



The Seventh Circuit Bar Association
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SEVENTH CIRCUIT BAR ASSOCIATION
American Jury Project
Commission

Project Manual Phase Two (Four Concepts)

February 1, 2007 - January 31, 2008

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PHASE TWO OF THE SEVENTH CIRCUIT BAR ASSOCIATION AMERICAN JURY PROJECT

Introduction

Thank you in advance for your willingness to consider participating in Phase Two of the Seventh Circuit American Jury Project (the “Project”). As we explained with regard to Phase One, the Project is an outgrowth of the American Bar Association American Jury Project. After a national symposium in October 2004, the American Jury Project produced a single set of modern jury principles that the ABA proposed as a model for courts around the country. The revised principles were approved by the ABA House of Delegates during the midyear meeting in February 2005. The principles and commentary are available on-line at: <http://www.abanet.org/juryprojectstandards/principles.pdf>.

With the goal of putting these ideas into action, the Seventh Circuit Bar Association has taken a leading role nationwide in implementing and testing the ABA principles. The Seventh Circuit Jury Commission, which was formed in Summer 2005, for seven months from October 2005 through April 2006 tested seven concepts derived from the ABA American Jury Project Principles and Standards:

1. Twelve-Person Juries;
2. Jury Selection Questionnaires;
3. Preliminary Substantive Jury Instructions;
4. Trial Time Limits;
5. Questions by the Jury During Trial;
6. Interim Statements to the Jury by Counsel; and,
7. Enhancing Jury Deliberations.

In Phase Two, we intend to focus specifically for one year, February 2007 through January 2008, on four of these concepts:

1. Questions by the Jury During Trial;
2. Interim Statements to the Jury by Counsel;
3. Twelve-Person Juries; and,
4. Preliminary Substantive Jury Instructions.

This concentration of the Seventh Circuit Jury Commission's focus will hopefully produce a better understanding among members of the bench and the bar as to how to best implement these concepts to enhance jurors' understanding of the factual issues they are asked to resolve. In light of comments received in response to Phase One of the Project, the Commission has revised and updated the Project Manual to better capture and address the concepts emphasized in Phase Two. For example, for Questions by the Jury During Trial, a sub-committee that included Judge David Hamilton produced revised introductory jury instructions and procedures that were reviewed and approved by Judges Kennelly, Lefkow, and Reagan.

To ease the administrative burden on judges, Phase Two will rely on judicial law clerks as facilitators to assist in collecting Project Questionnaires and completing Project Information Sheets. This year-long Phase Two will provide more data over an expanded period of time with a more concentrated study of four particular concepts. We hope and believe that this expanded phase of the project will allow us to present a robust and meaningful analysis of these issues at the May 2008 Annual Meeting and Judicial Conference for the Seventh Circuit.

Phase One of the Project attracted substantial interest from the ABA leadership and from judges and bar leaders across the United States. The success of Phase Two, like that of Phase One, depends on the cooperation and participation of our Circuit's trial judges. One great strength of the Seventh Circuit is the close relationship between bench and bar. As with Phase One of the Project, Phase Two provides an opportunity for judges and trial lawyers to work together with the common goal of improving the civil jury trial experience. All of us and our system of justice will benefit through the process.

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Circuit Judge Diane Sykes

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The Commission expresses its appreciation for the work of the Law Clerks who are acting as Facilitators with the District Court Judges and Magistrate Judges to achieve the goals of this important project.

QUESTIONS BY THE JURY DURING TRIAL

1. ABA American Jury Project Principles

PRINCIPLE 13 – THE COURT AND PARTIES SHOULD VIGOROUSLY PROMOTE JUROR UNDERSTANDING OF THE FACTS AND THE LAW

- C. In civil cases, jurors should, ordinarily, be permitted to submit written questions for witnesses. In deciding whether to permit jurors to submit written questions in criminal cases, the court should take into consideration the historic reasons why courts in a number of jurisdictions have discouraged juror questions and the experience in those jurisdictions that have allowed it.
1. Jurors should be instructed at the beginning of the trial concerning their ability to submit written questions for witnesses.
 2. Upon receipt of a written question, the court should make it part of the court record and disclose it to the parties outside the hearing of the jury. The parties should be given the opportunity, outside the hearing of the jury, to interpose objections and suggest modifications to the question.
 3. After ruling that a question is appropriate, the court may pose the question to the witness, or permit a party to do so,¹ at that time or later; in so deciding, the court should consider whether the parties prefer to ask, or to have the court ask, the question. The court should modify the question to eliminate any objectionable material.
 4. After the question is answered, the parties should be given an opportunity to ask follow-up questions.

2. The Rationale for Testing the Concept

The Commission chose this concept for the pilot test and follow-up testing because the Commission believes that allowing jurors to submit written questions after attorney questioning can increase the likelihood that the jurors will concentrate on the evidence being presented. Allowing juror questions is especially appropriate in situations where witness testimony is complex or confusing. It is predicated on the notion that, with appropriate safeguards, juror questioning can materially advance the pursuit of truth. Judges and attorneys using this technique have reported that most questions are serious, concise, and relevant to the trial proceedings. Moreover, the fact that the occasional irrelevant or prejudicial questions were disallowed did not appear to affect jurors' judgment in any significant manner.

¹ Note: Although Principle 13, C. 3 permits counsel to ask the juror's question, the Subcommittee on Jury Questions for the Seventh Circuit Commission believes that the better practice is for the court to ask the question.

3. Authority Supporting the Concept's Use

*(plus research on court experience with juror questions)

- *Ashba v. State*, 816 N.E.2d 862, 866 (Ind. Ct. App. 2004). (Construing IND. R. EVID. 614(d) permitting juror questions.)
- *United States v. Sutton*, 970 F.2d 1001, 1005 n.3 (1st Cir. 1992). (“Juror-inspired questions may serve to advance the truth by alleviating uncertainties in the jurors’ minds, clearing up confusion, or alerting the attorneys to points that bear further elaboration. Further, it is at least arguable that a question-asking juror will be a more attentive juror.”)
- *United States v. Bush*, 47 F.3d 511, 514-15 (2d Cir. 1995). (Questions from jurors are a “matter within the judge’s discretion, like witness-questioning by the judge himself.” Direct questioning by jurors of witnesses “strongly discourage[d].”)
- *State v. Doleszny*, 844 A.2d 773 (Vt. 2004). (“[T]he overwhelming endorsement in other jurisdictions of allowing jurors to question witnesses through the judge, and the lack of persuasiveness of the criticisms of the practice, lead us to hold that trial judges in Vermont have authority to allow jurors to question witnesses, through the judge, in criminal cases.”)
- *Carter v. State*, 234 N.E.2d 650 (Ind. 1968). (Holding that a preliminary jury instruction that jurors were forbidden to ask questions of witnesses was reversible error.)
- Warren D. Wolfson, *An Experiment in Juror Interrogation of Witnesses*, 1 CBA REPORT 12 (Fed. 1987). (A trial judge’s assessment of permitting jurors to ask questions of witnesses.)
- *Larry Heuer & Steven Penrod, *Increasing Juror Participation in Trials Through Note Taking and Question Asking*, 79 JUDICATURE (March-April 1996).
- *Nicole L. Mott, *The Current Debate on Juror Questions: “To Ask or Not to Ask, That is the Question,”* 78 CHI.-KENT L. REV. 1099 (2003).
- *Shari Seidman Diamond, Mary R. Rose, & Beth Murphy, *Jurors’ Unanswered Questions* 41 COURT REVIEW 20 (2004).
- *Shari Seidman Diamond, Mary R. Rose, Beth Murphy, & Sven Smith, *Juror Questions During Trial: A Window on Juror Thinking*, VANDERBILT LAW REV. (in press – 2006).

4. Suggested Procedures for the Concept's Use

- At the beginning of the trial, the judge tells the jury that, after attorney questioning of a witness is over, jurors may submit written questions, which the judge may or may not address to the witness. A sample jury instruction on this issue is attached.
- Jurors are not required to submit questions. If they choose to, however, jurors must signify that they have a question, but they do not have to sign the question or otherwise identify themselves.
- When attorney examination of a witness is over, the judge asks the jurors whether there are any questions. If so, written questions are handed to the judge, who then consults with the attorneys outside the presence of the jury, usually at a sidebar, on whether the question can be asked. The judge reads each question for the record and permits the attorneys to object to the form or content of any question.
- The judge rules on any objections and makes any wording changes that he or she deems appropriate.
- Back in the presence of the jury, the judge reads the permitted questions to the witness, and the attorneys may further examine the witness.
- If the jury has submitted questions that cannot be answered, the judge may remind the jury that evidentiary rules prohibit asking certain questions, and they should attach no significance to those questions not asked.

5. Suggested Jury Instructions

Attached are a proposed preliminary jury instruction and a proposed final jury instruction.

The judge need not give any additional jury instructions to use this concept, other than providing the standard instruction each judge is requested to give to the jurors after the jury returns the verdict or is discharged without returning a verdict regarding completing the Project's questionnaires.

6. Acknowledgements

The Commission wishes to acknowledge and thank the following persons who served as part of the subcommittees addressing the concept of Allowing Juror Questions During Trial during the Initial and Follow-up Pilot Project:

Initial Pilot Project

Mike Pope
McDermott, Will & Emery

Judge Joan Gottschall

Follow-up Pilot Project

Fredrick E. Vars
Miller Shakman & Beem

Judge David Hamilton

Shari Seidman Diamond
Northwestern University School of Law
American Bar Foundation

PRELIMINARY INSTRUCTION

In this trial, we are using a procedure that you may not have seen before. As members of the jury, you will be permitted to submit questions for a witness after the lawyers have finished questioning the witness. Here is how the procedure works: After each witness has testified and the lawyers have asked all of their questions, I will turn to the jury to see if anyone has any additional questions. If you have a question, you should write it down and give it to the court staff.

You may submit a question for a witness to clarify or help you understand the evidence. Our experience with juror questions indicates that a juror will rarely have more than a few questions for one witness, and there may be no questions for some witnesses.

If you submit a question, the court staff will provide it to me and I will share your questions with the lawyers in the case. If your question is permitted under the rules of evidence, I will read your question to the witness so that the witness may answer it. In some instances, I may modify the form or phrasing of a question so that it is proper under the rules of evidence. On other occasions, I may not allow the witness to answer a question, either because the question cannot be asked under the law or because another witness is in a better position to answer the question. Of course, if I cannot allow the witness to answer a question, you should not draw any conclusions from that fact or speculate on what the answer might be.

Here are several important things to keep in mind about your questions for the witnesses:

First, all questions must be submitted in writing. Please do not ask questions orally of any witness.

Second, witnesses may not be recalled to the witness stand for additional juror questions, so if you have a question for a particular witness, you should submit it at the end of that witness's testimony.

Finally, as jurors you should remain neutral and open throughout the trial. As a result, you should always phrase any questions in a neutral way that does not express an opinion about the case or a witness. Remember that at the end of the trial, you will be deciding the case. For that reason, you must keep an open mind until you have heard all of the evidence and the closing arguments of counsel, and I have given you final instructions on the law.

FINAL INSTRUCTION

During the trial, written questions by some members of the jury have been submitted to be asked of certain witnesses. Testimony answering a question submitted by a juror should be considered in the same manner as any other evidence in the case. If you submitted a question that was not asked, that is because I determined that under the rules of evidence the answer would not be admissible, just as when I sustained any objection to questions posed by counsel. You should draw no conclusion or inference from my ruling on any question, and you should not speculate about the possible answer to any question that was not asked or to which I sustained an objection.

INTERIM STATEMENTS TO JURY BY COUNSEL

1. ABA American Jury Project Principles and Standards

PRINCIPLE 13 – THE COURT AND PARTIES SHOULD VIGOROUSLY PROMOTE JUROR UNDERSTANDING OF THE FACTS AND THE LAW

Standard 13G

- A. Parties and courts should be open to a variety of trial techniques to enhance juror comprehension of the issues including: alteration of the sequencing of expert witness testimony, mini- or interim openings and closings, and the use of computer simulations, deposition summaries and other aids.

2. The Rationale for Testing the Concept

The Commission chose this concept for testing because the Commission believes it will enhance juror comprehension in civil trials. The judge may consider, after conferring with the parties' attorneys, allowing the attorneys to make explanatory statements to the jury during the course of the trial ("Interim Statements"). Although the value of Interim Statements is particularly compelling in complex matters, the Commission believes that they will be helpful in all civil cases. Interim Statements can be used to explain forthcoming testimony and exhibits or to highlight the significance and context of evidence already elicited. In addition to enhancing a jury's ability to understand the evidence, Interim Statements by the attorneys can: (a) assist jurors in recalling the evidence; (b) allow counsel to organize, clarify, emphasize, contextualize and explain evidence; (c) aid jurors in remaining focused; (d) break up and make more interesting and informative the parade of evidence; and (e) streamline the presentation of evidence and increase the overall efficiency of the trial. Moreover, judges would retain complete discretion and power to prevent any abuse of Interim Statements or their unduly interfering with the presentation of evidence or the orderly progress of the trial.

If you have questions or wish to discuss the subject, including the procedures suggested below, judges may contact the Honorable Amy J. St. Eve at (312) 435-5686, and judges and lawyers may contact Steve Novack at (312) 419-6900.

3. Authority Supporting the Concept's Use

- *Westmoreland v. CBS*, Case No. 82 Civ. 7913 (PNL). (In a 62-day trial, attorneys were each given two hours each for interim statements with complete discretion as to how to utilize their time. Each side gave interim summations over 40 times, with the longest summation running about 10 minutes and the shortest slightly over one minute; the average summation lasted about two-and-a-half minutes. Attorneys typically gave their summaries at the start or the conclusion of a witness's direct- or cross-examination.)

- *Energy Trans. Sys., Inc. v. Burlington, et al.*, Case No. 13-84-979-4. (In a lengthy antitrust trial, attorneys on each side were given six hours of interim summaries. Plaintiff attorneys used summations to outline and preview the purpose of various witnesses' testimony and to show how the evidence coincided with the court's preliminary instructions. Defendant attorneys used summations to educate the jury about the points they would cover in cross-examination. Both sides used daily transcripts to remind jurors of significant testimony and highlight discrepancies between the testimony and the documents. Both used summations to identify witnesses in the other side's case and to explain evidence that was unfavorable to them.)
- *ABA Standards for Crim. Justice Discovery and Trial by Jury*, Standard 15-4.2(c) (3d ed. 1996). (Encouraging trial judges to consider, consistent with parties' rights, mechanisms that might be adopted to improve juror understanding of issues and trial efficiency.)
- Tom M. Dees 111, *Juries: On the Verge of Extinction? A Discussion of Jury Reform*, 54 SMU L. Rev. 1755, 1778-1780 (2001).
- *What Trial Judges Would Like To Say To Trial Judges: Panel Two*, 31 N.M. L. REV. 241, 250-51 (2001).
- Honorable B. Michael Dann, "*Learning Lessons*" and "*Speaking Rights*": *Creating Educated and Democratic Juries*, 68 IND. L.J. 1229, 1255-56 (Fall 1993).

4. Suggested Procedures for the Concept's Use

- Attorneys should be allowed to use Interim Statements before or after a witness's testimony, on both direct- and cross-examination, as previews (if before) or summations (if after). Granting attorneys discretion as to when and how to use their Interim Statements maximizes the benefits and advantages thereof.
- Interim Statements should be given outside the presence of witnesses except for those witnesses not subject to the witness exclusionary rule found in Federal Rule of Evidence 615.
- Interim Statements should not be used to directly respond to, argue, or refer to an Interim Statement by opposing counsel. This will prevent the trial from becoming excessively contentious and will prevent an attorney from interjecting argument during the other attorneys' presentation of evidence. Attorneys should be allowed to make those objections that are permissible during traditional opening statements and closing arguments.

