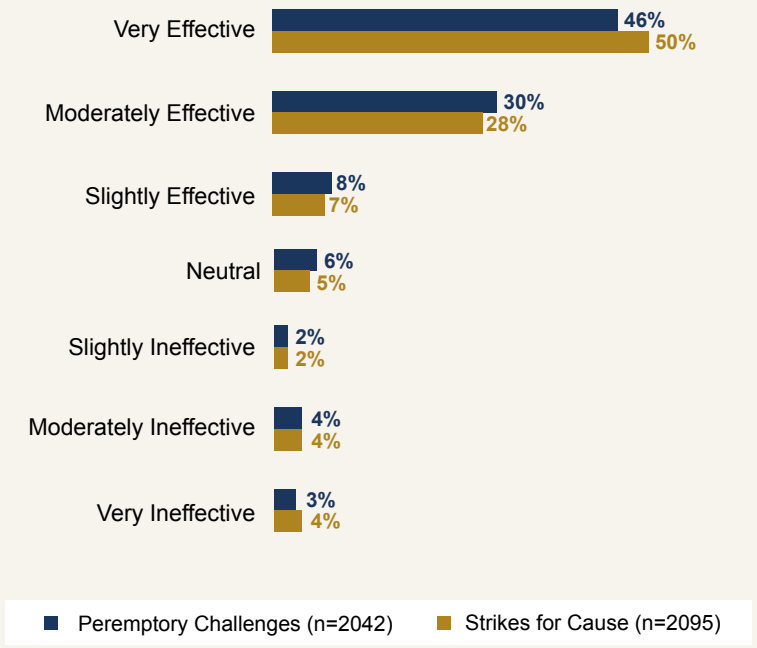
Perceived Effectiveness of Voir Dire Methods

Voir dire is essentially a screening process in which the judge first removes jurors who cannot serve fairly and impartially as a matter of law using strikes for cause. At that point, attorneys use their allotted peremptory challenges to remove jurors who they believe may be unfavorable to their side, but who were not found sufficiently biased to be removed for cause. The number of peremptory challenges is typically set by statute or court rule and varies from state to state based on case type. In noncapital felony trials, for example, the number of peremptory challenges ranges from 0 per side in Arizona to 20 per side in New Jersey.[17] Jurors remaining after challenges for cause and peremptory challenges have been executed become the sworn jurors and alternates in the order they appeared on the randomized venire list.

In the 2023 SOS Survey, we asked judges and attorneys to rate the effectiveness of the voir dire process for identifying jurors to remove for cause and for informing attorneys about using their peremptory challenges. Responses ranged from 1 (very ineffective) to 7 (very effective). Figure 6 reports their ratings. Overall, respondents were very positive about the effectiveness of voir dire. The average effectiveness score was 5.55 for identifying jurors to strike for cause and 6.19 for informing attorneys about how to use their peremptory challenges. Ten percent or fewer respondents rated voir dire as ineffective in any degree.

FIGURE 6

Respondent Ratings of Voir Dire Effectiveness



17 For a state-by-state listing by case type, see the Peremptory Challenges tab at https://www.ncsc-jurystudies.org/state-of-the-states/jury-data-viz.

On average, however, judges rated voir dire methods more effective than attorneys for both strikes for cause (judges=6.34, attorneys=5.53) and peremptory challenges (judges=6.19, attorneys=5.55).[18] Using regression analysis to identify which voir dire methods predicted effectiveness ratings did not identify any significant methods for strikes for cause, but found several methods for the effectiveness of using peremptory challenges, including posing questions to jurors individually at sidebar; using case-specific juror questionnaires; and having greater attorney participation in questioning prospective jurors.[19] The identity of the respondent as a judge was also a significant predictor of voir dire effectiveness for peremptory challenges.[20]

The Role of Peremptory Challenges in Jury Selection

A longstanding debate about the use and misuse of peremptory challenges has received heightened attention in recent years in the context of the renewed focus on racial justice in America, especially in the criminal justice system. Proponents of peremptory challenges view them as an essential tool to remove prospective jurors who are suspected of bias but jurors' responses to questions during voir dire were insufficient to persuade the trial judge to remove the juror for cause. In addition, proponents argue that peremptory challenges give the parties an active role in formulating the final composition of jury, which bolsters party and public confidence in the legitimacy of the jury's verdict.

