

DRAFT

REPORT TO THE

SUPREME COURT OF MISSOURI

FROM

THE CIVIL JURY STUDY COMMITTEE

Last revised 9/11/2000

CONTENTS

	<u>Page</u>
I. Introduction	1
A. Scope of the Committee's Charge	1
B. Work of the Committee	1
C. Matters for the Legislature: Juror Compensation and Juror Hardships	2
II. Uniform Juror Qualification Form and Questionnaire	4
A. Discussion	4
B. Recommendation	5
III. Juror Note-taking	7
A. Discussion	7
B. Recommendation	8
IV. Jurors' Submission of Questions to Witnesses	10
A. Discussion	10
1. Procedure	10
2. Advantages	10
3. Concerns	11
B. Recommendation	13
V. Discussion by Jurors before Deliberations	14
VI. Civil Jury Instructions	16
VII. Other Recommendations to Assist Jurors	18
A. Introduction of the Case to Jurors	18
B. Notebooks for Jurors	19

C.	Pre-trial Conference Rule	20
D.	Miscellaneous Recommendations	21
VIII.	Conclusion	24

APPENDICES

Appendix A	Bibliography	I
Appendix B.	Juror Survey Results	III
Appendix C	Judge Survey Results	XI
Appendix D	Juror Compensation, Contacts, and Convenience Chart	XXII
Appendix E	Questions Asked of Jury Panels	XXIX
Appendix F	Questions to be Added to All Qualification Forms	XXXIV
Appendix G	Sample Modified Jury Instruction for MAI 2.01 for Questions by Jurors	XXXV
Appendix H	Sample Procedures for Questioning by Jurors	XXXIX
Appendix I	Sample Jury Instruction for End of Trial for Questioning by Jurors	XLI

EXECUTIVE SUMMARY

I. Uniform Juror Qualification Form and Questionnaire

The Committee recommends that the Supreme Court require that all circuits use a uniform juror qualification form and/or questionnaire, to include a minimum set of standard questions for all potential jurors. The Committee further suggests that the Supreme Court require that the responses be available to the lawyers in time to prepare for and use during voir dire.

II. Juror Note-taking

The Committee recommends that Supreme Court Rule 69.03, which allows note-taking, be amended to encourage trial judges to *sua sponte* permit jurors to take notes and, upon request of any party, to require trial judges to permit juror note-taking absent good cause to deny the request.

III. Jurors' Submission of Questions to Witnesses

The Committee recommends that pilot programs be established to study the advantages and concerns related to jurors' ability to ask questions of witnesses through the lawyers or judge. An example of procedures and jury instructions that could be used is included in the report. The Committee also recommends advance training for those judges selected to participate in the pilot programs.

IV. Discussion by Jurors before Deliberations

The Committee considered whether pre-deliberation discussion by jurors should be permitted. Recognizing the radical departure from prior practice and serious potential dangers, the Committee believes the experience in other courts should be carefully studied and does not recommend, at this time, that pre-deliberation discussions be permitted.

V. Civil Jury Instructions

The Committee found both that jurors highly rate the ease of understanding jury instructions and that means exist to enhance jurors' understanding of the instructions. The Committee recommends that the MAI Committee consider:

- (1) jury instructions at the start of the trial prior to opening statements,
- (2) further simplification of instructions, and
- (3) repeating portions of MAI 2.01, which is given at the beginning of trial, at the close of the evidence, perhaps in MAI 2.03.

Moreover, the Committee recommends that each juror be given a copy of the instructions before final argument and deliberation.

VII. **Other Recommendations to Assist Jurors**

A. **Introduction of the Case to Jurors**

The Committee recommends encouraging the use of a summary statement of the case, which can be read to the jury prior to voir dire, by adding a provision to Rule 69. New Rule 69.04 would require the trial judge to read a brief summary of the case based on the parties' agreement; or if the parties do not agree on a statement, to read the court's statement; or to permit brief non-argumentative statements by counsel.

B. **Notebooks for Jurors**

The Committee encourages the use of notebooks for jurors, to include explanatory instructions (such as MAI 2.01), a copy of the brief statement of the case, and possibly other materials such as courthouse information and blank pages for taking notes. The Committee suggests a new section in Rule 69 authorizing such notebooks.

C. **Pre-trial Conference Rule**

The Committee recommends using the pre-trial conference rule, Rule 62.01, to encourage judges and lawyer to consider and implement ways to enhance jury trials. Pre-trial conference topics should include the use of notebooks for juror note-taking, a brief summary of the case prior to voir dire, the effective management of documents and exhibits, and the use of technology to present evidence and make it more understandable.

VIII. **Miscellaneous Recommendations**

The Committee believes that a number of other ideas merit further study, consideration, and implementation. For example, judges, lawyers, and court personnel should make every effort to minimize delays and make the most efficient use of jurors' time, and they should communicate clearly to the jurors what the jurors' responsibilities are and what jurors can expect. Courts should encourage the use of technology to make the case simpler, more understandable, and more interesting. Courts should "de-brief" jurors so that jurors may provide comments, receive advice on their privacy rights and residual stress, and complete their service with a feeling of satisfaction.

REPORT TO THE SUPREME COURT OF MISSOURI
FROM THE CIVIL JURY STUDY COMMITTEE

I. INTRODUCTION

A. SCOPE OF THE COMMITTEE'S CHARGE

Pursuant to a resolution of the Executive Council of the Judicial Conference, on September 14, 1999, Chief Justice William Ray Price, Jr., appointed a Committee to study civil jury reform. The Committee was directed to examine ways that jurors participate in civil trials and recommend to the Supreme Court changes that might be desirable. The Committee was asked to focus on those issues that could be addressed by Supreme Court administrative or procedural rule, rather than by statutory change. The Committee was given broad authority to examine all potential areas of meaningful jury improvements including such issues as juror note-taking and questioning during trial, guides for juror deliberations, revision of explanatory instructions, juror discussion of the case prior to final deliberation, standardized voir dire procedures, use of juror notebooks, explanatory statements by lawyers during the course of trial, and any other trial procedures that might enhance jury participation and effectiveness.

B. WORK OF THE COMMITTEE

The Committee was provided a wide variety of materials: articles by the National Center for State Courts; a report of the Colorado Supreme Court Committee on the Effective and Efficient Use of Juries; materials on enhancing the jury system, improving jury deliberations, and recommendations for jury improvements prepared by the American Judicature Society; studies by the American Bar Association; and extensive materials analyzing jury trial enhancements initiated in Arizona. The complete

bibliography of the materials provided to the Committee is listed in Appendix A to this report.

The Committee met on six occasions. The work of the Committee was publicized in The Missouri Bar Bulletin and on The Missouri Bar and the Supreme Court of Missouri Web sites.

With funding from The Missouri Bar Foundation, the Committee commissioned Professor Greg Casey, Department of Political Science for the University of Missouri – Columbia, College of Arts and Sciences, to prepare a juror survey. This survey was distributed to jurors who had participated in civil trials throughout the state and to jurors who had participated in civil trials in the United States District Court for the Western District of Missouri in a four-month period. The results of that survey are contained in Appendix B.

The Committee also distributed surveys to Missouri trial judges to gauge their reactions to certain jury change proposals. Their responses are compiled in Appendix C.

**C. MATTERS FOR THE LEGISLATURE:
JUROR COMPENSATION AND JUROR HARDSHIPS**

All Committee members strongly believe that because of the importance of the jury trial system, efforts should be made to reduce the hardship of jury service. While this report focuses on changes to be made by Supreme Court rule, the Committee has also identified areas that may merit legislative consideration. First, the minimum daily compensation for jurors, as set by section 494.455, RSMo, is woefully inadequate. The statute provides that jurors receive a minimum of \$6.00 per day from the state and \$.07 per mile, plus an amount, if any, that the county authorizes. A 1999 amendment

encourages increased juror pay: if the county authorizes another \$6.00, the state matches it, bringing the total compensation to \$18.00 per day. Despite the amendment, some counties still pay the minimum of \$6 per day. In the majority of counties, state and county pay totals no more than \$20 per day plus mileage. (See Juror Compensation, Contacts, and Convenience Chart, Appendix D.) Since an increase in minimum jury compensation would require a statutory change, the Committee has not analyzed juror compensation issues in depth or included a specific recommendation on that in this report. The Committee believes, however, that efforts should continue to be made to increase juror compensation.

Second, in its December 15, 1995 report, the Advisory Commission on the Organization of the Judicial Department made several recommendations regarding the management of juries. Among those recommendations was providing greater protection and privacy for jurors. This Committee believes that the protection and privacy issue should be studied further.

Third, the Advisory Commission recommended limiting the time that a juror spends at the courthouse to a maximum of two days or completion of one trial. This recommendation has been enacted as section 494.445, RSMo Supp. 1999.

Fourth, the Advisory Commission also recommended that the minimum age for jury service be reduced to 18 years. The Advisory Commission believed that lowering the minimum age would expand the jury pool and broaden its base, thereby reducing the number of times any individual would serve on a jury and assisting in ensuring a representative jury pool. This Committee, however, makes no recommendation regarding lowering of the minimum age for jury service.

II. UNIFORM JUROR QUALIFICATION FORM AND QUESTIONNAIRE

A. DISCUSSION

Voir dire can be more effective and the risk of non-disclosure minimized by the use of written juror qualification forms and questionnaires given to the jurors to complete prior to voir dire. Many circuits in the state have adopted juror qualification forms, questionnaires or both. The Committee has studied whether a uniform juror qualification form and questionnaire should be adopted for the use of all circuits in the state.

The Committee first requested that each circuit provide it with a copy of any juror qualification form or juror questionnaire used in that circuit. The Committee then reviewed these forms and compiled a list of all questions asked of jury panels on a circuit by circuit basis. (See Questions Asked of Jury Panels, Appendix E.) From this list, the Committee determined that the circuits generally requested the same information from potential jurors, but the circuits differed with respect to the specific questions asked. The circuits also differed on when they provided the information in the responses to the lawyers trying the case.

The Committee also considered the recent plethora of litigation¹ concerning juror non-disclosure. Juror non-disclosure is an important fairness issue, which concerns all

¹ See generally, e.g., *Brines v. Civis*, 822 S.W.2d 138 (Mo. banc 1994); *Wemott v. Tonkens*, -S.W.3d-, WD57397 (Mo.App. W.D. 2000); *Schultz v. Heartland Health System, Inc.*, -S.W.3d-, 2000 WL 155092 (Mo.App. W.D. 2000) (intentional juror nondisclosure resulting in reversal and remand for new trial); *Wood v. Kriegshauser*, 851 S.W.2d 574 (Mo.App. E.D. 1992) (new trial ordered because five jurors failed to disclose their prior litigation experiences as defendants); *Hightower v State*, 987 S.W.2d 439 (Mo.App. W.D.1999) (juror's failure to disclose during voir dire four landlord-tenant lawsuits); *Jackson v Watson*, 978 S.W.2d 829, (Mo.App. W.D. 1998) (juror's nondisclosure during voir dire of fact that she had been sued in three lawsuits was intentional); *Shafer v. Schuster*, 882 S.W.2d 310 (Mo.App. W.D. 1994) (two jurors' failure to disclose fact that they had been involved in prior litigation during voir dire was unintentional and did not prejudice parties); *Wood v Kriegshauser, supra* (12 jurors during voir dire had failed to disclose information regarding prior claims or lawsuits as they had been asked during voir dire).

members of the bench and bar.² The disclosure or nondisclosure of prior litigation, either intentional or unintentional,³ will continue to provide masses of motions for new trials and appeals.⁴

B. RECOMMENDATION

The Committee recommends that the Supreme Court require that all circuits utilize a uniform juror qualification form and/or questionnaire, to include a minimum set of standard questions for all potential jurors. The minimum set of questions would include those required to ascertain eligibility under the applicable statute and eight or ten additional questions most commonly asked as shown in Appendix E. The Committee has developed two additional questions to specifically deal with the issue of juror non-disclosure of prior litigation. (See Questions to be Added to All Qualification Forms, Appendix F.) The questions about prior lawsuits were drafted to be sufficiently clear so

² See, e.g., W. Dudley McCarter, Juror Nondisclosure, Journal of the Missouri Bar, July-August 1999, at 214. This article gives a comprehensive look at issues and problems associated with juror nondisclosure. See e.g., Robert T. Adams, and Bryan T Pratt, Juror Nondisclosure, Missouri Organization of Defense Attorneys, April 2000, at 4. This article focuses on the problems associated with intentional and unintentional juror nondisclosure and the need for clear and concise questions in order to avoid either a negative outcome or a new trial.