- Attorneys should not be required to give advance notice of their Interim Statements. This recognizes that Interim Statements will often be the product of counsel’s last-minute, spontaneous decisions and strategy and of the unexpected turns that trials often take.
- An overall time limit for Interim Statements by each side should be set by the court in advance of trial. In setting limits, the court should consider the anticipated length of the trial, the complexity of the case and the nature of the evidence to be submitted.
- At the end of the last day of trial each week or the beginning of the first day of each week, each side should also be given 10 minutes to summarize the evidence that was introduced during the previous week and/or preview the evidence anticipated for the coming week. This will allow the attorneys to: (a) put into context the evidence the jury heard all week; (b) emphasize the key points they want the jury to remember; and (c) let the jury know what they can expect to hear in the coming week.

5. Suggested Jury Instructions

The standard instructions each judge is requested to give to the jurors at the various stages of the trial are included on page 4 of this section.

Each judge is also requested to give to the jurors the instruction regarding the completion of the Project’s questionnaires after the jury returns the verdict or is discharged without returning a verdict, which is included in the project manual section containing the questionnaires.

6. Acknowledgements

The Commission wishes to acknowledge and thank the following persons who served as part of the subcommittee addressing the concept of Interim Statements By Counsel During Trial.

Attorney Chairpersons

Stephen Novack
 Kenneth Abell
 Novack and Macey LLP

Reviewing Judge

Judge Amy St. Eve.

**“INTERIM STATEMENT” JURY INSTRUCTION TO BE GIVEN AT
BEGINNING OF TRIAL**

At various times during the trial the lawyers will address you. You will soon hear the lawyers’ opening statements, and at the end of the trial you will hear their closing arguments. From time to time in between, the lawyers may choose to make short statements to you, either to preview upcoming evidence or to summarize and highlight evidence that was previously presented. These statements and arguments are the lawyers’ views of the evidence or of what they anticipate the evidence will be. They are not themselves evidence.

**“INTERIM STATEMENT” JURY INSTRUCTION TO BE GIVEN AT THE TIME
OF THE FIRST INTERIM STATEMENT (AND, POSSIBLY, IN MODIFIED FORM
FOR SUCCESSIVE STATEMENTS)**

At the start of the trial, I told you that the lawyers may make short statements to you to preview upcoming evidence or to summarize and highlight evidence that was previously presented. At this time, Ms./Mr. _____ is going to make a short statement. Please remember that the statement you are about to hear – like all statements by the lawyers – represents Ms./Mr. _____’s view of the evidence or of what she/he anticipates the evidence will be, but is not itself evidence.

**“INTERIM STATEMENT” JURY INSTRUCTION TO BE GIVEN AT THE END
OF THE TRIAL AS PART OF THE OVERALL INSTRUCTIONS**

At various times during the trial, the lawyers addressed you. At the beginning of the trial you heard the lawyers’ opening statements, at the end of the trial you heard the lawyers’ closing arguments, and in between you heard the lawyers’ short statements. If a lawyer said something to you that was not shown by the evidence, you should disregard what the lawyer said. None of the statements or arguments made by the lawyers is evidence.

TWELVE-PERSON JURIES

1. ABA American Jury Project Principles and Standards

PRINCIPLE 3 – JURIES SHOULD HAVE 12 MEMBERS

Standard 3

A. Juries in civil cases should be constituted of 12 members wherever possible and under no circumstances fewer than six members.

2. The Rationale for Testing the Concept

This concept was chosen for testing because empirical data encourages a return to a 12-person jury in civil cases whenever feasible. Studies appear to show that 12-member juries are significantly more effective than six-person juries. Twelve-member juries have a better collective recall of the trial testimony, and they are more likely to be representative of the community at large and return verdicts and damage awards that reflect community standards. Reducing the number of jurors below 12 only minimally decreases the likelihood of a hung jury. According to some sources, smaller juries produce only minimal savings in time and expense compared to 12-person juries.

3. Authority Supporting the Concept's Use

- The Seventh Amendment guarantees the right to a jury trial in civil cases. “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.” U.S. Const. amend VII.

Ballew v. Georgia, 435 U.S. 223, 237-240 (1978). (The U.S. Supreme Court held that juries of fewer than six persons were unconstitutional and recognized the greater reliability of a 12-person jury over a six-person jury.)

- **Fed. R. Civ. P. 48 states:**

NUMBER OF JURORS – PARTICIPATION IN VERDICT

The court shall seat a jury of not fewer than six and not more than twelve members and all jurors shall participate in the verdict unless excused from service by the court pursuant to Rule 47(c). Unless the parties otherwise stipulate, (1) the verdict shall be unanimous and (2) no verdict shall be taken from a jury reduced in size to fewer than six members.

- **Fed. R. Civ. P. 47 states:**

SELECTION OF JURORS

(a) Examination of Jurors. The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorney as it deems proper.

(b) Peremptory Challenges. The court shall allow the number of peremptory challenges provided by 28 U.S.C. § 1870.

(c) Excuse. The court may for good cause excuse a juror from service during trial or deliberation.

- **28 U.S.C. § 1870 titled “Challenges” states:**

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

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

- Stephan Landsman, *In Defense of the Jury of 12 and the Unanimous Decision Rule*, 88 *Judicature* 301 (May-June 2005). (Twelve-person juries are more reliable, are more likely to produce accurate results, and are more likely to reflect both the values and makeup of the community. Furthermore, 12-person juries only slightly increase the likelihood of hung juries, and any costs and time saving from using a smaller jury are negligible.)

- Michael J. Saks, *The Smaller the Jury, the Greater the Unpredictability*, 79 *Judicature* 263 (March-April 1996). (Larger juries deliberate longer and have better recall of trial testimony. Smaller civil juries produce a number of outlier awards that do not reflect community values. Finally, smaller juries are more likely to be less representative of the community.)

4. Suggested Procedures for the Concept's Use

- The judge empanels no fewer than 12 persons for a civil jury trial using the jury selection procedures that the judge desires to use consistent with the Federal Rules of Civil Procedure and 28 U.S.C. § 1870.
- Each side remains entitled to three peremptory challenges when 12 as opposed to six jurors are selected under 28 U.S.C. § 1870 because Fed. R. Civ. P. 48 contemplates no more than 12 and no less than six jurors will be selected to serve as the jury in a civil trial.

5. Suggested Jury Instructions

The judge need not give any jury instructions to use this concept, other than providing the standard instruction each judge is requested to give to the jurors after the jury returns the verdict or is discharged without returning a verdict regarding completing the Project's questionnaires.

6. Acknowledgements

The Commission wishes to acknowledge and thank the following persons who served as part of the subcommittee addressing the concept of Twelve-Person Juries in Civil Cases:

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Patrick Malone
Grippio & Elden

Reviewing Judge

Judge John W. Darrah

PRELIMINARY SUBSTANTIVE JURY INSTRUCTIONS

1. ABA American Jury Project Principles and Standards

PRINCIPLE 6 – COURTS SHOULD EDUCATE JURORS REGARDING THE ESSENTIAL ASPECTS OF A JURY TRIAL

Standard 6

- C. Throughout the course of the trial, the court should provide instructions to the jury in plain and understandable language.
 1. The court should consider giving preliminary instructions directly following empanelment of the jury that explain the jury's role, the trial procedures including note-taking and questioning by jurors, the nature of evidence and its evaluation, the issues to be addressed, and the basic relevant legal principles, including the elements of the charges and claims and definitions of unfamiliar legal terms.
 2. The court should advise jurors that once they have been selected to serve as jurors or alternates in a trial, they are under an obligation to refrain from talking about the case outside the jury room, or allowing anyone to talk about the case in their presence until the trial is over and the jury has reached a verdict.
 3. The court should give such instructions during the course of the trial as are necessary to assist the jury in understanding the facts and law of the case being tried as described in Standard 13 D.2.

2. The Rationale for Testing the Concept

This Commission chose this concept for testing because the Commission believes it will facilitate better decision making by jurors as well as their greater understanding of their duty in the decision-making process. The Commission recommends that the judge, after conferring with counsel for the parties, provide not merely the standard preliminary instructions recommended for the trial courts in the Seventh Circuit¹, but in advance of opening statements also substantive jury instructions such as instructions on the elements of the plaintiff's claim, burden of proof, and explanatory instructions relating to the plaintiff's claim and any pertinent instructions regarding the defendant's affirmative defenses to the plaintiff's claim. Jurors' ability to recall relevant evidence and apply the law to the facts will improve if they understand in advance the context in which they will be required to evaluate or analyze the evidence presented during the trial. The judge, of course, will also give the jury final instructions on the applicable law after the evidence in accordance with the judge's usual practice pursuant to Federal Rule of Civil Procedure 30(c). It is recommended that the preliminary jury instructions include sufficient detail on the legal framework of the case to inform the jurors of the legal issues the jurors will be asked to decide.

¹ See FEDERAL CIVIL JURY INSTRUCTIONS OF THE SEVENTH CIRCUIT, General Instructions (2005), available at www.ca7.uscourts.gov/7thcivinstruc2005.pdf

The judge may also consider whether effective decision making by jurors may be improved if certain substantive instructions are also given at appropriate times during the presentation of evidence.

3. Authority Supporting the Concept's Use

- *United States v. Bynum*, 566 F.2d 914, 924 (5th Cir. 1978). (“Although it is difficult for the courts to give preliminary jury instructions in all cases, it is not only not error to do so, it is a well-reasoned modern trend to give instructions outlining the issues and the law involved prior to the taking of testimony.”). *Id.*, 924 n.7. (“[C]ertainly it is the obligation of the court to do all within its power to assist the jury in understanding the issues involved and the application of the law.”)

- **Fed. R Crim. P. 30(c) states:**

INSTRUCTIONS

The court...may instruct the jury at any time after the trial begins and before the jury is discharged.

- **Fed. R Civ. P. 51(b)(3) advisory notes to the 1987 Amendment state:**

[Giving instructions before the arguments] has been praised because it gives counsel the opportunity to explain the instructions, argue their application to the facts and thereby give the jury the maximum assistance in determining the issues and arriving at a good verdict on the law and the evidence. As an ancillary benefit, this approach aids counsel by supplying a natural outline so that arguments may be directed to the essential fact issues which the jury must decide. Moreover, if the court instructs before an argument, counsel then know the precise words the court has chosen and need not speculate as to the words the court will later use in its instructions. Finally, by introducing ahead of argument the court has the attention of the jurors when they are fresh and can give their full attention to the court's instructions. It is more difficult to hold the attention of jurors after lengthy arguments.

- B. Michael Dam and Valerie P. Hans, *Recent Evaluative Research on Jury Trial Innovations*, 41 *Court Rev.* 12, 15-16 (2004). (Summarizes five studies that found substantial benefit in providing preliminary jury instructions on the applicable law.)

4. Suggested Procedures for the Concept's Use

- Before trial, the attorneys should be requested to submit proposed preliminary substantive jury instructions that will be given after the jury is sworn but prior to opening statements, which will address the key substantive issues the jury must decide including the elements of the claims (or charges) and defenses and any explanatory or definitional instructions necessary for the jury to properly evaluate the claims and defenses.

- The judge should follow “traditional” procedures for the preliminary jury instructions including holding a jury instruction conference with counsel, providing a copy of the finalized instructions to both parties and the jury, reading the instructions to the jury, informing them that the lawyers can refer to and quote the instructions in opening statements as well as closing arguments.
- The judge may refer to the preliminary jury instructions to the jury during the taking of evidence when the Court believes that this would assist the jury.
- The judge may choose to provide additionally supplemental preliminary jury instructions during the trial or may wait until final jury instructions, which under Federal Rule of Civil Procedure 30(c) may be given before or after the closing arguments in the case.

5. Suggested Jury Instructions

Substantive jury instructions are available at FEDERAL CIVIL JURY INSTRUCTIONS OF THE SEVENTH CIRCUIT (2005) at www.ca7.uscourts.gov/7thcivinstruc2005.pdf (employment discrimination, Equal Pay Act, public employees and prisoner retaliation, constitutional torts, and prisoner’s right of access to the court). Others may become available as the Project proceeds.

The judge is also requested to give to the jurors the standard instruction after the jury returns the verdict or is discharged without returning a verdict regarding completion of the Project’s questionnaires.

6. Acknowledgements

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PREAMBLE

The American jury is a living institution that has played a crucial part in our democracy for more than two hundred years. The American Bar Association recognizes the legal community's ongoing need to refine and improve jury practice so that the right to jury trial is preserved and juror participation enhanced. What follows is a set of 19 principles that define our fundamental aspirations for the management of the jury system. Each principle is accompanied by a standard designed to express the best of current-day jury practice in light of existing legal and practical constraints. It is anticipated that over the course of the next decade jury practice will improve so that the standards set forth will have to be updated in a manner that will draw them ever closer to the principles to which we aspire.

DISCLAIMER: The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

GENERAL PRINCIPLES

PRINCIPLE 1– THE RIGHT TO JURY TRIAL SHALL BE PRESERVED

Standard 1

- A. Parties in civil matters have the right to a fair, accurate and timely jury trial in accordance with law.
- B. Parties, including the state, have the right to a fair, accurate and timely jury trial in criminal prosecutions in which confinement in jail or prison may be imposed.
- C. In civil cases the right to jury trial may be waived as provided by applicable law, but waiver should neither be presumed nor required where the interests of justice demand otherwise.
- D. With respect to criminal prosecutions:
 - 1. A defendant’s waiver of the right to jury trial must be knowing and voluntary, joined in by the prosecutor and accepted by the court.
 - 2. The court should not accept a waiver unless the defendant, after being advised by the court of his or her right to trial by jury and the consequences of waiver, personally waives the right to trial by jury in writing or in open court on the record.
 - 3. A defendant may not withdraw a voluntary and knowing waiver as a matter of right, but the court, in its discretion, may permit withdrawal prior to the commencement of trial.
 - 4. A defendant may withdraw a waiver of jury, and the prosecutor may withdraw its consent to a waiver, both as a matter of right, if there is a change of trial judge.

- E. A quality and accessible jury system should be maintained with budget procedures that will ensure adequate, stable, long-term funding under all economic conditions.

PRINCIPLE 2 – CITIZENS HAVE THE RIGHT TO PARTICIPATE IN JURY SERVICE AND THEIR SERVICE SHOULD BE FACILITATED

Standard 2

- A. All persons should be eligible for jury service except those who:
 - 1. Are less than eighteen years of age; or
 - 2. Are not citizens of the United States; or
 - 3. Are not residents of the jurisdiction in which they have been summoned to serve; or
 - 4. Are not able to communicate in the English language and the court is unable to provide a satisfactory interpreter; or
 - 5. Have been convicted of a felony and are in actual confinement or on probation, parole or other court supervision.
- B. Eligibility for jury service should not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, disability, sexual orientation, or any other factor that discriminates against a cognizable group in the jurisdiction other than those set forth in A. above.
- C. The time required of persons called for jury service should be the shortest period consistent with the needs of justice.
 - 1. Courts should use a term of service of one day or the completion of one trial, whichever is longer.
 - 2. Where deviation from the term of service set forth in C.1. above is deemed necessary, the court should not require a person to remain available to be selected for jury service for longer than two weeks.
- D. Courts should respect jurors' time by calling in the minimum number deemed necessary and by minimizing their waiting time.

1. Courts should coordinate jury management and calendar management to make effective use of jurors.
 2. Courts should determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust both the number of persons summoned for jury duty and the number assigned to jury panels.
 3. Courts should ensure that all jurors in the courthouse waiting to be assigned to panels for the first time are assigned before any juror is assigned a second time.
- E. Courts should provide an adequate and suitable environment for jurors, including those who require reasonable accommodation due to disability.
- F. Persons called for jury service should receive a reasonable fee.
1. Persons called for jury service should be paid a reasonable fee that will, at a minimum, defray routine expenses such as travel, parking, meals and child-care. Courts should be encouraged to increase the amount of the fee for persons serving on lengthy trials.
 2. Employers should be prohibited from discharging, laying off, denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service.
 3. Employers should be prohibited from requiring jurors to use leave or vacation time for the time spent on jury service or be required to make up the time they served.