Critics of peremptory challenges cite to substantial empirical evidence that peremptory challenges are routinely used in a discriminatory manner, resulting in the disproportionate exclusion of people of color from juries. In 1986, the U.S. Supreme Court ruled in *Batson v. Kentucky,* 476 US 79 (1986), that the intentional use of peremptory challenges to remove jurors on the basis of race violated defendants' Sixth Amendment right to an impartial jury and citizens' Fourteenth Amendment right to equal

18 Strikes for cause F (1, 2093)=165.097, p<.001; peremptory challenges F (1, 2040)=88.792, p<.001.

19 β (sidebar)=0.068, t(3.048), p=0.002; β (case-specific questionnaire)=0.058, t(2.609), p=0.009 ; β (who questionned jurors)= -0.195, t(-8.787), p<.001.

20 B (judge) = 0.042, t(1.892), p<.001. R^2 = 0.084, F (7, 1906) = 24.984, p<.001.

protection from discriminatory treatment.[21] Almost four decades and tens of thousands of cases later, most commentators agree that *Batson* has been woefully ineffective at curbing discriminatory use of peremptory challenges.

In the 2023 SOS Survey, we asked Judge & Lawyer Survey respondents to indicate whether a *Batson* challenge was raised during jury selection, which they reported occurred in 4.5% of trials. There was no difference in the frequency of *Batson* challenges for state versus federal courts, nor was there a difference based on the type of survey respondent (judge versus attorney). *Batson* challenges were more common in capital and noncapital felony trials (5%) compared to civil and misdemeanor trials (4%) and other case types (2%), but these differences were not statistically significant. The only observable factor affecting the frequency of *Batson* challenges was whether attorneys had exhausted their allotment of peremptory challenges. *Batson* challenges were raised in **8%** of trials in which the attorneys used all of their peremptory challenges compared to **5%** in trials in which attorneys waived their remaining peremptory challenges.[22]

