Language in Society (2025), 1–25
doi:10.1017/S0047404525101565

CAMBRIDGE UNIVERSITY PRESS

ARTICLE

Asking about bias: Managing the sensitivities of voir dire questioning

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(Received 12 February 2025; revised 10 July 2025; accepted 11 July 2025)

Abstract

Jury selection in the US involves *voir dire*, an examination process wherein prospective jurors are questioned about their potential for fairness or bias. Such inquiries are hampered by social desirability pressures inhibiting admissions of bias. Analogous pressures hamper survey interviews, but since voir dire examinations are unscripted their study can reveal how desirability pressures are addressed through naturally occurring variations in question design. This article combines sequential and distributional analyses of >100 transcribed question-answer sequences targeting juror fairness/bias, and documents various tendencies and preferences in question design. Court officials focus on bias rather than fairness by default, and the predominant bias-targeting questions are mitigated through: (i) indirect references to bias, (ii) diffusion of responsibility for bias, and (iii) projecting bias as minimal or unlikely. The findings shed light on the social dynamics of jury selection and, more broadly, how question design practices are adapted for inquiry into sensitive subjects. (Questions, law, voir dire, juries, social desirability bias, conversation analysis)

Introduction

In the US justice system, the selection of citizen jurors involves an examination process known as *voir dire*, where prospective jurors are questioned to ascertain their suitability for jury service and in particular to identify disqualifying forms of bias.[1] A predisposition to disregard evidence or favor one side is a standard basis for eliminating candidate jurors, an unlimited number of which may be struck 'for cause' in pursuit of a fair and impartial jury. Voir dire examinations may be supplemented with juror questionnaires but their use is sporadic and limited, making voir dire a predominant source of biographical information for jury selection.

A difficulty realizing the goals of voir dire is that bias may not be readily admitted in public statements. Beyond the cognitive inaccessibility of latent or implicit forms of bias (Greenwald & Banaji 1995), a more general problem arises from the

constraints of social desirability. Fairness and bias are asymmetrically valued within the culture, which may encourage vows of fairness while inhibiting admissions of bias. Social desirability pressures are by no means limited to the courtroom; they are a pervasive problem in research interviews and social surveys addressing value-laden and stigmatized topics (Krumpal 2013). But such pressures are apt to be exacerbated in the courtroom context where prospective jurors are questioned in the presence of onlookers (cf. Presser & Stinson 1998; Rasinski, Willis, Baldwin, Yeh, & Lee 1999), and in an environment steeped in the formalities and symbology of the justice system. The image of lady justice, with her blindfold on and balance scale in hand, can be an intimidating reminder of the impartiality ideal.

While voir dire is a challenge for court officials, it represents an opportunity for social researchers and methodologists. Unlike survey interviewers, judges and attorneys are under no obligation to adhere to a predetermined script;[2] they are free to modify and adjust the design of their questions as they move from juror to juror and pursue lines of questioning over time. Since each question is a locus of choice for the investigator, questions can be examined for their methodical deployment across contexts. This can, in turn, reveal question design alternatives that evidently matter for court officials, but have thus far escaped the notice of social scientists interested in the management of inquiry into sensitive subject areas. Accordingly, voir dire questioning invites attention both for its sociolegal importance in jury selection and as strategic research materials (Merton 1987) for investigating how social desirability pressures are dealt with in naturally occurring courses of inquiry.

Theoretical background: Sensitive questioning in the courtroom and beyond

Social desirability is a widely recognized obstacle in social surveys (Krumpal 2013), medical history taking (Heritage 2010), clinical counseling (Peräkylä 1995; Tracey 2016), and other interactional sources of self-reported data (Whitehead 2009). This problem may arise from fear of material consequences (Rasinski et al. 1999), but a more pervasive concern is the desire for approval (Krumpal 2013; Yan 2021). Interviews are necessarily social encounters as well as research instruments (Antaki & Widdicombe 1998; Maynard, Houtkoop-Steenstra, Schaeffer, & van der Zouwen 2002; Potter & Hepburn 2005; Drew, Raymond, & Weinberg 2006), and as such a locus for self-presentation and impression management (Goffman 1959). This gives rise to the 'dark number problem' of underreporting for stigmatized attitudes and behaviors, and conversely the overreporting of what is regarded as mainstream or normative, data quality distortions that can be self-reinforcing over time (Noelle-Neumann 1993; Kuran 1997).

Researchers have sought methods for minimizing such distortions. Taking stock of these efforts, Schaeffer & Presser (2003) note they have been more successful in identifying techniques for managing the overall interview situation (e.g. assuring confidentiality, response verification; see Fowler 1995; Schaeffer & Dykema 2020; Krumpal 2024 for overviews) than for designing questions themselves. But some studies (Holtgraves, Eck, & Lasky 1997; Yan 2021) have begun to explore face-saving question frames and response options as efforts toward de-toxifying sensitive questions.

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For the case of voir dire, social pressures favoring fairness over bias are readily evident in the vastly different ways that claims of fairness as opposed to bias get expressed. The following episode vividly illustrates this contrast. When the attorney suggests that the candidate juror appears to empathize with the defendant (lines 1–2), the juror's acknowledgment of bias (line 3) is treated as dispreferred (cf. Davidson 1984; Pomerantz 1984). The admission is substantially delayed by "Well", a pause of silence, and an extended preface. The admission is also qualified by its preface, marked as both subjective ("in my mind") and uncertain ("I guess"). And it is followed by a no-fault account (lines 5–6) portraying his partiality as driven by circumstance and as normal for "anyone" in his situation. In short, the juror's empathetic feelings are put forward with manifest caution and are cast as involuntary.

(1) [York tape 3: 17]

((Prosecutor is summarizing the import of juror's prior comments.))

1	Atty:		So you've already placed yourself in the position of the
2			defendant.
3	Juror:	→	.hh We:ll,- (m-) (0.7) in: my: mind I guess I have,
4	Atty:		[Kay.
5	Juror:	→	[I mean h- I don't think (.) anyone could sit here and no:t,
6		→	(0.4) I mean to some degree.
7			(0.6)
8	Atty:		'Kay.

By contrast in the very next exchange, when asked if he can set his feelings aside at trial (lines 9–11), his vow of fairness (lines 13–16) is delivered straightforwardly and expressed in unqualified and steadfast terms.

