Juries: On the Verge of Extinction - A Discussion of Jury Reform

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JURIES: ON THE VERGE OF EXTINCTION?
A DISCUSSION OF JURY REFORM

Tom M. Dees, III*

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . .¹

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . .²

The right of trial by jury shall remain inviolate.³

In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury . . . .⁴

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¹ U.S. CONST. amend. VI.
² U.S. CONST. amend. VII.
⁴ TEX. CONST. art. V, § 10.
I. INTRODUCTION

Since the sensationalized acquittal of O.J. Simpson, jury reform has become a popular topic. In truth, the American jury system has been subject to criticism for well over a century. As early as 1872, the renowned Mark Twain commented: “The jury system puts a ban on intelligence and honesty, and a premium upon ignorance, stupidity and perjury. It is a shame that we must continue to use a worthless system because it was good a thousand years ago.” Similarly, in 1911 Ambrose


6. Mark Curriden, Putting the Squeeze, supra note 5, at 52 (quoting Mark Twain 1872); WILLIAM SHAKESPEARE, THE SECOND PART OF KING HENRY THE SIXTH act 4, sc. 2 (“The first thing we do, let’s kill all the lawyers.”).
Bierce defined "trial" as "[a] formal inquiry designed to prove and put upon record the blameless characters of judges, advocates and jurors."\[7\]

Such a negative view may have literary merit, but in fact juries are the cornerstone of the American advocacy system. As Alexis de Tocqueville noted, "[t]he jury contributes powerfully to form the judgment and to increase the natural intelligence of a people; and this, in my opinion, is its greatest advantage."\[8\] He further opined that, "I think that the practical intelligence and political good sense of the Americans are mainly attributable to the long use that they have made of the jury in civil causes."\[9\]

Similarly, the United States Supreme Court has held that "[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with utmost care."\[10\]

With regard to the Simpson trial, an editorial in *Judicature* warns against undue response noting that "a particularly useful thing to keep in mind about the Simpson trial is its singularity. Calls for extensive reform of the justice system based on events in one Los Angeles courtroom should be viewed with utmost skepticism."\[11\] In other words, revamping the en-

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9. Id. at 284-85; see Akhil Reed Amar & Alan Hirsch, For the People: What the Constitution Really Says About Your Rights 52 (1998) ("The 'big idea' behind the jury is not so much protecting discrete individuals (though that is certainly important) as perceiving a democratic culture.").


tire American jury system simply because of the uncertainty surrounding one isolated legal anomaly is, at best, a gross overreaction.

There have been numerous articles written about jury reform in recent years. One of the most notable is the report of the Committee on More Effective Use of Juries, requested by the Arizona Supreme Court in 1993. To date, most efforts toward jury reform have been on the state level. In particular, Arizona, California, Colorado, the District of Colorado, Hawaii, Idaho, Indiana, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming have all considered jury reform in some capacity. The Arizona Supreme Court Committee on More Efficient Use of Juries, requested by the Arizona Supreme Court in 1996, made innovative and creative recommendations for major changes that would yield juries that were more democratic and representative of an increasingly diverse society.


14. See American Judicature Society Guidebook, supra note 5 at 1-3 (chronicling, briefly, the history of state level jury reform).

15. See id. at 5 ("One of the first comprehensive jury reform efforts began in 1993 when the Arizona Supreme Court established its Committee on the More Efficient Use of Juries and empowered that body to recommend comprehensive statewide reforms. The committee was directed to focus specifically on the trial aspects of the jury process and to make innovative and creative recommendations for major changes that would yield juries that were more democratic and representative of an increasingly diverse society."); see also Appendix 2.

16. See American Judicature Society Guidebook, supra note 5, at 6 ("The third major statewide jury reform commission was the California Judicial Council's Blue Ribbon Commission. This commission was not the first group to consider jury reform in California; in fact, previous work by the legislature, bar associations, and the courts substantially aided the commission in its efforts. Particularly influential reports on the Los Angeles jury system had been issued by the Los Angeles Superior Court and the Citizens Economy and Efficiency Commission of Los Angeles County. The State Bar of California had sponsored two forums on the jury system, and 'Principles Relating to Jury Reform' had been promulgated by the State Board of Governors. Subcommittees of the California Judicial Council and numerous legislative bills dealing with jury reform issues provided a backdrop for the creation of the Blue Ribbon Commission in October 1995."); see also Appendix 3.