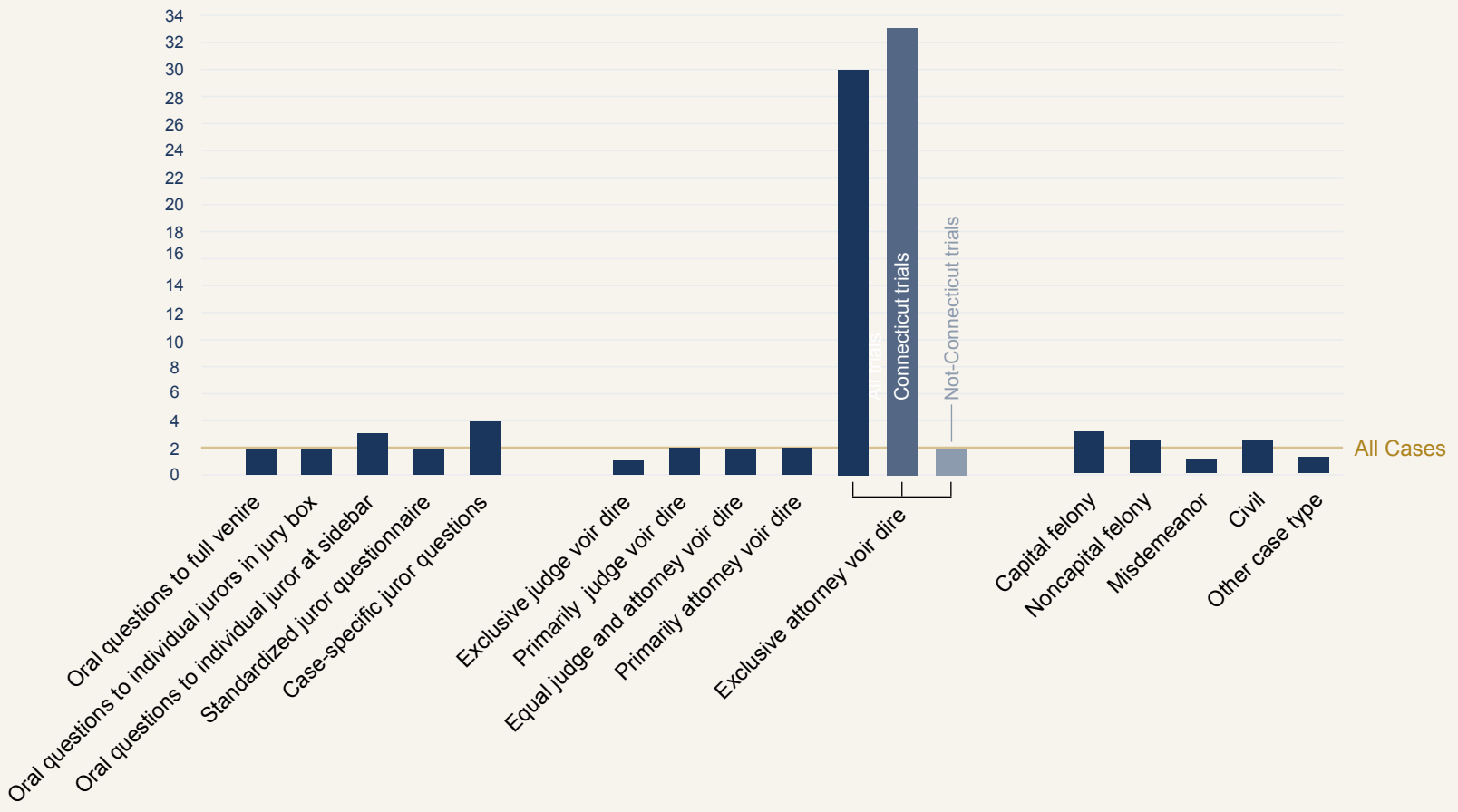
Length of Voir Dire

The methods commonly employed in selecting a jury affect the amount of time expended in voir dire. Moreover, different methods can be used in combination. The median length of voir dire in the 2023 SOS Survey was 2 hours, but varied depending on a range of factors, including trial characteristics (Figure 7). Cases that questioned jurors individually at sidebar took 3 hours, and 4 hours for cases employing case-specific questionnaires. The average length of voir dire when attorneys exclusively questioned jurors took 30 hours on average, but this number was heavily skewed by the presence of 129 trial reports from Connecticut, which by state constitution permits attorneys to conduct individual voir dire with every juror on the venire; elsewhere in the United States, exclusively attorney conducted voir dire averaged 2 hours, which was still longer than the one hour for exclusively judge-conducted voir dire. Capital felonies took 3 hours on average to pick a jury, 2 hours for noncapital felonies and civil cases, 1 hour for misdemeanors, and just over 1 hour for other case types.

21 The ruling in *Batson* focused solely on the discriminatory use of peremptory challenges by prosecutors on the basis of race in criminal cases. Subsequent cases expanded the prohibition on discriminatory use of peremptory challenges to criminal defense attorneys (*Powers v. Ohio,* 499 US 400 (1991)), on the basis of gender (*JEB v. Alabama* ex rel., 114 S. Ct. 1491 (1994)), and in civil cases (*Edmonson v. Leesville Concrete Co.,* 500 US 614 (1991)).