(2) [York tape 3, continued]

9	Atty:		But that intellectually you feel thet- that you can
10			overcome a:ll that at some point and then decide the
11			case just based on the fa:cts?
12			(0.2)
13	Juror:	→	Oh yes, because uhm- my:- (0.7) I guess what I live by
14			is fair play. (.) I've- (.) fairness. (0.2) for everyone
15			and everything.'at's- (.) it's import'n=I'v:e s:sacrificed
16			personally for things to be fair.

While it retains a one-word preface ("Oh" precedes "yes"), this strengthens rather than mitigates the response by suggesting that it is obvious (Heritage 1998). And his subsequent extreme-case account (Pomerantz 1986; Edwards 2000) portrays fairness not as an involuntary response to circumstance but rather as a trans-situational principle that he "live[s] by" and applies to "everyone and everything".

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The social inhibition against admitting bias may be counterbalanced by a contrary incentive to claim bias as a way of escaping the burden of jury service. Hypothetically, this could motivate some jurors in the opposite direction, while also encouraging judges to avoid giving an 'easy out' to jurors ostensibly seeking one. Legal consultants nonetheless recognize social desirability as the predominant problem in voir dire and advise 'normalizing bias' to create a context conducive to candor (Broda-Bahm 2013; Hamilton & Zephyrhawke 2015; see also Fowler 1995:35–36). Efforts of this sort can be seen in the present data, both in the framing of particular questions and in more general introductory remarks portraying personal biases as commonplace and a natural part of life.

Beyond explicit normalizing comments, what else do court officials do to manage the sensitivities of voir dire questioning? Despite the centrality of voir dire to jury selection and practical interest among attorneys and consultants, empirical research on actual examination conduct is remarkably sparse. Most work has utilized experimental methods (Middendorf & Luginbuhl 1995; Otis, Greathouse, Kennard, & Kovera 2014), mock trials (Gongola 2019), and post-hoc interviews (Broeder 1965; Johnson & Haney 1994) to examine contextual factors exogenous to examination conduct itself. Meanwhile direct observational research, prominent in studies of trial examinations and dispute resolution (Ehrlich 2010; Komter 2013; Conley, O'Barr, & Riner 2019; Drew & de Almeida 2021), remains underdeveloped for voir dire, although some studies have explored the distribution of certain broad action categories (e.g. questioning vs. commenting, open vs. closed questions; Johnson & Haney 1994, Grosso & O'Brien 2019). Until these initiatives can be developed, much will remain unknown about how the interaction order of questioning mediates a key process central to jury selection and the implementation of justice ideals.

Resources for the study of voir dire can be found in conversation analytic research, where question design is a well-established field of study. Most relevant is work on polar question-answer sequences (Raymond 2003; Heritage 2010), which has yielded insight into how specific question-design formats can invite or 'prefer' either *yes*- or *no*-type responses (Heritage 2010), and relatedly how they may suggest a stance toward the probability of affirmation (Heritage & Raymond 2021; Raymond & Heritage 2021) or its anticipated strength (cf. Couper-Kuhlen, Thompson, & Fox 2023; see Hayano 2013 and Bolden, Heritage, & Sorjonen 2023 for overviews). Such language-based stances and response preferences may be mobilized in ways that downplay whatever may be socially undesirable about the subject of inquiry, such as asking about abnormal medical conditions (Heritage 2010) or student truancies (Pomerantz 2004). Accordingly, in the courtroom context their study can illuminate how court officials orient to and work to address the sensitivities of asking candidate jurors about bias.

This body of work provides analytic resources for the present study, which examines specimens of voir dire questioning in their natural habitat of pre-trial jury selection. We anatomize the overall activity structure of voir dire, and then focus on the subset of questions explicitly targeting juror fairness/bias. We identify key tendencies and preferences in question design, including how bias is referenced, explained, and projected as likely (or unlikely). For each of these we track variations

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across expanded sequences, and demonstrate that these patterns are accountable as efforts to balance two overarching social norms: (i) showing due diligence in the task of rooting out bias, while also (ii) avoiding offense to prospective jurors. We conclude by considering broader implications for question design in jury selection and other investigative contexts.

Database and methodology

The primary database for this study (also utilized in Fox & Clayman 2024) consists of four criminal trials drawn from Arizona state courts, and one civil trial from a federal district court in northern California. The infrequency of voir dire recordings necessitated a focus on these courts which, for different reasons, recorded some trials' voir dire examinations. Arizona state courts permitted trial recordings for a television documentary on the jury system (CBS Reports: Enter the Jury Room, released April 16, 1997). Video recordings and transcripts are archived and publicly available at various law libraries, and both were obtained for the present study. The northern California federal court trial was recorded in 2016 for a pilot program evaluating the effect of cameras in district courtrooms. Videos were not available at the time of the present study, but transcripts were obtained from the Westlaw legal research platform. Further information about the pilot program and associated data can be found at the US Courts website.[3]

Case selection from these sources continued until saturation was reached. The resulting database consists of criminal trials for armed robbery, aggravated assault, and drug possession and sale (the latter including both an initial trial and a retrial), and a civil trial for a boating collision lawsuit. All are low-profile and routine cases of their type. Except for the retrial, each case was overseen by a different judge. A small number of questions from other Arizona court cases were also examined qualitatively, but these do not figure in the quantitative analysis.

Our primary analysis concerns exchanges where the juror's fairness or bias is EXPLICITLY THEMATIZED as the target of inquiry (e.g. "Would you have any difficulty serving as a fair and impartial juror in this case?"). A comprehensive review of the database yielded sixty sequences of this kind. Of these, thirty-five are single question-answer sequences, and twenty-five sequences are expanded with follow-up questions, for a total of $N = 107$ fairness/bias questions.

Our methods began with context-sensitive case analysis in the conversation analytic tradition. In this phase, each question was examined for its design features, sequential placement, and subsequent uptake. Patterns emerging from the case analyses then suggested features to be coded systematically across the database[4] and subjected to statistical measures of frequency and association. This combination of methods—sequential case analysis plus quantification—has become commonplace in applications of conversation analysis to medicine, media, and other institutional areas, as well as longitudinal and cross-cultural comparative projects (see Clayman & Heritage 2021; Robinson 2024; Helmer, Deppermann, & Stivers 2025). The presentation of findings broadly mirrors this two-stage approach, with each dimension of questioning first exemplified with sequential case analyses, then examined for frequency and distribution across questioning episodes.

