

October 2003

## The Current Debate on Juror Questions: "To Ask or Not to Ask, That Is the Question"

Nicole L. Mott

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>



Part of the [Law Commons](#)

---

### Recommended Citation

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). Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol78/iss3/8>

This Article is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact [dginsberg@kentlaw.iit.edu](mailto:dginsberg@kentlaw.iit.edu).

# THE CURRENT DEBATE ON JUROR QUESTIONS: “TO ASK OR NOT TO ASK, THAT IS THE QUESTION”

NICOLE L. MOTT\*

## I. INTRODUCTION

In the past couple of decades courts have experimented with various jury reforms.<sup>1</sup> These reforms led a majority of states and federal courts to permit jurors to ask questions of the court and witnesses during trial. According to state rules of procedure, typically all states allowed jurors to submit written questions during deliberations. As an expansion of this practice, many courts now allow jurors to ask questions during or after the counsel’s presentation of the evidence.<sup>2</sup> Although the procedure is not prohibited by statute per se, it remains a novel experience for many judges, attorneys, and especially jurors. This Article addresses the concerns as well as the advantages of juror questions and analyzes what types of questions jurors submit, based on samples from various jurisdictions.

The major concern voiced by those who oppose juror questioning is the threat to the adversary system.<sup>3</sup> Namely, critics ask when courts bestow jurors with this opportunity, does this radically change their role? Of course this begs the question of what the jury’s current role actually is, as well as what it should be. What role a juror plays in the trial is central to the discussion of whether jurors should or should not be allowed to ask questions.

\* Court Research Associate at the National Center for State Courts, Williamsburg, VA. I would like to thank Valerie Hans, the Honorable Thomas Vanaskie, the Honorable B. Michael Dann, the Honorable Richard J. Williams, Sherry Keese-Buchanan, Dan O’Connell, and Robert Waters for making this Article possible. This Article is based on a chapter from my dissertation, “How Civil Jurors Cope with Complexity: Defining the Issues.” A draft of this Article was also presented at the Law and Society Association meeting in Budapest, Hungary, July 4–7, 2001.

1. See generally *JURY TRIAL INNOVATIONS* (G. Thomas Munsterman et al. eds., 1997).

2. See, e.g., ARIZ. R. CIV. P. 39(b)(10); ARIZ. R. CRIM. P. 18.6(e).

3. *United States v. Johnson*, 892 F.2d 707, 713 (8th Cir. 1989); Kara Lundy, *Juror Questioning of Witnesses: Questioning the United States Criminal Justice System*, 85 MINN. L. REV. 2007, 2038 (2001).

Unfortunately, there have been no definitive answers to these questions. However, certain influential judges have indicated that they would welcome such jury questions. For instance, although the United States Supreme Court has not addressed whether jurors may submit questions during trial, Justice Sandra Day O'Connor, at a conference in Arizona in 1996, commented on the practice favorably.<sup>4</sup>

As previously stated, many courts allow jury questions; however, they do this to varying degrees. Regarding juror questions, states fall into three general categories: (1) those that expressly prohibit questions; (2) those that do not prohibit questions, but where trial judges do not typically employ the practice; and (3) those that allow questions in some form and within specified guidelines.<sup>5</sup>

Only a couple of states prohibit juror questioning for all cases;<sup>6</sup> for example, Mississippi courts actually "condemn" and "forbid" the practice, although most states' provisions do not specifically address questioning in trial practices.<sup>7</sup> However, Texas, Georgia, and more recently Minnesota bar the practice in criminal cases.<sup>8</sup> On the other hand, Arizona, Florida, and Indiana explicitly allow jurors to submit written questions to witnesses.<sup>9</sup> Additionally, a Colorado Superior Court Committee has just this year recommended that jury questions be permitted in both civil and criminal cases.<sup>10</sup>

The continuum of procedural rules is further delimited by case characteristics. As is typical with trial procedure innovations, juror questions are more widely accepted in civil trials than in criminal trials.<sup>11</sup> However, determinations of when juror questions are most

4. Judge Jacqueline A. Connor, *Jury Reform: Notes on the Arizona Seminar*, 1 J. LEGAL ADVOC. & PRAC. 25, 32 (1999).

5. See, e.g., *Wharton v. State*, 734 So. 2d 985, 990 (Miss. 1998) (questioning prohibited); *State v. Costello*, 646 N.W.2d 204, 209 (Minn. 2002) (questioning allowed in many jurisdictions, but judges do not frequently employ questioning); *State v. LeMaster*, 669 P. 2d 592, 597 (Ariz. Ct. App. 1983) (questioning allowed under "certain guidelines").

6. See A. Barry Cappello & G. James Strenio, *Juror Questioning: The Verdict Is In*, TRIAL, June 2000, at 44, 46.

7. *Wharton*, 734 So. 2d at 990.

8. *Morrison v. State*, 845 S.W.2d 882, 884 (Tex. Crim. App. 1992); *Matchett v. State*, 364 S.E.2d 565, 567 (Ga. 1988); *Costello*, 646 N.W.2d at 209.

9. *LeMaster*, 669 P.2d at 596-97; *Watson v. State*, 651 So. 2d 1159, 1163 (Fla. 1994); *Matheis v. Farm Feed Constr. Co.*, 553 N.E.2d 1241, 1242 (Ind. Ct. App. 1990).

10. See, e.g., Howard Pankratz, *Let Jurors Ask Questions During Trials*, DENVER POST, Dec. 20, 2002, at A1; Leonard Post, *Colorado Jurors May Get Right to Quiz Witnesses*, NAT'L L.J., Feb. 24, 2003, available at <http://www.law.com/jsp/article.jsp?id=1045793303795>.

11. JURY TRIAL INNOVATIONS, *supra* note 1, at 138-39; MARY DODGE, SHOULD JURORS ASK QUESTIONS IN CRIMINAL CASES?, A REPORT SUBMITTED TO THE COLORADO SUPREME COURT'S JURY SYSTEM COMMITTEE 1 (2002), available at [www.courts.state.co.us/supct/committees/juryreformdocs/publicnotice03.pdf](http://www.courts.state.co.us/supct/committees/juryreformdocs/publicnotice03.pdf).

appropriate do not solely fall along these lines. For instance, cases of greater complexity are prime candidates to reap the benefits associated with juror questions because in such cases jurors face lengthy trials often inundated with complicated, unfamiliar, or confusing testimony. After consideration of these and other factors, the American Bar Association (“ABA”) determined that questions may not be appropriate in all contexts, leaving the discretion to the trial judge.<sup>12</sup>

Whether states allow or actively encourage juror questions is an important distinction; these actions are not similar. A state may “allow” questioning according to the rules of procedure; yet, achieving a level of “encouragement” has a much greater impact on the trial. In the Ninth Circuit, the jury procedure manual grants trial judges discretion to allow questioning by jurors, but states that “questions by jurors during trial should not be encouraged or solicited.”<sup>13</sup>

As with most changes contemplated by courts, critics voice concerns with implementing this procedure. An Ohio state appellate court, for example, recently ruled juror questions prejudicial.<sup>14</sup> The court stated that through the act of questioning the role of the jury is significantly altered. Furthermore, the court reasoned that the effect on the burden of proof is problematic.<sup>15</sup> There is an assumption that the defendant must justify why the questions were prejudicial.<sup>16</sup> The court proffered that there is no burden for either side to demonstrate prejudice; question asking is prejudicial, even if the prejudice is subtle.<sup>17</sup> In general, while a majority of courts accept the practice of submitting juror questions to witnesses, the practice has not reached a point of universal acceptance.