PRINCIPLE 3 – JURIES SHOULD HAVE 12 MEMBERS

Standard 3

- A. Juries in civil cases should be constituted of 12 members wherever possible and under no circumstances fewer than six members.
- B. Juries in criminal cases should consist of:
1. Twelve persons if a penalty of confinement for more than six months may be imposed upon conviction;

2. At least six persons if the maximum period of confinement that may be imposed upon conviction is six months or less.
- C. At any time before verdict, the parties, with the approval of the court, may stipulate that the jury shall consist of fewer jurors than required for a full jury, but in no case fewer than six jurors. In criminal cases the court should not accept such a stipulation unless the defendant, after being advised by the court of his or her right to trial by a full jury, and the consequences of waiver, personally waives the right to a full jury either in writing or in open court on the record.

PRINCIPLE 4 – JURY DECISIONS SHOULD BE UNANIMOUS

Standard 4

- A. In civil cases, jury decisions should be unanimous wherever possible. A less-than-unanimous decision should be accepted only after jurors have deliberated for a reasonable period of time and if concurred in by at least five-sixths of the jurors. In no civil case should a decision concurred in by fewer than six jurors be accepted, except as provided in C. below.
- B. A unanimous decision should be required in all criminal cases heard by a jury.
- C. At any time before verdict, the parties, with the approval of the court, may stipulate to a less-than-unanimous decision. To be valid, the stipulation should be clear as to the number of concurring jurors required for the verdict. In criminal cases, the court should not accept such a stipulation unless the defendant, after being advised by the court of his or her right to a unanimous decision, personally waives that right, either in writing or in open court on the record.

PRINCIPLE 5 – IT IS THE DUTY OF THE COURTS TO ENFORCE AND PROTECT THE RIGHTS TO JURY TRIAL AND JURY SERVICE

Standard 5

- A. The responsibility for administration of the jury system should be vested exclusively in the judicial branch of government.
1. All procedures concerning jury selection and service should be governed by rules and regulations promulgated by the state's highest court or judicial council.

2. A unified jury system should be established wherever feasible in areas that have two or more courts conducting jury trials. This applies whether the courts are of the same or of differing subject matter or geographic jurisdiction.
 3. Responsibility for administering the jury system should be vested in a single administrator or clerk acting under the supervision of a presiding judge of the court.
- B. Courts should collect and analyze information regarding the performance of the jury system on a regular basis in order to ensure:
1. The representativeness and inclusiveness of the jury source list;
 2. The effectiveness of qualification and summoning procedures;
 3. The responsiveness of individual citizens to jury duty summonses;
 4. The efficient use of jurors; and
 5. The reasonableness of accommodations being provided to jurors with disabilities.

**PRINCIPLE 6 – COURTS SHOULD EDUCATE JURORS REGARDING THE
ESSENTIAL ASPECTS OF A JURY TRIAL**

Standard 6

- A. Courts should provide orientation and preliminary information to persons called for jury service:
1. Upon initial contact prior to service;
 2. Upon first appearance at the courthouse; and
 3. Upon reporting to a courtroom for juror voir dire.
- B. Orientation programs should be:
1. Designed to increase jurors' understanding of the judicial system and prepare them to serve competently as jurors;
 2. Presented in a uniform and efficient manner using a combination of written, oral and audiovisual materials; and

3. Presented, at least in part, by a judge.
- C. Throughout the course of the trial, the court should provide instructions to the jury in plain and understandable language.
1. The court should give preliminary instructions directly following empanelment of the jury that explain the jury's role, the trial procedures including note-taking and questioning by jurors, the nature of evidence and its evaluation, the issues to be addressed, and the basic relevant legal principles, including the elements of the charges and claims and definitions of unfamiliar legal terms.
 2. The court should advise jurors that once they have been selected to serve as jurors or alternates in a trial, they are under an obligation to refrain from talking about the case outside the jury room until the trial is over and the jury has reached a verdict. At the time of such instructions in civil cases, the court may inform the jurors about the permissibility of discussing the evidence among themselves as contemplated in Standard 13 F.
 3. The court should give such instructions during the course of the trial as are necessary to assist the jury in understanding the facts and law of the case being tried as described in Standard 13 D. 2.
 4. Prior to deliberations, the court should give such instructions as are described in Standard 14 regarding the applicable law and the conduct of deliberations.

PRINCIPLE 7 – COURTS SHOULD PROTECT JUROR PRIVACY INsofar AS CONSISTENT WITH THE REQUIREMENTS OF JUSTICE AND THE PUBLIC INTEREST

Standard 7

- A. Juror interest in privacy must be balanced against party and public interest in court proceedings.
1. Juror voir dire should be open and accessible for public view except as provided herein. Closing voir dire proceedings should only occur after a finding by the court that there is a threat to the safety of the jurors or evidence of attempts to intimidate or influence the jury.

2. Requests to jurors for information should differentiate among information collected for the purpose of juror qualification, jury administration, and voir dire.
 3. Judges should ensure that jurors' privacy is reasonably protected, and that questioning is consistent with the purpose of the voir dire process.
 4. Courts should explain to jurors how the information they provide will be used, how long it will be retained, and who will have access to it.
 5. Courts should consider juror privacy concerns when choosing the method of voir dire (open questioning in court, private questioning at the bench, or a jury questionnaire) to be used to inquire about sensitive matters.
 6. Courts should inform jurors that they may provide answers to sensitive questions privately to the court, and the parties.
 7. Jurors should be examined outside the presence of other jurors with respect to questions of prior exposure to potentially prejudicial material.
 8. Following jury selection and trial, the court should keep all jurors' home and business addresses and telephone numbers confidential and under seal unless good cause is shown to the court which would require disclosure. Original records, documents and transcripts relating to juror summoning and jury selection may be destroyed when the time for appeal has passed, or the appeal is complete, whichever is longer, provided that, in criminal proceedings, the court maintains for use by the parties and the public exact replicas (using any reliable process that ensures their integrity and preservation) of those items and devices for viewing them.
- B. Without express court permission, surveillance of jurors and prospective jurors outside the courtroom by or on behalf of a party should be prohibited.
- C. If cameras are permitted to be used in the courtroom, they should not be allowed to record or transmit images of the jurors' faces.

PRINCIPLE 8 -- INDIVIDUALS SELECTED TO SERVE ON A JURY HAVE AN ONGOING INTEREST IN COMPLETING THEIR SERVICE

Standard 8

During trial and deliberations, a juror should be removed only for a compelling reason. The determination that a juror should be removed should be made by the court, on the record, after an appropriate hearing.

ASSEMBLING A JURY

PRINCIPLE 9 – COURTS SHOULD CONDUCT JURY TRIALS IN THE VENUE REQUIRED BY APPLICABLE LAW OR THE INTERESTS OF JUSTICE

Standard 9

- A. In civil cases where a jury demand has been made, a change of venue may be granted as required by applicable law or in the interest of justice.
- B. In criminal cases, a change of venue or continuance should be granted whenever there is a substantial likelihood that, in the absence of such relief, a fair trial by an impartial jury cannot be had. A showing of actual prejudice should not be required.
- C. Courts should consider the option of trying the case in the original venue but selecting the jury from a new venue. In addition to all other considerations relevant to the selection of the new venue, consideration should be given to whether the original venue would be a better location to conduct the trial due to facilities, security, and the convenience of the victims, court staff, and parties. This should be balanced against the possible inconvenience to the jurors.

PRINCIPLE 10 – COURTS SHOULD USE OPEN, FAIR AND FLEXIBLE PROCEDURES TO SELECT A REPRESENTATIVE POOL OF PROSPECTIVE JURORS

Standard 10

- A. Juror source pools should be assembled so as to assure representativeness and inclusiveness.

1. The names of potential jurors should be drawn from a jury source list compiled from two or more regularly maintained source lists of persons residing in the jurisdiction. These source lists should be updated at least annually.
2. The jury source list and the assembled jury pool should be representative and inclusive of the eligible population in the jurisdiction. The source list and the assembled jury pool are representative of the population to the extent the percentages of cognizable group members on the source list and in the assembled jury pool are reasonably proportionate to the corresponding percentages in the population.
3. The court should periodically review the jury source list and the assembled jury pool for their representativeness and inclusiveness of the eligible population in the jurisdiction.
4. Should the court determine that improvement is needed in the representativeness or inclusiveness of the jury source list or the assembled jury pool, appropriate corrective action should be taken.
5. Jury officials should determine the qualifications of prospective jurors by questionnaire or interview, and disqualify those who fail to meet eligibility requirements.

B. Courts should use random selection procedures throughout the juror selection process.

1. Any selection method may be used, manual or automated, that provides each eligible and available person with an equal probability of selection, except when a court orders an adjustment for underrepresented populations.
2. Courts should use random selection procedures in:
 - a. Selecting persons to be summoned for jury service;
 - b. Assigning jurors to panels;
 - c. Calling jurors for voir dire; and
 - d. Designating, at the outset of jury deliberations, those jurors who will serve as “regular” and as “alternate” jurors.
3. Departures from the principle of random selection are appropriate:
 - a. To exclude persons ineligible for service in accordance with basic eligibility requirements;

- b. To excuse or defer jurors in accordance with C. below;
- c. To remove jurors for cause or if challenged peremptorily in accordance with D. and E. below; or
- d. To provide jurors who have not been considered for selection with an opportunity to be considered before other jurors are considered for a second time, as provided for in Standard 2 D. 3.

C. Exemptions, excuses, and deferrals should be sparingly used.

- 1. All automatic excuses or exemptions from jury service should be eliminated.
- 2. Eligible persons who are summoned may be excused from jury service only if:
 - a. Their ability to perceive and evaluate information is so impaired that even with reasonable accommodations having been provided, they are unable to perform their duties as jurors and they are excused for this reason by a judge; or
 - b. Their service would be an undue hardship or they have served on a jury during the two years preceding their summons and they are excused by a judge or duly authorized court official.
- 3. Deferrals of jury service to a date certain within six months should be permitted by a judge or duly authorized court official. Prospective jurors seeking to postpone their jury service to a specific date should be permitted to submit a request by telephone, mail, in person or electronically. Deferrals should be preferred to excusals whenever possible.
- 4. Requests for excuses or deferrals and their disposition should be written or otherwise made of record. Specific uniform guidelines for determining such requests should be adopted by the court.

D. Courts should use sensible and practical notification and summons procedures in assembling jurors.

- 1. The notice summoning a person to jury service should be easy to understand and answer, should specify the steps required for answering and the consequences of failing to answer, should allow for speedy and accurate eligibility screening, and should request basic background information.
- 2. Courts should adopt specific uniform guidelines for enforcing a summons for jury service and for monitoring failures to respond to

a summons. Courts should utilize appropriate sanctions in the cases of persons who fail to respond to a jury summons.

- E. Opportunity to challenge the assembled jury pool should be afforded all parties on the ground that there has been material departure from the requirements of the law governing selection of jurors. The court should maintain demographic information as to its source lists, summonses issued, and reporting jurors.

PRINCIPLE 11 – COURTS SHOULD ENSURE THAT THE PROCESS USED TO EMPANEL JURORS EFFECTIVELY SERVES THE GOAL OF ASSEMBLING A FAIR AND IMPARTIAL JURY

Standard 11

- A. Before voir dire begins, the court and parties, through the use of appropriate questionnaires, should be provided with data pertinent to the eligibility of jurors and to matters ordinarily raised in voir dire, including such background information as is provided by prospective jurors in their responses to the questions appended to the notification and summons considered in Standard 10 D. 1.
 - 1. In appropriate cases, the court should consider using a specialized questionnaire addressing particular issues that may arise. The court should permit the parties to submit a proposed juror questionnaire. The parties should be required to confer on the form and content of the questionnaire. If the parties cannot agree, each party should be afforded the opportunity to submit a proposed questionnaire and to comment upon any proposal submitted by another party.
 - 2. Jurors should be advised of the purpose of any questionnaire, how it will be used and who will have access to the information.
 - 3. All completed questionnaires should be provided to the parties in sufficient time before the start of voir dire to enable the parties to adequately review them before the start of that examination.
- B. The voir dire process should be held on the record and appropriate demographic data collected.
 - 1. Questioning of jurors should be conducted initially by the court, and should be sufficient, at a minimum, to determine the jurors' legal qualification to serve in the case.

2. Following initial questioning by the court, each party should have the opportunity, under the supervision of the court and subject to reasonable time limits, to question jurors directly, both individually and as a panel. In a civil case involving multiple parties, the court should permit each separately represented party to participate meaningfully in questioning prospective jurors, subject to reasonable time limits and avoidance of repetition.
3. Voir dire should be sufficient to disclose grounds for challenges for cause and to facilitate intelligent exercise of peremptory challenges.
4. Where there is reason to believe that jurors have been previously exposed to information about the case, or for other reasons are likely to have preconceptions concerning it, the parties should be given liberal opportunity to question jurors individually about the existence and extent of their knowledge and preconceptions.
5. It is the responsibility of the court to prevent abuse of the juror selection examination process.

C. Challenges for cause should be available at the request of a party or at the court's own initiative.

1. Each jurisdiction should establish, by law, the grounds for and the standards by which a challenge for cause to a juror is sustained by the court.
2. At a minimum, a challenge for cause to a juror should be sustained if the juror has an interest in the outcome of the case, may be biased for or against one of the parties, is not qualified by law to serve on a jury, has a familial relation to a participant in the trial, or may be unable or unwilling to hear the subject case fairly and impartially. There should be no limit to the number of challenges for cause.
3. In ruling on a challenge for cause, the court should evaluate the juror's demeanor and substantive responses to questions. If the court determines that there is a reasonable doubt that the juror can be fair and impartial, then the court should excuse him or her from the trial. The court should make a record of the reasons for the ruling including whatever factual findings are appropriate.

D. Peremptory challenges should be available to each of the parties.

1. In the courts of each state, the number of and procedure for exercising peremptory challenges should be uniform.
 2. The number of peremptory challenges should be sufficient, but limited to a number no larger than necessary to provide reasonable assurance of obtaining an unbiased jury, and to provide the parties confidence in the fairness of the jury.
 3. The court should have the authority to allow additional peremptory challenges when justified.
 4. Following completion of the examination of jurors, the parties should exercise their peremptory challenges by alternately striking names from the list of panel members until each side has exhausted or waived the permitted number of challenges.
- E. Fair procedures should be utilized in the exercise of challenges.
1. All challenges, whether for cause or peremptory, should be exercised so that the jury panel is not aware of the nature of the challenge, the party making the challenge, or the basis of the court's ruling on the challenge.
 2. After completion of the examination of jurors and the hearing and determination of all challenges for cause, the parties should be permitted to exercise their peremptory challenges as set forth in D. 4. above. A party should be permitted to exercise a peremptory challenge against a member of the panel who has been passed for cause.
 3. The court should not require a party to exercise any challenges until the attorney for that party has had sufficient time to consult with the client, and in cases with multiple parties on a side, with co-parties, regarding the exercise of challenges.
 4. No juror should be sworn to try the case until all challenges have been exercised or waived, at which point all jurors should be sworn as a group.
- F. No party should be permitted to use peremptory challenges to dismiss a juror for constitutionally impermissible reasons.
1. It should be presumed that each party is utilizing peremptory challenges validly, without basing those challenges on constitutionally impermissible reasons.

2. A party objecting to the challenge of a juror on the grounds that the challenge has been exercised on a constitutionally impermissible basis, establishes a prima facie case of purposeful discrimination by showing that the challenge was exercised against a member of a constitutionally cognizable group; and by demonstrating that this fact, and any other relevant circumstances, raise an inference that the party challenged the juror because of the juror's membership in that group.
 3. When a prima facie case of discrimination is established, the burden shifts to the party making the challenge to show a nondiscriminatory basis for the challenge.
 4. The court should evaluate the credibility of the reasons proffered by the party as a basis for the challenge. If the court finds that the reasons stated are not pretextual and otherwise constitutionally permissible and are supported by the record, the court should permit the challenge. If the court finds that the reasons for the challenge are pretextual, or otherwise constitutionally impermissible, the court should deny the challenge and, after consultation with counsel, determine whether further remedy is appropriate. The court should state on the record the reasons, including whatever factual findings are appropriate, for sustaining or overruling the challenge.
 5. When circumstances suggest that a peremptory challenge was used in a constitutionally impermissible manner, the court on its own initiative, if necessary, shall advise the parties on the record of its belief that the challenge is impermissible, and its reasons for so concluding and shall require the party exercising the challenge to make a showing under F. 3. above.
- G. The court may empanel a sufficient number of jurors to allow for one or more alternates whenever, in the court's discretion, the court believes it advisable to have such jurors available to replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties.
1. Alternate jurors shall be selected in the same manner, have the same qualifications, be subject to the same examination and challenges, and take the same oath as regular jurors.
 2. The status of jurors as regular jurors or as alternates should be determined through random selection at the time for jury deliberation.