³ The test for intentional juror nondisclosure used by Missouri courts is detailed in *Williams By and Through Wilford v. Barnes Hosp.*, 736 S.W.2d 33, 36 (Mo. 1987). Intentional nondisclosure occurs: 1) where there exists no reasonable inability to comprehend the information solicited by the question asked of the prospective juror, and 2) where it develops that the prospective juror actually remembers the experience or that it was of such significance that his purported forgetfulness is unreasonable. Also contained in *Williams* is the test for unintentional juror nondisclosure, “which exists where, for example, the experience forgotten was insignificant or remote in time, or where the venireman reasonably misunderstands the question posed.” See generally, e.g., *Mantz v. Southwest Freight Lines* 377 S.W.2d 414, 418 (Mo.1964); *Begley v. Adaber Realty & Investment Co.*, 358 S.W.2d 785, 792-93 (Mo.1962); *Hornberger v. St. Louis Public Service Co.*, 353 S.W.2d 635, 642 (Mo.1962); *Barb v. Farmers Ins. Exchange*, 281 S.W.2d 297, 302 (Mo.1955); *Blond v. Overesch*, 527 S.W.2d 663, 669 (Mo.App.1975); *Lindsey v. P.J. Hamill Transfer Co.*, 404 S.W.2d 397, 399 (Mo.App.1966).

⁴ See generally, e.g., *Aliff v Cody*, 987 S.W.2d 439 (Mo. App. W.D. 1999); *Schultz v Heartland Health System, supra*. Although there are numerous cases dealing with the juror nondisclosure issue, these two recent cases help to illustrate the problems of nondisclosure, which could have easily have been dealt with through the use of a uniform juror questionnaire containing specific questions regarding prior involvement in legal proceedings. One case was found to be unintentional and one intentional, but both could have been discovered and dealt with early on through the use of a thorough jury questionnaire.

that the juror's answer will allow the court to ascertain, if necessary, whether there has been intentional non-disclosure. The Committee further suggests that the Supreme Court adopt a rule requiring that the responses be available to lawyers for all parties in the litigation in sufficient time to prepare for and use during voir dire.

The benefits of this proposed change are clear. Because the juror questionnaires are uniform, the lawyers will know what standard juror information will be available to them prior to voir dire in every case. Because the questions set forth a minimum to be asked, circuit courts and the board of jury commissioners will retain the discretion and flexibility to add questions if a particular local need is perceived. The questions are phrased to reduce the possibility of juror non-disclosure. The use of written responses would promote the selection of a fair and impartial jury⁵ as jurors would be more willing to disclose potentially embarrassing information under these circumstances.

The Committee suggests that the benefits of a uniform juror qualification form or questionnaire would far out-weigh any additional time spent by court administrators or circuit clerks in the distribution and collection of these qualification forms or questionnaires.

⁵MO. CONST. art. I, section 22(a) states, "the right to trial by jury as heretofore enjoyed shall remain inviolate." This has been interpreted to mean the right to a fair and impartial jury. *See, e.g. Tate v Giunta*, 413 S.W.2d 200 (Mo. 1967); *Derr v St. Louis Public Service Co* 399 S.W.2d 241 (Mo. App. 1965); *Triplett v St. Louis Public Service Co.*, 343 S.W.2d 670 (Mo. App 1961); *Sunset Acres Motel, Inc. v Jacobs*, 336 S.W.2d 473 (Mo. 1960).

III. JUROR NOTE-TAKING

A. DISCUSSION

Supreme Court Rule 69.03 permits juror note-taking. State trial judge surveys show that while 76% of judges support the concept of note-taking, judges rarely suggest note-taking, and it is not a common practice. (Appendix C, questions 1-3.) Seventy-three percent of judges have never allowed note-taking. (Appendix C, question 1.) Juror surveys in St. Louis City, St. Louis County, Jackson County, Greene County and other circuits demonstrate that jurors support note-taking. (See Appendix B, questions 2 and 3.) Statewide, when jurors were permitted to take notes, 74% used the notes during deliberations, and 80% believed notes were helpful in recalling testimony. (Appendix B, question 1, 2a, 2b, 2c.)

Trial judges who have allowed note-taking have reported only a few (if any) minor problems with the practice. Concerns that note-taking unduly distracts the individual or other jurors, that note-takers exert undue influence over other jurors during deliberation, that note-taking favors one side over the other, or that note-taking decreases over the course of the trial to the detriment of defendant and third-party defendants have not been substantiated in practice. The benefits of note-taking outweigh the concerns.

The trial judges, trial lawyers and jurors (based upon the surveys mentioned above and judges who have permitted note-taking and reported to the Committee) have found that note-taking:

- a. Promotes juror attention;
- b. Assists jurors in refreshing their recollection of trial testimony;
- c. Limits the requests for reviewing trial testimony during deliberation;

- d. Limits the number of trial exhibits requested for review during deliberation, and in many instances, where requests for exhibits are made, results in the jurors specifically identifying the particular exhibit requested; and
- e. Shortens the jury deliberation time in many instances.

B. RECOMMENDATION

Supreme Court Rule 69.03, which allows note-taking, should be amended to encourage trial judges to *sua sponte* permit jurors to take notes and, upon request of any party, to require trial judges to permit juror note-taking, unless good cause is shown to deny the request. The trial judge should also instruct jurors in all civil cases, when requested under Rule 69.03, that jurors are entitled, but not required, to take notes during the trial. Specifically, Rule 69.03 could be amended similar to the following:

Upon the request of any party or upon the court's own motion, the court shall allow juror note taking, absent good cause to deny such request. Where such request has been made, [If the court allows juror note taking,] the court shall supply each juror with notebooks and pencils. Jurors shall not have their notes during recesses but may use their notes during deliberations. The court shall collect all juror notes immediately before discharge of the jury. After the jury is discharged, the court shall destroy the notes promptly without permitting their review by the court or any other person. Juror notes shall not be used to impeach a verdict.

The Committee believes that this modification of Rule 69.03 will encourage trial judges to permit note taking more frequently than is currently permitted.

To facilitate this rule, the Committee also recommends that upon the commencement of a civil trial, the court should supply notebooks to the jurors, which include blank paper and a copy of MAI 2.01 as discussed in other sections of this report.

IV. JURORS' SUBMISSION OF QUESTIONS TO WITNESSES

A. DISCUSSION

The Committee considered whether jurors should be permitted to submit questions for the court or lawyers to ask witnesses.⁶ The Committee studied the procedure generally used in Missouri state and federal courts that allow juror questions. The Committee also studied the reported advantages and concerns of juror questioning.

1. Procedure

Various methods are used in courts that allow jurors to ask questions. The judge gives an instruction at the beginning of the trial. (Sample Modified Jury Instruction for MAI 2.01, Appendix G.) Generally, the judge receives the question(s) in writing after the lawyer's cross-examination of the witness. If the question is proper, it is asked, usually by the judge. Then, follow-up redirect and recross-examination are allowed. (Sample Procedures for Questioning by Jurors, Appendix H.) At the end of the trial, the court may submit an additional instruction. (Sample Jury Instruction for End of Trial for Questioning by Jurors, Appendix I.)

2. Advantages

The lawyers and judges who have allowed jurors to ask questions have found it helpful to both the jurors and the court in clarifying issues and witness testimony. Some lawyers have reported to the courts that the juror questions have helped them frame their

⁶ Authority: *Callahan v. Cardinal Glennon Hospital*, 863 S.W.2d 852 (Mo banc 1993); *Sparks v. Daniels*, 343 S.W.2d 661 (Mo. App. 1961).

closing arguments and focus their questions of the witness so that the jurors' questions may be answered.

Jurors report they feel more a part of the trial than if they just sit and watch and do not take notes or ask questions during the trial. The juror survey disclosed that one-fifth of the jurors surveyed were allowed to propound questions of a witness. (Appendix B, question 6.) When the witness answered a juror's question(s), 65% of jurors found the answer somewhat or very helpful in their thinking in the case, as opposed to less than 10% who did not find the answer helpful. (Appendix B, question 6b.) This procedure is, at a minimum, “somewhat helpful” in achieving the goals of seeking truth and doing justice.

Permitting jurors to ask questions increases the likelihood that the jury will understand witness testimony. Permitting jurors to ask questions also allows the court and the lawyers an opportunity to identify situations in which jurors may have misunderstood testimony and gives the lawyers an opportunity to clarify the testimony while the witness is still on the stand. Finally, permitting jurors to ask questions helps them keep alert and engaged in the trial proceedings.⁷

3. Concerns

In Jury Trial Innovations, the authors note some of the concerns associated with juror questions. The Committee lists those concerns below, along with responses based on judges' experience.

⁷ Munsterman, Hannaford and Whitehead, editors Jury Trial Innovations, (1997).

1. *Permitting jurors to ask questions may confuse their role as neutral fact-finders, assuming instead the role of advocates.*

Those judges who have experience in permitting juror questioning and who reported to the Committee have not found this result in their trials. They indicate that the questions have been concise, serious, and relevant to the trial. Although some questions may not be central to the issue, those questions are very important to the jurors in that the questions help them understand the testimony during the trial.

2. *Jurors may interpret the trial judge's failure to ask a question as an indication that the witness' testimony should be discounted.*

Those judges who have experience in permitting questioning and who reported to the Committee have indicated that the opposite is true. They have been informed by jurors that when a juror's question is not asked, the jurors referred to the instruction that told them that there was to be no inference drawn from the fact that a question was not asked. Once the question was not asked, the jurors then stopped considering that issue because it was clear to them that the issue was not a part of the trial.

3. *Jurors may be offended or angry if all of their questions are not answered.*

Again, experienced and reporting courts have not found that this has occurred. Although some jurors express concern or ask why their questions were not asked, they

have not been offended or angry on this issue. Again, the instruction tells them that not all questions will be propounded to the witnesses.

4. *Permitting jurors to ask questions of witnesses adds to the length of the trial.*

In the experience of the state courts allowing juror questioning, this procedure generally adds five percent (5%) or less trial time. The advantages of allowing jurors to ask questions during trial outweigh the minimal time added to the jury trial. In addition, deliberation time may be shortened and more effective when the jurors have the information they need to make a decision.

B. RECOMMENDATION

The Committee recommends that pilot programs be established to study the advantages and asserted concerns of jurors being allowed to ask questions of a witness.⁸ Those judges selected to participate in the program should receive advance training. For an example of a procedure that could be followed and sample jury instructions that could be used at the beginning and end of trial, see Appendices G, H, and I.

⁸ Present Supreme Court rules do not speak to, or prescribe procedures for, jurors asking questions. Judge and juror surveys demonstrate that at least one state judge, but no more than a few state judges, permit such questioning. Federal courts generally permit such questioning.

V. DISCUSSION BY JURORS BEFORE DELIBERATIONS

Currently, jurors in Missouri state courts are prohibited from discussing the case until they receive the final jury instructions. MAI 2.01 states, in part:

Justice requires that you not make up your mind about the case until all of the evidence has been seen and heard. You must not comment on or discuss what you may hear or learn in the trial until the case is concluded and you retire to the jury room for your deliberations. During the trial, you should not remain in the presence of anyone who is discussing the case when the court is not in session....

The comments to this instruction suggest that the trial judge give this same admonition to the jury prior to a recess.

Other states have considered permitting pre-deliberation discussions by jurors. A few jurisdictions are conducting this as a pilot program whereby, upon stipulation of counsel, pre-deliberation discussions are being permitted, particularly in lengthy or complex cases. In response to a survey, a number of Missouri state judges stated that despite Missouri's instruction to the contrary, jurors "do it anyway." (See Appendix C, question 6 Comments.)

Articles on this subject suggest that prohibiting jurors from talking about the case as the trial progresses may be contrary to basic human psychological needs and the adult learning process. Other commentators have stated that, because pre-deliberation

discussions will occur regardless of whether they are permitted, the interests of justice are better served by giving jurors guidance on when and how such discussions should take place. The jurisdictions that are experimenting with this process have implemented an instruction that states, in part:

Discussions of this case among yourselves while the evidence is being presented to you may occur only in the jury room and only while all jurors are present.... During your discussions of the case before you have heard all the evidence, the argument of counsel and all the jury instructions, you must keep in mind your oath as a juror to withhold judgment until you have had this opportunity.

There are concerns about this practice. All trials involve piecemeal presentation of evidence, with the plaintiff (or party with the burden of proof) going first and the other party waiting to present evidence. An understandable fear is that, if the jury discusses the case prior to hearing all the evidence, the arguments of counsel and the court's instructions on the law, the jury could reach a decision prematurely or certain jurors with strong opinions could dominate the process. Seventy-eight percent of Missouri trial judges who responded to a survey were opposed to allowing jurors to discuss the case prior to deliberation. (Appendix C, question 6.)