17. See American Judicature Society Guidebook, supra note 5, at 6 ("On January 5, 1996, the Colorado Supreme Court established its Committee on Effective and Effi-
Columbia,\textsuperscript{18} and New York\textsuperscript{19} have lead the way by implementing statewide committees devoted to jury-reform. The Texas Supreme Court also created a Jury-Reform Task Force to analyze the Texas jury system, which completed and submitted a final report on September 8, 1997,\textsuperscript{20} and an Executive Committee On Accommodating Jurors With Disabilities, which completed and submitted a final report in September 1998.\textsuperscript{21}

This article assesses the American jury system's strengths and weaknesses, and offers several suggestions to improve its overall effectiveness. With an emphasis on Texas law, this article breaks the trial process into separate stages and discusses specific noteworthy jury-reform innovations for each stage with references to additional applicable reform measures—attached as appendixes—where appropriate. While the jury system may have imperfections, it must not be abolished because it remains a primary shield against tyranny and a fundamental way in which citizens participate in their government.

\section*{II. RIGHT TO TRIAL BY JURY}

The right to trial by jury is firmly embedded in both the Constitution of the United States and the Constitution of the State of Texas. In fact, the drafters of both constitutions found this right so imperative they included it twice in both.\textsuperscript{22} Hence, Americans' cultural affinity for the right to trial by jury has deep Constitutional moorings.

In the Constitution of the United States, the right to trial by jury is located in both the Sixth and Seventh Amendments. The Sixth Amendment states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district...
wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.\textsuperscript{23}

The Seventh Amendment states: "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."\textsuperscript{24}

In the Constitution of the State of Texas, the right to trial by jury is located in both article I and article V.\textsuperscript{25} Article I states:

The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.\textsuperscript{26}

Article V states:

In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be empaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature.\textsuperscript{27}

As the Thirteenth District Court of Appeals stated in \textit{Trapnell v. Sysco Food Services, Inc.},\textsuperscript{28} "[c]ompared to the federal system, at common law Texans enjoyed a broader right to a jury trial"\textsuperscript{29} and "[t]he right to a jury trial reserved to the people in art. V. § 10 is significantly broader than that granted in the Seventh Amendment. It affords this right in all 'causes' in a Texas District Court."\textsuperscript{30}

\begin{flushright}
\textsuperscript{23} U.S. Const. amend. VI. \\
\textsuperscript{24} U.S. Const. amend. VII; see 1 Lawrence M. Tribe, American Constitutional Law § 3-32 (3d ed. 2000) (explaining the Seventh Amendment's importance regarding the right to trial by jury). \\
\textsuperscript{25} See \textit{Trapnell v. Sysco Food Servs., Inc.}, 850 S.W.2d 529, 544 n.12 (Tex. App.—Corpus Christi 1992), aff'd, 890 S.W.2d 796 (Tex. 1994) (citing 1 George D. Braden & David A. Anderson, The Constitution of the State of Texas: An Annotated and Comparative Analysis 421 (1977) ("No other constitution in the United States has two constitutional provisions protecting the right to trial by jury in a civil case."). \\
\textsuperscript{26} Tex. Const. art. I, § 15 (amended 1935). \\
\textsuperscript{27} Tex. Const. art. V, § 10. \\
\textsuperscript{28} 850 S.W.2d 529 (Tex. App.—Corpus Christi 1992), aff'd, 890 S.W.2d 796 (Tex. 1994). \\
\textsuperscript{29} Id. at 544 (citing Tex. Const. art. I, § 15 (amended 1935)). \\
\textsuperscript{30} \textit{Trapnell}, 850 S.W.2d at 544 (citing Tex. Const. art. V, § 10); see also 7 William V. Dorsaneo, III, Texas Litigation Guide § 113.03[1][b] (Nov. 1999); 4 Roy W. McDonald & Elaine G. Carlson, Texas Civil Practice § 21.5 (2d ed. 2000 Supp.).
\end{flushright}
III. RESPONSE TO JURY SUMMONSES

A. SETTING THE STAGE

Before any jury trial may proceed, there must first be a jury. Similarly, before any intelligent discussion of jury reform may be entertained, improving citizens' responses to jury summonses must first be addressed. As Robert G. Boatright, a research associate at the American Judicature Society, suggested, "[t]o increase summons response, courts must focus upon the actual needs of citizens, they must move beyond stereotypes about alienated or ignorant citizens, and they must think about the logistics of becoming a juror as well as the experience of actually serving."  