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Overview and activity structure

In our data the pool of prospective jurors is co-present throughout voir dire, and the judge plays a predominant role in launching the process, summarizing the case, asking the majority of questions (cf. Johnson & Haney 1994), and announcing juror selection decisions. Attorneys are invited to ask questions later, usually of jurors already questioned by the judge.

The examination process itself typically unfolds as a series of episodes, each comprised of three ordered phases as sketched in Figure 1.

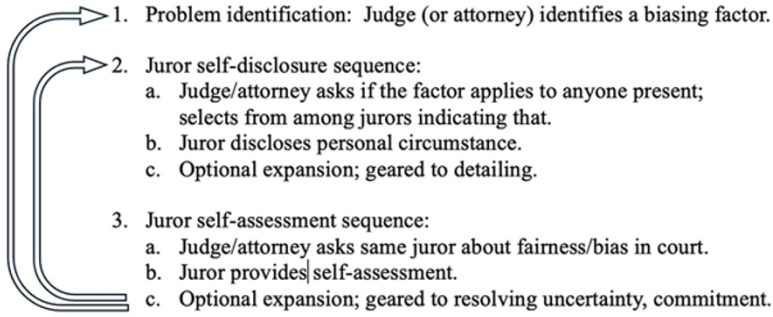

Figure 1. Voir dire activity structure.

In phase 1, PROBLEM IDENTIFICATION, the judge (or an attorney) identifies some circumstance as a possible biasing factor. These include being acquainted with the parties involved, having parallel life experiences or deep-seated ethical concerns, or other circumstances that might predispose the juror to disregard trial evidence or favor one side in the case.

In phase 2, JUROR SELF-DISCLOSURE SEQUENCE, the judge/attorney then asks via a show of hands if the circumstance identified in phase 1 applies to any candidate jurors, and selects one to disclose their personal situation. The disclosure may be completed within a single exchange, or expanded with additional questions pursuing clarification or further detail.

In phase 3, JUROR SELF-ASSESSMENT SEQUENCE, shifting from the just-disclosed circumstance to the upcoming trial, the judge/attorney asks the candidate to reflect on their capacity for fairness or bias if selected for the jury. The self-assessment may be completed within a single exchange, or expanded with further questions geared to resolving ambiguity or securing a more definitive self-assessment (cf. Houtkoop-Steenstra 1987; Lindström 2017).

The last two phases are repeated for other jurors indicating that the same biasing factor may apply to them; and all three phases are repeated to explore other factors. When attorneys return to a juror previously questioned by the judge, the phases may be reduced. The recursive three-phase process sketched above is thus an ideal type, describing in broad strokes what transpires during voir dire until a full complement of jurors and alternates has been selected.

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Juror self-assessment question design: Targeting bias over fairness

The remaining analysis zeroes in on phase 3 and the design of juror self-assessment questions. These questions follow the disclosure of some potentially biasing circumstance, and they fall within a new sequence that shifts to future conduct at trial. They have a number of characteristic design features illustrated in excerpts (3) through (6) below. They are commonly formed as polar questions establishing the relevance of a *yes*- or *no*-type response (Raymond 2003). And they deploy grammatical forms that lean in favor of a *yes*-type answer (Heritage 2010), most often straight interrogatives (e.g. "Is there..." in excerpt (6) below) or positive declaratives (e.g. "You could be..." in excerpt (3); see also excerpts (4) and (5)) seeking confirmation of the juror's anticipated performance. Both of these forms advance a proposition that ASSERTS some state of affairs rather than NEGATING it (cf. "You couldn't be..."), and are in that way positively polarized and hence built for a *yes*-type response. In general, then, juror self-assessment questions are linguistically designed for a positive affirmation of whatever proposition about future conduct is being put forward.

Notwithstanding these commonalities, the questions vary in other ways, with the most basic distinction centering on the nature of the conduct in question. Questions may reference and thematize either potential FAIRNESS, or alternatively potential BIAS. Those targeting fairness, exemplified in the next two excerpts, invite the recipient to assess their capacity for impartiality ("You could be fair and impartial" in excerpt (3), line 1) or evidence-based conduct ("you would accept and examine all of facts" in excerpt (4), lines 2–4) at trial. In this context an affirmative answer promises fairness if selected for the jury.

(3) [York tape 1: 8]

1	Judge:	You could be fair and impartial: (0.4) ((juror nods
2		briefly during silence)) to both sides is that correct,
3	Juror:	I believe so.
4	Judge:	^Okay.

(4) [York tape 3: 29]

1	Judge:	And without (0.3) l:etting: uh: (0.7) your um (1.5)
2		>so to speak< your heart (.) rule on your decision.=you
3		would accept and examine all o'the facts, .hhh uh- pro
4		and con and make your decision based on those facts:
5		and the law that I give you,
6	Juror:	Yes. (0.4) I think I could....

Since fairness is, as noted earlier, culturally normative and desirable, these questions' GRAMMATICAL preference is congruent with and reinforcing of the questions' content-based SOCIAL preference (Heritage 2010). These jurors are, in effect, being grammatically invited to affirm a socially desirable ideal, and the subsequent

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affirmative responses are indeed fully aligned with both preferences. Both responses are also relatively prompt and straightforward. Although they are subjectivized (see the initial response "I believe so" in excerpt (3), line 3; and the subsequent elaboration "I think I could" in excerpt (4), line 6), subjectivization of this kind is a characteristic feature of courtroom talk (Szczyrbak 2013, 2020) and a recurrent method of exhibiting 'carefulness' or 'circumspection' in this formal investigative setting (see also Edwards & Potter 2017).

By contrast, questions targeting bias, as in the next two excerpts, invite the recipient to assess their potential for favoritism or partiality. For these questions, an affirmative answer (e.g. excerpt (5)) entails an admission of some potentially disqualifying form of bias.

(5) [York tape 3: 17]

1 Judge: .hhh So you- you enter the fray:: (.) with some type of a bias:,
2 Juror: I have to answer honestly and say yes I do.
3 Judge: *Mkay.*

(6) [Holzhauer: 21]

1 Judge: So is there anything about that experience that
2 you had that's going to bias you in some way
3 for or against one of the parties here?
4 Juror: Probably not. But if it's insurance company I will
5 probably have some bias.