3. In civil cases where there are fewer than 12 jurors, all jurors, including alternates, should deliberate and vote, but in no case should more than 12 jurors deliberate and vote.
- H. Courts should limit the use of anonymous juries to compelling circumstances, such as when the safety of the jurors is an issue or when there is a finding by the court that efforts are being made to intimidate or influence the jury's decision.

CONDUCTING A JURY TRIAL

PRINCIPLE 12 – COURTS SHOULD LIMIT THE LENGTH OF JURY TRIALS INSOFAR AS JUSTICE ALLOWS AND JURORS SHOULD BE FULLY INFORMED OF THE TRIAL SCHEDULE ESTABLISHED

Standard 12

- A. The court, after conferring with the parties, should impose and enforce reasonable time limits on the trial or portions thereof.
- B. Trial judges should use modern trial management techniques that eliminate unnecessary trial delay and disruption. Once begun, jury trial proceedings with jurors present should take precedence over all other court proceedings except those given priority by a specific law and those of an emergency nature.
- C. Jurors should be informed of the trial schedule and of any necessary changes to the trial schedule at the earliest practicable time.

PRINCIPLE 13 – THE COURT AND PARTIES SHOULD VIGOROUSLY PROMOTE JUROR UNDERSTANDING OF THE FACTS AND THE LAW

Standard 13

- A. Jurors should be allowed to take notes during the trial.
 1. Jurors should be instructed at the beginning of the trial that they are permitted, but not required, to take notes in aid of their memory of the evidence and should receive appropriate cautionary instructions on note-taking and note use. Jurors should also be

instructed that after they have reached their verdict, all juror notes will be collected and destroyed.

2. Jurors should ordinarily be permitted to use their notes throughout the trial and during deliberations.
3. The court should ensure that jurors have implements for taking notes.
4. The court should collect all juror notes at the end of each trial day until the jury retires to deliberate.
5. After the jurors have returned their verdict, all juror notes should be collected and destroyed.

B. Jurors should, in appropriate cases, be supplied with identical trial notebooks which may include such items as the court's preliminary instructions, selected exhibits which have been ruled admissible, stipulations of the parties and other relevant materials not subject to genuine dispute.

1. At the time of distribution, the court should instruct the jurors concerning the purpose and use of their trial notebooks.
2. During the trial, the court may permit the parties to supplement the materials contained in the notebooks with additional material that has been admitted in evidence.
3. The trial notebooks should be available to jurors during deliberations as well as during the trial.

C. In civil cases, jurors should, ordinarily, be permitted to submit written questions for witnesses. In deciding whether to permit jurors to submit written questions in criminal cases, the court should take into consideration the historic reasons why courts in a number of jurisdictions have discouraged juror questions and the experience in those jurisdictions that have allowed it.

1. Jurors should be instructed at the beginning of the trial concerning their ability to submit written questions for witnesses.
2. Upon receipt of a written question, the court should make it part of the court record and disclose it to the parties outside the hearing of the jury. The parties should be given the opportunity, outside the hearing of the jury, to interpose objections and suggest modifications to the question.

3. After ruling that a question is appropriate, the court may pose the question to the witness, or permit a party to do so, at that time or later; in so deciding, the court should consider whether the parties prefer to ask, or to have the court ask, the question. The court should modify the question to eliminate any objectionable material.
4. After the question is answered, the parties should be given an opportunity to ask follow-up questions.

D. The court should assist jurors where appropriate.

1. The court should not in any way indicate to the jury its personal opinion as to the facts or value of evidence by the court's rulings, conduct, or remarks during the trial.
2. When necessary to the jurors' proper understanding of the proceedings, the court may intervene during the taking of evidence to instruct on a principle of law or the applicability of the evidence to the issues. This should be done only when the jurors cannot be effectively advised by postponing the explanation to the time of giving final instructions.
3. The development of innovative mechanisms to improve juror comprehension of the issues and the evidence presented should be encouraged consistent with the rules of evidence and the rights of the parties.
4. The court should exercise self-restraint and preserve an atmosphere of impartiality and detachment, but may question a witness if necessary to assist the jury.
 - a. Generally, the court should not question a witness about subject matter not raised by any party with that witness, unless the court has provided the parties an opportunity, outside the hearing of the jury, to explain the omission. If the court believes the questioning is necessary, the court should afford the parties an opportunity to develop the subject by further examination prior to its questioning of the witness.
 - b. The court should instruct the jury that questions from the court, like questions from the parties, are not evidence; that only answers are evidence; that questions by the court should not be given special weight or emphasis; and the fact that the court asks a question does not reflect a view on the merits of the case or on the credibility of any witness.

- E. The court should control communications with jurors during trial.
 - 1. The court should take appropriate steps ranging from admonishing the jurors to, in the rarest of circumstances, sequestration of them during trial, to ensure that the jurors will not be exposed to sources of information or opinion, or subject to influences, which might tend to affect their ability to render an impartial verdict on the evidence presented in court.
 - 2. At the outset of the case, the court should instruct the jury on the relationship between the court, the parties and the jury, ensuring that the jury understands that the parties are permitted to communicate with jurors only in open court with the opposing parties present.
 - 3. All communications between the judge and members of the jury panel from the time of reporting to the courtroom for juror selection examination until dismissal should be in writing or on the record in open court. Each party should be informed of such communications and given the opportunity to be heard.
- F. Jurors in civil cases may be instructed that they will be permitted to discuss the evidence among themselves in the jury room during recesses from trial when all are present, as long as they reserve judgment about the outcome of the case until deliberations commence.
- G. Parties and courts should be open to a variety of trial techniques to enhance juror comprehension of the issues including: alteration of the sequencing of expert witness testimony, mini- or interim openings and closings, and the use of computer simulations, deposition summaries and other aids.
- H. In civil cases the court should seek a single, unitary trial of all issues in dispute before the same jury, unless bifurcation or severance of issues or parties is required by law or is necessary to prevent unfairness or prejudice.
- I. Consistent with applicable rules of evidence and procedure, courts should encourage the presentation of live testimony.
- J. The court may empanel two or more juries for cases involving multiple parties, defendants, or claims arising out of the same transaction or cause of action, in order to reduce the number and complexity of issues that any one jury must decide. Dual juries also may be used in order to promote judicial economy by presenting otherwise duplicative evidence in a single

trial.

JURY DELIBERATIONS

PRINCIPLE 14 –THE COURT SHOULD INSTRUCT THE JURY IN PLAIN AND UNDERSTANDABLE LANGUAGE REGARDING THE APPLICABLE LAW AND THE CONDUCT OF DELIBERATIONS

Standard 14

- A. All instructions to the jury should be in plain and understandable language.
- B. Jurors should be instructed with respect to the applicable law before or after the parties' final argument. Each juror should be provided with a written copy of instructions for use while the jury is being instructed and during deliberations.
- C. Instructions for reporting the results of deliberations should be given following final argument in all cases. At that time, the court should also provide the jury with appropriate suggestions regarding the process of selecting a presiding juror and the conduct of its deliberations.
- D. The jurors alone should select the foreperson and determine how to conduct jury deliberations.

PRINCIPLE 15 – COURTS AND PARTIES HAVE A DUTY TO FACILITATE EFFECTIVE AND IMPARTIAL DELIBERATIONS

Standard 15

- A. In civil cases of appropriate complexity, and after consultation with the parties, the court should consider the desirability of a special verdict form tailored to the issues in the case. If the parties cannot agree on a special verdict form, each party should be afforded the opportunity to propose a form and to comment upon any proposal submitted by another party or fashioned by the court. The court should consider furnishing each juror with a copy of the verdict form when the jury is instructed and explaining the form as necessary.
- B. Exhibits admitted into evidence should ordinarily be provided to the jury for use during deliberations. Jurors should be provided an exhibit index to facilitate their review and consideration of documentary evidence.

- C. Jury deliberations should take place under conditions and pursuant to procedures that are designed to ensure impartiality and to enhance rational decision-making.
 - 1. The court should instruct the jury on the appropriate method for asking questions during deliberations and reporting the results of its deliberations.
 - 2. A jury should not be required to deliberate after normal working hours unless the court after consultation with the parties and the jurors determines that evening or weekend deliberations would not impose an undue hardship upon the jurors and are required in the interest of justice.
- D. When jurors submit a question during deliberations, the court, in consultation with the parties, should supply a prompt, complete and responsive answer or should explain to the jurors why it cannot do so.
- E. A jury should be sequestered during deliberations only in the rarest of circumstances and only for the purposes of protecting the jury from threatened harm or insulating its members from improper information or influences.
- F. When a verdict has been returned and before the jury has dispersed, the jury should be polled at the request of any party or upon the court's own motion. The poll should be conducted by the court or clerk of court asking each juror individually whether the verdict announced is his or her verdict. If the poll discloses that there is not that level of concurrence required by applicable law, the jury may be directed to retire for further deliberations or may be discharged.

PRINCIPLE 16 – DELIBERATING JURORS SHOULD BE OFFERED ASSISTANCE WHEN AN APPARENT IMPASSE IS REPORTED

Standard 16

- A. If the jury advises the court that it has reached an impasse in its deliberations, the court may, after consultation with the parties, inquire the jurors in writing to determine whether and how court and the parties can assist them in their deliberative process. After receiving the jurors' response, if any, and consulting with the parties, the judge may direct that further proceedings occur as appropriate.

- B. If it appears to the court that the jury has been unable to agree, the court may require the jury to continue its deliberations. The court should not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals.
- C. If there is no reasonable probability of agreement, the jury may be discharged.

POST-VERDICT ACTIVITY

PRINCIPLE 17 – TRIAL AND APPELLATE COURTS SHOULD AFFORD JURY DECISIONS THE GREATEST DEFERENCE CONSISTENT WITH LAW

Standard 17

Trial and appellate courts should afford jury decisions the greatest deference consistent with law.

PRINCIPLE 18 – COURTS SHOULD GIVE JURORS LEGALLY PERMISSIBLE POST-VERDICT ADVICE AND INFORMATION

Standard 18

- A. After the conclusion of the trial and the completion of the jurors' service, the court is encouraged to engage in discussions with the jurors. Such discussions should occur on the record and in open court with the parties having the opportunity to be present, unless all the parties agree to the court conducting these discussions differently. This standard does not prohibit incidental contact between the court and jurors after the conclusion of the trial.
- B. Under no circumstances should the court praise or criticize the verdict or state or imply an opinion on the merits of the case, or make any other statements that might prejudice a juror in future jury service.
- C. At the conclusion of the trial, the court should instruct the jurors that they have the right either to discuss or to refuse to discuss the case with anyone, including counsel or members of the press.
- D. Unless prohibited by law, the court should ordinarily permit the parties to contact jurors after their terms of jury service have expired, subject, in the court's discretion, to reasonable restrictions.

- E. Courts should inform jurors that they may ask for the assistance of the court in the event that individuals persist in questioning jurors, over their objection, about their jury service.

**PRINCIPLE 19 – APPROPRIATE INQUIRIES INTO ALLEGATIONS OF
JUROR MISCONDUCT SHOULD BE PROMPTLY UNDERTAKEN BY THE
TRIAL COURT**

Standard 19

- A. Only under exceptional circumstances may a verdict be impeached upon information provided by jurors.
 - 1. Upon an inquiry into the validity of a verdict, no evidence should be received to show the effect of any statement, conduct, event, or condition upon the mind of a juror or concerning the mental processes by which the verdict was determined.
 - 2. The limitations in A.1 above should not bar evidence concerning whether the verdict was reached by lot or contains a clerical error, or was otherwise unlawfully decided.
 - 3. A juror's testimony or affidavit may be received when it concerns:
 - a. Whether matters not in evidence came to the attention of one or more jurors; or
 - b. Any other misconduct for which the jurisdiction permits jurors to impeach their verdict.
- B. The court should take prompt action in response to an allegation of juror misconduct.
 - 1. Upon receipt of an allegation of juror misconduct, the court should promptly inform the parties and afford them the opportunity to be heard as to whether the allegation warrants further enquiry or other judicial action.
 - 2. Parties should promptly refer an allegation of juror misconduct to the court and to all other parties in the proceeding.
 - 3. If the court determines that the allegation of juror misconduct warrants further inquiry, it should consult with the parties concerning the nature and scope of the inquiry, including:
 - a. Which jurors should be questioned;

- b. Whether the court or the parties should ask the questions; and
 - c. The substance of the questions.
4. If the court ascertains that juror misconduct has occurred, it should afford the parties the opportunity to be heard as to an appropriate remedy.
 5. If the allegation of juror misconduct is received while the jury is deliberating, the recipient must ensure as quickly as possible that the court and counsel are informed of it, and the court should proceed as promptly as practicable to ascertain the facts and to fashion an appropriate remedy.

**JURY INSTRUCTION REGARDING THE COMPLETION
OF JURY PROJECT QUESTIONNAIRES**

Each judge is requested to give the standard instruction below regarding completion of the Project's questionnaires by the jurors after the jury returns the verdict or is discharged without returning a verdict.

Members of the jury, thank you again for your service as jurors in this case. Your service in this case is now over, but I have one additional request of you. Before you say your goodbyes to one another and leave the jury room today, I would like you to fill out a brief questionnaire regarding your jury service in this case.

The questionnaires I am asking you to complete are part of a project in which federal district courts in the states of Indiana, Illinois and Wisconsin are participating. Your answers to the questions in the questionnaires will assist us in finding ways to improve the jury system.

Your filling out the questionnaires is voluntary. It is not required as part of your jury service in this case. If you desire to be on your way without filling out the questionnaires, we fully understand and thank you again for your service. We appreciate and thank in advance those of you who do fill out the questionnaires because you will be providing us with valuable information regarding your jury service.

Thank you again.

FACILITATOR INSTRUCTION SHEET

As you are aware, the jurors, attorneys, and judge in this trial are being asked to complete questionnaires as part of a study on jury trials, which is sponsored by the 7th Circuit American Jury Project Commission. We are very grateful for your time and cooperation in assisting with this important study.

Judges will select from four possible innovations they may use in any particular trial: a 12-member jury, preliminary substantive jury instructions, juror questions during trial, and interim statements (as described in the 7th Circuit American Jury Project Commission Manual). The judge may choose to use all, some, or none of these innovations in a particular case. **Whether or not the judge decides to use any of the innovations, please ask that the judge, attorneys, and jurors complete the questionnaires for that trial.**

Please find below a list of instructions for completing this project. If you have any questions, please contact Dr. Daniel Wolfe at (312) 925-0333.

1. Please meet with the judge to review the process and procedures for administering this survey. If you will not be present in the courtroom throughout the trial, you should identify someone who will be present and who can assist you in completing the Facilitator Information Sheet (see details below at No. 7).
2. For each trial, you will need to print or copy a set of questionnaires from the Project Manual. Make sure you have enough copies of each of the respective questionnaires. For most trials, you should have one (1) copy of the Judge Questionnaire, twelve (12) copies of the Juror Questionnaire, and at least four (4) copies of the Attorney Questionnaire. For the Attorney Questionnaire, please have the lead attorney and second chair (if there is one) for each side complete a questionnaire. Therefore, if there are multiple plaintiffs and/or defense counsel, please have at least two (2) copies of the Attorney Questionnaire available for each respective plaintiff and defense counsel.
3. In order to coordinate materials across the study, each of the questionnaires should be labeled with the case number for the appropriate trial. There is a space for the case number on the first page of each questionnaire (Case # _____) as well as the Facilitator Information Sheet, which can be filled-in electronically before you print the materials.
4. For the Judge Questionnaire only, please ask the judge to complete Questions 1 through 7 beginning on Page 2 BEFORE the jury returns its verdict, if at all possible.
5. Once the jury has returned its verdict, distribute the respective questionnaires to the attorneys and the jurors and instruct them to complete the questionnaires before they leave the courtroom. If the judge agrees, the bailiff and/or Marshal can distribute the Juror Questionnaires and ask the jurors to complete them after the jury reports that it has reached its verdict – that is, while the jurors are waiting for the parties to assemble in the courtroom.
6. If at all possible, have the attorneys complete the questionnaires before leaving the courtroom. If the attorneys ask to take the questionnaires with them and then complete them later, please arrange for them to deliver them to you as soon as possible. The jurors should complete their questionnaires before leaving the courthouse, generally in the deliberation room. If the jurors ask to take the questionnaire with them and then complete them later, try to discourage them from doing so. However, use your discretion, and if you can easily arrange for them to return the completed questionnaire to you as soon as possible, please do so.