B. SPECIFIC REFORM INNOVATIONS

1. Compensation

One of the most popular means to improve citizens' responses to jury service is to increase juror compensation. The United States Code states that "A juror shall be paid an attendance fee of $40 per day for actual attendance at the place of trial or hearing." As a result, as states consider jury reform, many are considering raising the fee paid to jurors in juror compensation statutes to equal the federal rate. For example, the Texas Government Code states that jurors are entitled to receive not less than six dollars, but no more than fifty dollars a day as compensation for jury service. Moreover, Texas jurors have the option of donating their juror compensation to one of four choices:

(1) the compensation to victims of crime fund . . . ;
(2) the child welfare board of the county . . . ;
(3) any program selected by the commissioners court that is operated by a public or private nonprofit organization and that provides shelter and services to victims of family violence; or
(4) any other program approved by the commissioners court of the county.

31. The issue of improving citizens' responses to jury summonses is further discussed in another section of this five-part study. See generally Ted Eades, Revisiting the Jury System in Texas: A Study of the Jury Pool in Dallas County, 54 SMU L. REV. 1813 (2001).
32. Boatright, Jury Summonses, supra note 12, at 164; see Appendix I.
35. TEX. GOV'T CODE ANN. § 61.001 (Vernon 1988 & Supp. 2000). As a way to pay for the increased juror compensation, the Texas Jury Compensation Committee recommended that Texas "[s]uspend payment for the first calendar day of jury service whether the juror is actually selected or not" because "[s]tatistics show that 80% of all funds expended for jury service [in Texas] are for the first day. The savings that accrue from this action will allow a significant increase in funding jury service for day two through the end of all cases." Texas Final Report, supra note 20, at 91.
2. Enforcement

The primary tools the judiciary may use against those potential venire panelists who fail to answer their jury summonses are located in the Texas Government Code\textsuperscript{37} and the Texas Criminal Procedure Code.\textsuperscript{38} The Texas Government Code states that those who fail to appear for jury duty are "subject to a contempt action punishable by a fine of not less than $100 nor more than $1,000."\textsuperscript{39} Similarly, the Texas Criminal Procedure Code states that "[t]hose [potential jurors] not present [when a case is called for trial] may be fined not exceeding fifty dollars."\textsuperscript{40} Hence, fines may be imposed on those who choose not to respond to jury summonses.

One method of improving citizens' responses to jury summonses may be to make the penalties for failing to respond stricter by increasing the monetary fines, thereby making such an offense a misdemeanor crime that enhances with repeat offenses. For example, in Texas it is a Class C misdemeanor for one who holds a driver's license to fail to inform the Department of Public Safety of a change of address or name (including by marriage) within thirty days of the change.\textsuperscript{41} One way to improve citizens' responses to jury summonses is to enforce such statutes against those who fail to update their addresses, do not receive their summonses, and consequently fail to appear for jury service. Alternative sources to locate citizens' current addresses for jury summonses include federal income tax records, state property tax records, and state Department of Motor Vehicles records (other than drivers' license documents).

In Rousseau v. State,\textsuperscript{42} Justice Baird summarized the juror summons and selection process in the State of Texas as follows:

The Legislature has prescribed strict procedures for the selection of juries in our State. Potential jurors are summoned from either the registered voters of the county or persons, living in the county, who hold a valid drivers license or personal identification card issued by the Department of Public Safety.\textsuperscript{43}

From these sources, jury lists are either manually, mechanically or electronically drawn.\textsuperscript{44} If manually drawn, a party may be present and observe the drawing of the jury list for the time period in which the party's case is set for trial.\textsuperscript{45} The trial judge informs the clerk of the date prospective jurors are to be summoned to appear. The clerk takes the jury list, in the consecutive manner in which it was prepared, makes a notation on the list concerning the date such prospective jurors are to appear, and delivers the list to the county sheriff.\textsuperscript{46} The sheriff summons each pro-