### A. *Benefits and Biases*

Juror questioning of witnesses is not a new phenomenon. For example, in 1895, jurors in *Schaefer v. St. Louis & S. Ry. Co.* spontaneously asked a witness for clarification of the testimony during

12. See generally ABA CIVIL TRIAL PRACTICE STANDARDS, available at <http://www.abanet.org/litigation/litnews/practice/civil.html>.

13. NINTH JUDICIAL CIRCUIT, MANUAL ON JURY TRIAL PROCEDURES, Rule 3.5, available at <http://www.ce9.uscourts.gov>.

14. *State v. Gilden*, 759 N.E.2d 468, 470 (Ohio Ct. App. 2001).

15. *Id.* at 472.

16. *Id.*

17. *Id.*

trial.<sup>18</sup> In another Missouri case in 1961, a Missouri appeals court addressed the potential of prejudicial error. The court found no such error, but encouraged trial judges to exercise caution in handling juror questions, as “the juror, to some extent at least, represents the court.”<sup>19</sup>

Despite the century-long history of juror questions, only in the last few decades has the debate intensified. Case law and empirical research addressing and determining the effects of allowing or encouraging juror questions has highlighted both the advantages of enhancing jurors’ truth-seeking function and the disadvantages of inherently altering jurors’ roles in the adversary system.

### 1. Benefits

In weighing the benefits of jury questioning, it is best to consider who is reaping the benefits. There are benefits to the judge, the courts, the attorneys, and the jurors. A comprehensive set of studies was conducted by two social scientists to evaluate the effect of jury reforms, specifically addressing jury questioning.<sup>20</sup> Larry Heuer and Steven D. Penrod performed an empirically based investigation in which they solicited data from judges, lawyers, and jurors in two separate studies.<sup>21</sup> The first study comprised 67 Wisconsin state court trials and the second with a national scope comprised 160 state and federal court trials conducted in thirty-three states.<sup>22</sup> These studies shed light on the various perspectives of court actors.

Although social science can evaluate court procedures, the court must make the commitment to implement any changes. The courts are concerned about competing objectives. Courts must weigh the due process rights of litigants when considering procedural changes. A key interest of courts is in securing the public’s trust and confidence in the integrity of the court system. Therefore, critically important for the courts is an understanding of how an alteration to the jury trial, such as implementing juror questions, will affect court decisions and people’s belief that the institution is fair and just.

18. 30 S.W. 331, 333 (Mo. 1895).

19. *Sparks v. Daniels*, 343 S.W.2d 661, 667 (Mo. Ct. App. 1961).

20. See generally Larry Heuer & Steven Penrod, *Increasing Juror Participation in Trials Through Note Taking and Question Asking*, 79 JUDICATURE 256 (1996); Steven D. Penrod & Larry Heuer, *Tweaking Commonsense: Assessing Aids to Jury Decision Making*, 3 PSYCHOL. PUB. POL’Y & L. 259 (1997).

21. Heuer & Penrod, *supra* note 20, at 256–57; Penrod & Heuer, *supra* note 20, at 273–74.

22. Heuer & Penrod, *supra* note 20, at 256–57; Penrod & Heuer, *supra* note 20, at 273–74.

The trial judge's perspective on juror questions is arguably the key because many states give trial judges the discretion to allow juror questions and to determine what protocol will be adopted. In Heuer and Penrod's empirical studies, judges were generally neutral in regard to the practice in the abstract.<sup>23</sup> However, after implementing the procedure in their own courts, the judges were more favorable toward allowing the practice in the courtroom. If juror questions are permitted based on the trial judge's discretion, he or she must decide how the procedure will improve and facilitate effective case management. From a judge's perspective, if a jury is informed of the facts, the jury will more likely reach its decision with confidence. In fact, work by Heuer and Penrod revealed that jurors who were allowed to ask questions were more confident in their final decision.<sup>24</sup> Assuming jurors are able to obtain answers to their questions, they will be less likely to enter deliberations with confusion and less likely to encounter conflict or, ultimately, to hang.<sup>25</sup>

The perspective of an attorney is also important. He or she has to consider the best interest of her client. Thus, as expected, since the burden of proof rests with the prosecution, defense attorneys were more skeptical of allowing questions than prosecuting attorneys.<sup>26</sup> Defense attorneys wondered whether jury questions would aid the prosecution.<sup>27</sup> Overall, in Heuer and Penrod's study, attorneys' initial opinions reflected a moderate objection to jury questions. However, after experiencing juror questions firsthand, attorneys, like judges, evaluated the procedure more favorably.<sup>28</sup> Initially, defense attorneys were concerned that jury questions would raise issues that they had deliberately omitted at trial, interfere with their trial strategies, inhibit the flow of the trial, result in prejudice towards their clients, and diminish the control they had claimed over the trial.<sup>29</sup> Empirical work found that none of the above occurred, as evinced by attorneys' evaluation of the process.<sup>30</sup>

23. *Id.* at 261.

24. *Id.* at 260.

25. For a discussion on hung juries, see PAULA L. HANNAFORD-AGOR ET AL., ARE HUNG JURIES A PROBLEM?, available at [http://www.ncsconline.org/WC/Publications/Res\\_Juries\\_HungJuriesPub.pdf](http://www.ncsconline.org/WC/Publications/Res_Juries_HungJuriesPub.pdf); Valerie P. Hans et al., *The Hung Jury: The American Jury's Insights and Contemporary Understanding*, 39 CRIM. L. BULL. 33 (2003).