7. **Instructions for the Facilitator Information Sheet**

- a) Questions 1 through 8 can be completed as soon as the trial begins. If the trial ends before a jury deliberates and delivers a verdict, please complete as many questions as possible on the Facilitator Information Sheet and note in Questions 24 and 25 how the trial ended (e.g., settled, mistrial) and when it ended (e.g., after jury selection, after closing arguments).
- b) Questions 9 through 13 can be completed just after the jury has been selected and before opening statements.
 - i) Question 11: If the jurors completed a juror questionnaire in the case, the length of jury selection does *not* include the time jurors used to complete the questionnaire.
 - ii) Questions 12 and 13: Indicate the number of jury members in each racial/ethnic group separately for men and women. If you cannot tell the racial/ethnic group of a particular juror, use the “other” category for that juror.
- c) Questions 14 through 17 concern the innovations that may or may not have been used in the trial.
 - i) Questions 14 and 15 can be completed just after the jury has been selected and before opening statements.
 - ii) Questions 16 and 17 can be completed as soon as deliberations begin. Please make copies of all juror questions, whether or not the judge permitted a witness to answer. Count the number of submitted, 16A, and permitted, 16B, questions.
- d) Questions 18 and 19 can be completed as soon as deliberations begin.
 - i) Question 18: The length of the trial is the number of days from the beginning of jury selection until the jury *begins* deliberations or the trial ends in some other way (e.g., it is settled).
 - ii) Question 19: Answer only if jurors received a predicted trial duration before the trial began.
- e) Questions 20 through 22 should be completed once deliberations have ended.
 - i) Question 20: Fill in the number of jurors who began deliberations. If a juror did not complete deliberations, please make a note in the margin.
 - ii) Question 21: Please count the number of questions submitted during deliberations and attach copies of the questions and the answer the jury received.
 - iii) Question 22: The length of deliberations is the number of hours of actual deliberations. Please consult the Marshal in order to subtract lunch or other breaks when deliberations are not continuing.
- f) Questions 23 through 25 should be completed when a verdict is reached or the trial ends without a verdict.

8. Please remember to obtain copies of any preliminary instructions used in the trial and any questions submitted by jurors during trial or during deliberations. Attach them to your Facilitator Information Sheet.

9. When you have collected all questionnaires and completed the Facilitator Information Sheet, please bundle them together with a rubber band and arrange to have them delivered immediately to:

Jim Figliulo, Esq.
Figliulo & Silverman
10 S. LaSalle, Suite 3620
Chicago, Illinois 60603

Case # _____

Case Name _____

Facilitator Information Sheet

Please provide the information below by either writing your responses in the spaces provided or by circling the number that corresponds to your answer. Thank you for taking time to complete this sheet; it is vital to the success of this project. If you have any questions, please contact Dr. Daniel Wolfe at (312) 925-0333.

1. Individual completing information sheet: _____

2. Date completing this information sheet: Month _____ Day _____ Year _____

3. State: _____ Federal district: _____ Division: _____

4. Type of Case: Contract Tort Civil rights Other, specify _____

5. Issues in Case: Liability and damages Damages only Other, specify _____

6. Claims and evidence:

Number of claims by Plaintiff Number of claims by Defendant

7. Parties: Number of plaintiffs Number of defendants

8. When did the trial begin (month/day/year)? _____

9. Were jurors told how long the trial would last? Yes: 1 No: 2

10. Were jurors told what day the trial would end? Yes: 1 No: 2

11. How long did jury selection take? hours

12. Jury composition (females): **Please indicate in the boxes below the total number of female jurors, and then indicate the number of female jurors in each of the following racial/ethnic categories:**

Females

Asian-American Black/African-American Non-White Hispanic/Latino

White Hispanic/Latino White/Caucasian Other/unknown

13. Jury composition (males): **Please indicate the total number of male jurors, and then indicate the number of male jurors in each of the following racial/ethnic categories:**

Males

Asian-American Black/African-American Non-White Hispanic/Latino

White Hispanic/Latino White/Caucasian Other/unknown

PLEASE COMPLETE BOTH SIDES OF INFORMATION SHEET

14. At the beginning of the trial, did the judge give instructions to the jury on the legal issues the jury would have to decide? Yes: 1 No: 2

If preliminary instructions were given, please attach a copy to this survey.

15. Did the judge set time limits for the trial? Yes: 1 No: 2

16. Were jurors allowed to submit questions for the witnesses? Yes: 1 No: 2

If jurors were allowed to submit questions for the witnesses...

a. How many questions did the jury submit for the witnesses?

b. How many questions did the judge permit the witnesses to answer?

If jurors submitted questions, please attach copies of all questions, indicating which ones were answered.

17. Were explanatory statements/interim summaries allowed during the trial?
Yes: 1 No: 2

18. How long was this trial? days

19. If jurors were told what day the trial would end, did the trial end on the day promised?
Yes: 1 No: 2

20. How many jurors deliberated for the trial? jurors

21. How many questions did the jury submit to the judge during its deliberations? questions

If jurors submitted questions during deliberations, please attach copies of all questions and the answers the jury received.

22. How long did the jury deliberate? hours

23. Verdict: Plaintiff Damages: \$ _____ Defendant
 Counter-Plaintiff Damages: \$ _____ Counter-Defendant

24. How did the trial end? Mistrial Settlement Directed verdict Jury verdict

25. If the trial ended prior to a jury verdict, please indicate when the trial ended.

- After jury selection After opening statements After Plaintiff's Case in Chief
- After Defendant's Case in Chief After closing arguments
- Other, please specify when _____

Additional comments:

Case # _____

Judge Questionnaire

The jurors, attorneys and judge in this trial are being asked to complete questionnaires as part of a study of jury trials. Please take the time to complete this questionnaire. It will probably take about 15 minutes.

Some questions ask you to check a box or circle a number to indicate your answer. Other questions ask you to provide a written response in your own words.

THIS QUESTIONNAIRE IS DOUBLE-SIDED, SO PLEASE MAKE SURE TO COMPLETE ALL APPROPRIATE PAGES.

Thank you for your time and cooperation in completing this survey. We are very grateful for your participation in this important study.

PLEASE TURN OVER FOR PAGE 2

Overview of the Trial

Please complete Questions 1 through 7 before the jury returns the verdict. It is important that we obtain your opinions about the trial before you know the verdict so that your impressions are not influenced by the outcome. Once the jury has returned its verdict, please complete the remainder of the questionnaire.

1. Overall, how satisfied were you with the trial process?

Not at all satisfied 1 2 3 4 5 6 7 Very satisfied

2. How complex was the evidence presented at trial?

Not at all complex 1 2 3 4 5 6 7 Very complex

3. How clearly was the evidence presented in this trial?

Not at all clearly¹ 2 3 4 5 6 7 clearly Very

4. How difficult or easy was it for jurors to understand the evidence in this trial?

Very easy 1 2 3 4 5 6 7 Very difficult

5. How difficult or easy was it for jurors to understand the law in this trial?

Very easy 1 2 3 4 5 6 7 Very difficult

6. If this trial had been a bench trial, what would your verdict have been?

Plaintiff Damages: \$_____

Defendant

Counter-Plaintiff Damages: \$_____

Counter-Defendant

7. Did you answer Questions 1 **through** 6 before or after you learned of the jury's verdict in this case?

Before

After

PLEASE PROCEED TO PAGE 3

Number of Jurors

8. Generally speaking, what size of jury do you favor?

- 6 jurors More than 6 jurors, but less than 12 12 jurors

8A. In your opinion, how did the number of jurors in this trial affect:

	Increased	Did not affect	Decreased	Don't know
(a) The diversity of the jury?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) The fairness of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) The efficiency of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Your satisfaction with the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Substantive Preliminary Instructions

9. Before the jury heard any evidence, did you give preliminary instructions to the jury that included an explicit description of the claims and the law governing this case?

- Yes - GO TO 9A No - SKIP TO 10

9A. In your opinion, how did the use of preliminary jury instructions in this case affect:

	Increased	Did not affect	Decreased	Don't know
(a) The fairness of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) The efficiency of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Jurors' understanding of the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Your satisfaction with the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9B. Were any logistical, implementation, or other problems encountered with giving these preliminary jury instructions?

- Yes No IF YES, PLEASE USE LAST PAGE TO DESCRIBE AND INDICATE HOW THEY WERE SOLVED.

PLEASE TURN OVER FOR PAGE 4

IF SUBSTANTIVE PRELIMINARY INSTRUCTIONS NOT GIVEN: *Please answer the following question about the use of substantive preliminary instructions in light of your experience in other cases.*

10. In your opinion, how would the use of substantive preliminary instructions have affected:

	Would have increased	Would not have affected	Would have decreased	Don't know
(a) The fairness of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) The efficiency of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Jurors' understanding of the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

General Questions on Trial Length

11. Which of the following statements best describes your reaction to the length of the trial?

- Too short About right Too long

11A. Please rate the trial on the following dimensions (circle the number on the scale that best reflects your opinion for the particular characteristic):

Efficiency of the trial (Was time wasted or used effectively?)

Not at all efficient 1 2 3 4 5 6 7 Very efficient

Organization of the trial

Not at all organized 1 2 3 4 5 6 7 Very organized

Repetitiveness/redundancy of the evidence and/or testimony

Not at all repetitive 1 2 3 4 5 6 7 Very repetitive

The amount of time each side had to present its case

Not enough time allowed 1 2 3 4 5 6 7 Too much time allowed

Ease of understanding the case material and information presented

Not at all easy to understand 1 2 3 4 5 6 7 Very easy to understand

How interesting the case was in general

Not at all interesting 1 2 3 4 5 6 7 Very interesting

PLEASE PROCEED TO PAGE 5

Juror Questions for Witnesses During Trial

12. Did you allow jurors to submit questions for witnesses in this case?

- Yes - GO TO 12A No - SKIP TO 13

12A. Did the jurors in this trial submit questions for any witnesses?

- Yes No

If yes, how many questions did the jurors submit? _____

If yes, how many questions were witnesses permitted to answer? _____

12B. What is your opinion of the number of questions submitted by jurors during the trial?

- Too many An appropriate number Not enough

12C. How would you describe the jury's questions (check only one)?

- Most of the questions were relevant
 Some were relevant, some were irrelevant
 Most of the questions were irrelevant
 Jury did not ask any questions

12D. In your opinion, how did allowing jurors to submit questions in this trial affect:

	Increased	Did not affect	Decreased	Don't know
(a) The fairness of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) The efficiency of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Jurors' understanding of the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Your satisfaction with the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12E. Were any logistical, implementation, or other problems encountered with permitting jurors to submit questions?

- Yes No

IF YES, PLEASE USE LAST PAGE TO DESCRIBE
AND INDICATE HOW THEY WERE SOLVED.

PLEASE TURN OVER FOR PAGE 6

IF JUROR QUESTIONS WERE NOT PERMITTED, PLEASE ANSWER QUESTION 13 and 13B.

13. In your opinion, how would permitting juror questions have affected:

	Would have increased	Would not have affected	Would have decreased	Don't know
(a) The fairness of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) The efficiency of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Jurors' understanding of the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Your satisfaction with the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

13A. If any of the jurors' questions were not answered, did you provide jurors with the reason for not answering the question(s)?

Yes No

Interim Statements

14. Did you allow the attorneys to give interim statements in this case?

Yes - GO TO 14A No - SKIP TO 15

14A. How much time did you allot for interim statements (circle your choices)?

____ (hours/minutes) per (trial/trial week/trial day)

In retrospect that was:

Too much time The right amount of time Too little time

14B. In your opinion, how did the interim statements in this trial affect:

	Increased	Did not affect	Decreased	Don't know
(a) The fairness of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) The efficiency of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Jurors' understanding of the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Your satisfaction with the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PLEASE PROCEED TO PAGE 7

14C. Did you think there were any abuses of the interim statements?

Yes No

If yes, please explain, giving specific examples of any abuses:

14D. Would you permit interim statements in future trials?

Yes No

IF INTERIM STATEMENTS WERE NOT PERMITTED, PLEASE ANSWER QUESTION 15.

15. In your opinion, how would interim statements have affected:

	Would have increased	Would not have affected	Would have decreased	Don't know
(a) The fairness of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) The efficiency of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Jurors' understanding of the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Your satisfaction with the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Instructions Regarding Jury Deliberations

16. Did you give jurors any instructions or suggestions on how to select a foreperson?

Yes No

16A. Did you give jurors any instructions or suggestions on how to conduct their deliberations?

Yes No

Jury Questions During Deliberations

17. Did the jury submit any questions to you during its deliberations?

Yes No

17A. Did you answer any of the questions that the jury submitted during its deliberations?

Yes No Jury did not ask any questions.

17B. Were the parties cooperative (with the court and with each other) in helping to respond to questions from the jury?

Definitely no 1 2 3 4 5 6 7 Definitely yes

PLEASE TURN OVER FOR PAGE 8

17C. If you did not answer any of the questions, did you give the jury a reason for not answering the question(s)?

- Yes No Jury did not ask any questions.

17D. What types of questions did the jury submit (**check** all that apply)?

- Questions about legal instructions or legal terms
 Questions about the content of the evidence
 Requests to see evidence
 Questions about procedure or case management
 Other _____

17E. How would you describe the jury's questions submitted during deliberations (check only one)?

- Most of the questions were relevant
 Some were relevant, some were irrelevant
 Most of the questions were irrelevant
 Jury did not ask any questions

Judicial Background

Please circle the number that corresponds to your answer or fill in the blank. This information is being used for statistical purposes only.

18. How many civil jury trials have you had as a judge, excluding this trial? _____ trials

18A. Please indicate what percentage of your prior civil jury trials included the following:

- (a) Twelve-person juries _____
(b) Preliminary substantive jury instructions _____
(c) Juror questions to witnesses _____
(d) Interim statements _____
(e) Jury questions during deliberations _____

Please use the space below for any further comments you have on the procedures used (or not used) in this trial.

THANK YOU VERY MUCH FOR YOUR PARTICIPATION!

Case # _____

Attorney Questionnaire

The jurors, attorneys, and judge in this trial are being asked to complete questionnaires as part of a study of jury trials. Please take the time to complete this questionnaire. It will probably take about 15 minutes.

Some of the questions ask you to check a box or circle a number to indicate your answer. Other questions ask you to provide a written response in your own words.

THIS QUESTIONNAIRE IS DOUBLE-SIDED, SO PLEASE MAKE SURE TO COMPLETE ALL APPROPRIATE PAGES.

Thank you for your time and cooperation in completing this survey. We are very grateful for your participation in this important study.

PLEASE TURN OVER FOR PAGE 2

Overview of the Trial

1. What was your overall level of satisfaction with the trial process?

Not at all satisfied 1 2 3 4 5 6 7 Very satisfied

2. How complex was the evidence presented at trial?

Not at all complex 1 2 3 4 5 6 7 Very complex

3. How clearly was the evidence presented in this trial?

Not at all clearly¹ 2 3 4 5 6 7 clearly Very

4. How difficult or easy was it for jurors to understand the evidence in this trial?

Very easy 1 2 3 4 5 6 7 Very difficult

5. How difficult or easy was it for jurors to understand the law in this trial?

Very easy 1 2 3 4 5 6 7 Very difficult

5A. In this trial, did you or will you order a daily transcript of the trial proceedings?