\textsuperscript{37} Id. § 62.0141.
\textsuperscript{38} TEX. CRIM. PROC. CODE ANN. art. 35.01 (Vernon Supp. 2000).
\textsuperscript{40} TEX. CRIM. PROC. CODE ANN. art. 35.01 (Vernon Supp. 2000).
\textsuperscript{43} TEX. GOV'T CODE ANN. § 62.001 (Vernon 1988 & Supp. 2000).
\textsuperscript{44} Id. §§ 62.004, 62.011.
\textsuperscript{45} Id. § 62.005.
\textsuperscript{46} Id. § 62.012.
A prospective juror to appear at the time and place ordered by the trial judge. A prospective juror who fails to appear is subject to contempt. A jury panel, or venire, is selected from the prospective jurors who appear for service. Members of the venire are disqualified unless they meet certain qualifications.

C. Final Remarks Regarding Jury Summonses

If something is not done to increase citizens' responses to jury summonses in Texas and beyond, the process of summoning jurors and jury selection will be further compromised. Legislators should be encouraged to pursue reform measures actively to relieve the judiciary of the growing problem of citizens failing to respond to jury summonses.

IV. Voir Dire: Jury Selection

A. Setting the Stage

Voir dire is the preliminary process by which prospective jurors are examined to determine whether they are qualified to serve on a particular jury. As Judge John McClellan Marshall explains:

The phrase [voir dire] [literally] translates from French as 'to see, to speak.' In that context, it faithfully conveys the import of the process; namely, that it is the opportunity for the attorney to see the potential juror face-to-face and to speak directly in a dialogue with the potential juror in an effort to uncover whatever bias or prejudice might lurk on the panel.

Voir dire examination of the venire panel "has a dual purpose: first, to determine whether any prospective juror is disqualified; secondly, to supply the attorneys with the information necessary to permit them to exercise with intelligent discrimination their peremptory challenges." Many seasoned trial attorneys faithfully believe that an effective voir dire is the key to a successful trial. For example, as Judge Marshall clarifies:

47. Id. § 62.013.
51. Rousseau, 855 S.W.2d at 689 (Baird, J., dissenting).
52. Judge Marshall, now a senior judge, was formerly the judge of the 14th District Court in Dallas County.
53. Judge John McClellan Marshall, Free From Any Bias or Prejudice: Voir Dire, 6 Voir Dire 20 (Fall 1999) [hereinafter Marshall, Voir Dire]; see Black's Law Dictionary 1569 (7th ed. 1999) (defining voir dire as "to speak the truth").
54. 4 Roy W. McDonald, Texas Civil Practice § 21.15 (1992). Peremptory challenges are challenges parties may make to prospective jurors that do not need to be justified, provided they are not based on discriminatory reasons. One the other hand, challenges for cause are challenges parties may make to prospective jurors that must be made for specific disqualifying reasons, such as for bias or prejudice. See Black's Law Dictionary 223 (7th ed. 1999).
[T]he jury is not there to be experts, but to learn from the judge and the lawyers about the case. This learning process then sets them free to perform their true function of finding the facts of the case. Put another way, the jury becomes a multi-headed lie detector in relation to the witnesses and the attorneys. When properly selected and informed, they have an uncanny ability to discern who is telling the truth and to render their verdict accordingly. That is the genius of the American jury system, and the explanation as to why *voir dire* is so important in the trial.\(^{55}\)

It is through *voir dire* that counsel have an opportunity to ferret out any bias existing within the venire and select the appropriate group of citizens to decide the matter fairly. While all on the venire panel who are not disqualified are potential jurors for any given trial, some—because of their unique life experiences—may make better jurors for certain trials. That is the purpose of *voir dire*: to locate these jurors. Moreover, “[f]rom the trial lawyer’s viewpoint, a further purpose—or at least a result—of an effective *voir dire* examination is to establish acquaintance and perhaps rapport with the prospective jurors.”\(^{56}\) That is, it is also during *voir dire* that potential jurors will see and hear the attorneys for the first time, and develop crucial first impressions that may play an integral role in the verdict at a later stage.

In the federal system, Federal Rule of Civil Procedure 47(a) permits attorney-conducted and court-conducted *voir dire*.\(^{57}\) As courts have broad discretion regarding the form and scope of jury examination,\(^{58}\) counsel should “[m]ove the court to permit attorney-conducted *voir dire* and to allow sufficient time to do justice to the issues in the case”\(^{59}\) if the court will not allow counsel to conduct *voir dire*.\(^{60}\) In *United States v. Ledee*,\(^{61}\) the Fifth Circuit noted that judges do not possess the same comprehension of facts that may be important during trial as do the lawyers and that “[p]eremptory challenges are worthless if trial counsel is not afforded an opportunity to gain the necessary information upon which to base such strikes.”\(^{62}\) The bottom line is that the judge is the one lawyer in the courtroom that knows the least about the case at bar.