26. Heuer & Penrod, *supra* note 20, at 261.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

Moreover, attorneys may benefit from receiving feedback from the jurors. When jurors adopt a traditionally passive role, attorneys have a difficult time gauging whether the jurors understood the evidence and testimony until after the trial is complete. Juror questions will highlight what is confusing to jurors and will allow attorneys, including opposing counsel, to respond in kind. Under most jury questioning guidelines, courts allow counsel to pose follow-up questions to the witness after a juror question is asked in court.<sup>31</sup>

Although jurors may enter the courthouse reluctant to spend their time fulfilling their civic duty to serve on a jury, after sitting on a jury, jurors are generally very satisfied with their experiences.<sup>32</sup> From a juror's perspective asking questions is a natural tendency. As in any learning environment, laypersons expect to clarify confusion by asking questions. However, the ability to ask questions does not appear to improve that satisfaction further.<sup>33</sup> Likely this effect is due to the high level of satisfaction with jury service. Nevertheless, when jurors are allowed to ask questions, they are more active in the process, thereby becoming more attentive through the duration of the trial. Although it has not been tested empirically, proponents of jury questioning believe it will increase jurors' comprehension, especially in complex cases.<sup>34</sup>

Prior to embracing this procedure, several court systems have implemented pilot studies within their own courts to evaluate the procedure.<sup>35</sup> For example, in one pilot study during the first half of 2000, the Supreme Court of New Jersey authorized juror questioning for the purpose of evaluating the procedure in civil trials. New Jersey courts made an informed decision about the procedure after evaluating it in the courts.<sup>36</sup> During the experimental period, eleven judges overseeing 127 jury trials provided jurors the opportunity to submit questions.<sup>37</sup>

31. *Id.* at 260.

32. Shari Seidman Diamond, *What Jurors Think: Expectations and Reactions of Citizens Who Serve as Jurors*, in VERDICT: ASSESSING THE CIVIL JURY SYSTEM 282, 286-87 (Robert E. Litan ed., 1993).

33. Heuer & Penrod, *supra* note 20, at 260.

34. Nicole L. Mott, *How Civil Jurors Cope with Complexity* (2001) (unpublished Ph.D. dissertation, University of Delaware) (on file with author).

35. *See, e.g.*, AOC State of New Jersey Jury Subcommittee, *Report on Pilot Project Allowing Jury Questions* (unpublished AOC Report) (on file with author) [hereinafter N.J. AOC].

36. *Id.*

37. *Id.* at 1.

As in the Heuer and Penrod studies, this study surveyed judges, attorneys, and jurors regarding the procedure.<sup>38</sup> Jurors responded very favorably to the process, as did judges. Some judges were initially skeptical, but after experience with questions in their courtrooms, they were pleased with the results and expressed their desire to continue after the pilot period ceased.<sup>39</sup> A majority of the attorneys also responded favorably to juror questions.<sup>40</sup> However, more defense attorneys expressed negative views than did plaintiffs' attorneys.<sup>41</sup> The primary concern was the "interference with trial strategy and control of witnesses."<sup>42</sup> Most of those who experienced such concerns appeared to refer not to the trials that had just concluded, but to "potential problems in future cases."<sup>43</sup> The results suggest that attorneys' and judges' firsthand experiences with the procedure increased their acceptance of it.

The pilot project report yielded several important findings. For example, in all but 5% of the cases, jurors proposed questions resulted in a total of 2,540 questions across all 127 cases.<sup>44</sup> Jurors submitted an average of 21 questions and a median of 9 questions per case, with a maximum of 50 questions in one case.<sup>45</sup> Interestingly, the case in which jurors submitted 50 questions was not the lengthiest trial in the sample. Over three-fourths of the questions were asked only after approval by the judge and counsel.<sup>46</sup> Overall, an estimated median time of thirty minutes was added to the trials due to jurors' submission of questions.<sup>47</sup>

Ultimately, judicial opinions weighing the benefits of jury questioning, not empirical work, determine court practice. Thus, it is important to review these opinions. A 1994 opinion in *Commonwealth v. Urena*<sup>48</sup> outlined recommendations on how to conduct juror questions. In 2001, the Supreme Judicial Court of Massachusetts decided *Commonwealth v. Britto*,<sup>49</sup> in which the defendant argued he

38. *Id.*

39. *Id.* at 7.

40. *Id.* at 9.

41. *Id.* at 11.

42. *Id.*

43. *Id.* at 3.

44. *Id.* at 5.

45. *Id.* at 6.

46. *Id.*

47. *Id.* at 7.

48. 632 N.E.2d 1200 (Mass. 1994).

49. 744 N.E.2d 1089 (Mass. 2001).



had been denied a fair trial. His appeal was based on alleged error by the trial judge who allowed jurors to submit questions during trial.<sup>50</sup> The appellate court acknowledged concern for potential bias or delay with questions, but did not rule that bias was indeed present in this particular case.<sup>51</sup> In fact, the court noted that the raising of the issue “provide[d] the opportunity to clarify and offer suggestions for juror questioning in future trials.”<sup>52</sup>

In January 2001, appellate judges in Minnesota approved the practice of allowing jurors to question witnesses during the trial of *State v. Costello*.<sup>53</sup> In this decision, the appellate court affirmed the District Court’s decision and ruled that juror questioning—pursuant to appropriate instructions and when providing attorneys an opportunity to object—does not violate the defendant’s constitutional right to a fair trial.<sup>54</sup>

However, this decision was further appealed to the Supreme Court of Minnesota in June of 2002.<sup>55</sup> The court ruled that, through the practice of allowing jurors to ask questions, the role of the juror in the adversarial system is threatened.<sup>56</sup> Because the effects of the error due to juror questioning were impossible to determine,<sup>57</sup> the court reversed the conviction and remanded for a new trial; no juror questions are presently allowed in any criminal case in Minnesota.<sup>58</sup>

## 2. Biases

Although the aforementioned empirical work and case law largely identifies benefits of jury questions, court actors voice concern about this. As stated in an opinion by the Supreme Court of Minnesota, courts are concerned with the effect juror questions may have on due process. In the majority opinion, Chief Justice Blatz stated that “[t]hose who doubt the value of the adversary system or who question its continuance will not object to distortion of the jury’s role.”<sup>59</sup>

50. *Id.* at 1103.

51. *Id.* at 1104–06.

52. *Id.* at 1105.

53. *State v. Costello*, 620 N.W.2d 924 (Minn. Ct. App. 2001).

54. *Id.* at 929.

55. *State v. Costello*, 646 N.W.2d 204 (Minn. 2002).

56. *Id.* at 209–10.

57. *Id.* at 215.

58. *Id.*

59. *Id.* at 214.