Because permitting pre-deliberation discussions by jurors would be such a radical departure from prior practice and potentially very harmful, the Committee believes the experience in other states' courts should be carefully studied and does not recommend, at this time, that a rule be adopted permitting pre-deliberation discussion by jurors.

VI. CIVIL JURY INSTRUCTIONS

In response to the juror survey, jurors highly rated the instructions on ease of understanding. (Appendix B, questions 9, 10a, 12.) Likewise, in response to the judge survey, 80% of judges believed the explanatory instructions are understandable and helpful to the jurors. (Appendix C, question 5.) This Committee commends the Supreme Court Committee on Jury Instructions and Charges – Civil (MAI Committee) on this result, which reflects the outstanding efforts of the MAI Committee members to implement and explain often complex statutory and decisional law in terms understandable by jurors.

This Committee recommends enhancing the instructions that jurors receive in the following ways:

First, this Committee recommends that the MAI Committee consider additional jury instructions at the start of the trial or prior to opening statements in civil trials. Although Supreme Court Rule 70.02(f) permits the court, with agreement of the parties, to give preliminary instructions to the jurors as will assist them in understanding their role or the issues in the case, this is rarely, if ever, done.

Second, the MAI Committee should continue its efforts to further simplify jury instructions to improve and enhance juror understanding thereof and citizen fulfillment in the experience of participatory democracy that is our civil justice system.

Third, to refresh the jurors on the information they were given in MAI 2.01 at the beginning of trial, certain sentences in 2.01 could be re-stated in an appropriate, later instruction. For example, the MAI Committee may consider including the following (or similar) sentences from 2.01 in 2.03 at the appropriate place:

All of the evidence is now presented to you and you will receive my final instructions and hear the closing arguments of the lawyers. Then, you will retire to the jury room for your deliberations. You will select a foreperson, decide the facts and arrive at a verdict. During your deliberations, you will be considering the testimony of witnesses as well as other evidence that has been presented. You may give the testimony of any witness such weight and value that you believe that testimony is entitled to receive.

Finally, this Committee recommends that each juror be given a copy of the instructions before instruction reading, final argument and deliberation. While the juror survey highly rated the ease of understanding the instructions, the ease of understanding increased significantly when each juror received his or her own copy of the instructions. (Appendix B, questions 9, 10a, 12.)

Should the MAI Committee consider any changes in substance or procedure relating to civil jury instructions to be beneficial toward these ends, that committee would follow its usual procedure of making its recommendations to the Supreme Court for its consideration and possible adoption.

VII. OTHER RECOMMENDATIONS TO ASSIST JURORS

A. INTRODUCTION OF THE CASE TO JURORS

The United States District Courts for both the Western District and Eastern District of Missouri issue an order relating to jury trials that includes the following requirement of the parties:

Stipulation: Meet and jointly prepare and file a joint stipulation of all uncontested facts, which may be read into evidence subject to any objections of any parties set forth in said Stipulation (including a brief summary of the case, which may be used on voir dire).

The Committee recommends that the Supreme Court adopt a rule for the use of a similar summary statement of the case, which can be read to the jury prior to voir dire. Such a brief summary statement would increase the jury's understanding of a case at the earliest possible stage, assist in streamlining voir dire, and help the jury as evidence is presented. A copy of this statement could be included in notebooks given to the jurors along with copies of the explanatory jury instructions, as discussed in other sections of this report.

To encourage this practice, a provision in language similar to the following could be added to Supreme Court Rule 69:

* RULE 69.04 INTRODUCTION OF THE CASE TO JURORS

Immediately after the venire panel is sworn, and prior to questioning of the panel by the lawyers, the court shall read a brief summary of the case based upon the parties' agreement. If the parties do not agree upon the statement, the court may develop such a statement. Alternatively, the court may permit such information to be presented, by counsel, through brief non-argumentative statements.

The statement can be read to the jurors at the earliest possible stage and familiarize the jurors with the relevant factual context for both the questions to be asked of them and the evidence that will be presented during the trial.

B. NOTEBOOKS FOR JURORS

The Committee believes that the use of notebooks by jurors should be encouraged. As discussed above, notebooks could include copies of both the explanatory instructions (such as MAI 2.01) and a copy of the summary statement of the case. As the use of the notebooks becomes more common, they could include a variety of “housekeeping” information, for example a diagram of the courthouse or courtroom, the location of facilities in and around the courthouse, and other information for the jurors. The notebook could also include blank pages for jurors to utilize in taking notes. Use of juror notebooks could assist jurors in understanding the jury trial system, as well as the proceedings of the particular trial they will be hearing. It could be used to provide simple

information to the jurors, possibly answer questions they may have, and give them a reference point throughout the trial.

Other jurisdictions that utilize juror notebooks provide reusable binders. The court and the lawyers provide materials to be placed in the notebook. After the trial, the individual juror's notes and other information provided for the particular case should be removed and destroyed, while the permanent section, containing MAI 2.01 and the courthouse information, would remain permanently in the notebooks and used again.

To encourage the use of juror notebooks, a new section should be added, perhaps to Supreme Court Rule 69, in language similar to the following:

69.05 NOTEBOOKS FOR JURORS. Notebooks for jurors may be used in all trials to aid the jurors in the performance of their duties. Such notebooks may include MAI 2.01, the brief summary of the case and such other materials as the court determines will aid the jury.

C. PRE-TRIAL CONFERENCE RULE

The Committee believes that pre-trial conferences can be better utilized to encourage and implement procedures for more efficient jury trials. In addition to other items discussed at the pre-trial conference, the Committee recommends that the Supreme Court consider inserting a new subparagraph (6) to Rule 62.01 as follows:

(6) The use of notebooks for juror note-taking, the summary statement of the case to be read to prospective jurors prior to voir dire, the effective management of documents and exhibits and the use of technology to present evidence in the case and make it more understandable to the jury.

(7) Such other matters [formerly (6)]

The Committee believes that if such a subparagraph is added to Rule 62.01, judges and lawyers will be encouraged to consider and implement better ways to enhance jury trials for both the jurors and the parties.

D. MISCELLANEOUS RECOMMENDATIONS

Based on the changes to jury trials implemented in other states and the Committee's own research and experience, the Committee believes that a number of other ideas merit further study and consideration.

Judges, lawyers and court personnel should make every effort to minimize delays and make the most efficient use of jurors' time. Results of the Juror Survey show the most common juror complaint is wasted time. (Appendix B, question 14.) Every effort should be made to minimize the amount of time jurors "waste" by simply waiting in the courthouse – both before and after they are selected for jury duty in trial. Creative solutions to minimize juror waiting time should be explored. To the extent that waiting time is necessary, jurors should be told, perhaps at the initiation of the trial, why waits are often necessary as well as how they may actually help to shorten the trial. Appendix C

identifies courts that allow jurors to bring materials to make more effective use of waiting periods. Additional means to improve jurors' use of waiting periods, comfort, and convenience while waiting--and while serving--should also be explored. For example, where possible, jurors should have access to water, telephones, and other conveniences, such as clean restrooms, during breaks and recesses.

Communications with prospective jurors are of extreme importance. From their first contact, judges, lawyers and court personnel should communicate clearly to the jurors what jurors' responsibilities are and what jurors can expect during their service as jurors. The Missouri Bar pamphlet, "Information for Trial Jurors," identified in Supreme Court Rule 69.02, is a valuable tool that circuit courts can use to assist jurors before and after they arrive for service. Once prospective jurors reach the courthouse, they should be given an oral and written orientation of procedures they are to follow. They should also be provided with appropriate information regarding the courthouse facilities.

Courts should encourage the use of technology to help simplify the case and make it more understandable, as well as interesting, for the jurors. Other ideas implemented in several states include using deposition summaries instead of reading lengthy depositions⁹ and permitting portions of exhibits to be highlighted or otherwise identified for the jurors' attention.

After a jury trial is concluded, trial judges and court personnel should be encouraged to "de-brief" jurors as a way to "wrap up" their time in the courthouse and allow them to leave with a feeling of satisfaction. Among other things, during this process, the jurors could be asked for their comments on improving jury service, and they

⁹ A small percentage of jurors indicated that listening to the reading of lengthy depositions ranked among the top two stresses in performing jury service. (Appendix B, question 14.)

could be advised on their privacy rights and how to deal with any residual stress they may have from the trial.

VIII. CONCLUSION

The Committee believes that its work represents the start, not the end, of further study on ways to improve the jury system. It hopes that the issues raised in this report will be the subject of further debate and analysis and that continued efforts will be made to improve the effectiveness of jury trials and enhance jurors' understanding of both the case and the judicial process. Efforts at both the state and local level to improve the comfort and convenience of jurors should be ongoing. Since jury trials are the cornerstone of the civil trial system, the importance of continuing with these efforts cannot be understated.

The Committee appreciates the service of the Honorable Michael A. Wolff, Judge of the Supreme Court of Missouri, who served as the Court's liason to the Committee. The Committee is grateful to the Honorable David Noce, U.S. Magistrate Judge, Eastern District of Missouri, and the Honorable William A. Knox, U.S. Magistrate Judge, Western District of Missouri, who served as the federal court liaisons to the Committee. The Committee expresses its sincerest thanks to Ms. Tracy Synan, Communications Counsel for the Supreme Court of Missouri, for her dedication and hard work, and to Mr. Bill Thompson, Counsel for the Supreme Court of Missouri, for his advice and counsel. The Committee also expresses its thanks to The Missouri Bar for its assistance and to The Missouri Bar Foundation for providing the funding to conduct the juror survey. Finally, the Committee extends its thanks to Professor Greg Casey and Research Assistant William Perkins, of the University of Missouri – Columbia, for their assistance in connection with the juror questionnaire.

Walter H. Bley, Jr., Honorable
Kathianne Knaup Crane, Alan B.
Gallas, Honorable Calvin R.
Holden, Thomas G. Kokoruda,
James W. Newberry, Gerard T.
Noce, Daniel T. Rabbitt, Stephen H.
Ringkamp, Honorable Vernon E.
Scoville, III, Steven W. White and
W. Dudley McCarter

APPENDICES

APPENDIX A

BIBLIOGRAPHY

Akhil Reed Amar, *Reinventing Juries: Ten Suggested Reforms*, 28 U. Cal. Davis L. Rev. 1169 (1995).

American Judicature Society, *Behind Closed Doors: A Resource Manual to Improve Jury Deliberations* (1999).

American Judicature Society, *Enhancing the Jury System: A Guidebook for Jury Reform* (1999).

American Judicature Society Editorial Committee, *Jury Improvement, Not Reform*, 83:6 Judicature 284 (May-June 2000).

Robert G. Boatright, *Improving Citizen Response to Jury Summonses: A Report with Recommendations* (available through the American Judicature Society).

Robert G. Boatright, *Why Citizens Don't Respond to Jury Summonses and What Courts Can Do About It*, 82:4 Judicature 156 (January-February 1999)

David C. Brody and John Neiswender, *Judicial Attitudes Towards Jury Reform*, 83:6 Judicature 298 (May-June 2000).

William Ecenbarger, *The Jury Jumps In*, Reader's Digest, August 2000, at 129.

B. Michael Dann¹⁰, *Jury Trial Innovations* (handout from the 1998 Missouri Bar Annual Meeting).

B. Michael Dann & George Logan III, *Jury Reform: The Arizona Experience*, 79 Judicature 280.

Mark A. Frankel, *A Trial Judge's Perspective on Providing Tools for Rational Jury Decisionmaking*, 85 Nw. U.L. Rev. 221 (1990).

Paula L. Hannaford, Valerie P. Hans, and G. Thomas Munsterman, *Permitting Jury Discussions During Trial: Impact of the Arizona Reform*, research reported in unpublished article funded by a State Justice Institute grant /SJI-96-12A-B-181, available from the National Center for State Courts.

Valerie P. Hans, Paula L. Hannaford, and G. Thomas Munsterman, *The Arizona Jury Reform Permitting Civil Jury Trial Discussions: The Views of Trial Participants, Judges, and Jurors*, 32:2 U. Mich. J.L. Ref. 349 (Winter 1999).

¹⁰ Judge of the Maricopa County (Phoenix) Superior Court and Chair of the Arizona Supreme Court Committee on More Effective Use of Juries.

Jan Hefler, *'Your witness' has unprecedented ring to jurors*, The Philadelphia Inquirer, July 3, 2000, at A1.

Larry Heuer & Steven Penrod, *Increasing Juror Participation in Trials Through Note Taking and Question Asking*, 79 Judicature 256 (1996).

Larry Heuer & Steven Penrod, *Increasing Jurors' Participation in Trials: A Field Experiment with Jury Note Taking and Question Asking*, 12 Law and Human Behavior 409 (1988).