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57. FED. R. CIV. P. 47(a).
58. United States v. Harvey, 756 F.2d 636, 640 (8th Cir. 1985).
60. See Cohn v. Julien, 574 So.2d 1202 (Fla. Dist. Co. App. 1991) (finding that restricting plaintiff’s counsel to fifteen minutes for *voir dire* in complex negligence case was unreasonable); see also Marshall, *Voir Dire*, supra note 53, at 21 (“[T]he ‘principle of inclusion’ . . . is the hallmark of an effective *voir dire* . . . [I]nclusion works because it not only acquaints the prospective jurors with some of the salient facts of the case, but because by eliciting their ‘feelings,’ the attorney is learning how to pitch the presentation of the case itself. In effect, it is the mechanism by which the jurors educate the lawyer as to just how the lawyer should talk to them. For this mechanism to work, however, there is an important ingredient that should not be ignored . . . time.”).
61. 549 F.2d 990 (5th Cir. 1977).
62. Id. at 993; see also Conlin & Jensen, *What Me?*, supra note 59.
A DISCUSSION OF JURY REFORM

In Texas, attorney-conducted *voir dire* is authorized by the court's order pursuant to Texas Rule of Civil Procedure 226a. The Texas Supreme Court Advisory Committee, through the efforts of a subcommittee chaired by Paula Sweeney, has recently completed a proposed change to the Texas Rules of Civil Procedure regarding *voir dire*. The proposed rule is as follows:

(1) The parties have the right to conduct *voir dire* examination for a reasonable time which shall be set by the court.

(2) The parties may:
   (a) advise the jury panel of the claims, defenses, damages, and other relief sought in the case so that the panelists may intelligently answer questions about their qualifications, backgrounds, experiences, and attitudes; and
   (b) question the panelists sufficiently to be able to make reasonably informed peremptory challenges and challenges for cause.

(3) The examination shall not be abusive, repetitive, argumentative, or unduly invasive.

(4) A party may not attempt to commit a panelist to a particular verdict or finding, but may question a panelist generally about the panelist's ability to fairly consider any element of the claims, damages, defenses, and other relief sought in the case.

The need for a rule regarding *voir dire* in Texas arose because during the 76th Legislative Session several legislators filed bills to protect *voir dire* from unwarranted or excessive restriction by trial judges. Not surprisingly, the proposed legislation drew a great deal of attention. While

64. Paula Sweeney is a partner with the firm of Howie & Sweeney, L.L.P. and a member of the Texas Supreme Court Advisory Committee.
   Section 1. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.006 to read as follows: (a) In this section, 'side' has the same meaning as in Rule 233, Texas Rules of Civil Procedure, or its successor. (b) In any civil action to be tried before a jury, the trial court shall allow each side *voir dire*, as follows: (1) In level One cases, as defined by Rule 190.2, Texas Rules of Civil Procedure, at least one hour; (2) In Level Two cases, as defined by Rule 190.3, Texas Rules of Civil Procedure, at least two hours; and (3) In Level Three cases, as defined by Rule 190.4, Texas Rules of Civil Procedure, at least three hours. (c) The time allocated in Subsection (a) shall not include time consumed in making the preemptory challenges or challenges for cause to jurors or in making or responding to objections. (d) The Supreme Court may adopt rules consistent with the provision of this Act. To the extent that any rule conflicts with the provisions of the Act, this Act controls. (e) Section 22.004, Government Code, does not apply to this section.
67. See, e.g., Letter from Honorable Joe N. Johnson, Judge of the 170th District Court, to Bob Pemberton, Rules Attorney, Texas Supreme Court (Jan. 21, 2000) (on file with author)
the proposed rule did not come without considerable debate, the final result is a plausible rule that addresses many contemporary critiques of voir dire in Texas and beyond. The proposed rule meets the legislative concerns that started the process as it protects the litigants’ right to adequate voir dire, both in terms of time available and in specific terms of substance to be permitted. Most importantly, the proposed rule is aimed at protecting voir dire, not restricting it.