Concerns about the drawbacks of jury questioning are suggested by the “cautionary instructions” adopted by many states and identified in the ABA standards.<sup>60</sup> The ABA standards enumerate several points for courts that choose to implement the procedure.<sup>61</sup> For instance, juror questions ought to be used only for important points and to clarify testimony. A concern for how juror questions may transform the juror’s role is also apparent. Jurors “are not advocates and must remain neutral fact finders.”<sup>62</sup> Further instruction is given to clarify why some questions may not be asked, for instance, due to evidentiary rule objections or interference with litigation strategy.<sup>63</sup>

The main concern with implementing this procedure is that through questioning a juror may lose his or her neutrality and become an advocate. But whether a juror’s role would change is difficult to ascertain. If a juror’s role is similar to that of the judge, what precautions do judges assume when asking questions? A notable difference is that judges are trained in the law and legal procedure. However, any juror question is subjected to scrutiny by the judge as well as both counsel. Critics voice one concern of the potentially negative effect on the jury if an attorney were to raise an objection. Heuer and Penrod’s study did not find that counsel was reluctant to raise objections to questions.<sup>64</sup> Furthermore, they found jurors were not angry or embarrassed when the objections were sustained. In fact, in the Wisconsin trials, jurors typically reported they understood why their questions were not asked.<sup>65</sup>

A common comparison typically used to evaluate the reasonableness of a jury’s verdict is whether or not the judge agrees with it. Heuer and Penrod employed this technique to assess any effect on jury verdicts in trials allowing jurors to question witnesses. They concluded that judge and jury agreement rates did not differ between questioning and nonquestioning juries.<sup>66</sup> Agreement rates were determined by comparing the jury’s verdict and the judge’s hypothetical verdict. Judges were asked to determine what verdict they would have reached in a bench trial.<sup>67</sup> As a further comparison across

60. See ABA CIVIL TRIAL PRACTICE STANDARDS, *supra* note 12.

61. *Id.*

62. *Id.*

63. *Id.*

64. Heuer & Penrod, *supra* note 20, at 260.

65. *Id.*

66. *Id.* at 261.

67. *Id.*

experimental trials, the verdicts reached by questioning juries did not differ from those that were unable to question witnesses.<sup>68</sup>

Another concern voiced by critics of juror questioning is that jurors will prematurely begin to accept one counsel's hypothesis over another's.<sup>69</sup> This argument suggests that when jurors frame a question they are testing a hypothesis. However, jurors in Heuer and Penrod's study were asked whether they perceived one attorney less favorably than another, which would occur if the jurors had lost sight of their neutrality.<sup>70</sup> In actuality, jurors perceived both attorneys more favorably in the trials that allowed questions than in those without the procedure.<sup>71</sup>

Critics of jury questions also argue that jurors will disproportionately weigh the answers to their own questions.<sup>72</sup> However, when jurors were surveyed, they reported an average of fifteen minutes—or 10% of their deliberations—were spent discussing such answers.<sup>73</sup>

Logistical issues surface among critics of the procedure, primarily among attorneys. Attorneys have expressed concern that jury questioning will alter the strategic plan of how the evidence is presented. However, attorneys who have experienced jury questioning did not encounter these problems.<sup>74</sup> Videotaped testimony creates another logistical concern. For example, jurors would be unable to ask questions of witnesses who testify via videotape. In a Missouri case, the court ruled that jury questions were unfair in trials presenting videotaped testimony.<sup>75</sup>

However, with basic recommendations for implementing jury questions, several concerns are allayed. For instance, the flow of the trial is only disrupted when the questions are not properly managed. Most guidelines suggest that jurors submit their questions in writing after the completion of testimony by a witness.<sup>76</sup> Attorneys have also expressed concern about how a juror is told his or her question will not be asked. There is no evidence from empirical studies that this is

68. *Id.*

69. *Id.*

70. *Id.* at 260–61.

71. *Id.* at 261.

72. *Id.*

73. *Id.*

74. DODGE, *supra* note 11, at 38; Heuer & Penrod, *supra* note 20, at 260.

75. *City of Springfield v. Thompson Sales Co., et al.*, No. 23595, 2001 Mo. App. LEXIS 1285, at \*23 (July 24, 2001).

76. *See infra* app. Sidebars 1 & 2.

a concern.<sup>77</sup> If the judge instructs jurors that questions may not be asked in open court due to the rules of evidence or an attorney's trial strategy (e.g., the question will be answered at a later time), it is unlikely jurors will misinterpret this ruling as revealed in findings from the Heuer and Penrod study.

Attorneys, judges, and court managers are concerned that the benefit created by allowing juror questions does not outweigh the burden created as a result of the time delay that would occur.<sup>78</sup> This argument is based on an assumption that jurors will ask numerous, and possibly unreasonable, questions. The study in New Jersey found that the estimated median time added to trials allowing questions was only thirty minutes.<sup>79</sup> Furthermore, the assumption that jurors will be unyielding and unreasonable if provided the opportunity to ask questions is unfounded. A study asking judges in Arizona to rate the reasonableness of juror questions found that judges' ratings were extremely high.<sup>80</sup>

Despite this evidence, some courts have been expressly critical of allowing juror questions of witnesses. In one notable case, an Ohio appellate court ruled, "the practice of questioning by jurors is so inherently prejudicial" that there is no need to demonstrate the prejudice specifically.<sup>81</sup> The thrust of this opinion is that the juror's role is transformed once the juror begins interrogating witnesses, so the juror is no longer a neutral decision maker. Among opinions critiquing juror questioning is the oft-cited opinion of Judge Lay proffering that juror questioning promotes a "gross distortion of the adversary system."<sup>82</sup> The unanswered question is whether the adversary system is truly jeopardized by this practice, and if so, does the role change encourage a more valuable truth-seeking role?

### B. Guidelines

Before addressing some of the concerns laid out in the previous section, it is clear that management techniques, such as development and adherence to recommended guidelines, alleviates much of the critics' apprehension. Without a doubt, this practice is still in its

77. Heuer & Penrod, *supra* note 20, at 260.

78. N.J. AOC, *supra* note 35, at 11.

79. *Id.* at 7.

80. Mott, *supra* note 34, at 133.

81. *State v. Gilden*, 759 N.E.2d 468, 472 (Ohio Ct. App. 2001).

82. *United States v. Johnson*, 892 F.2d 707, 713 (8th Cir. 1989).

formative stages. And thus, the early stages of this procedure necessitate models and guidelines.

Although many states have written their own guidelines for implementing juror questions with slight variations, most follow the guidelines and rules set by the ABA or the Arizona Supreme Court (see Sidebar #1) as a result of a ruling passed in December of 1995.<sup>83</sup>

Generally, the practice is left to the discretion of the trial judge. However, judges often defer to guidelines if set by the state. Virtually all of the guidelines suggest jurors submit written questions, not oral questions.<sup>84</sup> Additionally, most states have acknowledged that the timing is best when jurors submit the questions at the conclusion of each witness's testimony.<sup>85</sup> The trial judge typically solicits questions from the jury before each witness is excused.

There has been less agreement with other issues. For example, courts are mixed as to whether the trial judge should encourage questions, instruct jurors of the option, or not instruct jurors at all of this possibility.<sup>86</sup> The typical recommendation is that the judge instruct jurors about asking questions so that jurors know that they have options.<sup>87</sup> If the court rules specify that juror questions are only to be used in compelling situations, the recommendations should clearly state the anticipated circumstances that qualify as compelling.