In bias-targeted questions, the grammatical and social preferences are cross-cutting (Heritage 2010), with the question's conducive grammar favoring affirmation of something that is socially undesirable. In effect, the juror is being invited to admit to a socially noxious predisposition toward favoritism. As might be expected, responses here cannot easily align with both preferences and are more frequently non-conforming (Raymond 2003) and relatively elaborate. In excerpt (5) the admission of bias ("yes I do") is grammatically aligned but socially dispreferred. It is also substantially delayed and elaborately framed as 'reluctant' through a prefatory clause ("I have to answer honestly") that includes a modal verb of obligation and an explicit claim to sincerity (recurrent in dispreferred responses; Edwards & Fasulo 2006). Conversely, in excerpt (6) the vow of fairness is socially preferred but grammatically disaligned; it is also qualified as probabilistic, and subsequently dialed back by noting circumstances under which they would "probably have some bias".

The simple binary distinction between fairness- and bias-targeted questions glosses over substantial variation within each category, but this rough distinction nonetheless matters for examiners who discriminate between them in a way that FAVORS QUESTIONS TARGETING BIAS OVER QUESTIONS TARGETING FAIRNESS. One general indication of this preference is that the question types are not equally frequent (Table 1),[5] with bias-targeted questions significantly outnumbering fairness-targeted questions by almost a 3:1 ratio.

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Beyond this aggregate tendency, a preference for bias-targeted over fairness-targeted questions is further evident in the emergent construction of individual cases, when questions are revised or subject to self-repair (Schegloff, Jefferson, & Sacks 1977). In each of the next two cases, an apparent fairness-targeted question is aborted prior to completion (see (7), line 1 and (8), line 2) and then replaced with an alternative question targeting bias (see (7), line 3 and (8), line 3).

Table 1. Questions targeting fairness versus bias.

	Fair	Biased	Mixed or unclear	Total
n	27	77	3	107
%	25.2	72.0	2.8	100

$\chi^2 = 24.04, p < .0001^{***}$

(7) [Holzhauer: 32]

1 Judge: → My question for you is, can you promise-
2 → well, let me ask it a different way.
3 → Will you have any difficulty if you hear testimony
4 that you don't agree with, substantively or technically,
5 will you have any difficulty in just deciding the case
6 based on the evidence?

(8) [Holzhauer: 34]

1 Judge: Mr. Rhoades was injured.
2 → Are you going to be able to-
3 → Is what happened to you going to interfere with
4 your ability to hear the evidence in this case?

In the first case, the self-repair is 'over-exposed' (Bolden et al. 2022) through an explicit comment ("let me ask it a different way") that retroactively acknowledges the normative breach-in-progress and projects its rectification. The second case is less explicit, but both cases show the judge actively choosing between alternative question-design formats, launching a positively valenced interrogative frame projecting a question about fairness, but then abandoning this in favor of a bias-targeted alternative.

All of this suggests that judges and attorneys are on the lookout for bias, building their questions in such a way as to probe for its possible existence. This orientation toward what is undesirable stands in stark contrast to the predominantly benign orientation found in ordinary conversation (Maynard 2003; Raymond & Heritage 2021) and some institutional contexts (Pomerantz 2004; Heritage 2010). In medicine for instance (Heritage 2010), clinicians' history-taking questions are routinely geared toward biomedically DESIRABLE responses (e.g. indicating health rather than illness,

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with exceptions for particular patients). The contrasting orientation toward problematicity in voir dire is compatible with the courtroom context in a variety of ways. It fits the immediate sequential context where the juror has just disclosed some potentially biasing circumstance (in phase 2); the subsequent question designedly targets this just-revealed circumstance and probes its consequentiality at trial. Furthermore, targeting bias pushes back against the social desirability pressure to answer 'correctly' with a vow of fairness. To frame the question otherwise (cf. "So you could be fair at trial?"), anticipating ideal conduct just when this has been cast into doubt, could be seen as ignoring or perhaps whitewashing a potential problem. Accordingly, targeting bias displays a semblance of 'due diligence' in working to uncover elusive indications of favoritism or prejudice.

Probing for bias is the default orientation of judges and attorneys, but this orientation is also context-sensitive and may be modified depending on how the juror responds. In expanded self-assessment sequences, if the juror is initially optimistic regarding their capacity for fairness, the follow-up question may register this by targeting fairness instead. For instance, here the attorney first asks if prior difficulties with public transit might have engendered "some animosity or bias" against transit employees (lines 1–4). But when the juror rejects that view and claims "no specific feelings" toward any transit employees (lines 5–9), the next question shifts the target from bias to fairness (lines 10–11); and the question's "so" preface (line 10) frames it as building upon the juror's prior optimistic response (Bolden 2006).

(9) [Holzhauer 29]

1	Atty:	Is there anything that you kind of took away from
2		that that might make you feel some animosity
3		or bias against those who work for or run a similar
4		transportation system like the Golden Gate Ferries?
5	Juror:	No, I don't think so. I mean I understand their
6		job is very difficult and they work really hard.
7		So no specific feelings towards everyone who works
8		at BART or works for like ferries or any public
9		transportation system.
10	Atty:	So you could keep- you could listen to all the facts
11		and keep an open mind as you hear the evidence?
12	Juror:	That's correct, yes.

The trajectory evident in this excerpt reflects a recurrent pattern in expanded self-assessment sequences. Table 2 disaggregates the distribution of fairness/bias questions by their position within expanded episodes of questioning. While bias-targeted questions predominate across the board, this tendency is strongest in initial questions and declines later in subsequent questions to the same juror. In the sequence-initiating position, bias-targeted questions comprise more than 80% of the cases, and some of the less-frequent fairness-targeted questions in that position (just 17% of cases) have other compositional features suggesting skepticism about the

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capacity for fairness. In later questions, after jurors have expressed optimism about their own capacity for fairness, this asymmetry diminishes (the bias-to-fairness ratio drops from ≈5:1 to < 2:1 as the proportion of fairness questions more than doubles) to an extent that is statistically significant. All of this is consistent with court officials being on the lookout for bias by default, but reducing that orientation in subsequent questions contingent on the juror's response.

Table 2. Fairness/bias questions by sequential position.

		FAIR	BIASED	MIXED OR UNCLEAR	TOTAL
Initial questions	n	10	49	1	60
	%	16.7	81.7	1.7	100
Later questions	n	17	28	2	47
	%	36.2	59.6	4.3	100

$\chi^2 = 5.75, p < .05$*

Mitigating bias questions: Referencing bias indirectly

Bias-targeted questions, while predominant, have a number of convergent design features geared to mitigating or detoxifying the inquiry. These design patterns reflect court officials' orientation to the socially stigmatized nature of bias, and they are accountable as efforts to manage the inhibitions that such stigma may entail.