B. Specific Reform Innovations

1. Individual Voir Dire

Judge Gregory E. Mize endorses individually interviewing every member of the venire panel. Before attorney-conducted voir dire begins in Judge Mize’s court, he allows counsel to review approximately fourteen questions and offer additions or deletions. Afterwards, he asks the venire panel these questions collectively. Upon completing these questions, Judge Mize reviews the potential jurors’ responses with counsel. Historically, if any of the venire responded to any of the general questions, Judge Mize would call only those jurors in for an individual interview with counsel and the court to determine which potential jurors should be immediately excused. He explains that he “customarily had not called non-responders, i.e., the silent citizens, to the jury room for an individual interview . . . to save time, the notion being that no news on the

Id.

68. Compare Letter from Honorable Scott Brister, Judge of the 234th District Court, to Charles L. Babcock, Chairman, Texas Supreme Court Advisory Committee (Jan. 11, 2000) (on file with author) (“I would like the Committee to consider the following proposals as well: [§] 1. Adopt the voir dire rule proposed by the Jury Task Force . . . . [§] 2. Adopt the Jury Task Force proposal to repeal TEX. R. CIV. P. 223 providing for a jury shuffle, at least in counties with random panels . . . . [§] 3. Amend TEX. R. CIV. P. 233 to cut the number of peremptory strikes to three per side . . . .”) with Letter from Joseph D. Jamail, to Chief Justice Tom Phillips, Texas Supreme Court, and Justice Nathan Hecht, Texas Supreme Court 3 (March 30, 2000) (on file with author) (“The right of trial by jury must not be burdened by the imposition of onerous conditions, restrictions or regulations which diminish the right. Proposals to modify voir dire examination, diminish peremptory strikes and allow for rehabilitation of prima facie disqualified jurors do just that, however.”) and Letter from Charles A. Hood, to Justice Nathan Hecht, Texas Supreme Court 2 (May 23, 2000) (on file with author) (“I of course don’t know who are the other judges Judge Brister has talked with in his one-man crusade to end voir dire: almost every trial lawyer and judge I know believes voir dire is the most important phase of trial. How could it not be so? We all have our prejudices and preconceptions, and the idea of putting two litigants’ fates at the hands of the first 12 people spit out by a computer makes me shudder for the sake of Justice.”) and Letter from Ted B. Lyon, to Editor, TEXAS LAWYER (May 31, 2000) (on file with author) (“I thought that our jury system was supposed to give a fair trial to both sides and if it inconveniences a judge who has to sit and listen to lawyers asking questions for a couple of hours, so be it.”).

69. Judge Mize is a trial judge with the Superior Court of the District of Columbia and co-chair of the District of Columbia’s Jury Project, which produced the District of Columbia’s jury study—Juries for the Year 2000 and Beyond.

general voir dire questions was good news."

After completing the *Juries for the Year 2000 and Beyond* report on jury reform in the District of Columbia, however, Judge Mize began experimenting with individually interviewing all members of the venire. Judge Mize states that he "found the individual voir dire of all citizens to be an indispensable way of ferreting out otherwise unknown juror qualities. Minimal questioning of each prospective juror has exposed problematic UFO's, so to speak, without any significant increase in time consumption." For example, through individual interviews with "silent citizens," Judge Mize learned the following from potential jurors who were subsequently excused for cause: (1) "I'm the defendant's financee"; (2) "I was on a hung jury before—I don't know if I can follow instructions of the court for gun possession—that was the problem in my other trial"; (3) "I am afraid I will do what others tell me to do in the jury room"; (4) "I'm in high school and don't want to miss any class and affect graduation."

In thirty felony jury trials, Judge Mize found that "about sixteen people in an average size venire panel of fifty-nine citizens remained unresponsive." Utilizing individual voir dire before these trials "resulted in at least one and as many as four persons being promptly struck for cause—by consensus of the parties—in twenty-seven of the thirty trials!" In summary, Judge Mize concludes "I am convinced that even if individual questions took up significant amounts of time (which it has not for me), it would be well worth expending the effort in order to avoid juror UFO's and the consequent danger of mistrials caused by impaneling biased . . . citizens."