Larry Heuer & Steven Penrod, *Some Suggestions for the Critical Appraisal of a More Active Jury*, 85 Nw. U.L. Rev. 226 (1990).

The Jury Project, Report to the Chief Judge of the State of New York (March 31, 1994).

Nancy J. King, *Jury Research and Reform: A Introduction*, 79 Judicature 214 (1996).

Christopher N. May, *What Do We Do Now? Helping Juries Apply the Instructions*, 28 Loyola L.A. L. Rev. 869 (1995).

Michael A. McLaughlin, *Questions to witnesses and note taking by the jury as aids in understanding complex litigation*, 18 New Eng. L. Rev. 687 (1983).

Munsterman, Hannaford & Whiteheads (eds.), *Jury Trial Innovations*, National Center for State Courts (1997).¹¹

G. Thomas Munsterman, *A Brief History of State Jury Reform Efforts*, 79 Judicature 216 (1996).

Order in the Classroom (videotape), produced by the Institute of the IADC Foundation, National Jury Trial Innovations Project (IADC Institute 1998).

Bradley Saxton, *How Well Do Jurors Understand Jury Instructions? A Field Test Using Real Juries and Real Trials in Wyoming*, 33 Land & Water L. Rev. 59 (1998).

David Schneider, *Jury Deliberations and the Need for Jury Reform: An Outsider's View*, 36 Judges' Journ. 23 (1997).

William W. Schwarzer, *Reforming Jury Trials*, 1990 U. Chi. Legal F. 119.

Janessa E. Shtabsky, Comment, *A More Active Jury: Has Arizona Set the Standard for Reform With Its New Jury Rules?*, 28 Ariz. St. L.J. 1009 (1997).

Daniel W. Shuman et al., *The Health Effects of Jury Service*, 18 Law & Psych. Rev. 267 (1994).

Douglas G. Smith, *The Historical and Constitutional Contexts of Jury Reform*, 25 Hofstra L. Rev. 377 (1996).

Douglas G. Smith, *Structural and Functional Aspects of the Jury: Comparative Analysis and Proposals for Reform*, 48 Ala. L. Rev. 441 (1997).

¹¹ Highly recommended by the American Judicature Society.

Franklin D. Strier, *Making Jury Trials More Truthful*, 30 U. Cal. Davis L. Rev. 95 (1996).

J. Alexander Tanford, *The Law and Psychology of Jury Instructions*, 69 Neb. L. Rev. 71 (1990).

Elizabeth G. Thornburg, *The Power and the Process: Instructions and the Civil Jury*, 66 Fordham L. Rev. (1998).

Neil Vidmar, *The Performance of the American Civil Jury: An Empirical Perspective*, 40 Ariz. L. Rev. 849 (1998).

What States are Doing to Reform and Improve the Jury System, National Center for State Courts Videoconference Seminar from the Education and Technology Center (November 1, 1999).

With Respect to the Jury, Report of the Colorado Supreme Court Committee on the Effective and Efficient Use of Juries, Adopted in Principle by the Colorado Supreme Court (February 1997).

APPENDIX B

JUROR SURVEY RESULTS

Draft

EXECUTIVE SUMMARY

The civil jury survey was distributed to all Missouri circuit (including associate circuit division) judges in state courts and to the United States District Court for the Western District of Missouri, for use in all civil jury trials for an approximately four-month period, April through July 2000. Surveys were returned from approximately 72 trials. Based on the responses:

Note-taking

- Nearly 1/3 jurors were permitted to take notes during trial.
- When permitted to take notes, 80% reported that someone on the jury did so, and 64% reported that they personally took notes. 74% used the notes during deliberations.
 - 80% found notes very or somewhat useful in recalling testimony, as opposed to 4% who did not find notes useful in recalling testimony.
 - Almost 80% found notes very or somewhat useful in recalling the lawyers' arguments, as opposed to 8% who did not find them useful in recalling lawyers' arguments.
 - 64% found notes very or somewhat useful in recalling the judge's instructions, as opposed to 16% who did not find them useful in recalling instructions.
 - 42% found other jurors' notes to be accurate, 18% found other jurors' notes somewhat accurate, and no one found other jurors' notes inaccurate.
 - 47% felt notes shortened deliberations, while 2% felt notes lengthened deliberations.
- For jurors who were not permitted to take notes:
 - 60% thought taking notes would have been helpful; 22% did not think notes would have been helpful.
 - 81% thought notes would have been very or somewhat useful in recalling testimony while 8% did not think notes would have been useful in recalling testimony.

- 76% thought notes would have been very or somewhat useful in recalling lawyers' arguments while 13% did not think notes would have been useful in recalling lawyers' arguments.
- 67% thought notes would have been very or somewhat useful in recalling judge's instructions while 20% did not think notes would have been useful in recalling instructions.

Questions to the Judge during Deliberations

- 60% of juries talked about sending questions to the judge, yet less than half did so.

Questions for Witnesses

- 19% of jurors were permitted to give the judge a question for either the judge or an attorney to ask a witness; 59% were not permitted to submit questions.
- When jurors submitted a question, the question was asked about 1/2 the time.
- When the question was asked, two-thirds of jurors found the answer(s) very or somewhat helpful to the jury's thinking in the case; one-tenth did not find the answer(s) helpful.

Witness Testimony

- Two-thirds of jurors felt the witnesses answered all important questions, and half felt the jury was able to get all the information it needed from the witnesses.

The Judge's Instructions

- 89% of jurors rated the jury instructions relatively easy to understand when the judge read the instructions, selecting 3, 4, or 5 on a 5-point scale. In fact, 40% rated the instructions 5, "easy". 12% of jurors found the jury instructions difficult to understand, rating the instructions 0, 1, or 2. Only .3% rated the instructions 0, "difficult".
- When jurors went to deliberations with a set of instructions, the ease of understanding the instructions increased. 92% rated the instructions on the upper half of the ease-of-understanding scale, with 46% rating the instructions 5, "easy". The number of jurors who rated the instructions on the lower half of the scale dropped to 8%. Only .5% rated the instructions 0, "difficult".
- In 1/5 of the cases, each juror received his or her own copy of the instructions. When each juror received a copy of the instructions to read along with the judge, the ease of understanding the instructions increased again. 93% rated the instructions on the

upper half of the ease-of-understanding scale, with 56% rating them 5, "easy". The number of jurors who rated the instructions on the lower half of the scale dropped to 7%. Only .6% rated the instructions 0, "difficult".

- 59% of jurors who did not receive their own copy of jury instructions reported that having a copy of instructions to read along with the judge would have been very or somewhat helpful; 30% said it would not have helped.

Enjoyments, Stresses, and Suggestions

- Jurors were asked open-ended questions as to what two things about their service as a juror they found most enjoyable or stressful.
 - The most popular responses as to enjoyment were (1) social incentives, such as meeting other jurors; (2) enjoying law in action, including witnessing court procedure, hearing testimony, lawyers and cross-examination; and (3) a pride in the system, civic duty and being a part of the process.
 - The number one response jurors cited as the least enjoyable or most stressful is waiting, wasting time and sitting still for hours. Next, the jurors found making the decision stressful. Over 10% complained about the temperature in the court and parking.
- Jurors' top suggestions for improving trials were: allow jurors to ask questions of judges and lawyers, allow note taking, lessen waiting, and permit questions of witnesses.

**Missouri Juror Study 2000
The Missouri Bar
The Missouri Bar Foundation**

**Executive Director: Keith Birkes
President: Mike Gunn
Committee Chair: Dudley McCarter**

**Principal Investigator: Greg Casey
Research Associate: William Perkins
Supreme Court Communications Counsel: Tracy Synan**

**Penultimate Report
September 1, 2000**

This report gives frequency distributions on all variables on the questionnaire, imposing closure with results from 72 trials reported.

I. Frequency Counts of Responses to Questions

A. Responses on Location, Results, etc.

1. County of Trial (Number in Parentheses = number of jurors responding; can divide by 12 for an approximation of number of juries convened, except in federal, where division by 6 gives a better estimate)

Atchison (7)
Buchanan (13)
Butler (13)
Cape Girardeau (12)
Christian (47)
Clay (59)
Cole (12)
Franklin (24)
Greene (110)
Henry (13)
Jackson (138)
Jefferson (23)
Johnson (9)
Pemiscot (25)
St. Louis County (178)
Taney (24)
St. Louis City (122)
Federal (83)

2. Was a verdict rendered?

Verdict: 91.6% (775)

No verdict: 8.4% (71)

N.B. Change in statistical base occurs:

3. If no verdict, was the case a mistrial or settled out of court?

Mistrial: 31.0% (22)

Settled: 69.0% (49)

B. Notes at Trial

1. Were you permitted to take notes during the trial?

Yes: 31.7% (278) Unsure: 17.2% (151)

No: 51.0% (447)

N=876

All jurisdictions except Greene County and federal courts:

Yes: 21.7% (150) Unsure: 19.1% (137) No: 58.4% (403)

These jurisdictions are broken out separately in that these jurisdiction represent areas in which note-taking and questioning is more commonly permitted.

N=690

N.B. We now branch off onto the subset permitted to take notes, but note that more than 278 now answer.

2a.. Did anyone on your jury take notes during the trial?

Yes: 80.0% (268) No: 16.7% (56)

Unsure: 3.3% (11)

N=335

All jurisdictions except Greene County and federal courts:

Yes: 70.3% (142) No: 25.2% (51) Unsure: 4.5% (9)

N=202

2a1. Did you personally take notes during the trial?

Yes: 64.4% (195)

No: 35.6% (108)

N=303

All jurisdictions except Greene County and federal courts:

Yes: 51.9% (97)

No: 48.1% (90)

N=187

2b. Did members of the jury use notes during jury deliberation?

Yes: 73.8% (222)

No: 26.2% (79)

N=301

All jurisdictions except Greene County and federal courts:

Yes: 65.2% (122)

No: 34.8% (65)

N=187

2c. Please rate how useful the notes were for the following tasks:

2c1. In recalling **testimony**:

Very Useful: 47.3% (142)

Somewhat Useful: 32.7% (98)

Not Useful: 3.7% (11)

Not Applicable: 16.3% (49)

N=300

All jurisdictions except Greene County and federal courts:

Very Useful: 36.1% (66) Somewhat Useful: 37.7% (69)

Not Useful: 4.9% (9) Not Applicable: 21.3% (39)

N=183

2c2. In recalling **the lawyers' arguments**:

Very Useful: 40.6% (123)

Somewhat Useful: 38.3% (116)

Not Useful: 7.6% (23)

Not Applicable: 13.5% (41)

N=303

All jurisdictions except Greene County and federal courts:

Very Useful: 36.0% (68)

Somewhat Useful: 38.1% (72)

Not Useful: 9.5% (18)

Not Applicable: 16.4% (31)

N=189

2c3. In recalling **the Judge's instructions**:

Very Useful: 37.2% (111)

Somewhat Useful: 26.5% (79)

Not Useful: 14.8% (44)

Not Applicable: 21.5% (64)

N=298

All jurisdictions except Greene County and federal courts:

Very Useful: 33.3% (62)

Somewhat Useful: 29.0% (54)

Not Useful: 15.6% (29)

Not Applicable: 22.0% (41)

N=186

2d. How accurate were others jurors' notes?

Accurate: 41.6% (122)

Somewhat Accurate: 18.4% (54)

Inaccurate: --

Unsure, Can't Say: 39.9% (117)

N=290

All jurisdictions except Greene County and federal courts:

Accurate: 31.5% (56)

Somewhat Accurate: 20.2% (36)

Inaccurate: --

Unsure, Can't Say: 48.3% (86)

N=17/

2e. In your opinion, did the notes bring about shorter deliberations, longer deliberations, or make no difference?

Shorter: 46.6% (135)

No Difference: 29.0% (84)

Longer: 1.7% (5)

Unsure, Can't Say: 22.8% (66)

N=290

All jurisdictions except Greene County and federal courts:

Shorter: 40.3% (73)

No Difference: 30.9% (56)

Longer: 2.2% (4)

Unsure, Can't Say: 26.5% (48)

N=181

Now, we look at the other branch of questions for the subset who were unsure or who thought that no juror notes were permitted (N.B.: although the total number of jurors available for this, from answers to question #1, should be 542, more than that number answer):

3a. Would taking notes have been helpful?