Consider, first, how the concept of bias is referenced. It may be formulated directly as *bias* (e.g. excerpts (5), (6)) or with synonymous terms such as *partiality, sympathy/animosity toward one side,* etc. (e.g. excerpt (1), line 1; excerpt (9), line 2).

Alternatively, bias may be referenced indirectly,[6] with two such indirect forms recurrent in the data and relevant to mitigation. In the *litotes* version, bias is formulated indirectly by problematizing its opposite; that is, characterizing FAIRNESS as elusive, hampered, or only partially achieved. The disclosed circumstance may be said to "affect your ability to be fair" (much like excerpts (10), (11)), or to "make you less than fair and impartial" (excerpt (12)).

(10) [Solano tape 1: 84]

Judge: Alright would that affect your ability to be fair in this case?

(11) [Lopez tape 4: 47]

Judge: .hhhh Uh:m (1.3) Would that incident in any way
affect your ability to sit as a fair and impartial
juror in this case if you were selected,
Juror: pt I don't think so.

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(12) [Dona 54]

Judge: Anything in your background at all that you think would make you less than fair and impartial in a case such as this?
Juror: I don't think so, no.

Litotes formulations, by virtue of their roundabout or circuitous construction (e.g. *difficulty being fair* instead of *biased*), are a widely used resource for cautiously broaching sensitive matters (Bergmann 1992; Lutfey & Maynard 1998).

An alternative form of indirectness, arguably even less direct than the litotes version, avoids the language of fairness/bias altogether in favor of a more allusive formulation. The question may refer in a general way to difficulty "[serving] as a juror" (excerpt (13)) or difficulty "decid[ing] this case" in (14).

(13) [Lopez tape 4: 48a]

Judge: My question t'you is would- would .hhh his: (.) former: occupation in any way affect your ability to serve as a juror_
Juror: No.

(14) [Solano retrial tape 2: 86]

Judge: Would that affect your ability to decide this case.=
y[un- yun-
Juror: [No I don't think so your honor.

Such formulations allude to bias while steering clear of the terminological framework of FAIRNESS/BIAS altogether.

Here again, these distinctions are not merely academic. Judges and attorneys discriminate between alternative formulations in a variety of ways that favor indirect over direct references to bias. This is evident, first, in the aggregate frequency of these alternatives (Table 3), with questioners choosing indirect bias reference forms over three times more frequently than direct forms.

Table 3. Direct vs. indirect bias questions.

	BIASED: DIRECT	BIASED: INDIRECT	TOTAL
n	17	60	77
%	22.1	77.9	100

$\chi^2 = 24.01, p < .0001$***

This evident preference for INDIRECT references to bias is, much like the preference for bias-targeted questions more generally, a default orientation that is context-sensitive and subject to modification contingent on the juror's response.

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Just as optimistic responses can prompt fairness-targeted follow-up questions (as seen in excerpt (9) above), uncertain or explicitly pessimistic responses can prompt a shift to questions referencing bias in a more direct and straightforward way (lines 13-15).

(15) [Lopez tape 4: 75]

((Prior to this, juror disclosed serving as a trial witness for a similar crime.))

1	Judge:		Okay. .hh ^Anything about that experience either:
2			(.) (eh)as a witness: or:eh .hh umm (.) uh=your
3			appearance before the grand jury: or witness at trial
4			that would any way affect your ability (f) to be
5			a juror in this case,
6	Juror:		Well possibly:. I mean .hh becaus:e (.) the attorneys asked
7			me if I was being prejudiced against the black defendant.
8			(1.4)
9	Judge:		And,
10	Juror:		.hh And I wasn't but(hh) (0.5) y'know- (.) it was
11			somewhat intimidating.
12			(2.5)
13	Judge:	→	.h Okay: umm (1.0) pt You believe that you might be
14		→	prejudiced in this case because of your prior: uhm:
15			(0.6) experience?
16	Juror:		It's possible.
17	Judge:		Okay. (.) .hh >Okay Ms. Davis I'm going to excuse
18			ya='n I 'preciate your candor.

Here the initial question targets bias while referring to it allusively ("would... affect your ability to be a juror in this case", lines 4–5). But after the juror's pessimistically inflected response ("well possibly", line 6), the follow-up query formulates bias in a direct and even blunt manner ("You believe you might be prejudiced in this case", lines 13–14).

The trajectories evident in excerpts (9) and (15) above are recurrent in expanded sequences (Table 4). The tendency to target bias indirectly is strongest in sequence-initiating questions where indirect reference forms outnumber direct forms by more than a 5:1 ratio. In subsequent questions to the same juror, indirect forms decline in frequency while both direct bias forms and fairness forms increase in frequency. Questions thus become more polarized over the course of expanded sequences, shifting toward the direct targeting of either bias or fairness contingent on the juror's response to the initial question.[7] It is noteworthy, however, that this shift toward polarization is modest in the aggregate, with INDIRECT bias questions remaining more frequent than direct bias forms (by a 2:1 ratio) even in follow-up questions, hence after the juror has expressed optimism or pessimism about their capacity to serve.

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Table 4. Fairness/bias questions by sequential position.

		Fair	Biased: direct	Biased: indirect	Mixed or unclear	Total
Initial questions	n	10	8	41	1	60
	%	16.7	13.3	68.3	41.7	100
Later questions	n	17	9	19	2	47
	%	36.2	19.1	40.4	4.3	100

$\chi^2 = 8.29, p < .05$*

Mitigating bias questions: Diffusing responsibility for bias

A second locus of variation among bias-targeted questions concerns how the juror's responsibility for bias may be underscored or diffused through the linguistic encoding of agency. Lexico-grammatical practices for representing agency are a universal feature of human languages (Duranti 2004). While such practices do not provide a direct 'window into the mind' of participants (Edwards & Potter 1993; Ochs, Gonzales, & Jacoby 1996), they are public discursive acts that evidently matter for observers' perceptions and inferences (Fausey, Long, Inamori, Boroditsky 2010; McGlone, Bell, Zaitchik, & McGlynn 2013; Bell, McGlone, & Dragojevic 2014; Chen, McGlone, & Bell 2015) and for language users themselves (Budwig 1990; Duranti 1990; Bohner 2010; Conley 2013, 2015). In the voir dire context, the relevant distinction is between questions that feature (i) the JUROR as opposed to (ii) the CIRCUMSTANCE as the subject of the sentence or clause and, by implication, the main driving force in the process projected as fair or biased.