There remains much variation of procedures in guidelines proposed by jurisdictions. For example, the ABA guidelines suggest that jurors sign submitted questions with either their name or jury number.<sup>88</sup> Massachusetts follows this practice, but a District of Columbia decision suggests the opposite.<sup>89</sup> The District of Columbia suggests jurors will benefit from submitting questions anonymously. Another variation by jurisdiction is evident in a decision that ruled on whether the judge and/or attorneys might alter the jurors' questions.<sup>90</sup> The ruling suggests that modifying the wording due to rules of evidence,

83. For the Arizona rules, see ARIZ. R. CIV. P. 39(b)(10), and ARIZ. R. CRIM. P. 18.6(e).

84. See ABA CIVIL TRIAL PRACTICE STANDARDS, *supra* note 12.

85. *Id.*

86. For a sampling of courts' views on this issue, see *supra* note 5.

87. ABA CIVIL TRIAL PRACTICE STANDARDS, *supra* note 12, standard 4.

88. *Id.*

89. See *Commonwealth v. Britto*, 744 N.E.2d 1089, 1105 (Mass. 2001) (stating that, "[w]e suggest that the juror's identification number be included on each question"); *Yeager v. Greene*, 502 A.2d 980, 981 n.4 (D.C. 1985) (setting forth procedures for juror questions *without* requiring that a juror's name or number be attached to the question).

90. *Britto*, 744 N.E.2d at 1089.

to remove legalese, or simply to present the question more clearly is acceptable.<sup>91</sup>

## II. WHAT DO JURORS ASK?

In the midst of the debate on the benefits or biases of jury questioning, little is known about the actual questions. An examination of what jurors ask when given the opportunity is quite revealing. For example, how frequently do jurors ask questions? To whom are the questions directed and what is asked? Furthermore, are the questions reasonable? Based on an examination of juror questions, the following section provides differences between criminal and civil cases, as well as differences between jurisdictions. In sum, do jurors retain their role as neutral fact finders or does this process truly alter the jurors' role and ultimately threaten the adversarial system of justice?

In conjunction with three research initiatives, the author collected data on a grand total of 2,271 juror questions. Table 1 provides details about the data sources. The first initiative involved an empirical investigation of Arizona's experiment, in 1995, when it allowed civil jurors to discuss trial evidence prior to final deliberations.<sup>92</sup> In this study, judges in 169 cases were asked to record the number of questions jurors submitted, and the judges, along with attorneys and jurors, were asked to respond to the procedure. In addition, judges in 59 of the cases submitted written copies of 641 juror questions.<sup>93</sup>

A second initiative examined hung juries.<sup>94</sup> Four jurisdictions participated in the study and provided data from the judge, attorneys, and jurors in noncapital felony cases. In addition, several judges from two of the jurisdictions submitted the actual juror questions. Maricopa County, Arizona submitted 761 questions from 31 cases and the District of Columbia submitted 313 questions from 18 cases.

Federal District Court Judge Thomas Vanaskie championed a final initiative in which he tracked statistics for all civil (41) and criminal (15) cases over which he presided between May of 1994 and

91. See *id.* at 1105 (ruling that where juror questions are submitted, "[t]he judge further should emphasize that, if a particular question is altered or refused, the juror who poses the question must not be offended or hold that against either party.").

92. See generally Paula L. Hannaford et al., *Permitting Jury Discussions During Trial: Impact on the Arizona Reform*, 24 LAW & HUM. BEHAV. 359 (2000).

93. Mott, *supra* note 34, at 118.

94. See generally *supra* note 25.

November of 2002 and compiled a record of the content of all 563 questions jurors submitted.<sup>95</sup>

Juror questions from actual trials provides a rare and informative opportunity to discover what types of questions jurors ask and, when given the opportunity, how jurors respond to this process. Clearly the data from the three initiatives described above are not representative of all cases allowing juror questions, nor did the author collect the data for the purpose of analyzing the practice of jury questioning. The data do not allow for a comparison of the values or detriments of implementing this procedure, as there were no experimental or control groups. However, the large sample of extremely rich data provides an unprecedented opportunity to analyze what jurors ask and what conclusions can be drawn from their questions.

Essentially, the author compiled five subsets of data from the juror questions. There were two subsets from civil cases, from Arizona state court and Pennsylvania federal district court. Three of the subsets were from criminal: Maricopa County, District of Columbia, and Pennsylvania. The case type, location, and jurisdiction variations created important distinctions in the following analyses. First, state rules often distinguish between permitting juror questions for civil and criminal cases.<sup>96</sup> Second, the jurisdictional differences in jury instructions, judicial discretion, and purpose for data collection were critical to distinguish. For example, the jury questions from the jury discussion initiative data set may have been influenced by the experimental manipulation allowing jurors to discuss evidence prior to the final deliberations, and the cases from the hung jury initiative in which judges offered to share juror questions were more likely to come from cases that resulted in a hung verdict.

#### A. *How Often Do Jurors Ask Questions?*

The frequency with which jurors utilize this procedure illuminates how useful jurors found the process and to what extent judges and attorneys must contend with potential trial interruptions and extended time of trials. Of the 130 state-level cases, the average number of questions jurors submitted per case was 16. There were a few cases with many questions (e.g., maximum of 130). Since the

95. Judge Vanaskie of the Middle District of Pennsylvania granted the author permission to incorporate and analyze juror questions submitted in his court (Personal communication Nov. 25, 2002).

96. See *supra* notes 6–10 and accompanying text.

average statistic is influenced by outliers, the median, or fiftieth percentile, provides a better measure. The median number of questions per case was 7. It is also important to note that only cases in which jurors submitted a minimum of one question were included in this analysis; the results only apply to cases with jury questions.

Some notable differences exist between the civil and criminal cases. Jurors in criminal cases asked almost twice as many questions as those in civil cases. Criminal jurors know their decision is of greater consequence, and thus they may ask more questions than civil jurors to increase their level of confidence. In addition, since jurors have greater exposure to criminal issues as seen on television, perhaps there is more confusion when they attempt to reconcile their expectations with the actual trial experience.

A comparison of the frequency of juror questions in the Federal District Court for the Middle District of Pennsylvania with other state cases provides similar results. The overall mean number of questions asked was 10, with a median of 6 questions. The maximum asked in any case was 82. In 90% of the cases, jurors submitted fewer than 20 questions per case. A comparison between civil and criminal cases confirms that the mean and 5% trimmed mean<sup>97</sup> were higher for criminal cases than for civil.<sup>98</sup> However, the median number of questions asked in civil cases was only slightly higher than the median in criminal cases. Since there were only 15 criminal federal cases, more data would be necessary to confirm the reliability of these results.