Yes: 59.7% (386) No: 22.3% (144) Unsure: 18.1% (117)

N=647

3b. During deliberation, would notes from the trial have been helpful:

3b1. In recalling **testimony**:

Very Useful: 36.1% (225)

Somewhat Useful: 45.1% (281)

Not Useful: 8.0% (50)

Not Applicable: 10.8% (67)

N=623

3b2. In recalling **the lawyers' arguments**:

Very Useful: 31.4% (197)

Somewhat Useful: 44.8% (281)

Not Useful: 12.6% (79)

Not Applicable: 11.2% (70)

N=627

3b3. In recalling **the Judge's instructions**:

Very Useful: 33.3% (210)

Somewhat Useful: 33.3% (210)

Not Useful: 20.0% (126)

Not Applicable: 13.3% (84)

N=630

C. Questions From Jurors to Judge

4. During deliberations, did your jury talk about sending any questions to the Judge?

Yes: 59.8% (530)

Unsure: 4.4% (39)

No: 35.9%(318)

N=887

5. During deliberations, did your jury send any questions to the Judge?

Yes: 45.5% (402)

Unsure: 2.5% (22)

No: 52.0% (459)

N=883

D. Questions from Jurors for Witness

6. During the trial, was your jury permitted to give the Judge a question or questions) for either the Judge or one of the attorneys to ask a witness?

Yes: 19.1% (166) Unsure: 21.6% (188) No: 59.3% (515) N=869

N.B.: The statistical base changes at this point, with only those answering "yes" to question #6 expected to proceed with the boxed probe.

6a. Was the witness asked your jury's question?

Yes: 46.0% (74) No: 34.8% (56) Unsure, maybe rephrased: 19.3% (31) N=161

6b. How much did the witness's answer to jurors' question(s) help your thinking in the case?

Very Helpful: 28.8% (44) Somewhat Helpful: 36.6% (56)
Not Helpful: 9.8% (15) Not Applicable: 24.8% (38) N=153

N.B.: Now the statistical base reverts to all jurors answering the poll.

7. Did the witnesses answer all important questions?

Yes: 63.8% (578) Unsure: 16.6% (150) No: 19.6% (178) N=906

8. Was the jury able to get all the information it needed from the witnesses?

Yes: 49.5% (444) Unsure: 23.0% (206) No: 27.5% (247) N=897

E. The Judge's Instructions

9. The Judge read jury instructions to you before your final deliberations. Please rate, on this scale from "0" to "5," how easy it was to understand the instructions when the Judge read them to you:

"0" (Difficult to Understand)	0.3% (3)
"1"	4.4% (39)
"2"	6.9% (62)
"3"	18.5% (165)
"4"	29.5% (263)
"5" (Easy to Understand)	40.4% (361)

N=893

10. Did you receive a set of the instructions to review in the jury room during your deliberations?

Yes: 93.3% (816) Unsure: 2.4% (21) No: 4.3% (38) N=875

N.B.: Note a slight change in the statistical base on the following question: of the 708 answering "yes" to questions #10, 10 fall away, and 698 go on to rate those instructions.

10a. Please rate, on this scale from "0" to "5," how easy it was to understand the instructions when you were able to read them in the jury room:

"0"	0.5% (4)
"1"	2.1% (17)
"2"	5.5% (44)
"3"	16.5% (132)
"4"	29.1% (233)
"5"	46.4% (372)

N=802

11. Did the Judge give each juror a written copy of the jury instructions for you to read along with the Judge?

Yes: 19.6% (173) Unsure, saw nothing: 2.8% (25) No: 77.5% (683)

N=881

N.B.: Note the change in statistical bases for the next two questions. Those who answer "yes" to Question #11 are guided to answer Question 12 (and 149 of the 152 who answered "yes" co-operated); those who answered "unsure" or "no" to Question #11 are guided to answer Question #13 (and 566 of the 620 jurors co-operated).

12. Please rate, on this scale from "0" to "5," how easy it was to understand the written jury instructions when you were able to read them along with the Judge?

"0"	0.6% (1)
"1"	3.0% (5)
"2"	3.0% (5)
"3"	9.5% (16)
"4"	24.4% (41)
"5"	59.5% (100)

N=168

13. How helpful would having your own written copy of the jury instructions to read along with the Judge have been in understanding the instructions?

Very Helpful: 18.8% (122) Somewhat Helpful: 39.0% (253)
Not Helpful: 30.2% (196) Not Applicable: 12.0% (78)

N=649

F. Open-ended Questions: Enjoyments, Stresses, Suggestions.

14. What two things about your service as a juror did you find most enjoyable or stressful?

Enjoyments, First Response:

Social Incentives: other jurors, meeting others, etc. (a) 20.2% (100)

Enjoyed Court personnel:

Friendly judge (b)	4.0% (20)
Friendly bailiffs (c)	0.4% (2)
Other court personnel (d)	3.0% (15)

Enjoyed Law in Action		
Court procedure, law in action (e)	35.4%	(175)
Hearing testimony (f)	6.5%	(32)
Hearing lawyers, cross-examination (g)	4.8%	(24)
Discussion in Jury Room (h)	3.0%	(15)
Pride in the system, civic duty, part of process(i)	12.3%	(61)
Nice accommodations (j)	2.4%	(12)
Learning information (k)	2.0%	(10)
Miscellaneous (z)	5.9%	(29)

Enjoyments, Second Response:

Social Incentives: other jurors, meeting others, etc.(a)	6.9%	(7)
Enjoyed Court personnel:		
Friendly judge (b)	11.9%	(12)
Friendly bailiffs (c)	2.0%	(2)
Other court personnel (d)	11.59.9%	(10)
Enjoyed Law in Action		
Court procedure, law in action (e)	10.9%	(11)
Hearing testimony (f)	1.0%	(1)
Hearing lawyers, cross-examination (g)	16.8%	(17)
Discussion in Jury Room (h)	5.0%	(5)
Pride in the system, civic duty, part of process (i)	14.9%	(15)
Nice accommodations (j)	5.0%	(5)
Learning information (k)	7.9%	(8)
Not yet identified (x)	1.0%	(1)
Miscellaneous (z)	6.9%	(7):

Stresses, First Response:

People Complaints:		
Complaints about other jurors (a)	1.1	(5)
Complaints about the judge (b)		
Complaints about court personnel (c)		
Other complaints about people (d)	1.1	(5)
Different points of view (x)		1.8 (8)
Procedural Complaints:		
The selection process (voir dire) (e)	2.5	(11)
Coming up with a decision (f)		20.9 (90)
Delivering decision to the court (g)	0.5	(2)
Constrained by law, not allowed to decide the way s/he wanted to (h)		0.7 (3)
Too much waiting, wasted time, sitting still for hours (i)		28.2 (123)
Repetition, amount of information (j)		5.3 (23)
Complaints about witnesses:		
Inability to understand testimony (k)		1.6 (7)
Use of depositions, hard to listen to (l)		5.3 (23)
Complaints against lawyers:		
Listening to lawyers ramble on (m)	0.9	(4)
Allow questions from jurors (n)		2.3 (10)
Physical Complaints:		
Chairs, seating (o)		5.5 (24)
Temperature of room(s) (p)		1.4 (6)

Refreshments (water, soda, snacks) (q)	0.2 (1)
Confinement (r)	0.5 (2)
Lunch, meals, need for café (s)	
Loss of income, missing work (t)	5.5 (24)
Low pay for services (u)	0.9 (4)
Child care concerns / home life disrupted (v)	2.5 (11)
Parking problems, complaints (w)	6.2 (27)
Expressing an opinion (y)	
Miscellaneous (z)	5.3 (23)

Stresses, Second Response:

People Complaints:

Complaints about other jurors (a)	1.6 (1)
Complaints about the judge (b)	
Complaints about court personnel (c)	
Other complaints about people (d)	
Different points of view (x)	

Procedural Complaints:

The selection process (voir dire) (e)	
Coming up with a decision (f)	12.9 (8)
Delivering decision to the court (g)	1.6 (1)
Constrained by law, not allowed to decide the way s/he wanted to (h)	
Too much waiting, wasted time, sitting still for hours (i)	12.9 (8)
Repetition, amount of information (j)	3.2 (2)

Complaints about witnesses:

Inability to understand testimony (k)	6.5 (4)
Use of depositions, hard to listen to (l)	1.6 (1)

Complaints against lawyers:

Listening to lawyers ramble on (m)	1.6 (1)
Allow questions from jurors (n)	6.5 (4)

Physical Complaints:

Chairs, seating (o)	
Temperature of room(s) (p)	11.3 (7)
Refreshments (water, soda, snacks) (q)	3.2 (2)
Confinement (r)	3.2 (2)
Lunch, meals, need for café (s)	3.2 (2)
Loss of income, missing work (t)	1.6 (1)
Low pay for services (u)	3.2 (2)
Child care concerns/home life disrupted (v)	1.6 (1)
Parking problems, complaints (w)	12.9 (8)

Expressing an opinion (y)

Miscellaneous (z)	9.7 (6)
-------------------	---------

15. Please give us suggestions for improving jury trials:

16. Please give us suggestions for improving your comfort, convenience, etc., while serving as a juror:

Suggestions, First Response:

Procedural suggestions:

Allow note-taking, transcripts (a)	14.0 (40)
------------------------------------	-----------

Allow questions of judges and/or lawyers to be asked of witnesses (b)	1.0 (3)
Allow questions to be asked of witnesses (c)	8.7 (25)
Allow questions of judges and lawyers (d)	0.3 (1)
Time limits on questioning, depositions (e)	4.2 (12)
Judge/lawyer lack of co-ordination (f)	0.7 (2)
Better instructions, clarify (g)	4.5 (13)
Allow research (h)	0.3 (1)
Less waiting (i)	17.8 (57)
Allow latitude in awarding damages (j)	2.1 (6)
Less duplication (k)	1.7 (5)
Better preparedness / competent lawyers (l)	3.8 (11)
Practical suggestions:	
Shorter/more frequent breaks (m)	2.1 (6)
Provide footstools (n)	--
Better chairs, seating (o)	3.1 (9)
Better food (p)	2.4 (7)
Better drinks, working facilities (q)	0.7 (2)
Allow smoking (r)	0.7 (2)
Prohibit smoking (s)	--
Hearing/sight augmentation (t)	5.2 (15)
Better scheduling instructions (u)	5.2 (15)
Parking (v)	5.2 (15)
Snacks (w)	0.3 (1)
Pay too low (x)	1.7 (5)
Accommodations (courthouse, jury room) (y)	4.9 (14)
Miscellaneous (z)	8.7 (25)

Suggestions, Second Response:

Procedural suggestions:	
Allow note-taking, transcripts (a)	2.0 (1)
Allow questions of judges and/or lawyers to be asked of witnesses (b)	2.0 (1)
Allow questions to be asked of witnesses (c)	10.2 (7)
Allow questions of judges and lawyers (d)	36.7 (25)
Time limits on questioning, depositions (e)	4.1 (2)
Judge/lawyer lack of co-ordination (f)	
Better instructions, clarify (g)	4.1 (2)
Allow research (h)	
Less waiting (i)	12.2 (6)
Allow latitude in awarding damages (j)	4.1 (2)
Less duplication (k)	
Better preparedness / competent lawyers (l)	2.0 (1)
Practical suggestions:	
Shorter/more frequent breaks (m)	
Provide footstools (n)	--
Better chairs, seating (o)	4.1 (2)
Better food (p)	4.1 (2)
Better drinks, working facilities (q)	2.0 (1)
Allow smoking (r)	
Prohibit smoking (s)	--
Hearing/sight augmentation (t)	

Better scheduling instructions (u)	2.0 (1)
Parking (v)	
Snacks (w)	
Pay too low (x)	4.1 (2)
Accommodations (courthouse, jury room) (y)	
Miscellaneous (z)	6.1 (3)

G. Demographics of Jurors Participating:

Gender:

Male: 43.5% (396) Female: 56.5% (514)

N = 910

Age of juror:

21-29: 10.4% (96) 30-44: 34.2% (317)
45-59: 38.1% (353) 60 or older: 17.3% (160)

N=926

Level of juror education:

8th Grade: 0.2% (2) 12th Grade 25.1% (222)
Some College: 43.6% (386) College Graduate: 16.9%(150)
Beyond College: 14.2% (126)

N=886

Employment, parenting status of juror:

Employed: 71.3% (397) Unemployed, retired: 19.0% (106)
Parenting: 3.9% (22) Employed and parenting: 5.7% (32)

N.B.: Employment status is dropped as overly invariant; the three factors used are gender, age, and educational attainment.

Table 1. Demographic Factors' Relations with Key Juror Variables			
Demographic Factor:	Gender	Age Cohort	Educational Level
Dependent Variable:			
Took Notes	.001	-	-
Recall of Testimony	.029	-	-
Recall of Arguments	.01	-	-
Recall of Judge's Instructions	-	.028	.023
Value in Deliberation	-	-	-
Notes Would Have Been Helpful	-	-	-
For Recall of Testimony	-	-	-
For Recall of Arguments	-	.036	-
For Recall of Judge's Instructions	-	.003	.003
Obtaining Witness' Answer	-	-	-

Understanding of Judge's Instructions	-	.023	-
Receive Judge's Instructions for Use in Jury Room?	.025	.007	.001
Reading Judge's Instructions in Jury Room	-	-	-
Helpfulness of Judge's Instructions	-	-	-

N.B.: The number given relates the statistical significance of the relationship, indicating the number of chances out of 1000 that the relationship found is not true of the general juror population. A dash means that the relationship between the two variables is not statistically significant at the .05 level; *i.e.*, there is more than one chance in twenty that the relationship noted is not true of the general juror population.