The juror is spotlighted as the sentential subject and primary agent in both of the following questions, the first targeting fairness ("You could be fair and impartial...") and the second targeting bias ("Are you going to give their evidence less weight...").

(16) [York tape 1: 8: targeting fairness]

Judge: You could be fair and impartial: (0.4) ((juror nods briefly during silence)) to both sides is that correct,
Juror: I believe so.
Judge: ^Okay.

(17) [Holzhauer 34: targeting bias]

Judge: Are you going to give their evidence less weight or give Mr. Rhoades or Ms. Holzhauer's evidence more weight because of your feeling about the District?

By contrast, in the next examples the circumstantial factor is spotlighted as the sentential subject and primary agent, while the juror is cast as the object acted upon by circumstance. This construction is used in questions targeting bias directly (excerpt (18)) and through more indirect litotes in (19) and allusive formulations in (20).

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(18) [Holzhauer 21: targeting bias]

Judge: So is there anything about that experience that
you had that's going to bias you in some way
for or against one of the parties here?

(19) [Solano tape 1: 84: targeting bias indirectly (litotes)]

Judge: Alright would that affect your ability to be fair
in this case?

(20) [Lopez tape 4: 48a: targeting bias allusively]

Judge: My question t'you is would- would .hhh his: (.) former:
occupation in any way affect your ability to serve
as a juror_

In each case, the circumstance is in the subject position and is thus treated as the causal factor that will "bias you" in (18) or "affect your ability" to be fair or to serve (see (19), (20)). Responsibility for bias is thereby diffused in a way that subordinates the juror's role relative to the determinative circumstances.

Not surprisingly, almost all fairness-targeted questions have the juror as subject and primary agent (e.g. excerpt (16), also (3) and (4)). Responsibility for rendering a fair judgment is routinely attributed to the juror. By contrast, bias-targeted questions exhibit more variability in the construction of agency, with an evident preference for spotlighting THE CIRCUMSTANCE as the driving factor behind bias. As with other question design preferences documented above, this preference for the circumstance as subject is evident in both single cases and aggregate patterns.

At the single-case level are instances involving self-repair. Here the question is launched with the juror as subject/agent ("Are you...", line 1), but that construction is aborted before completion and then replaced (line 2) with an alternative version spotlighting the circumstance ("anything about that experience") as impacting the juror's "ability to be fair".

(21) [Holzhauer 23]

1 Judge: → Okay. Are you-
2 → Is there anything about that experience that you
3 think would affect your ability to be fair to
4 Mr. Rhoades or Ms. Holzhauer or the District?

Here the judge can be seen switching between alternate constructions in a manner that ultimately works to deflect responsibility for bias away from the juror (cf. excerpt (10) above).

There is also aggregate distributional evidence for the preference evident in this case (see Table 5). Among bias-targeted questions, constructions spotlighting

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the circumstance as subject/agent are twice as frequent as those spotlighting the juror. So unlike fairness-targeted questions that overwhelmingly credit the juror for impartiality, bias-targeted questions tend to deflect responsibility away from the juror and toward the circumstance.

Table 5. Bias-targeted questions with juror vs. circumstance as subject.

	Juror as subject	Circumstance as subject	Unclear	N/A	Total
n	21	50	2	4	77
%	27.3	64.9	2.6	5.2	100

$\chi^2 = 11.85, p < .001$***

This is, moreover, a default orientation in questioning that is transformable contingent on the juror's response. In the next exchange (seen earlier in excerpt (15) above), the judge's initial bias-targeted question spotlights the circumstance as subject/agent ("Anything about that experience...", lines 1–5). But after the juror expresses pessimism about their capacity for fairness (lines 6–11), the follow-up question invites re-confirmation of what is treated as an admission while shifting the spotlight from circumstance to juror ("You believe that you might be prejudiced...", lines 13–15).

(22) [Lopez tape 4: 75]

((Prior to this, juror disclosed serving as a trial witness for a similar crime.))

1	Judge:	Okay. .hh ^Anything about that experience either:
2		(.) (eh)as a witness: or:eh .hh umm (.) uh=your
3		appearance before the grand jury: or witness at trial
4		that would any way affect your ability (f) to be
5	Juror:	a juror in this case,
6		Well possibly:. I mean .hh becaus:e (.) the attorneys asked
7		me if I was being prejudiced against the black defendant.
8		(1.4)
9	Judge:	And,
10	Juror:	.hh And I wasn't but(hh) (0.5) y'know- (.) it was
11		somewhat intimidating.
12		(2.5)
13	Judge:	.h Okay: umm (1.0) pt You believe that you might be
14		prejudiced in this case because of your prior: uhm:
15		(0.6) experience?
16	Juror:	It's possible.
17	Judge:	Okay. (.) .hh >Okay Ms. Davis I'm going to excuse
18		ya='n I 'preciate your candor.

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The follow-up question retains a reference to circumstance, but this is relegated to a subordinate clause ("because of your prior experience"); the juror is now the sentential subject.

The pattern evident in the preceding excerpt—where the subject/agent spotlight shifts from the circumstance to the juror over the course of an expanded sequence—turns out to be a recurrent feature of expanded sequences targeting bias (see Table 6). Initial questions overwhelmingly spotlight the circumstance over the juror as subject/agent by almost a 7:1 ratio. But later questions tend to spotlight the juror more than the circumstance, albeit to a lesser degree (< 2:1 ratio).

Table 6. Bias-targeted questions with juror vs. circumstance as subject, by sequential position.

		Juror as subject	Circumstance as subject	Unclear	N/A	Total
Initial questions	n	6	41	1	1	49
	%	12.2	83.7	2.0	2.0	100
Later questions	n	15	9	1	3	32
	%	53.6	32.1	3.6	10.7	100

$\chi^2 = 18.87, p < .0001$***

Mitigating bias questions: Projecting bias as minimal or unlikely

A third locus of variation concerns whether the question 'anticipates' a response from the juror proclaiming either fairness or bias. As noted earlier, fairness/bias questions are grammatically designed for *yes,* through straight interrogatives or positive declaratives, in an overwhelming proportion of cases (≈95%). Notwithstanding the near-universality of *yes*-preferring question formats, there is a residue of variation in the inclusion (or not) of certain lexical items—*some/something* or *any/anything*—that have been shown to modulate this preference. In field experiments varying only this one lexeme in polar questions (Heritage, Robinson, Elliott, Beckett, & Wilkes 2007), *some* and *any* have been shown to be positively and negatively polarized, respectively, as evidenced by their impact on the polarity of responses. In subsequent naturalistic research focusing on how speakers deploy these terms in context, Heritage & Raymond (2021) conclude that they encode a stance anticipating THE LIKELIHOOD OF AFFIRMATION, with *some* casting affirmation as likely and *any* as unlikely. Other researchers (Couper-Kuhlen et al. 2023) offer a somewhat different account of *any*, arguing that its import, while context-dependent, can in some contexts work to LOWER THE BAR FOR AFFIRMATION.