Yes, did order Yes, will order No

Number of Jurors

6. Generally speaking, what size of jury do you favor?

6 jurors More than 6 jurors, but less than 12 12 jurors

6A. What is your opinion of the number of jurors who served on this trial?

Too few An appropriate number Too many

PLEASE PROCEED TO PAGE 3

6B. In your opinion, how did the number of jurors in this trial affect:

	Increased	Did not affect	Decreased	Don't know
(a) The diversity of the jury?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) The fairness of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) The efficiency of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Your satisfaction with the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Substantive Preliminary Instructions

7. Before the jury heard any evidence, did the judge give preliminary instructions to the jury that included an explicit description of the claims and the law governing this case?

- Yes - GO TO 7A No - SKIP TO 8

7A. Please rate the preliminary substantive jury instructions regarding the law governing this case on the following dimensions (circle the number on the scale that best reflects your opinion for the particular characteristic):

Substantive fairness

Not at all fair 1 2 3 4 5 6 7 Very fair

Length of preliminary instructions

Too short 1 2 3 4 5 6 7 Too long

When administered

Not at all appropriate time 1 2 3 4 5 6 7 Extremely appropriate time

Helpful to jurors

Not at all helpful 1 2 3 4 5 6 7 Very helpful

PLEASE TURN OVER FOR PAGE 4

7B. In your opinion, how did the use of preliminary jury instructions in this case affect:

	Increased	Did not affect	Decreased	Don't know
(a) The fairness of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) The efficiency of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Jurors' understanding of the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Your satisfaction with the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IF PRELIMINARY SUBSTANTIVE JURY INSTRUCTIONS WERE NOT GIVEN, PLEASE ANSWER QUESTION 8.

8. Would you have liked the judge give substantive jury instructions regarding the law governing this case to the jury at the beginning of the trial?

Yes No

PLEASE PROCEED TO PAGE 5

General Questions on Trial Length

9. Which of the following statements best describes your reaction to the length of the trial?

Too short About right Too long

9A. Please rate the trial on the following dimensions (circle the number on the scale that best reflects your opinion for the particular characteristic):

Efficiency of the trial (Was time wasted or used effectively?)

Not at all efficient 1 2 3 4 5 6 7 Very efficient

Organization of the trial

Not at all organized 1 2 3 4 5 6 7 Very organized

Repetitiveness/redundancy of the evidence and/or testimony

Not at all repetitive 1 2 3 4 5 6 7 Very repetitive

The amount of time each side had to present its case

Not enough time allowed 1 2 3 4 5 6 7 Too much time allowed

Ease of understanding the case material and information presented

Not at all easy to understand 1 2 3 4 5 6 7 Very easy to understand

How interesting the case was in general

Not at all interesting1 2 3 4 5 6 7 Very interesting

PLEASE TURN OVER FOR PAGE 6

Juror Questions for Witnesses

10. Were jurors permitted to submit questions for witnesses in this case?

Yes - GO TO 10A

No - SKIP TO 11

10A. Did jurors submit questions for any witnesses during the trial?

Yes

No

10B. Approximately how many questions did the jurors submit? _____

10C. Approximately how many questions did the judge permit the witness to answer? _____

10D. If the witness was NOT permitted to answer a juror question, what happened (check all answers that apply)?

Another witness answered the question later

The judge answered the question

One of the attorneys answered the question

No one answered the question

10E. If any of the jurors' questions were not answered, were the jurors given a reason why the question(s) were not answered?

Yes

No

10F. What is your opinion of the number of questions submitted by jurors during the trial?

Too many

An appropriate number

Not enough

10G. How would you describe the jury's questions?

Most of the questions were relevant

Some were relevant, some were irrelevant

Most of the questions were irrelevant

Jury did not ask any questions

PLEASE PROCEED TO PAGE 7

10F. In your opinion, how did allowing jurors to submit questions in this trial affect:

	Increased	Did not affect	Decreased	Don't know
(a) The fairness of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) The efficiency of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Jurors' understanding of the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Your satisfaction with the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IF JUROR QUESTIONS FOR WITNESSES WERE NOT PERMITTED, PLEASE ANSWER QUESTION 11.

11. In your opinion, how would permitting juror questions have affected:

	Would have increased	Would not have affected	Would have decreased	Don't know
(a) The fairness of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) The efficiency of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Jurors' understanding of the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Your satisfaction with the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Interim Statements

12. Were attorneys in this case permitted to make interim statements to the jury?

Yes - GO TO 12A

No - SKIP TO 13

12A. In your opinion, how did interim statements affect the efficiency of the trial process?

Increased efficiency

Did not affect efficiency

Decreased efficiency

PLEASE TURN OVER FOR PAGE 8

12B. Did you feel that the use of interim statements allowed you to:

Better organize the evidence for the jurors?

Definitely no 1 2 3 4 5 6 7 Definitely yes

Better explain the evidence for the jurors?

Definitely no 1 2 3 4 5 6 7 Definitely yes

Better emphasize parts of the evidence for the jurors?

Definitely no 1 2 3 4 5 6 7 Definitely yes

12C. Did you think there were any abuses of the interim statements?

Yes No

If yes, please explain, giving specific examples of any abuses:

12D. Is there anything you would have liked to change about the interim statements?

IF INTERIM STATEMENTS WERE NOT PERMITTED (Interim statements are statements made from time to time by the attorneys to either introduce evidence about to be presented through the testimony of witnesses or statements that summarize the testimony of witnesses that has just been presented), PLEASE ANSWER QUESTIONS 13 AND 13A.

13. In your opinion, how would interim statements have affected the efficiency of the trial process?

- Would have increased efficiency Would not have affected efficiency
 Would have decreased efficiency Don't know

PLEASE PROCEED TO PAGE 9

13A. Do you feel that the use of interim statements would have allowed you to:

Better organize the evidence for the jurors?

Definitely no 1 2 3 4 5 6 7 Definitely yes

Better explain the evidence for the jurors?

Definitely no 1 2 3 4 5 6 7 Definitely yes

Better emphasize parts of the evidence for the jurors?

Definitely no 1 2 3 4 5 6 7 Definitely yes

Instructions Regarding Jury Deliberations

14. Did the judge give jurors any instructions or suggestions on how to select a foreperson?

Yes No

14A. How do you feel about the amount of guidance that the jury had from the judge on how to select a foreperson?

Not enough 1 2 3 4 5 6 7 Too much

14B. Did the judge give jurors any instructions or suggestions on how to conduct their deliberations?

Yes No

14C. How do you feel about the amount of guidance that the jury had from the judge on how to conduct its deliberations?

Not enough 1 2 3 4 5 6 7 Too much

PLEASE TURN OVER FOR PAGE 10

17. How many civil jury trials have you participated in excluding this trial? _____ trials

18. Please indicate what percentage of your prior civil jury trials included the following:

- (a) Twelve-person juries _____
- (b) Preliminary substantive jury instructions _____
- (c) Juror questions to witnesses _____
- (d) Interim statements _____
- (e) Jury questions during deliberations _____

19. How would you characterize the outcome of this trial for your client?

Big loss 1 2 3 4 5 6 7 Big win

Please use the space below and the other side of the page for any further comments you have on the procedures used (or not used) in this trial.

THANK YOU VERY MUCH FOR YOUR PARTICIPATION!

PLEASE COMPLETE THIS QUESTIONNAIRE INDIVIDUALLY. DO NOT DISCUSS THE QUESTIONS OR YOUR ANSWERS WITH YOUR FELLOW JURORS. WE ARE INTERESTED IN YOUR PERSONAL OPINIONS.

Overview of the Trial

1. What was your overall level of satisfaction with the trial process?

Not at all satisfied	1	2	3	4	5	6	7	Very satisfied
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2. How complex was the evidence presented at trial?

Not at all complex	1	2	3	4	5	6	7	Very complex
--------------------	---	---	---	---	---	---	---	--------------

3. How clearly was the evidence presented in this trial?

Not at all clearly	1	2	3	4	5	6	7	Very clearly
--------------------	---	---	---	---	---	---	---	--------------

4. How difficult or easy was it for jurors to understand the evidence in this trial?

Very easy	1	2	3	4	5	6	7	Very difficult
-----------	---	---	---	---	---	---	---	----------------

5. How difficult or easy was it for jurors to understand the law in this trial?

Very easy	1	2	3	4	5	6	7	Very difficult
-----------	---	---	---	---	---	---	---	----------------

5A. What did the judge tell you about the case before you heard any evidence (check all that apply)?

- A description of the claims in this case
- The procedures that would be used in this trial
- The law that the jury would be applying in this case

Number of Jurors

6. How many jurors were on your jury at the beginning of the trial? _____ jurors

6A. How many jurors were on your jury at the end of your deliberations? _____ jurors

PLEASE PROCEED TO PAGE 3

6B. Did all of the jurors on your jury contribute to your deliberations?

Yes No

6C. If no, how many of the jurors contributed to your deliberations? _____ jurors

6E. Did any one juror dominate the deliberations of the jury?

Yes No

6F. What was your opinion of the number of jurors on your jury?

Too few The right number Too many

Preliminary Jury Instructions

7. Before you began hearing testimony from witnesses, did the judge tell you what the case was going to be about – what the plaintiff and the defendant would be claiming?

Yes No

7A. Before you began hearing testimony from witnesses, did the judge tell you about the way the case would be run?

Yes No

7B. Before you began hearing testimony from witnesses, did the judge tell you about the law that would be applied in the case?

Yes No

If you answered yes to any of the above, go to 7C. If you answered no to ALL of the above, skip to 8.

7C. How helpful, if at all, was the judge’s telling you about what the plaintiff and the defendant were claiming?

Not at all helpful 1 2 3 4 5 6 7 Very helpful

7D. How did you feel about the length of what the judge told you about the parties’ claims and about the law in this case?

Too short 1 2 3 4 5 6 7 Too long

PLEASE TURN OVER FOR PAGE 4

7E. How did you feel about the timing of what the judge told you about the parties' claims and about the law in this case?

Given at most inappropriate time 1 2 3 4 5 6 7 Given at most appropriate time

7F. Was there anything the judge told you about the law at the END of the case just before you began deliberating that you would have liked to know earlier in the trial?

Yes No

7G. If yes, what was it?

IF THE JUDGE DID NOT GIVE PRELIMINARY SUBSTANTIVE INSTRUCTIONS, PLEASE ANSWER QUESTION 8.

8. Would you have liked for the judge to give instructions to you at the beginning of the trial explaining the legal issues that you had to decide in the trial?

Yes No

8A. Was there anything the judge told you about the law at the END of the case just before you began deliberating that you would have liked to know earlier in the trial?

Yes No

8B. If yes, what was it?

General Questions on Trial Length

11. Were you told by the judge at the beginning of the trial how long the trial would last or when the trial would be finished?

Yes No

11A. If the judge did tell you how long the trial would last or when the trial would be finished, did the trial end when promised?

Yes No

PLEASE PROCEED TO PAGE 5

11B. How important, if at all, was it that you knew at the beginning of the trial how long the trial would be and/or what day the trial would be finished?

Not at all important 1 2 3 4 5 6 7 Extremely important

11C. Which of the following statements best describes your reaction to the length of the trial?

Too short About right Too long

11D. Please rate the trial on the following dimensions (circle the number on the scale that best reflects your opinion for the particular characteristic):

Efficiency of the trial (Was time wasted or used effectively?)

Not at all efficient 1 2 3 4 5 6 7 Very efficient

Organization of the trial

Not at all organized 1 2 3 4 5 6 7 Very organized

Repetitiveness/redundancy of the evidence and/or testimony

Not at all repetitive 1 2 3 4 5 6 7 Very repetitive

The amount of time each side had to present its case

Not enough time allowed 1 2 3 4 5 6 7 Too much time allowed

Ease of understanding the case material and information presented

Not at all easy to understand 1 2 3 4 5 6 7 Very easy to understand

How interesting the case was in general

Not at all interesting¹ 2 3 4 5 6 7 Very interesting

PLEASE TURN OVER FOR PAGE 6

Juror Questions During Trial

12. Were jurors permitted to submit questions for witnesses in this case?

Yes - GO TO 12A

No - SKIP TO 13

12A. In your opinion, should jurors be permitted to submit questions for witnesses?

Yes

No

12B. In this case, did you submit any questions to be asked of the witnesses?

Yes

No

If yes, how many?_____

12C. How many of your questions did the judge answer or permit the witness to answer?

All

Some

None

Does not apply/I didn't ask any questions

12D. In this case, were you aware of any other jurors submitting questions to be asked of the witnesses?

Yes

No

If yes, how many?_____

PLEASE PROCEED TO PAGE 7

12E. If you submitted any questions to the judge, what were the primary purposes of your questions (check "Yes" or "No" for each of the following reasons that apply)?

To repeat information already presented

Yes No

To clarify information already presented

Yes No

To check on a fact or an explanation

Yes No

To get additional information

Yes No

To find out the opinion of a witness

Yes No

To resolve inconsistencies in the evidence

Yes No

To understand the law

Yes No

To test witness credibility

Yes No

To link up other evidence

Yes No

To help one side or the other

Yes No

To make sure the trial was fair

Yes No

To cover something that the lawyers missed

Yes No

Other, specify _____

12F. If the judge did not answer any of your questions, did he/she give the reason for not answering the question(s)?

Yes No

PLEASE TURN OVER FOR PAGE 8

12G. Which of the following statements best describes your reaction to the number of questions asked by jurors?

- Too many An appropriate number Not enough

12H. How did the opportunity to submit questions for witnesses during trial affect:

	Helped	Did not affect	Hurt
(a) Your understanding of the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) The fairness of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) The efficiency of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Your satisfaction with the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IF JUROR QUESTIONS FOR WITNESSES WERE NOT ALLOWED, PLEASE ANSWER QUESTIONS 13-13B.

13. In your opinion, should jurors be permitted to submit questions for witnesses during the trial?

- Yes No

13A. Did you have any questions you would have liked to submit to be asked of a witness during this trial?

- Yes No

13B. If you had been permitted to submit questions for the witnesses, how would it have affected:

	Would have helped	Would not have affected	Would have hurt
(a) Your understanding of the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) The fairness of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) The efficiency of the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Your satisfaction with the trial process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PLEASE PROCEED TO PAGE 9

Interim Statements

In some trials, attorneys are permitted to make short statements in the course of the trial in addition to the opening statements and closing arguments. These statements may either introduce evidence about to be presented through the testimony of witnesses or summarize the evidence that has already been presented.

14. Did the attorneys make short statements during this trial?

Yes - GO TO 14A

No - SKIP TO 15

14A. How did the lawyers use the short statements during the trial?

Mostly to introduce the evidence about to be presented

About the same in terms of introducing versus summarizing the evidence

Mostly to summarize the evidence that had just been presented

14B. Which type of the short statements did you find most useful?

When used to introduce the evidence about to be presented

When used to summarize the evidence that had just been presented

Both uses of short attorney statements were equally useful

Neither, I didn't find them useful at all

14C. Please rate how helpful the short attorney statements were on each of the following dimensions (circle the number on the scale that best reflects your opinion for each characteristic):

In your opinion, how helpful were the short attorney statements to you in:

	Not at all helpful						Very helpful
(a) Understanding the evidence?	1	2	3	4	5	6	7
(b) Recalling the evidence during deliberations?	1	2	3	4	5	6	7
(c) Keeping focused on the evidence?	1	2	3	4	5	6	7
(d) Making the evidence more interesting?	1	2	3	4	5	6	7

14D. Was there anything about the short attorney statements that you did not like?

Yes No

If yes, please explain: _____

PLEASE TURN OVER FOR PAGE 10

17. Did your jury submit any questions to the judge during your deliberations?

Yes No If yes, how many? _____

17A. How many of the jury's questions did the judge answer?

All Some None Does not apply/jury didn't ask any
questions

17B. If you submitted any questions to the judge, what were the primary purposes of your questions (check "Yes" or "No" for each of the following reasons that apply)?