22 F (1, 2034) = 5.233, p=0.022.

FIGURE 7 | Median length of voir dire (hours)



Fair and Impartial Juries

The ultimate objective of voir dire is to select the required number of unbiased trial jurors to hear the evidence and return a verdict in the case. So, an important performance measure for jury selection is the extent to which the judge and attorneys believe that they have accomplished that objective. The Judge & Lawyer Survey asked respondents to indicate their level of agreement on a scale of 1 (strongly disagree) to 7 (strongly agree) with the statement "I was satisfied that the jurors who were ultimately seated were fair and impartial." As shown in Table 3, the overwhelming majority of respondents (84%) agreed with the statement while only 7% disagreed. As for other aspects of voir dire, judges rated their agreement significantly higher than attorneys with an average score of 6.51 compared to 5.41.[23] Respondents reporting on trials conducted in state courts also rated their satisfaction higher than trials in federal courts (5.88 compared to 5.47).[24] There were significant differences based on case type. Other case types and criminal cases had the highest ratings (other=6.31, capital felony=6.02, noncapital felony=5.95, misdemeanor=6.10). Civil cases had the lowest ratings (5.66),[25] but there was no significant difference among attorney types.

TABLE 3 | Respondent Agreement that Selected Jurors Were Fair and Impartial

		Respondent type		Court type		Case type				
	All trials	Judges	Attorneys	State Court	Federal Court	Capital Felony	Noncapital Felony	Misdemeanor	Civil	Other Case Type
N=	*5151*	*2102*	*2898*	*4766*	*265*	*210*	*1873*	*850*	*2084*	*58*
Strongly disagree	1%	<1%	2%	1%	1%	1%	1%	1%	1%	0%
Disagree	4%	<1%	6%	4%	8%	2%	3%	2%	5%	0%
Slightly disagree	2%	<1%	4%	2%	2%	1%	2%	3%	3%	0%
Neutral	9%	3%	14%	9%	13%	8%	8%	6%	11%	5%
Slightly agree	7%	3%	11%	7%	9%	7%	7%	6%	9%	7%
Agree	37%	32%	40%	37%	40%	40%	37%	33%	37%	40%
Strongly agree	40%	62%	23%	40%	27%	41%	42%	49%	33%	48%

23 F (1, 4998) = 930.007, p<.001.

24 F (1, 5029) = 22.556, p<.001.

25 F (4, 5070) = 22.405, p<.001.

To tease out factors related to jury selection that predict increased agreement about juror impartiality, we employed regression analysis with agreement about juror impartiality as the dependent variable and voir dire methods, respondent type, and whether attorneys exhausted peremptory challenges as the independent variables. The only voir dire method that predicted agreement with juror impartiality was who posed questions to prospective jurors. As the amount of judicial control over voir dire increased, agreement with juror impartiality decreased.[26] Exhausting peremptory challenges also predicted lower ratings for agreement with juror impartiality, but judge-respondents predicted higher ratings.[27] Overall, these three factors explained 17% of the variation in agreement levels with juror impartiality.[28]

Conclusions

The weight of the evidence presented at trial is the single best predictor of jury verdicts, according to empirical research. Nevertheless, many trial lawyers remain firmly convinced that trials are won or lost in jury selection, especially as lawyers typically have more opportunity to shape the final composition of the jury than they do the testimony and evidence that jurors will hear during the trial. Given that jury verdicts are a binary choice—guilty or not guilty, liable or not liable—and only one side will emerge victorious, it is remarkable that voir dire practices continue to vary so widely. The 2023 SOS Survey saw some shift away from the extremes of exclusively judge or attorney-conducted voir dire compared to the 2007 SOS Survey. It also saw somewhat greater protections for juror privacy as evidenced by the increase in the use of questions posed to individual jurors at sidebar and the reduced use of standardized and case-specific questionnaires and restrictions on access to juror street addresses. Given the variation in voir dire methods employed in state and federal courts, it is noteworthy that 2023 SOS Survey respondents gave such consistently high ratings both for the effectiveness of those methods for eliciting candid information from prospective jurors and especially for their confidence in the impartiality of the jurors who were ultimately selected for trial.

26 $\beta = -0.068$, $t(-3.192)$, $p=.001$.

27 β (exhaust PC) = -0.087, t (-4.058), $p < .001$; β (judge) = 0.387, t (18.177), $p < .001$.

28 $R^2 = 0.170$, F (8, 1878) = 48.185, $p<.001$.

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