These analyses of *any,* although differing in specifics and suggesting different impacts on responses, are not incompatible at the level of stance and implicature. A practice that 'lowers the bar for affirmation' may also carry the implication that affirmation is 'unlikely', on the basis that the question's target phenomenon is presumptively scarce so as to require 'lowering the bar' to capture it. Furthermore, both interpretations have an a priori plausibility in the voir dire context, being broadly congruent with the dual institutional norms sketched at the beginning of this article. 'Lowering the bar' for reportable bias dovetails with the norm of SHOWING DUE DILIGENCE, since it can be understood as working to encourage bias disclosures even

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of the smallest or most negligible sort. Conversely, casting bias as 'unlikely' dovetails with the norm of AVOIDING OFFENSE to prospective jurors.

Actual patterns of use in voir dire reinforces the view that *any/anything* is normatively evocative in this context and a mitigating resource. Consider, first, that the terms are used primarily within bias-targeted questions, with *any/anything* being far more frequent than *some/something* and appearing most often in sequence-initiating questions. For instance, here an initial bias-targeted exchange is launched with *any*.

(23) [Lopez tape 4: 48g]

Judge: Would your experience with law enforcement cause you **any** misgivings about sitting on a jury?

And in the following expanded sequence, *any/anything* is used twice but only in the first bias-targeted question, while *some* is used the follow-up question (arrowed). Following the juror's disclosure of a noteworthy personal relationship (her husband is a deputy sheriff), the judge's initial question (lines 1–4) targets bias allusively and is twice modulated with *any/anything* suggesting that bias is apt to be minimal or unlikely.

(24) [York tape 1: 7]

((Juror just disclosed that her husband is a deputy sheriff.))

1	Judge:	→	...is'ere **anything** .hhh >(th't) you may've lear:ned about your
2			husband's experience or: (.) job uh (1.9) that may: (.) impact
3		→	in **any** fashion your ability to sit as a juror in ay criminal
4			case such as this:.
5			(0.4)
6	Juror:		Uh- I honestly: (0.4) don't know. hh.hh I mean we- (0.2)
7			talk about 'is jo:b but (.) I never (w-) .h thought of it (.)
8			he just tells me .hhh what goes o:n:, h ((swallows)) but I
9			never thought of having to look at it impar:tially.
10	Judge:		O[kay,
11	Juror:		[So I honestly don't know. .hh
12	Judge:	→	D'you have uh **some** uh (0.6) reservation then about uh your
13			ability to sit as a juror in a criminal case,

By contrast, after the juror admits to uncertainty about her capacity for fairness (lines 6–9, 11), the judge's follow-up question (lines 12–13) takes a more direct form and switches from "any" to "some" ("D'you have some reservation then about..."). This inclusion of "then" immediately after the shift marks it as an inference (Haselow 2011) from the juror's prior admission. In short, the judge shifts from an indirect question that is also relatively 'optimistic' about the juror's capacity to serve, to

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a more direct and 'pessimistic' form after the juror shows reluctance to promise fairness.

Distributional evidence demonstrates that the preceding cases are characteristic of bias-targeted questions generally (Table 7). The inclusion of either *some* or *any* is treated as optional, with more than a third of the questions having neither term. When they are used, *any* is far more frequent than *some* by almost a 5:1 ratio, with fully half of all bias-targeted questions mitigated in this way. By treating the existence of bias as minimal or unlikely, such questions are inflected with a modicum of 'optimism' about the recipient's capacity to serve.

Table 7. *Some* vs. *any* in bias-targeted questions.

	NONE	SOME	ANY	MIXED	TOTAL
n	29	8	39	1	77
%	37.7	10.4	50.6	1.3	100

$\chi^2 = 19.79, p < .0001$***

Disaggregating by sequential position (Table 8), *any* is used disproportionately in initial bias-targeted questions and is much less frequent in later questions. *Some* exhibits the inverse distribution in being clustered in later questions, although it is not very common even in that position. This overall pattern is indicative of a default impetus to probe for bias while casting it as minimal or unlikely, suggesting initial 'optimism' about the juror's capacity to serve that diminishes and may yield to relative 'pessimism' following jurors' subsequent admissions.

Table 8. *Some* vs. *any* in bias-targeted questions, by sequential position.

		NONE	SOME	ANY	MIXED	TOTAL
Initial questions	n	15	2	31	1	49
	%	30.6	4.1	63.3	2.0	100
Later questions	n	14	6	8	0	28
	%	50.0	21.4	28.6	0	100

$\chi^2 = 10.8236, p < .01$**

Earlier it was proposed (based on Heritage & Raymond 2021; Couper-Kuhlen et al. 2023) that the minimizing stance encoded by *any* ('lowering the bar' for reportable bias while anticipating that it is scant or unlikely) is intertwined with the institutional norms of DUE DILIGENCE and OFFENSE AVOIDANCE. Carrying this argument one step further, this normative functionality may be underscored and accentuated when the lexeme is used MULTIPLE TIMES in elaborated questions inviting a MULTIDIMENSIONAL AND FINE-GRAINED SEARCH FOR BIAS.

The two excerpts examined previously illustrate the contrast between relatively broad (excerpt (23)) versus fine-grained (excerpt (24)) bias queries. In excerpt (23), *any* is used once in a single referring expression pointing toward undifferentiated reservations about serving ("any misgivings about sitting on a jury"). By contrast in

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excerpt (24) *any/anything* is used twice within referring expressions that are more narrow and distinctly targeted. The first use (line 1) points toward aspects of her spousal relationship that could be problematic ("is there anything that you may have learned about your husband's experience or job"); the second use (lines 3–4) points toward various ways this might affect her in court ("that may impact in any fashion your ability to sit as a juror..."). Unlike the single broad use in excerpt (23), these distinctly targeted uses invite a more meticulous search for possible sources and manifestations of bias.