APPENDIX C

JUDGE SURVEY RESULTS

Surveys were distributed to Missouri's state trial judges, and 180 responses were received.

QUESTIONNAIRE TO MISSOURI TRIAL JUDGES FROM CIVIL JURY TRIAL STUDY COMMITTEE

1. Over the past year, how many times have you permitted jurors in civil cases to take notes?

	178 responding	
None	131	73%
Seldom	27	15-16%
About Half	8	.4%
Most	8	.4%
Once	1	
Several	1	
Always if asked	1	
N/A	1	

2. When note taking has been permitted, has this been usually by agreement of the attorneys or by your order over the objection of at least one of the attorneys?

	98 responding	
Agreement of Attorneys	51	53%
Judge's Order	14	14%
N/A	29	30%
Unsure	1	
Maybe	1	
None of the Above	1	
No one has asked	1	

3. Do you believe the note taking by jurors is a practice that should be continued? (If not, why not?)

	178 responding	
Yes	128	76%
No	36	22%
Sometimes	1	

No opinion	1
Case by case, yes	1

4. Do you believe jurors should be permitted to submit questions to the Judge who will decide whether or not they should be submitted to the witness?

	178 responding
Yes	57 32%
No	120 67%
Concerns	1

5. Do you believe the explanatory instructions to the jurors are understandable and helpful to them?

	174 responding
Yes	140 81%
No	32 18%
Sometimes	1
Mostly	1

If not, how could the instructions be improved?
Comments below.

6. Do you believe jurors should be permitted to discuss the case among themselves prior to deliberation, so long as they are admonished to do so only with all jurors present and to not make up their mind until deliberation?

	177 responding
Yes	40 22%
No	137 78%

7. Do you have any suggestions to enhance jury participation and/or effectiveness that you would like the Committee to consider?

Comments below.

Your County.

Judges' Comments on Survey

#2: Note taking: By Attorney Agreement or by Judge's Order:

Nobody has asked to take notes

I just tell attorneys that I am going to let the jurors take notes – there hasn't been an objection but I never ask for agreement

If Agreement of attorneys, I would upon request

Attorneys don't like notes

With no objection and at my suggestion

#3: Should note-taking be continued:

Yes, Sometimes, not always

No, One person's observations may carry too much weight; also, while taking notes, jurors miss other testimony

Yes, In extended, complicated cases

No, a misunderstanding of evidence once written down becomes a fact with dangerous result

Yes, especially when there is very technical – detailed testimony

Yes, but the conditions should be changed

No, creates another issue which may create error & overemphasizes the importance of the note taker

No, Distraction! Also inaccurate notes or judgmental notes

Yes, juror satisfaction

Yes, as long as it is up to the individual judge

_____ - no opinion

Yes, valuable in complex case but should remain discretionary

No, variance between factual statement

No, then one juror who takes notes will null the deliberations

Yes, in civil cases (especially if complex)

Yes, depending on case

Perhaps, I would like to experiment with it

No, notes incomplete; might miss subsequent testimony

No, the notes, whether correct or incorrect, will tend to bear too much weight in the decision-making process. They will become "the Bible"

No, Jurors will rely on notes of one juror more than memory

No, Taking notes diverts attention from witness on stand and juror may miss something i.e. "manner while testifying"; (2) could still get something wrong and would be less apt to yield in deliberation because it is in writing

No, tends to give more weight to a juror taking notes even if their notes are inaccurate

No, it allows the jurors to key on certain responses without taking all of the testimony in toto

Yes, decide on a case-by-case basis

No, You bring the integrity of the individual juror in play over everyone's memory and equal _____

No, distracting to note taker as well as others; when writing, probably not listening; Jury may attach more significance to fact in notes just because it is written down but may not even be accurately recorded by note taker

No, I think it will interfere with evidence presented

No, too much emphasis could be placed by other jurors on a note that was incorrectly taken

Some are good note takers – some not. Those that take notes often intimidate those that don't etc.

Too much emphasis on the notes and not actual testimony

Not in present form

In limited cases of complex litigation and lengthy trials

I have no experience with this issue. I would think note-taking would lessen concentration on what is happening while notes being made

Unreliable accuracy and too persuasive during deliberations

For all the reason I opposed the practice when initiated – a person taking notes will "miss" some Q & A – Plus, the "notes" will become "evidence" in the jury room (even if removed) and how do you guarantee the accuracy of the notes, over the recollection of the jury? It's a bad idea

Very selectively

Some jurors take better notes than others – then their opinions are likely to be more relied upon by other jurors

In some cases

Only some jurors will actively take notes – undue weight given to those notes

Seldom – only in complex litigation on agreement of parties

#4 Should Jurors be permitted to submit questions:

Yes, limited

No, questions are for counsel to ask

No, it takes away the lawyer's control of the trial strategy

No because the jurors are then playing lawyers

Yes but lawyers should be able to get objections on the record

Absolutely not!!! They will be too busy thinking of questions to listen!

No, the jurors will not understand why certain questions cannot be asked under the law, will blame party, attorneys and Court for not allowing them to ask that they want to ask

No, benefits would be outweighed by problems

Yes, but I do not encourage it and permit it only if they inquire for the opportunity

Yes, but not encouraged

Yes, with reservations

No XXX

#5 – Improvements to Instructions:

Less stilted language – too much repetition

I believe the instructions are very important to tell the jury the procedure and what is required of it; but I'm embarrassed to read some of the instructions, It seems that I'm talking down to them Is the word "please" in any instruction?

Jurors seem to have more trouble with the verdict forms than anything else, e.g. assessing % of fault to each party but assessing no damages when damages are clear. I'm not sure how the verdict forms can be improved, but it would be helpful if they were

They seem to be so elementary in wording _____ approach boring _____ insult

Improvement is probably possible but I haven't the time to come up with any good suggestions

Criminal MAI is excellent – I have little experience with civil MAI

The court needs the discretion to clarify the instructions in response to specific questions from jurors

In criminal case: have instruction explaining judge sentencing. Where their function is only to determine guilty or not. Federal Court has only judge sentencing. I believe there is federal instruction explaining that the jury need not concern itself with punishment since the judge will do it. By telling them before deliberation, the jury wouldn't have to speculate and the attorneys can argue this. Maybe add that jury can ask to see evidence in the case, but not matters referred to in trial, but not received.

Jurors should be told the truth about the % of time an inmate serves – in other words, we should have truth in sentencing

They're ok.

Shorten by 80% - plain English at 8th grade level

2:01 should _____ applicable 300.02 _____ 3d

Shortened and common English, not so formalized

Allow judges more discretion in answering jurors questions during deliberation

They could be shortened and simplified even more? Jury attention span isn't very long

The instructions are just too complex. The lawyers really don't understand them, so it is difficult for jurors

Less jargon

Some are poorly written

Believe instructions are understandable and helpful but they are wrong. Jurors should be permitted to take notes and keep them under an admonishment not to share them with other jurors and not to take them to the jury room. On questions, the jury should be instructed that questions are usually answered in later proceedings or testimony and for that reason, patience is preferred and the jurors should be reminded about the burden of proof principles

Why should a jury have to worry about "Note procedure" when they should be concerned about the merits of the case!

Use simple language and simple sentences. I always want to say "Now that means..." after reading an instruction

Yes [but] stress that collective memories of juries supercede notes - notes are an aid

Burden of proof instruction may be a little vague

Use everyday words that do not have to be explained

Same as improving the book of Revelations

More in #1 instruction about the judge being unable to communicate with jury during deliberations and that they can only consider matters in evidence (not dictionaries, maps, etc.)

Use elementary simple language

How about using plain old, everyday English? Perhaps given together with or in addition to the present instructions

#6 – Jury discussion before Final Deliberations:

No, but they do to some degree in spite of instructions

No, but they do it anyway

Yes, they do anyway

Perhaps, if ground rules can be worked out

Yes, I think it is only natural to discuss a particular ____ or evidence right after it is heard – it would help in final deliberations

If allowed to ask questions of witnesses, need to discuss with other jurors prior to asking

Yes, In all likelihood this would conform to reality

No, difficult to enforce

Only when trial is of duration longer than 48 hours

Yes, should be permitted, so long as they are "instructed" (not admonished) to do so only with all jurors present

No, - they do anyway

No, current instruction is better

#7 Suggestions to Improve Jury Trials:

Improve resources to educate public about jury service and particularly those placed in jury pool

Most questions come when they are in deliberation. They get frustrated when you can't answer the questions

Pay them more

Juror pay should be \$40 - \$60 per day

I believe it would be helpful on complicated cases to allow some limited argument as to why a particular witness is important and after the argument to allow a follow-up question or two to the jury

We need to simplify the language (terms) used in the verdict form and general instructions as a whole – jurors don't like legal jargon

Pay jurors more. Reduce size of juries to 6 or 8 for all except capital murder cases. Modify jury selection software to allow sorting by county of residence

If a juror has a reason not to serve that would come close to allowing him not to serve, but not quite, and the judge wants to excuse, make a provision to extend total jury pool time

Providing courtrooms with technology/equipment to allow jury observation of evidence – e.g. video, overhead projections, etc.

Any method to shorten the jury selection process. Voir dire seems to go on forever without any real purpose

Eliminate 12 person juries and go to 6 person jury

I believe in criminal cases the jury should be educated as to what sentences really mean. Also instructed regarding the parole system. Now they guess

Jurors should not be allowed to ask questions at all in any form. It would change the entire burden-of-proof system of advocacy

In 11 years in the 4th Circuit, I have a questionnaire to be completed by jury members and returned to me. My feedback tells me that the system works well now and I hope we don't foul it up

Jurors should be told, by a pattern instruction, why the court cannot answer questions during deliberations

Let's not make it so secretive. Maybe elect the foreman right after voir dire to be a jury spokesman

Jurors have told me that they find note taking to be very helpful in remembering the evidence

I have yet to have a case where even one of the attorneys wished to permit note-taking. I would be inclined to permit note taking in many cases, but I haven't wished to do so when none of the attorney's want it

Hearing-aid devices that are now available to amplify sound should be available to all jurors who need them. Many counties with no discretionary funds in their budgets don't have them. I think they should be included in the State Court Administrator's budget

Jury notebooks with all important info including the judge's instructions so jury can read along in extended cases with pictures of witnesses and place for note-taking

12 jurors unanimous – Criminal Felony; 6 jurors unanimous – Criminal Misdemeanor; 6-9 jurors with 2/3 vote – Civil Cases

The system works pretty well as is. Don't mess with it. The most important jury reform you can push is better juror compensation

It is not a perfect system, but some of the problems cannot be avoided, and overall the jury usually comes up with the right decision

Less "down time" when jury waits on court procedure that could be disposed of prior to swearing in jury; more attention paid by judge to comfort of jury in order to make the service on the jury as painless as possible.

Allow judges to explain why certain evidence cannot be sent to jury deliberation room when through admitted into evidence (i.e. all medical records; depositions that were partially read)

Note taking puts too much emphasis on who is the better note taker rather than observation of witnesses' manner while testifying – similar to a deaf person watching their signer rather than the witnesses

Perhaps we should have the court conduct voir dire upon questions submitted by the parties. I believe this would speed up this most misunderstood and boring part of the trial

Leave the # alone. #4 will do away with in limine. If you adopt the changes above (use everyday wording in instructions) you might as well send the witness in Grand Jury style and let the jury do what they want when finished

A St. Louis attorney, Tim Gallagher, has some very interesting videos of deliberations in a 'mock' trial. He showed them to Judge Berkemeyer and me and they ____ some preconceived notions of our jurors

8 women/men juries

Use of Jury Questionnaires prior to voir dire and after the case. Standardized questionnaires state-wide

Notes to be collected at each day's end – not to be taken home at night

Giving the elements of a case before evidence is presented so the jury knows that to look for – what's important

No. Jury members are doing just fine in my circuit, leave it alone

Better compensation for jurors

I have been handling criminal cases exclusively but I strongly believe that we should experiment with the suggestions listed above [allowing notes and questions] and other ways of helping jurors understand the trial and participate in it. I would like the judge to be allowed to give more responsive answers to jury questions during deliberations. The current restrictions frequently result in giving the jury useless responses to their questions

In Old Bailey in London they furnish tablet and pencils for the jurors. In the case where a juror took notes I later asked the foreman what influence that _____ had on their deliberations and he said "no body payed (sic) any attention to that SOB."