### B. *Content of Juror Questions*

The data bring to light specifically what types of questions jurors ask and thereby provide clues as to whom the questions were directed. As shown in Table 2, several nominal descriptions were created to determine to whom the jurors directed their questions: general witnesses, expert witnesses, legal experts (generally law enforcement or forensic scientists), judges, defendant or defense attorneys, and a final category in which jurors are generally clarifying conflicting testimony (potentially among multiple witnesses).<sup>99</sup>

97. Similar to a median, a "trimmed mean" eliminates the extreme outliers.

98. For criminal cases, 14.1 and 11.0 questions per case, compared with 8.6 and 6.9 questions per case for civil cases.

99. The categories were developed in a previous study for the jury discussion initiative data set with high (Cohen's Kappa = .92) interrater reliability. See Mott, *supra* note 34, at 119. The



Overall, jurors asked questions of witnesses—more specifically, general witnesses—rather than of the judge. In civil cases, experts were typically asked numerous questions, whereas in criminal cases, fewer experts testified. Although criminal jurors did not ask many questions of experts, typically when criminal jurors did ask questions of experts they asked law enforcement witnesses or forensic experts questions regarding their testimony. Comparing the final two categories, jurors asked the judge slightly more questions than the defendant. Table 2 reveals the frequency of each category for the five data subsets.

Across all cases, jurors directed questions to general witnesses most often (42%–66% of questions). Yet this category is likely overinclusive. Without the benefit of reviewing trial transcripts, if the question was not clearly identifiable as directed to a judge, expert, or litigant, the coder deferred to the default code, general witness. Approximately one-quarter of the time jurors solicited information from expert witnesses. Jurors questioned experts more often in criminal cases than in civil cases, mainly because of the use of legal experts such as law enforcement agents or forensic scientists. However, juror questions in federal criminal cases as opposed to state criminal cases did not proportionately include as many questions directed to legal experts as compared to those directed to all experts generally. Federal jurors requested information from general experts more often than jurors in state courts. The variation of case mix in federal court as compared to the mix in state courts likely explains this discrepancy. Numerous differences across the five subsets cannot be ruled out as explanatory factors for why question types vary.

Jurors asked the remaining questions of the court or litigants. Approximately 10% of the jurors' questions requested information from the judge. The percentage was slightly higher in criminal cases compared to civil. A similar percentage was directed to the litigants. Jurors requested information from criminal defendants more often than from civil litigants. However, the frequency of the questions depended primarily on the attorney's chosen trial strategy of whether to put the defendant on the stand. Defendants do not always testify on their own behalf. Thus, it is likely the frequency of jurors' questioning reflects that. Occasionally (3% of the questions), jurors

categories were modified slightly to accommodate the criminal data sets. The author then coded the questions from the study on hung juries and questions shared by Judge Vanaskie in Pennsylvania. Note that some jurors specified to whom the question was addressed, while others did not. If it was not clear from the question, the default was "general witness."

tioning reflects that. Occasionally (3% of the questions), jurors asked witnesses to clarify conflicting testimony. Such a situation occurred when one witness testified to a fact that directly conflicted with an earlier witness's testimony and a juror asked for clarification.

The author developed a second coding scheme to reveal further information about the content of the questions. A review of the questions provides some indication of what it was that jurors wanted to clarify. To enable a comparison across case types, the author grouped questions by comprehensive topic descriptions. Table 3 lists the topic descriptions and the frequency with which jurors asked questions.

### 1. Reasonable Person

In the civil cases, jurors most often asked questions that were specific to the case. This was the most common code in the federal district court cases—comprising half of all the jurors' questions, and one-quarter of their questions in the state court cases. Aside from the most general category, jurors most frequently (approximately 10%-20% of the questions) asked for information on topics unfamiliar to them. At times, laypersons who serve on a jury are somewhat unfamiliar with the testimony presented to them. Attorneys excuse potential jurors during voir dire if their life experiences would provide them with impressions or attitudes biased against one side. Once seated on the jury and presented with the evidence, jurors attempt to judge a person according to a "reasonable person" standard. Yet what is reasonable for a medical doctor or for a delivery truck driver may not be common knowledge to the jurors.

Examples of juror questions clarify this point.<sup>100</sup> Jurors inquired about typical practices within a profession, whether the expert believed an event was plausible, or what procedures an individual should have followed in a given situation. Jurors asked questions of witnesses in the medical profession, such as: "When a blood sample is drawn can more than one test be done on that one sample?" And in another case a juror submitted the following: "Normally, as far as you are aware, as a doctor, was it within the scope of Ms. \*\*\*, a LPN, to carry out 'faxed' doctor's orders (whether written on a prescription sheet or not)?" The practices of the law enforcement profession were

100. Examples of juror questions are presented in quotations for the following discussion of the question topics. Names are removed to protect confidentiality. The original data are on file with the author.

also unknown to many jurors. For example one juror asked: "How are the heat sealed bags sealed? Does the officer close the bag immediately after placing items in the bag or does time [e]lapse between the time the bag is filled and when it is sealed?" Jurors also questioned the police reporting process: "Is it customary that the arresting officers help with paperwork? Then, each officer's view of the arrest report for accuracy as the prior information was report[ed] to each other by radio transmission?" Even questions about what is typical for a member of a street gang in relationship to the police were helpful to a juror's decision, for example: "What color is the unmarked police vehicle? Is it known on the streets from gangsters that that type of vehicle is police?"

## 2. Understanding Motive

Jurors, through their questions, expressed interest in understanding what motivated the litigant or how a witness would explain his or her behavior. Answers to such questions provide jurors with a better understanding of how to judge one's responsibility. In some civil cases, jurors asked questions to better understand whether a litigant had prior knowledge or whether the litigant was absolved of some responsibility due to an illness or effects of medication. For example, a civil juror asked the plaintiff to explain her lack of action: "In the beginning why wasn't a formal written complaint ever written and submitted by the plaintiff herself?" In another case, a juror asked the medical expert to provide information on the effects of a medication: "What are the possible side effects of the drug Maxide that [the plaintiff] was taking at the time of the accident?"

Some question topics were more appropriate in criminal or civil cases. The motives of a defendant were more commonly questioned in criminal cases. For instance, one juror asked a defendant: "Since you were convicted of a felony, are you aware if you can or cannot obtain another federal firearms license? If not, how do you know that you cannot obtain one? Also, why don't you have or handle any firearms?" In two other cases, jurors asked the defendants to explain their behavior: "Why were you stealing a microwave with no vehicle to take it somewhere after your wife had kicked you out of the car?" and another juror asked: "If you saw [the co-defendant] running out why not follow after—it was stated you 'slowly walked away from scene'"? The jurors also asked a police officer to explain his motive:

“What made you think to stop a short black woman when you were told the suspect was 6’3”?”