To repeat or clarify information already presented

Yes No

To check on a fact or an explanation

Yes No

To get additional information

Yes No

To find out the opinion of a witness

Yes No

To resolve inconsistencies in the evidence

Yes No

To understand the law

Yes No

To help one side or the other

Yes No

To make a point the lawyers missed

Yes No

Other, specify _____

17C. If the judge did not answer any of your questions, did he/she give the reason for not answering the question(s)?

Yes No

17D. If the judge did answer some of your questions, how did the answers affect your understanding of the case?

- Helped me understand the case better
- Did not affect how well I understood the case
- Made it harder for me to understand the case

17E. If the judge did answer some of your questions, what effect did the answers have on your jury's deliberations?

- Were extremely helpful to the jury's decision making
- Were moderately helpful to the jury's decision making
- Were not helpful to the jury's decision making
- Made the jury's decision making more difficult

Juror Background

Please circle the number that corresponds to your answer or fill in the blank. This information is being used for statistical purposes only.

18. Did you ever sit on a jury before? Yes No

If yes, how many juries? _____

If yes, what type of juries have you served on (check all that apply)?

- Civil
- Criminal
- Don't Know

18A. Gender: Male Female

18B. Age: _____ years

18C. Which of the following best describes your racial/ethnic background?

- Asian-American
- Black/African-American
- White Hispanic/Latino
- Non-White Hispanic/Latino
- White/Caucasian
- Native American
- Other (specify): _____

18D. Are you currently employed? Yes No

18E. If you are currently employed, what is your occupation? _____

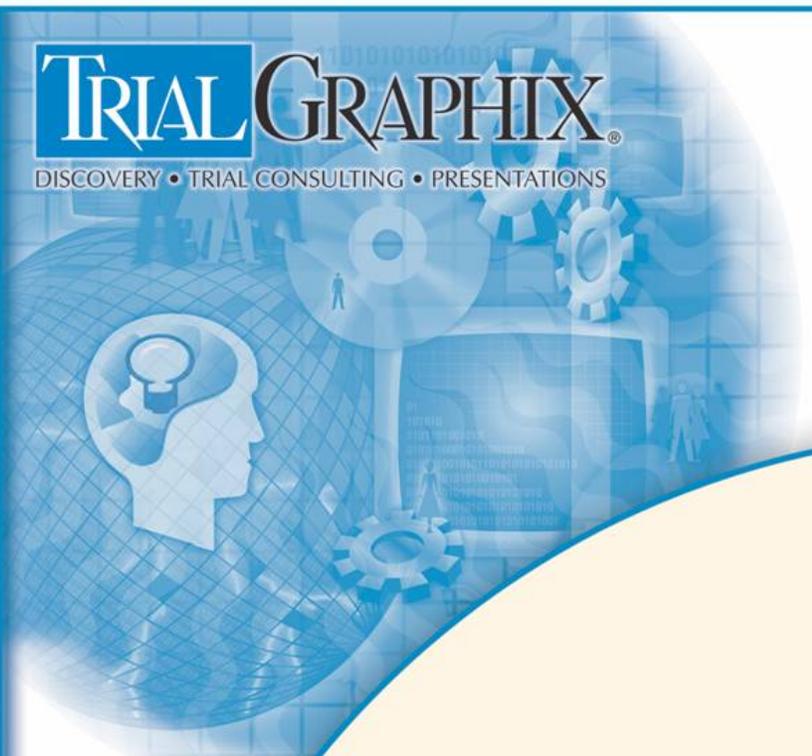
PLEASE PROCEED TO PAGE 13

18F. What is the last year of school you completed?

- Less than high school
- High school graduate
- Technical school/some college
- Completed two-year college
- Completed four-year college
- Graduate school

Please use the space below for any further comments you have on the procedures used in this trial.

THANK YOU VERY MUCH FOR YOUR PARTICIPATION!



*7th Circuit American
Jury Project*

Executive Summary

*7th Circuit Bar Association Annual Meeting
and Judicial Conference
May 22-23, 2006*

Overview

By way of background, the 7th Circuit Bar Association established a Commission last year to consider and test certain concepts recently adopted by the ABA as part of the American Jury Project. This Commission is a veritable "Who's Who" of leading trial attorneys, jurists, academicians, and practitioners.¹

This effort is being supported by the judges of this Circuit, including the Chief Judge of the 7th Circuit, the Honorable Joel M. Flaum, and the Chief Judge of the Northern District of Illinois, the Honorable Charles P. Kocoras. The Honorable Dianne Sykes, Honorable James F. Holderman and James Figliuolo are serving as the Co-Chairs of this Commission. One District Court Judge from each District serves as the Coordinating Judge for that District, and several District Court Judges and Magistrate Judges have participated. Each District has its own Committee co-chaired by a Coordinating Judge and trial lawyer.

Additionally, these efforts are being coordinated with the efforts of, *inter alia*, Shari Diamond, J.D., Ph.D. (Northwestern University), Stephan Landsman, J.D. (DePaul University), and Daniel Wolfe, J.D., Ph.D. (TrialGraphix).

Beginning in October 2005 through May 2006, seven (7) of the nineteen (19) concepts recommended by the American Jury Project in jury trials are being tested. The seven (7) concepts being tested are the following:

- Using 12 jurors
- Using substantive preliminary jury instructions before evidence is presented
- Using a written juror selection questionnaire
- Utilizing time limits
- Allowing jurors to ask questions of the witnesses during the trial
- Allowing counsel to make interim summation statements during the trial
- Providing jurors with deliberation guidance instructions

Questionnaires were developed to assess the efficacy of these concepts by using both quantitative and qualitative assessment techniques. The summary below is a preliminary report of those assessments by the judges, attorneys, and jurors in each of the cases where one or more of these concepts were utilized.

Twenty-two (22) judges from six (6) of the seven (7) Districts that comprise the 7th Circuit reported as having participated in this Project to date. Of the twenty-two (22) judges who have participated to date, there have been thirty-four (38) trials where one or more of these seven concepts have been utilized. Of these 38 trials, thirty-six (36) judge questionnaires were completed, seventy-four (74) attorneys completed questionnaires, and three hundred and three (303) jurors completed questionnaires.

Below is a list of the judges who have participated in the Project to date:

¹ See 7th Circuit American Jury Project Commission Roster

Northern District of Illinois (14)

Elaine E. Bucklo
Geraldine Soat Brown
David H. Coar
John W. Darrah
Morton Denlow
Samuel Der-Yeghiayan
Joan B. Gottschall
James F. Holderman
Matthew F. Kennelly
Joan Humphrey Lefkow
James B. Moran
Sidney I. Schenkier
Amy J. St. Eve
James B. Zagel

Southern District of Illinois (1)

Michael J. Reagan

Northern District of Indiana (2)

Paul R. Cherry
Andrew P. Rodovich

Southern District of Indiana (2)

David F. Hamilton
John D. Tinder

Eastern District of Wisconsin (2)

Lynn S. Adelman
Charles N. Clevert

Western District of Wisconsin (1)

Barbara B. Crabb

Overview of the Trial

What was your overall level of satisfaction with the trial process (on a scale of “1” to “7” where “1” is “Not at all satisfied” and “7” is “Very satisfied”)?

Participant	Mean Rating
Judges	5.3
Attorneys	6.0
Jurors	5.7

How complex was the evidence presented at trial (on a scale of “1” to “7” where “1” is “Not at all complex” and “7” is “Very complex”)?

Participant	Mean Rating
Judges	3.4
Attorneys	3.9
Jurors	3.9

How clearly was the evidence presented at trial (on a scale of “1” to “7” where “1” is “Not at all clearly” and “7” is “Very clearly”)?

Participant	Mean Rating
Judges	4.5
Attorneys	5.3
Jurors	4.6

How difficult or easy was it for jurors to understand the evidence in this case (on a scale of “1” to “7” where “1” is “Very easy” and “7” is “Very difficult”)?

Participant	Mean Rating
Judges	3.6
Attorneys	3.8
Jurors	3.5

How difficult or easy was it for jurors to understand the law in this case (on a scale of “1” to “7” where “1” is “Very easy” and “7” is “Very difficult”)?

Participant	Mean Rating
Judges	3.4
Attorneys	4.4
Jurors	3.5

Number of Jurors

Number of jurors deliberating:

<6	7	8	9	10	11	12
1%	14%	20%	3%	3%	27%	32%

Generally speaking, what size of jury do you favor?

Participant	6 Jurors	>6 but <12	12 Jurors
Judges	9%	60%	31%
Attorneys	15%	49%	36%

What is your opinion of the number of jurors who served on this trial/jury?

Participant	Too few	The right number	Too many
Attorneys	3%	79%	18%
Jurors	2%	92%	6%

In your opinion, how did the number of jurors in this trial affect:

The diversity of the jury?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	47%	47%	3%	3%
Attorneys	42%	53%	1%	4%

The fairness of the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	19%	75%	0%	6%
Attorneys	26%	61%	0%	13%

The efficiency of the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	3%	79%	19%	0%
Attorneys	11%	66%	18%	5%

Your satisfaction with the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	25%	67%	8%	0%
Attorneys	17%	71%	4%	8%

Substantive Preliminary Jury Instructions

Before the jury heard any evidence, did the judge give preliminary instructions to the jury that included an explicit description of the claims and the law governing the case?

Participant	Yes	No
Judges	68%	32%
Attorneys	82%	18%
Jurors	87%	13%

In your opinion, how did the use of preliminary jury instructions in this case affect:
[Asked of judges and attorneys only]

The fairness of the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	82% (10%) ²	9% (90%)	0% (0%)	9% (0%)
Attorneys	47%	36%	7%	10%

The efficiency of the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	74% (0%)	17% (70%)	0% (30%)	9% (0%)
Attorneys	54%	35%	2%	9%

Jurors' understanding of the case?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	91% (50%)	0% (50%)	0% (0%)	9% (0%)
Attorneys	72%	17%	4%	7%

Your satisfaction with the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	82%	18%	0%	0%
Attorneys	50%	33%	10%	7%

Were there any logistical, implementation, or other problems encountered with giving these preliminary jury instructions? [Asked of judges only]

Yes	No
5%	95%

² If preliminary jury instructions were not given, judges only were asked how the use of preliminary jury instructions would have affected three of these four dimensions, which is reported in the parentheses.

Please rate the preliminary substantive jury instructions regarding the law governing this case on the following dimensions: [Asked of attorneys and jurors only]

Substantive fairness (scale of “1” to “7” where “1” is “Not at all fair” and “7” is “Very fair”)

Participant	Mean Rating
Attorneys	5.5
Jurors	N/A

Length of preliminary instructions (scale of “1” to “7” where “1” is “Too short” and “7” is “Too long”)

Participant	Mean Rating
Attorneys	4.4
Jurors	4.4

When administered (scale of “1” to “7” where “1” is “Not at all appropriate time” and “7” is “Extremely appropriate time”)

Participant	Mean Rating
Attorneys	5.8
Jurors	5.7

Helpful to jurors (scale of “1” to “7” where “1” is “Not at all helpful” and “7” is “Very helpful”)

Participant	Mean Rating
Attorneys	5.4
Jurors	5.8

If preliminary jury instructions were NOT given, would you have liked for the judge to give substantive jury instructions at the beginning of the trial explaining the legal issues the jury had to decide in the trial? [Asked of attorneys and jurors only]

Participant	Yes	No
Attorneys	50%	50%
Jurors	73%	27%

Jury Selection Questionnaire

Was a jury selection questionnaire used at the beginning of the trial?

Participant	Yes	No
Judges	57%	43%
Attorneys	83%	17%
Jurors	59%	41%

In your opinion, how helpful was the juror questionnaire in assisting the court to determine which potential jurors were qualified to be impaneled as jurors in this case (on a scale of “1” to “7” where “1” is “Not at all helpful” and “7” is “Very helpful”)? [Asked of judges only]

Participant	Mean Rating
Judges	4.9

In your opinion, how helpful was the juror questionnaire in assisting the court to determine what follow-up questions, if any, should be asked to potential jurors by either court or counsel (on a scale of “1” to “7” where “1” is “Not at all helpful” and “7” is “Very helpful”)? [Asked of judges only]

Participant	Mean Rating
Judges	4.8

In your opinion, how helpful was the juror questionnaire in reducing the time needed for follow-up questions to be asked of potential jurors (on a scale of “1” to “7” where “1” is “Not at all helpful” and “7” is “Very helpful”)? [Asked of judges only]

Participant	Mean Rating
Judges	4.6

In your opinion, how did the use of the jury selection questionnaire in this case affect:
[Asked of judges and attorneys only]

The fairness of the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	11% (8%) ³	78% (83%)	0% (0%)	11% (8%)
Attorneys	47% (23%)	41% (29%)	5% (6%)	7% (41%)

The efficiency of the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	70% (0%)	15% (75%)	10% (17%)	5% (8%)
Attorneys	59% (35%)	25% (29%)	7% (6%)	9% (29%)

Your satisfaction with the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	60% (0%)	25% (100%)	15% (0%)	0% (0%)
Attorneys	54% (35%)	29% (29%)	8% (0%)	8% (35%)

The time spent in selecting the jury?[Asked of attorneys only]

Participant	Increased	Did not affect	Decreased	Don't know
Attorneys	20% (53%)	27% (0%)	47% (23%)	5% (23%)

How likely are you to use a jury selection questionnaire in the future?
[Asked of judges and attorneys only]

Participant	Mean Rating
Judges	6.2
Attorneys	6.1 (6.0) ⁴

How likely are you to use a jury selection questionnaire utilized in this case in the future?
[Asked of judges and attorneys only]

Participant	Mean Rating
Judges	5.5
Attorneys	5.2

Were there any logistical, implementation, or other problems encountered with using the jury selection questionnaire? [Asked of judges only]

Yes	No
28%	72%

³ If a jury selection questionnaire was not used, judges and attorneys only were asked how the use of a jury selection questionnaire would have affected these dimensions, which is reported in the parentheses.

⁴ If a jury selection questionnaire was not used, attorneys only were asked: "If given the opportunity, how likely would you be to use a jury selection question in the future?" which is reported in parentheses.

Which of the following statements best describes the length of the jury selection questionnaire used in this trial? [Asked of attorneys and jurors only]

Participant	Too short	About right	Too long
Attorneys	19%	75%	5%
Jurors	2%	93%	4%

Please rate the jury selection questionnaire on the following dimensions:

[Asked of attorneys only]

Completeness of jury selection questionnaire (scale of “1” to “7” where “1” is “Not at all complete” and “7” is “Very complete”)

Participant	Mean Rating
Attorneys	4.8

Organization of the jury selection questionnaire (scale of “1” to “7” where “1” is “Not at all organized” and “7” is “Very organized”)

Participant	Mean Rating
Attorneys	5.4

Usefulness of jury selection questionnaire (scale of “1” to “7” where “1” is “Not at all useful” and “7” is “Very useful”)

Participant	Mean Rating
Attorneys	5.4

Many of the questions on the jury selection questionnaire are questions the judge or the attorneys usually ask out loud in the courtroom. Which of the following would you prefer?

[Asked of jurors only]

Response Choice	% Selecting Response
To answer some of the questions by filling out a jury selection questionnaire	75% (56%) ⁵
To have all the questions asked out loud by the judge or attorneys	25% (44%)

Did the judge or the attorneys tell you how the information you provided in the written questionnaire would be used? [Asked of jurors only]

Yes	No
48%	52%

⁵ If a jury selection questionnaire was not used, jurors were asked this same question, which is reported in the parentheses.

How concerned were you, if at all, about your privacy when being asked questions on the written questionnaire (scale of “1” to “7” where “1” is “Not at all concerned” and “7” is “Extremely concerned”)? [Asked of jurors only]

Participant	Mean Rating
Jurors	2.4

How concerned were you, if at all, about your privacy when being asked questions by the judge or the attorneys out loud in the courtroom (scale of “1” to “7” where “1” is “Not at all concerned” and “7” is “Extremely concerned”)? [Asked of jurors only]

Participant	Mean Rating
Jurors	2.8 (3.0) ⁶

⁶ If a jury selection questionnaire was not used, jurors were asked this same question, which is reported in parentheses.

Time Limits

Which of the following statement best describes your reaction to the length of the trial?