In general, the language of the criminal instructions given before evidence are preferred to the civil instructions, but the burden of proof instructions should be given before evidence

A frequent note taker may become the expert on what the _____ was - Dangerous

I allowed note taking before the present Rule. The case was 3 weeks long and worked very well

Encourage counties to increase jury compensation

Treat [jury] better with regard to personal needs (raise pay, provide parking, provide opportunity to take care of personal business by phone) more comfort in jury room, computer terminal, day care for nominal or at no cost

We need to quit the charade over involvement of insurance and be honest with jurors and tell them that it is to have no bearing on their decision and they are not to speculate as to whether there is coverage. Then, if evidence of insurance comes in, either inadvertently or relevant on some issue, it should lessen the potential for any prejudicial effect. The way it is now, jurors suspect insurance is involved in all cases and it can work an injustice on parties when we do not tell them how to deal with it.

APPENDIX D
JUROR COMPENSATION, CONTACTS, AND
CONVENIENCE CHART

Information based on local jury office survey responses.

County/Circuit	Telephone Number	Pay for Jurors (amounts stated are per day) (as of July 1, 2000)	Some courts permit reading materials in waiting areas (not courtrooms)
Adair/2	660-665-3145	\$14 plus mileage	Books, etc.
Andrew/5	816-324-4221	\$20 serving, \$6 not serving, plus \$.26 p/mile	Books, etc.
Atchison/4	660-744-2707	\$6 plus \$.07 p/mile	
Audrain/12	573-473-5843	\$18	No books
Barry/39	417-847-3764 or 417-847-2361	\$18 plus \$.07 p/mile	Books, etc.
Barton/28	417-682-2444	\$18 serving, \$12 not serving, plus \$.07 p/mile	
Bates/27	660-679-5171	\$18 serving, \$10 not serving, plus \$.20 p/mile	Books, etc.
Benton/30	660-438-7712	\$20 plus \$.03 p/mile	Books, etc.
Bollinger/32	573-238-2710	\$18 serving, \$10 not serving, plus \$.20 p/mile	Books, etc.
Boone/13	573-642-0781	\$21 serving, \$6 not serving, plus mileage	Books, etc.
Buchanan/5	816-271-1552 or 816-271-1445	\$20 serving, \$6 not serving, plus \$.26 p/mile	Books, etc.
Butler/36	573-686-8082	\$20 plus mileage	Books, etc.
Caldwell/43	816-586-2581	\$12 serving, \$6 not serving, \$.07 p/mile	Books, etc.
Callaway/13	573-642-0781	\$21 serving, \$6 not serving, plus mileage	Books, etc.

Camden/26	573-346-4180	\$20 plus \$.07 p/mile	Books, etc.
Cape Girardeau/32	573-243-1755	\$18 serving, \$12 not serving, plus \$.15 p/mile	Books, etc.
Carroll/8	660-542-1466	\$20 serving, \$10 not serving, plus \$.07 p/mile	No books
Carter/37	573-323-4513	\$12 plus \$.07 p/mile	No books
Cass/17	816--380-8249	\$18 serving, \$10 not serving, plus \$.20 p/mile	Books, etc.
Cedar/28	417-276-6700 Ext. 234 Circuit Clerk 417-276-6700 Ext. 230 for Jury summons, etc.	\$18 serving, \$6 not serving, plus \$.07 p/mile	Books, etc. Encouraged to bring a chair because there is limited seating
Chariton/9	660-288-3602	\$6 plus .07 p/mile	Books, etc.
Christian/38	417-581-2853	\$18 plus mileage	Books, etc.
Clark/1	660-727-3292	\$18 serving, \$12 not serving, plus \$.07 p/mile	Books, etc.
Clay/7	816-792-7674	\$6 plus \$.07 p/mile	Books, etc.
Clinton/43	816-539-3731	\$20 serving, \$10 not serving, plus \$.07 p/mile	Books, etc.
Cole/19	573-634-8897	\$12 plus \$.20 p/mile	Books, etc.
Cooper/18	660-882-2232	\$18 plus \$.07 p/mile	Books, etc.
Crawford/42	573-775-2866	\$10 plus \$.07 p/mile	Books, etc.
Dade/28	417-637-2271	\$6 plus \$.07 p/mile	Books, etc.
Dallas/30	417-345-2243	\$50 serving, \$25 not serving, plus \$.30 p/mile	Books, etc.
Daviess/43	660-663-2932	\$18 serving, \$6 not serving, plus mileage	Books, etc.
DeKalb/43	816-449-2602	\$20 serving, \$10 not serving, plus \$.07 p/mile	Books, etc.
Dent/42	573-729-3931	\$12 plus \$.07	Books, etc.

Douglas/44	417-683-2794	p/mile \$6 plus \$.07	Books, etc.
Dunklin/35	573-888-2456 or 573-888-9133	p/mile \$18 serving, \$12 not serving, plus \$.07 p/mile	Books, etc. Recommend a sweater because Courtroom is cool
Franklin/20	636-583-6308	\$18 plus \$.07 p/mile	Books, etc.
Gasconade/20	573-486-2632	\$18 plus \$.07 p/mile	Books, etc.
Gentry/4	660-726-3618	\$15 serving, \$7.50 not serving, plus \$.07 p/mile	No books
Greene/31	417-868-4819 or 417-868-4820 office # is 417- 868-4821	\$6 plus \$.29 ½ p/mile	Books permitted No newspapers
Grundy/3 Harrison/3	660-359-6605 660-425-6425	\$20 plus mileage \$20 plus \$.07 p/mile	Books, etc. No magazines or other entertainment
Henry/27 Hickory/30	660-885-6963 417-745-6421	\$20 \$20 serving, \$10 not serving, plus \$.07 p/mile	Books, etc. Books, etc.
Holt/4 Howard/14	660-248-2194	\$6 plus \$.07 p/mile	Books, etc.
Howell/37	417-256-7505 Jury Information 417-256-3741 Circuit Clerk	\$20 maximum, \$6 minimum	Books, etc.
Iron/42	573-546-2811	\$8 plus \$.07 p/mile	No books
Jackson/16	816-881-3626	\$6 plus \$.07 p/mile	Books, etc.
Jasper/29	417-625-4370 or 417-358-0490	\$18 serving, \$14 not serving	Books, etc.
Jefferson/23	636-797-6069	\$18 plus \$.07 p/mile	Books, etc.
Johnson/17	660-747-6331	\$18 serving, \$10 not serving, plus mileage	Books, etc.
Knox/2	660-397-2186	\$14 plus \$.07 p/mile	Permitted with judge's permission

Laclede/26	417-532-2471 or 1-888-532-5968	\$20 serving, \$6 not serving, plus \$.07 p/mile	Books, etc.
Lafayette/15	660-259-6101	\$18 serving, \$12 not serving, \$.07 per mile.	Books, etc.
Lawrence/39	417-466-2471	\$20 serving, \$10 not serving, plus \$.17 p/mile	Books, etc.
Lewis/2	573-767-5440	\$20	Books, etc.
Lincoln/45	636-528-6300 or 636-528-0328 after 5 p.m.	\$20 plus \$.07 p/mile	Books, etc.
Linn/9	660-895-5212	\$20 plus \$.17 p/mile	Books, etc.
Livingston/43	660-646-1718	\$20 serving, \$6 not serving, plus \$.07 p/mile	Books, etc.
Macon/41	660-385-4631	\$20 serving, \$7 not serving, plus \$.07 p/mile	
Madison/24	573-783-2102	\$16 serving, \$10 not serving, plus \$.20 p/mile	Books, etc.
Maries/25	573-422-3338	\$6, plus \$.07 p/mile	Books, etc.
Marion/10	573-221-0579	\$18 serving, \$12 not serving, plus \$.07 p/mile	Books, etc.
McDonald/40	417-223-7515	\$15 plus \$.07 p/mile	Books, etc.
Mercer/3	660-748-4335	\$20 plus \$.07 p/mile	Books, etc.
Miller/26	573-369-2303	\$6 not serving, \$20 serving, \$.07 p/mile	Books, etc.
Mississippi/33	573-683-2146	\$15 serving, \$10 not serving, plus \$.07 p/mile	Books, etc.
Moniteau/26	573-796-2071	\$20 plus \$.07 p/mile	Books, etc.
Monroe/10	660-327-5204	\$18 plus \$.07 p/mile	Books, etc.
Montgomery/12	573-564-3341	\$18 serving, \$12 not serving, plus \$.07 p/mile	No books

Morgan/26	573-378-4413	\$20 serving, \$10 not serving, plus \$.07 p/mile	Books, etc.
New Madrid/34 Newton/40	573-748-2228 417-451-8267, 417-659-2950 & 417-451-8285 for answering machine	\$20 \$18 plus \$.07 p/mile	Books, etc. Books, etc.
Nodaway/4	660-582-5431	\$6 plus \$.07 p/mile	Books, etc.
Oregon/37	417-778-7460	\$6 plus \$.07 p/mile	
Osage/20	573-897-3114	\$18 plus \$.07 p/mile	Books, etc.
Ozark/44 Pemiscot/34	417-679-4232 573-333-0187	\$6 plus \$.07 p/mile \$20 serving, \$6 not serving, plus \$.07 p/mile	Books, etc. Books, etc.
Perry/32	573-547-6581	\$18 serving, \$12 not serving, \$.07 p/mile	Books, etc.
Pettis/18 Phelps/25	660-826-0617 573-364-1891 X 201	\$18 \$6 plus \$.07 p/mile	Books, etc. Books, etc.
Pike/45	573-324-3112	\$14 plus \$.07 p/mile	Books, etc.
Platte/6	816-858-3441	\$6 plus \$.07 p/mile	Books, etc.
Polk/30	417-326-4912	\$25 serving, \$12 not serving, plus \$.30 p/mile	Books, etc.
Pulaski/25	573-774-4755	\$6 plus \$.07 p/mile	Books, etc.
Putnam/3	660-947-2071	\$20 plus \$.07 p/mile	Books, etc.
Ralls/10 Randolph/14	573-985-5633 660-263-4474	\$12 \$18 plus \$.07 p/mile	Books, etc. No books
Ray/8	816-776-3377	\$20 serving, \$10 not serving, plus \$.07 p/mile	Books, etc.
Reynolds/42	573-648-2494	\$6 plus \$.07 p/mile	Books, etc.
Ripley/36	573-996-2818	\$20 plus \$.30 p/mile	Books, etc.

St. Charles/11	636-949-3088	\$20 plus mileage	Books, etc.
St. Clair/27	417-646-2226	\$20 serving, \$13 not serving, plus \$.25 p/mile	
St. Francois/24	573-756-4551	\$18 serving, \$10 not serving, \$.07 p/mile	Books, etc.
St. Louis Co./21	www.stlouisco.co m/circuitcourt	www.stlouisco.co m/circuitcourt	
St. Louis City/22	314-622-4457	\$18 serving, \$12 not serving	Books, etc.
Ste. Genevieve/24	573-883-2705	\$18 serving, \$12 not serving, plus mileage	No books
Saline/15	660-886-2300	\$18 plus \$.20 1/2 p/mile	Books, etc.
Schuyler/1	660-457-3784	\$18 serving, \$12 not serving, plus mileage	Books, etc.
Scotland/1	660-465-8605 or 660-465-2404	\$18 serving, \$6 not serving, plus \$.07 p/mile	Books, etc.
Scott/33	573-545-3596	\$18 serving, \$12 not serving, \$.07 per mile	
Shannon/37	573-226-3315	\$8 plus \$.07 p/mile	
Shelby/41	573-633-2151	\$20 plus \$.07 p/mile	Books, etc.
Stoddard/35	573-568-3118	\$18 serving, \$12 not serving, plus \$.25 p/mile	Books, etc.
Stone/39	417-357-6114	\$15 serving, \$10 not serving, plus \$.07 p/mile	Books, etc.
Sullivan/9	660-265-4717	\$18 serving, \$6 not serving	Books, etc.
Taney/38	417-546-7230 office hrs 417-546-7236 after hrs	\$20 plus mileage	Books, etc.
Texas/25	417-967-3742	\$6 plus \$.07 p/mile	Books, etc.
Vernon/28	417-448-2525 or 417-448-2512	\$20 serving, \$6 not serving, plus \$.07 p/mile	Books, etc.