As revealed in the questions, jurors do not accept all testimony as truthful. Although it was not frequent (approximately 5% of the questions), jurors questioned witnesses to determine their credibility: “Did the witness tell anybody what he had seen before he received defense counsel’s subpoena? To whom and when?” Another juror asked: “Were you promised any favors for you showing up in court today? For example, a reduced time before the DUI would be expunged from your record.” Jurors from two different cases asked eyewitnesses about the accuracy of their testimony: “When he (along with T\*\*\*) identified the defendant, is it true he was identifying him from fifteen feet or more?” In the second case the juror asked about racial differences: “Did you say you don’t know the difference between medium and dark skinned complexion?” One witness apparently provided conflicting testimony and a juror asked him to clarify: “If I’m not mistaken, you stated in a previous statement that he was coherent and understandable after thirty minutes. I believe you stated this on Thursday. Now you state he had slurred speech throughout the night. Thursday you stated it cleared and was understandable at the station.”

### 3. Evidence

Approximately one-fifth of the juror questions asked witnesses to clarify factual evidence such as exactly what events witnesses saw or more detailed facts about a person or place. The following questions were common of those that jurors asked of eyewitnesses: “Did you see blood anywhere else other than the knife?” and “Did you see anything other than beer in H\*\*\*’s hands when he ran out [of] the store?” Other jurors asked witnesses facts about a location, such as: “What type of door locks were on the entry door? And how old is the door and lock?” and “What is the speed limit at that intersection?” In another example, a juror asked a witness to clarify the facts in a previous legal decision: “Please clarify who is allowed to contact who[m] during the order of protection.”

The story model theory, proposed by Hastie, Penrod and Pennington,<sup>101</sup> suggests that jurors will best understand evidence if attorneys specify a chronological sequence of events. In the current

101. REID HASTIE ET AL., *INSIDE THE JURY* 22–23 (1983).

examples jurors were indeed concerned with how events occurred chronologically, thereby supporting the story model. Approximately 7% of the questions fit into this category. Based on the frequencies, criminal jurors asked timing questions more often than did civil jurors. As an example of a question on timing, one juror asked: "How much time elapsed from the time you stopped to the time you heard the shot?" Another juror asked: "When did you buy your horses? Before or after you went to work for \*\*\*?"

Civil jurors, on the other hand, heard evidence pertaining to monetary disputes more often than did criminal jurors. Thus it was expected that jurors would ask questions pertaining to money or insurance. While civil jurors only raised these types of questions approximately 10% of the time, the answers were likely important to jurors, especially during deliberations. Civil jurors are often unfamiliar with how to decide on an appropriate value for an award and thus commonly discuss this during deliberations.<sup>102</sup> A juror faced with complicated testimony from an expert asked: "As a financial/economic expert, do you feel the growth rate would be more accurate, if you looked at the growth rate history for more than 15 years?"

#### 4. Procedures and Law

In a final, and relatively rare, category of jury questions, jurors asked the judge to explain how the trial or deliberations are expected to proceed or to explain the law or legal terminology. Most legal terminology questions arise while jurors deliberate on the charges.<sup>103</sup> However, an examination of juror questions during trial and deliberations, revealed that they asked few questions of the law or procedures. When they did ask such questions, particularly in deliberations, jurors asked the judge how to interpret legal terminology critical to their decision such as: "What is considered a reasonable doubt?" Similarly, in another case a juror asked: "Why isn't involuntary manslaughter a choice in this case?" Another juror questioned the testimony of a witness that included a legal term: "What did you mean by 'he was never *served*' with the decision from Washington,

102. See Nicole L. Mott et al., *What's Half a Lung Worth? Civil Jurors' Accounts of Their Award Decision Making*, 24 LAW & HUM. BEHAV. 401 (2000).

103. HARRY KALVEN, JR. & HANS ZEISEL, *THE AMERICAN JURY* 511 (1966). Of the fifty-two jury requests of the court while jurors were in deliberations, Kalven and Zeisel found that 52% were questions on the law.

DC?’ And how do you know that?’ Some jurors asked the judge to explain the trial process more generally. For example, one juror asked: “Why is this in Federal Court?” Other jurors requested transcripts, dictionaries, or exhibits. Some jurors reported difficulty with reaching a group consensus, as in this submission: “Judge, we need some guidance; we are at an impasse.” Other jurors submitted notes asking if they could break for lunch or asked for permission to continue deliberation through their lunch break.

### III. LESSONS LEARNED FROM JUROR QUESTIONS

This analysis of juror questions does not offer support to the argument that implementation of the questioning procedure jeopardizes the adversary system by allowing jurors to become biased advocates. Instead, the data provide evidence that jurors utilize questions to enhance their role as neutral fact finders.

Most questions aimed to clarify testimony, not to introduce new evidence or interrogate witnesses. Jurors mainly asked questions of the evidence already presented. It is the court’s responsibility to ensure that jurors understand the evidence to the fullest extent possible. Of course, not all parties are interested in the truth-seeking role. However, without the evidence, jurors are likely to make uninformed decisions or possibly be unable to reach a decision at all. A study of why juries hang revealed that often jurors reach an impasse due to confusion or disputes about the evidence.<sup>104</sup>

The questions demonstrated that jurors prefer to put testimony and evidence into their own context. Despite the recommendations that judges ought to sustain objections or alter the wording of juror questions if the questions violate the rules of evidence, through this analysis it is evident that jurors exhibit a need to understand the information in their own minds. Jurors asked questions to evaluate actions for reasonableness, to clarify information with experts, to understand litigants’ motives, and generally to understand the case from a layperson’s perspective. Through their questions, jurors aimed to understand legal terminology of the courts and practices or jargon used by various professions.

Juror questions prevent confusion and misinterpretation, and this may prevent disagreements and uncertainty in deliberations. The procedure opens communication from a one-way traditional model to

104. See generally *supra* note 25.

a two-way active model. Clearly applying the educational model to jurors has shown that comprehension is improved with a two-way communication model.<sup>105</sup> In virtually all learning environments, people may ask questions and receive answers. Until fairly recently, with improved jury innovations, the courts have been an exception, requiring jurors to remain passive. In an article on juror questioning, one author proclaimed, "Jurors should remain silent."<sup>106</sup> This statement is akin to the condescending parental saying that "children ought to be seen but not heard." The author proffered a flawed argument that an active juror assumes commitment to a hypothesis simply by formulating a question. The juror questions analyzed in this Article provide clear examples of active jurors who have not committed to a hypothesis. The jurors retained a neutral stance while they aimed to clarify the evidence.

As further support for allowing jurors to question witnesses, judges report the questions are very reasonable. When asked to evaluate juror questions, judges in the first data subset (jury discussions) rated the questions as very reasonable—in only four of the cases did the judge report a score less than "neither reasonable nor unreasonable."<sup>107</sup> Furthermore, the number of questions jurors submitted in each case underscores that jurors, even when encouraged to ask questions, did not overwhelm the trial. The overall median was six questions per case and in only ten cases (6% of cases) did jurors ask more than fifty questions.