A similar compound and fine-grained query appears in the next excerpt. Here again there are two instances of *any/anything*, the first referencing the juror's past experience (first arrow), and the second various ways this might affect her in court (last arrow). But the judge here goes one step further, spelling out three distinct aspects of her experience that could be problematic (lines 2–3: witnessing a similar crime, testifying before a grand jury, and testifying at trial).

(25) [Lopez tape 4: 75]

((Prior to this, juror disclosed being a trial witness for a similar crime.))

1	Judge:	→	Okay. .hh ^**Anything** about that experience either: (.)
2			(eh)as a witness: or:eh .hh umm (.) uh=your appearance
3			appearance before the grand jury: or witness at trial
4		→	that would **any** way affect your ability (f) to be
5			a juror in this case,
6	Juror:		Well possibly:. I mean .hh becaus:e (.) the attorneys asked
7			me if I was being prejudiced against the black defendant.

Accordingly, this juror is being invited to inspect several different elements of her experience, as well as consider the varying ways they could impair her judgement. This calls for a fine-grained and intensive search, which may implicate the minimal or non-obvious nature of bias as well as a lowered bar for what should be deemed worthy of reporting.

Discussion

The preceding analysis documents various orientations and preferences in voir dire question design. Court officials probe for admissions of bias rather than vows of fairness by default, but these queries tend to be mitigated or detoxified in a variety of ways. They are EUPHEMISTIC, referring to bias indirectly or allusively. They DIFFUSE RESPONSIBILITY, spotlighting the circumstance rather than the juror as the driving force behind bias. And they are OPTIMISTICALLY INFLECTED, projecting bias as minimal or unlikely.

In expanded sequences, when the initial response generates further questions to the same juror, systematic patterns are evident in all of these areas. The orientations and preferences are all strongest in initial questions, becoming more attenuated and at times reversed in later questions contingent on the prospective

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juror's intervening response. Judges and attorneys evidently adjust the design of their questions in relation to the emerging interactional context and the juror's locally displayed stance.

These patterns, present in both the civil and criminal trials in our database, are consistent with two broad institutional norms to which judges and attorneys are evidently attentive. A norm of DUE DILIGENCE is manifest in the strong tendency to probe for bias rather than fairness as the explicit target of questioning. This investigative orientation also informs the design of those bias-targeted questions inviting a fine-grained and intensive search for potential sources and forms of bias. In these ways, a posture of diligence in the task of seeking to uncover bias and working to eliminate it from the jury pool predominates over mere expediency. Correspondingly, if judges are at times concerned that some in the pool may be exploiting bias to escape the burden of jury service, they do not often act on that suspicion; suggestions and claims of bias routinely eventuate in the candidate juror's dismissal.

In addition to due diligence, a contrasting norm of AVOIDING OFFENSE is manifest in the tendency to mitigate bias-targeted questions in ways that 'detoxify' the prospective bias and deflect responsibility away from the juror. These dual norms entail contrasting pressures on court officials, but they are not fundamentally incompatible and are routinely reconciled at the level of question design. Moreover, they are enacted in a context-sensitive manner that takes account of emerging information from the juror about their personal situation and its apparent impact. Accordingly, question design in voir dire reflects a balancing of contrasting institutional norms in relation to shifting relevancies posed by the evolving interactional context.

Infusing this dynamic balancing is the socially problematic status of BEING BIASED. The naturalistic approach taken in this study has uncovered a variety of question design practices geared to managing the sensitivities of asking about bias. These practices, while specialized for voir dire, may be applicable to research interviews, clinical encounters, and other varieties of investigative questioning that address undesirable or socially stigmatized matters (e.g. substance abuse, sexual problems, criminal behavior, xenophobia, and so on; see Bergmann 1992; Peräkylä 1995; Lutfey & Maynard 1998; Weathersbee & Maynard 2009; Heritage 2010; Denvir 2012; Halkowski 2012). With each such question, the investigator may need to decide: (i) whether to refer to the target phenomenon straightforwardly or in an indirect or euphemistic manner; (ii) whether to spotlight the recipient or the circumstance as the subject-agent; and (iii) whether to adopt a stance of relative optimism or pessimism regarding the undesirable phenomenon's likely presence. These appear to be fundamental dimensions of choice in questions about attitudes and behaviors, but their impact on responses remains little-understood and is by no means obvious. Some studies find markedly cautious forms of questioning to have inconsistent (Näher & Krumpal 2012) or even paradoxical effects (Bergmann 1992; Heritage et al. 2007) on the degree to which recipients are forthcoming. The present study suggests avenues to pursue in future research on voir dire, and analogous research on social surveys and research interviews seeking to identify best practices for inquiry into sensitive and stigmatized subjects.

https://doi.org/10.1017/S0047404525101565 Published online by Cambridge University Press

Acknowledgment. The authors are listed alphabetically and contributed equally to the project. Earlier versions of this article were presented at UCLA's Center for Language, Interaction, and Culture (CLIC) (November 2020), Rutgers University's Conversation Analysis Lab (May 2021), and the Law and Society Association's annual meeting (May 2021). The authors are grateful to the anonymous reviewers, and to David Gibson and John Heritage for comments and feedback.

Notes

1. Voir dire is also a feature of Canadian and Australian systems utilizing lay jurors.
2. Survey interviewers may depart from the script to deal with exigencies (Lavin & Maynard 2001; Maynard & Schaeffer 2006), but the departures documented (e.g. acknowledging answers or addressing their lack of fit to prespecified codes) are largely extraneous to questions themselves, suggesting voir dire does provide distinctively fertile ground for naturally occurring variations in question design.
3. See www.uscourts.gov/court-records/access-court-proceedings.
4. A code-recode reliability test indicates > 90% agreement for the system as a whole.
5. In all tables, percentages are rounded. *Chi*-square tests were run on the main variables of interest, excluding the MIXED/UNCLEAR category to set a higher bar for significance.
6. The ensuing discussion of indirect reference excludes anaphoric pronominals (e.g. "that" in excerpt (10), "that incident" in (11)), which are locally subsequent reference forms (Schegloff 1996) driven by sequential factors and thus not necessarily by the sensitivity of the subject matter.
7. The trend toward directness in subsequent questions parallels other trends in post-expansions, notably toward 'flatter' epistemic gradients claiming greater certainty about the projected answer in requests for confirmation (Stivers 2010).

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Cite this article: Clayman, Steven E. and Matthew P. Fox (2025). Asking about bias: Managing the sensitivities of voir dire questioning. *Language in Society* 1–25. https://doi.org/10.1017/S0047404525101565