Warren/12	636-456-3363	\$18 serving, \$12 not serving, plus \$.07 p/mile	Books, etc.
Washington/24	573-438-4171	\$6 plus \$.07 p/mile	Books, etc.
Wayne/42	573-224-3014	\$18 plus \$.07 p/mile	
Webster/30	417-859-2006	\$18 serving, \$14 not serving	Books, etc.
Worth/4	660-564-2210	\$6 plus \$.07 p/mile	Books, etc.
Wright/44	417-741-7121	\$6 plus \$.07 p/mile	Books, etc.

APPENDIX E

QUESTIONS ASKED OF JURY PANELS

QUESTION ASKED	A D A I R	B A R T O N	B O L L I G E R	B U C H A N A N	C A M D E N	C H A R I T O N	C L A Y	C O L E	C O O P E R	D A D E	D A L L A S	D U N K L I N	G E N N E V I E E	G R U N D Y	J A C K S O N	J E F F E R S O N	K N O X	L A W R E N C E	L I N C O L N	M A D I S O N	M E R C E R	P E M I S C O T	P H E L P S	R A N D O L P H	S C H U L Y E R	S H E L B Y	S T L O U I S	W A S H I N G T O N	W E B S T E R	W R I G H T				
Name	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X		
Mailing Address	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X			X	X	X		X	X	X	X		
How long have you lived at your present address?												X																			X			
Do you own your home?																		X																
Prior place of residence			X	X	X		X	X	X		X		X		X					X	X				X					X	X			
Home phone	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Age	X	X	X	X		X	X			X	X	X	X		X	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	
Sex																			X															
Social Security Number													X																					
Date of Birth			X	X					X						X				X		X	X			X									
Place of Birth				X																					X									
Business phone	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X		X			X	X
Employer	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Employers Address																								X	X	X								
Years employed by present employer			X	X			X								X					X				X					X					
Occupation	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	
Work duties															x																			
Work schedule/hours																																		
Prior employer			X	X																X														
If not currently employed, give your last occupation and employer.	X	X			X			X	X	X	X	X		X			X	X			X					X	X				X	X		
Marital Status	X	X	X	X	X	X	X	X	X	X	X	X	X	X	x	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Spouse's Name	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X		X	X				X	X	

Spouse's Occupation/Employer	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X		X		X	X	X		X	X
Names & Ages of Children	X	X	X		X	X	X	X		X	X		X	X	X		X		X	X	X		X		X	X	X		X	X
Maiden name if female	X		X			X		X									X									X			X	
Spouse's maiden name if applicable			X					X																						
List all members of your immediate family (husband/wife, children, your parents):						X						X			X				X								X			
Highest grade completed in school	X		X			X		X	X		X						X											X		
Do you drive an auto?	X		X			X	X					X					X			X						X	X	X		X
Mileage from your home to County Courthouse	X	X	X			X	X	X		X	X	X	X				X						X	X		X			X	X
Are you a resident of (blank) county?	X	X				X				X	X						X	X					X			X	X		X	X
Years of residence in (blank) county?			X	X	X		X	X	X			X	X	X		X		X	X	X	X			X	X			X		
Years of residence in Missouri?			X	X	X		X	X	X			X	X	X		X		X	X	X	X			X	X			X		
Are you a U.S. Citizen?	X	X								X				X			X	X			X	X	X			X	X		X	
Are you able to read, speak and understand the English language?		X								X		X		X				X			X	X	X			X	X			

Are you on active duty in the Armed Forces of the United States or a member of the organized militia on active duty under order of the governor of the State of Missouri?	X				X					X		X	X		X	X		
Have you ever been convicted of a felony?	X	X		X	X	X	X	X		X		X	X	X	X	X	X	X
If you have been convicted of a felony, have you been restored your civil rights?	X				X			X		X	X					X		
Have you ever been convicted of a crime other than traffic tickets?		X	X		X	X		X	X		X		X	X			X	X
Have you or an immediate family member ever pled guilty, been imprisoned for, or convicted of any crime?																X		X
Have you or any member of your family been a victim of a crime? If yes, briefly state circumstances.				X	X	X	X		X									
Have you been the Jury Foreperson?									X									
Have you ever served on a Jury? If so, when and where?	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Have you served on a Grand Jury? If so, when?		X	X											X				

Number of times you have served on a Civil Jury that reached a verdict.								X									
Number of times you have served on a Criminal Jury that reached a verdict.								X									
Have you or members of your immediate family ever suffered an accidental physical injury?									X		X	X				X	
Have you or any member of your immediate family been a party to any lawsuit?	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Has a claim for personal injury ever been made against you or any member of your family?		X	X	X		X	X		X	X	X	X	X	X		X	X
Have you or any member of your immediate family ever made a claim for personal injury?		X	X			X	X		X		X	X	X	X		X	X
Are you licensed to and actively engaged in the practice of medicine, osteopathy, chiropractic, dentistry, or pharmacy? If yes, explain.							X			X							
Are you a close friend or related to any Law Enforcement Officer? If so, could you be fair and impartial?			X			X	X		X		X	X				X	X

Are you related by blood or marriage to any attorney?						X			X		X						
Race							X										
Are you or a close relative employed by Department of Corrections?				X						X							
Do you have any physical disability or impairment that would interfere with your ability to serve as a juror? If so, explain.	X	X		X	X	X	X	X		X	X	X	X	X	X	X	X
Do you have a planned vacation? If so, when?						X											
Do you know of any reason why you cannot serve as a juror? If so, state reason.				X		X			X				X		X		X
As a prospective juror, have you completed this form? If no, who completed it for you and why?							X				X						
List all dates to be excused (vacations, Dr. appts., etc.)										X						X	
Missouri Law requires that every qualified juror be sober and intelligent and of good reputation. Do you consider yourself qualified in these respects?													X				

APPENDIX F

QUESTIONS TO BE ADDED TO ALL QUALIFICATION FORMS

1. Have you ever been involved in a lawsuit as a party (as a plaintiff or defendant, not merely as a witness)?

A lawsuit involves any action or proceeding in which someone invokes the judicial process or the court system or is served with court papers. A person can be involved in a lawsuit without ever hiring a lawyer or appearing in a courtroom or going before a judge. Some examples of a lawsuits include, but are not limited to, divorce or dissolution of marriage, increases or decreases in child support payments, child custody fights, personal or bodily injuries, bankruptcy actions, suits on unpaid credit card amounts or unpaid bills, suits on money loans that have not been paid, landlord-tenant actions for unpaid rent or possession or damage to premises or unrefunded security deposits, small claims actions, and Social Security matters that went to court. There are other kinds of lawsuits as well.

2. Have you ever made a claim to obtain or recover money, either for physical injuries or for damage to property?

A claim is a request or demand for money. A person can make a claim without ever hiring a lawyer or appearing in an administrative proceeding or before an administrative agency, a judge or other official. Some examples of claims include, but are not limited to, workers' compensation claims, claims made to insurance companies for personal or bodily injuries or property damage, Social Security disability claims, Veterans Administration disability claims, and employment-related disability claims, and employment-related claims.

APPENDIX G

SAMPLE MODIFIED JURY INSTRUCTION FOR MAI 2.01 **FOR QUESTIONS BY JURORS**

This instruction and other instructions which I will read to you near the end of the trial are in writing, and all of the written instructions will be handed to you for guidance in your deliberation when you retire to the jury room. They will direct you concerning the legal rights and duties of the parties and how the law applies to the facts which you will be called upon to decide.

The trial may begin with opening statements by the lawyers as to what they expect the evidence to be. At the close of the evidence, the lawyers may make arguments on behalf of their clients. Neither what is said in opening statements or closing arguments is to be considered as proof of a fact. However, if a lawyer admits some fact on behalf of his client, the other party is relieved of the responsibility of proving that fact.

After the opening statements, the Plaintiffs will introduce evidence. After that, the Defendant may introduce evidence and there may be rebuttal evidence after that. The evidence may include the testimony of witnesses who appear personally here in court, the testimony of witnesses who may not appear personally but whose testimony may be read or shown to you, and exhibits such as pictures, documents, and other objects.

While the trial is in progress, I may be called upon to determine questions of law and to decide whether these matters may be considered by you under the law. No ruling or remark which I may make at any time during the trial will be intended or should be considered by you to indicate my opinion as to the facts. There may be times when the lawyers come up to talk to me out of your hearing. This will be done in order to permit

me to decide questions of law. These conversations will be out of your hearing to prevent issues of law, which I must decide, from becoming mixed with the issues of fact, which you must decide. We will not be trying to keep secrets from you.

After all of the evidence has been presented, and you have received my final instructions and heard the closing arguments of the lawyers, you will retire to the jury room for your deliberations. At that time it will be your duty to select a foreperson, to decide the facts, and to arrive at a verdict.

Justice requires that you not make up your mind about the case until all of the evidence has been seen and heard. You must not comment on or discuss what you may hear or learn in the trial until the case is concluded and you retire to the jury room for your deliberations. During the trial, you should not remain in the presence of anyone who is discussing the case when the court is not in session. Otherwise, some outside influence or comment might influence a juror to make up his or her mind prematurely and be the cause of a possible injustice. For this reason, the lawyers and their clients are not permitted to talk to you until the trial is completed.

When you enter into your deliberations, you will be considering the testimony of witnesses as well as other evidence to which I have referred. In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude, and behavior of the witness, the interest of the witness in the outcome of the case, the relation of the witness to any of the parties, the inclination of the witness to speak truthfully or untruthfully, and the probability or improbability of the witness' statements. You may give the testimony of any witness such weight and value as you believe that testimony is entitled to receive.

There will be some matters which will be offered by the parties and to which objections will be made. If I overrule the objections, you may consider that matter when you deliberate on the case. If I sustain an objection, then that matter and any matter I order to be stricken is excluded and must not be considered by you in your deliberations.

Each of you may take notes in this case but you are not required to do so. I will give you notebooks. Any notes you take must be in those notebooks only. You may not take any notes out of the courtroom before the case is submitted to you for your deliberations. No one will read your notes while you are out of the courtroom. If you choose to take notes, remember that note taking may interfere with your ability to observe the evidence and witnesses as they are presented.

Do not discuss or share your notes with anyone until you begin your deliberations. During your deliberations, if you choose to do so, you may use your notes and discuss them with other jurors. Notes taken during trial are not evidence. You should not assume that your notes, or those of other jurors, are more accurate than your own recollection or the recollection of other jurors.

After you reach your verdict, your notes will be collected and destroyed. No one will be allowed to read them.

[You will be given the opportunity to ask written questions of any of the witnesses called to testify in this case. You are not encouraged to ask large numbers of questions because that is the primary responsibility of counsel. Questions may be asked only in the following manner.]

After all lawyers have finished asking questions of a witness then you will be allowed to ask questions. Each of you will be requested to write a question or write something on a sheet of paper after each witness. You will then pass all sheets to the bailiff.

The Court and lawyers will then review the questions and I will determine if your question is legally proper. The Court may then ask the question of the witness. No inference is to be drawn by which question the Court asks of the witness. The lawyers may then ask questions of the witness. No adverse inference should be drawn if the question is not allowed by the Court or if the question is not asked by one of the lawyers.]

APPENDIX H

SAMPLE PROCEDURES FOR QUESTIONING BY JURORS

The judge gives an instruction at the beginning of trial to advise jurors that questions will be permitted, the procedure for submitting questions, and that not all questions will be answered.

After all lawyers in the case have questioned each witness, the judge then permits the jurors to submit questions to the witnesses through the trial judge. The jurors submit the questions from the jury box in written form. They do not recess to discuss the questions to avoid discussing the case prior to submission. The court does not hand out any paper for jurors' questions until after a witness has finished answering the lawyers' questions for two reasons: First, if the jurors begin to formulate their questions and write them during the testimony, they may miss hearing testimony and not be aware that their questions have already been answered by the witness. Second, the questions may become quite lengthy if too much time is available. Each slip of paper is collected from every juror after every witness whether the juror has a written question or not in order to preserve the anonymity of the jurors who ask questions and the number of questions asked.

The judge then meets with the lawyers at side bar and reviews the questions. The lawyers may make all legal objections to the questions propounded by the jurors. The judge will then rule on those objections. Not all legally permissible questions must be propounded to the witness. The trial judge has the discretion to refuse any question. The judge will ask the questions of the witness. The lawyers may be allowed follow up

questions on that issue. Neither the court nor the lawyers may comment on any questions that the court declines to ask.

At the end of the trial, the court may submit an additional instruction to remind jurors that they are to draw no adverse inferences from unasked questions.

APPENDIX I

**SAMPLE JURY INSTRUCTION FOR END OF TRIAL
FOR QUESTIONING BY JURORS**

During the course of this trial, the Court has allowed jurors to prepare questions to be asked of certain witnesses. Some of those questions were not asked. The jury must not concern itself with the Court's reasons for refusing to ask questions. The fact that certain questions were not asked must not affect your consideration of the evidence in any way.