With the advent of jurors questioning witnesses, the role of the juror admittedly changes, but the new role is not a detriment to the adversary system. With appropriate judicial discretion and court management of this procedure, the concerns associated with this procedure are unfounded.

The benefits of allowing jurors to question witnesses are far-reaching. The public's trust of and confidence in the court system will increase by treating jurors respectfully and as intelligent and contributing members of the justice system. The attorneys receive feedback on juror confusion and are allowed a chance to elucidate the issues of the case, thereby bolstering the jurors' role as truth-seekers. More-

105. See, e.g., B. Michael Dann & George Logan III, *Jury Reform: The Arizona Experience*, 79 JUDICATURE 280 (1996); B. Michael Dann, "Learning Lessons" and "Speaking Rights": *Creating Educated and Democratic Juries*, 68 IND. L.J. 1229 (1993).

106. Lundy, *supra* note 3, at 2040.

107. Mott, *supra* note 34, at 132-33.

over, the justice to litigants is more likely to be realized and the jurors themselves are more likely to be confident with their decisions if jurors can ask questions.

Recommended guidelines already exist in many forms and provide courts with the tools needed to implement this procedure successfully (see Sidebars 1 and 2). Although the procedure remains within the judge's discretion, courts should allow attorneys to object to questions and raise concerns with interruptions to trial strategy and the flow of the trial proceedings.

Courts are more reticent in allowing juror questions in criminal cases than civil cases.<sup>108</sup> However, there is no evidence to justify this distinction. The differences found in this analysis do not identify why this procedure should exclude criminal cases. Assuming courts permit juror questions, further work needs to be done to determine the effects of *allowing* juror questions versus *encouraging* juror questions, a distinction that could prove to be very influential.

In sum, courts that give jurors the opportunity to ask questions of witnesses during trial enhance their role as fact finders; jurors do not become biased advocates. By providing jurors with valuable procedural tools, such as asking questions, courts encourage jurors to play an active, yet neutral, role as jurors.

108. DODGE, *supra* note 11, at 1; JURY TRIAL INNOVATIONS, *supra* note 1, at 138–39.



## APPENDIX

**Sidebar 1:***Arizona Rule of Civil Procedure 39(b)(10):*

The court should instruct the jury that any questions directed to witnesses or the court must be in writing, unsigned and given to the bailiff. The court should further instruct that, if a juror has a question for a witness or the court, the juror should hand it to the bailiff during a recess, or if the witness is about to leave the witness stand, the juror should signal to the bailiff. If the court determines that the juror's question calls for admissible evidence, the question should be asked by court or counsel in the court's discretion. Such questions may be answered by stipulation or other appropriate means, including but not limited to additional testimony upon such terms and limitations as the court prescribes. If the court determines that the jurors' question calls for inadmissible evidence, the question shall not be read or answered. If a juror's question is rejected, the jury should be told that trial rules do not permit some questions to be asked and that the jurors should not attach any significance to the failure of having their questions asked.

**Sidebar 2:***Instructions to Jurors on How to Ask Questions During Trial*

*Chief Judge Thomas I. Vanaskie, United States District Court, Middle District of Pennsylvania*

The court permits jurors to put important questions to witnesses during the trial under certain conditions. If you feel that the answer to your question would be helpful in understanding the issues in the case, please raise your hand after the lawyers have completed their examination, but before I have excused the witness. You will then be provided with pen and paper with which to write out your question to the witness. I will then confer with the lawyers privately about the question and make a ruling on whether the question is a proper one under the laws and trial procedures. If the question is proper, I will address the question to the witness.

Please do not address the court, the lawyers, or the witness directly, but follow this procedure carefully if you wish to have a specific question addressed to a witness. On the other hand, if you have difficulty in hearing a witness or a lawyer, please raise your hand immediately and the court will take corrective action.

**Table 1:**  
**Description of Data Subsets**

	<u>Jury Discussion</u>		<u>Hung Jury</u>		<u>Jury Innovations</u>	
<b>Court</b>	State		State		Federal	
<b>Location</b>	Arizona	Maricopa	DC	Pennsylvania		
<b>Date</b>	6/97 - 1/98	11/00 - 10/00	4/01 - 8/01	5/94 - 11/02	5/94 - 11/02	
<b>Case Types</b>	Civil	Criminal	Criminal	Civil	Criminal	
<b># Cases</b>	59	31	18	41	15	
<b>Questions Submitted</b>	641	761	313	352	211	
<b>Mean</b>	10.9	24.6	17.0	8.6	14.0	
<b>Median</b>	5	11	12	6	4	
<b>(Min, Max)</b>	(1, 85)	(1,30)	(1,54)	(1,56)	(1,82)	

**Table 2:**  
**To Whom Juror Direct Questions by Data Subset**

	<u>Discussion</u>	<u>Innovations</u>		<u>Hung</u>	
	Arizona	Pennsylvania		Maricopa	DC
	Civil	Civil	Criminal	Criminal	Criminal
	%	%	%	%	%
<b>General Witness</b>	58.8	66.1	50.0	41.8	18.3
<b>Expert Witness</b>	25.4	10.6	24.2	12.0	7.2
<b>Legal Expert</b>	—	4.7	3.2	19.6	30.1
<b>Judge</b>	6.1	9.7	11.3	11.2	30.4
<b>Defendant</b>	6.6	5.1	7.5	12.7	11.8
<b>Clarifying Conflicting</b>	3.1	3.8	3.8	2.8	2.3

**Table 3:**  
**Topic of Juror Questions by Data Subset**

	<u>Discussion</u>	<u>Innovations</u>		<u>Hung</u>	
	<u>Arizona</u>	<u>Pennsylvania</u>		<u>Maricopa</u>	<u>DC</u>
	<u>Civil</u> <u>%</u>	<u>Civil</u> <u>%</u>	<u>Criminal</u> <u>%</u>	<u>Criminal</u> <u>%</u>	<u>Criminal</u> <u>%</u>
Case /Charge specific	50.2	24.5	20.1	15.5	13.4
Common Practices	11.2	23.7	17.5	10.1	10.1
Litigants' Motives	13.1	7.9	18.5	18.0	8.5
Insurance/Financial	12.0	5.8	—	—	—
Procedures	3.0	5.8	6.3	5.8	22.5
Time Sequence	7.6	5.0	3.2	8.1	8.2
Law/Legal Terms	2.7	4.6	9.5	4.5	7.8
Eyewitness Evidence or Facts	—	2.9	13.8	24.2	16.7
Credibility of Testimony	—	0.8	4.2	5.8	6.9
Other	0.2	0.4	1.1	8.0	5.9