Participant	Too short	About right	Too long
Judges	3%	84%	12%
Attorneys	4%	87%	9%
Jurors	1%	73%	26%

Please rate the trial on the following dimensions:

Efficiency of the trial (was time wasted or used efficiently)(scale of “1” to “7” where “1” is “Not at all efficient” and “7” is “Very efficient”)

Participant	Mean Rating
Judges	5.2
Attorneys	5.8
Jurors	4.9

Organization of the trial (scale of “1” to “7” where “1” is “Not at all organized” and “7” is “Very organized”)

Participant	Mean Rating
Judges	5.4
Attorneys	5.8
Jurors	5.4

Repetitiveness/redundancy of the evidence and/or testimony (scale of “1” to “7” where “1” is “Not at all repetitive” and “7” is “Very repetitive”)

Participant	Mean Rating
Judges	3.6
Attorneys	3.5
Jurors	5.1

The amount of time each side had to present its case (scale of “1” to “7” where “1” is “Not enough time allowed” and “7” is “Too much time allowed”)

Participant	Mean Rating
Judges	4.3
Attorneys	4.1
Jurors	4.5

Were you told by the judge at the beginning of the trial how long the trial would last or when the trial would be finished? [Asked of jurors only]

Yes	No
94%	6%

If the judge did tell you how long the trial would last or when the trial would be finished, did the trial end when promised? [Asked of jurors only]

Yes	No
78%	22%

How important, if at all, was it that you knew at the beginning of the trial how long the trial would be and/or what day the trial would be finished (scale of “1” to “7” where “1” is “Not at all important” and “7” is “Extremely important”)? [Asked of jurors only]

Participant	Mean Rating
Jurors	5.5

Were time limits used?

Participant	Yes	No
Judges	21%	79%
Attorneys	31%	69%

In your opinion, how did the time limits affect: [Asked of judges and attorneys only]

The fairness of the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	14% (4%) ⁷	72% (67%)	14% (25%)	0% (4%)
Attorneys	0% (12%)	83% (25%)	13% (48%)	4% (15%)

The efficiency of the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	67% (8%)	33% (67%)	0% (18%)	0% (8%)
Attorneys	52% (24%)	44% (42%)	4% (13%)	0% (20%)

Your satisfaction with the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	57% (12%)	29% (54%)	14% (25%)	0% (8%)
Attorneys	17% (6%)	75% (40%)	8% (38%)	0% (15%)

How likely are you to use time limits in the future (scale of "1" to "7" where "1" is "Not at all likely" and "7" is "Very likely")? [Asked of judges only]

Participant	Mean Rating
Judges	4.7

How likely are you to use time limits utilized in this case in the future (scale of "1" to "7" where "1" is "Not at all likely" and "7" is "Very likely")? [Asked of judges only]

Participant	Mean Rating
Judges	4.2

Were there any logistical, implementation, or other problems encountered with using time limits? [Asked of judges only]

Yes	No
33%	67%

⁷ If time limits were not used, judges and attorneys only were asked how time limits would have affected these same dimensions, which is reported in the parentheses.

Jurors' Questions for Witnesses During Trial

Were jurors permitted to submit questions for witnesses?

Participant	Yes	No
Judges	71%	29%
Attorneys	79%	21%
Jurors	76%	24%

Did jurors submit questions for any witnesses?

Participant	Yes	No
Judges	72%	28%
Attorneys	86%	14%
Jurors	51%	49%

If yes, how many questions did the jurors submit?

Participant	Mean	Median	Mode
Judges	20	14	12
Jurors	3	2	1

If yes, how many questions were witnesses permitted to answer?

Participant	Mean	Median	Mode
Judges	18	13	1

Did the judge answer or permit the witness to answer any of your questions?

[Asked of jurors only]

Yes	No	Does not apply/I didn't ask any questions
63%	8%	29%

If you submitted any questions to the judge, what were the primary purposes of your questions (check all that apply)? [Asked of jurors only]

Response Choice	% Selecting Response
To clarify information already presented	56%
To get additional information	60%
To find out the opinion of a witness	14%
To resolve inconsistencies in the evidence	27%
Other	1%

What is your opinion of the number of questions submitted by jurors during the trial?

Participant	Too many	An appropriate number	Not enough
Judges	30%	55%	15%
Attorneys	25%	66%	9%
Jurors	3%	86%	11%

In your opinion, how did allowing jurors to submit questions in this trial affect:

The fairness of the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	60% (25%) ⁸	36% (50%)	0% (12%)	4% (12%)
Attorneys	43% (14%)	36% (29%)	7% (43%)	14% (14%)
Jurors	62% (41%)	37% (54%)	1% (6%)	0% (0%)

The efficiency of the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	4% (0%)	68% (37%)	24% (63%)	4% (0%)
Attorneys	31% (14%)	31% (21%)	32% (64%)	5% (0%)
Jurors	51% (30%)	48% (60%)	1% (10%)	0% (0%)

Jurors' understanding of the case?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	68% (14%)	28% (57%)	0% (14%)	4% (14%)
Attorneys	60% (46%)	18% (8%)	2% (15%)	20% (31%)
Jurors	80% (63%)	19% (31%)	1% (6%)	0% (0%)

Your satisfaction with the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	42% (25%)	54% (37%)	0% (25%)	4% (13%)
Attorneys	45% (29%)	32% (14%)	15% (36%)	8% (21%)
Jurors	78% (40%)	22% (54%)	0% (6%)	0% (0%)

Were there any logistical, implementation, or other problems encountered with permitting jurors to submit questions? [Asked of judges only]

Yes	No
29%	71%

⁸ If jurors were not permitted to submit questions for the witnesses, the judges, attorneys, and jurors were asked how permitting jurors to submit questions for the witnesses would have affected these dimensions, which is reported in parentheses.

IF JURORS NOT PERMITTED TO SUBMIT QUESTIONS FOR THE WITNESSES:

In your opinion, should jurors be permitted to submit questions for witnesses during the trial?
[Asked of jurors only]

Yes	No
65%	35%

Did you have any questions you would have liked to submit to be asked of a witness during the trial? [Asked of jurors only]

Yes	No
61%	39%

Interim Summation Statements

Were the attorneys permitted to give interim summation statements?

Participant	Yes	No
Judges	48%	52%
Attorneys	65%	35%
Jurors	42%	58%

In your opinion, how did the interim summation statements affect: [Asked of judges and attorneys only]

The fairness of the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	40% (6%) ⁹	50% (76%)	0% (12%)	10% (6%)

The efficiency of the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	40% (0%)	40% (27%)	10% (63%)	10% (0%)
Attorneys	37% (0%)	58% (33%)	5% (52%)	0% (15%)

Jurors' understanding of the case?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	80% (6%)	10% (82%)	0% (12%)	10% (0%)

Your satisfaction with the trial process?

Participant	Increased	Did not affect	Decreased	Don't know
Judges	70% (6%)	30% (41%)	0% (53%)	0% (0%)

Did you think there were any abuses of interim summation statements?
[Asked of judges and attorneys only]

Participant	Yes	No
Judges	0%	100%
Attorneys	7%	93%

Would you permit interim summation statements in the future? [Asked of judges only]

Participant	Yes	No
Judges	92%	8%

⁹ If interim summation statements were not permitted, judges only were asked how interim statements would have affected these same dimensions, which is reported in the parentheses.

Did you feel that the use of interim summation statements allowed you to:
[Asked of attorneys only]

Better organize the evidence for the jurors (scale of “1” to “7” where “1” is “Definitely no” and “7” is “Definitely yes”)

Participant	Mean Rating
Attorneys	4.8 (2.9) ¹⁰

Better explain the evidence for the jurors (scale of “1” to “7” where “1” is “Definitely no” and “7” is “Definitely yes”)

Participant	Mean Rating
Attorneys	5.3 (3.4)

Better emphasize parts of the evidence for the jurors (scale of “1” to “7” where “1” is “Definitely no” and “7” is “Definitely yes”)

Participant	Mean Rating
Attorneys	5.0 (3.7)

How did the lawyers use the interim statements during the trial? [Asked of jurors only]

Response Choice	% Selecting Response
Mostly to <u>introduce the evidence</u> about to be presented	51%
About the same in terms of introducing versus summarizing the evidence	25%
Mostly to <u>summarize the evidence</u> that had just been presented	24%

Which type of interim statement did you find most helpful? [Asked of jurors only]

Response Choice	% Selecting Response
When used to <u>introduce the evidence</u> about to be presented	33% (16%) ¹¹
When used to <u>summarize the evidence</u> that had just been presented	23% (21%)
I think both uses of interim statements would have been equally useful	34% (29%)
Neither, I didn't/wouldn't find them useful at all	9% (34%)

¹⁰ If interim summation statements were not permitted, attorneys only were asked how interim statements would have allowed the attorneys to do these three items, which is reported in the parentheses.

¹¹ If interim summation statements were not permitted, jurors only were asked which type of interim statements they would have found more useful during the trial, which is reported in the parentheses.

Please rate how helpful the interim summation statements were on each of the following dimensions (scale of “1” to “7” where “1” is “Not at all helpful” and “7” is “Very helpful”):
[Asked of jurors only]

Understanding the evidence

Participant	Mean Rating
Jurors	4.7

Recalling the evidence during deliberations

Participant	Mean Rating
Jurors	4.7

Keeping focused on the evidence

Participant	Mean Rating
Jurors	5.0

Making the evidence more interesting

Participant	Mean Rating
Jurors	4.4

Did the interim summation statements affect your verdict? [Asked of jurors only]

Yes	No
9%	91%

IF INTERIM STATEMENTS WERE NOT PERMITTED OR MADE:

Would you have found the use of interim summation statements during the trial to be helpful?
[Asked of jurors only]

Yes	No	Don't know
18%	28%	53%

Deliberation Guidance Instructions

Did the judge give the jurors any instructions or suggestions on how to select a foreperson?

Participant	Yes	No
Judges	30%	70%
Attorneys	48%	52%
Jurors	50%	50%

If yes, do you feel that you had to follow the judge's instructions about selection of a foreperson?
[Asked of jurors only]

Yes	No
63%	37%

How do you feel about the amount of guidance that the jury had from the judge on how to select a foreperson (scale of "1" to "7" where "1" is "Not enough" and "7" is "Too much")? [Asked of attorneys and jurors only]

Participant	Mean Rating
Attorneys	4.1
Jurors	4.0

Did the judge give the jurors any instructions or suggestions on how to conduct the deliberations?

Participant	Yes	No
Judges	53%	47%
Attorneys	70%	30%
Jurors	73%	27%

If yes, do you feel that you had to follow the judge's instructions about conduct during your deliberation? [Asked of jurors only]

Yes	No
81%	19%

How do you feel about the amount of guidance that the jury had from the judge on how to conduct its deliberations (scale of "1" to "7" where "1" is "Not enough" and "7" is "Too much")? [Asked of attorneys and jurors only]

Participant	Mean Rating
Attorneys	4.1
Jurors	4.2

What best describes how the foreperson was selected? [Asked of jurors only]

Response Choice	% Selecting Response
He/she volunteered	40%
Other jurors nominated him/her	46%
We took a vote	12%
The judge nominated him/her	0%
Other	2%

How much influence did the foreperson have on the jury's decision? [Asked of jurors only]

Response Choice	% Selecting Response
More than any other juror	1%
More than most jurors	11%
The same as other jurors	83%
Less than most jurors	5%

How satisfied were you with the way your deliberations were conducted (scale of "1" to "7" where "1" is "Extremely dissatisfied" and "7" is "Extremely satisfied")? [Asked of jurors only]

Participant	Mean Rating
Jurors	5.7

Did the jury submit any questions during its deliberations?

Participant	Yes	No
Judges	54%	46%
Attorneys	64%	36%
Jurors	54%	46%

Did the judge answer any of the questions submitted during deliberations?

Participant	Yes	No	Jurors did not ask questions
Judges	58%	7%	35%
Attorneys	64%	9%	27%
Jurors	73%	27%	N/A

If the judge did not answer any of the questions submitted during deliberations, did you/the judge give a reason for not answering the questions?

Participant	Yes	No	Jurors did not ask questions
Judges	37%	0%	63%
Attorneys	46%	11%	43%
Jurors	68%	32%	N/A

Were the parties cooperative (with the court and with each other) in helping to respond to questions from the jury (scale of “1” to “7” where “1” is “Definitely no” and “7” is “Definitely yes”)? [Asked of judges and attorneys only]

Participant	Mean Rating
Judges	6.2
Attorneys	6.1

What types of questions did the jury submit (circle all that apply)?

[Asked of judges and attorneys only]

Response Choice	% Selecting Response – Judges	% Selecting Response – Attorneys
Questions about legal instructions or legal terms	65%	63%
Questions about the content of evidence	23%	48%
Requests to see evidence	37%	36%
Questions about procedure or case management	7%	26%
Other	11%	18%

How would you describe the jury's questions during deliberations?
 [Asked of judges and attorneys only]

Response Choice	% Selecting Response – Judges	% Selecting Response – Attorneys
Most of the questions were relevant	75%	57%
Some were relevant, some were irrelevant	0%	21%
Most of the questions were irrelevant	5%	2%
Jury did not ask any questions	21%	21%

If the judge did answer some of your questions during deliberations, how did the answers affect your understanding of the case? [Asked of jurors only]

Response Choice	% Selecting Response
Helped me understand the case better	54%
Did not affect how well I understood the case	44%
Made it harder for me to understand the case	2%

If the judge did answer some of your questions during deliberations, what effect did the answers have on your jury's deliberation? [Asked of jurors only]

Response Choice	% Selecting Response
Were extremely helpful to the jury's decision making	39%
Were moderately helpful to the jury's decision making	43%
Were not helpful to the jury's decision making	16%
Made the jury's decision making more difficult	2%

Demographics/Backgrounds of Participants

Judges

How many civil jury trials have you had as a judge, excluding this trial?

Participant	Mean	Median	Mode
Judges	89	50	25

Please indicate what percentage of your prior civil jury trials included the following?

Practice	Mean	Median	Mode
Twelve-person juries	6%	2%	0%
Preliminary substantive jury instructions	20%	0%	0%
Voir dire questionnaires	39%	10%	0%
Time limits	5%	0%	0%
Juror questions to witnesses	14%	2%	0%
Interim statements	2%	0%	0%
Jury guidance instructions	39%	6%	0%
Jury questions during deliberations	50%	50%	10%

Attorneys

Whom did you represent?

Plaintiff	Defendant	Other
47%	53%	0%

How many civil jury trials have you participated in, excluding this trial?

Participant	Mean	Median	Mode
Attorneys	25	6	0

Please indicate what percentage of your prior civil jury trials included the following?

Practice	Mean	Median	Mode
Twelve-person juries	36%	17%	0%
Preliminary substantive jury instructions	11%	0%	0%
Voir dire questionnaires	39%	20%	0%
Time limits	18%	0%	0%
Juror questions to witnesses	6%	0%	0%
Interim statements	1%	0%	0%
Jury guidance instructions	33%	1%	0%
Jury questions during deliberations	33%	15%	0%

How would you characterize the outcome of this trial for your client (scale of “1” to “7” where “1” is “Big loss” and “7” is “Big win”)?

Participant	Mean Rating
Attorneys	4.7

Jurors

Did you ever sit on a jury before?

Yes	No
27%	73%

If yes, how many juries?

Participant	Mean	Median	Mode
Jurors	1	1	1

If yes, what type of juries have you served on (check all that apply)?

Participant	Civil	Criminal	Don't know
Jurors	51%	51%	3%

Gender:

Male	Female
47%	53%

Age:

Participant	Mean	Median	Mode
Jurors	46	45	40

Which of the following describe your racial/ethnic background?

Response Choice	% Selecting Response
Asian-American	2%
Black/African-American	6%
White Hispanic/Latino	7%
Non-White Hispanic/Latino	1%
White/Caucasian	84%
Native American	0%
Other	0%

Are you currently employed?

Yes	No
85%	15%

What is your last year of school you completed?

Response Choice	% Selecting Response
Less than high school	2%
High school graduate	19%
Technical school/some college	18%
Completed two-year college	12%
Completed four-year college	33%
Graduate school	16%