2. Anonymous Venire Panels

A popular theme among state jury-reform programs is to protect juror privacy during and after voir dire. In Los Angeles, Judge Philip Mautino began utilizing anonymous juries in 1994 after his wife served as a juror in a trial where a street gang member had been accused of murder.

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71. *Id.* (emphasis added).
72. *Id.*
73. *Id.* at 12-13 (providing additional responses from silent jurors that resulted in their being immediately excused from jury service).
74. *Id.* at 15.
75. *Id.*
78. Judge Philip Mautino is the presiding judge of the Los Cerritos Municipal Court.
"The gang members were just loaded into the court, and they all had their colors on," he recalled. "It was a highly intimidating situation, and it was very difficult for my wife . . . . She couldn't sleep at night. She was told not to leave the court except in pairs. She was given a special phone number in case there were problems, and it went on like this for several weeks."80

Since January 1994, "the Los Cerritos Municipal Court has experimented with a program in which jurors are identified only by number and personal identifying information is not permitted to be elicited during voir dire."81 The results of the experiment were quite conclusive. "Only those jurors who requested identification by number participated in the program. In 1994, over 2,800 jurors were called for service at the court, and only six people did not request identification by number. With a participation rate of 99.75%, this is obviously a popular program with jurors."82

The use of anonymous juries is not, however, without criticism. Such critiques include: (1) nameless juries elude accountability; (2) nameless juries may prejudice the jurors into thinking defendants in criminal cases are so dangerous that jurors' identities must be protected; and (3) nameless juries make it more difficult for attorneys conducting voir dire to discover bases for challenges for cause.83 Nevertheless, these concerns have not paralyzed the practice.

For example, Judge Mautino convinced California's Judicial Council's Blue Ribbon Commission on Jury System Improvements to investigate the use of anonymous juries. After some debate, the commission concluded "[o]n balance, it seems more likely that identifying jurors by number will decrease juror fear, increase juror honesty, and insulate jury deliberations from the corrupting influence of fear."84 Hence, the California committee approved the practice.

Moreover, in 1999 the Los Angeles Superior Court conducted a pilot study by testing five jury-reform innovations, one of which was identifying jurors only by juror identification numbers rather than by name in criminal cases.85 "Over ninety two percent of the responding jurors strongly advocated this procedure, stating over and over that it was 'essential,' and that it actually permitted them to focus on the evidence without being concerned about their privacy."86 Similarly, "[e]ach of the five criminal judges . . . felt that this innovation was a positive response to the unfortunate but inescapable modern reality that jurors are increasingly

80. Id.
82. Id.
83. See Blumberg, Anonymous Juries, supra note 76.
84. Id.
85. See Connor et al., Jury Innovation, supra note 11, at 1.
86. Id.
and consciously concerned for their privacy."\textsuperscript{87}

C. Final Remarks Regarding \textit{Voir Dire}

By continuing to improve \textit{voir dire} though reform efforts such as individually questioning each juror outside the presence of the other jurors and keeping jurors' identities confidential, not only will juror confidence and satisfaction increase, but also the overall quality of jurors selected for particular trials. Consequently, the entire trial process will be enhanced for the benefit of the parties as well as the court. As Judge Marshall contends, "[t]o do otherwise is to defeat the principle of 'fair and impartial jury that is free from any bias or prejudice'; and we do so at our peril."\textsuperscript{88}

V. TRIAL

A. Setting the Stage

The first step to understanding the jury's purpose in any trial is to comprehend the roles of the court and the jury. As Dean Leon Green\textsuperscript{89} keenly observed decades ago:

There is nothing to prevent . . . invasion of the jury's province except the self-restraint of the judges themselves. It is simply an institutional risk. Where impulses are so strong to do ultimate justice, and where the jury and what its members heard, observed and considered are so far removed from the chambers of the court, the brakes of self-restraint are severely taxed. The supreme power in a court system as in any other hierarchy inevitably increases with its exercise.\textsuperscript{90}

Here Dean Green focuses on the court's authority and how judges should exercise it. That is, Dean Green reminds us that there is a role for everyone in the courtroom—the court, litigants, advocates, and the jury—and warns these participants not to usurp, either accidentally or intentionally, one another's role.\textsuperscript{91} Most importantly, Dean Green urges jurists not to indulge the temptation to substitute their conclusions or opinions for those of juries.\textsuperscript{92}

\textsuperscript{87} Id. at 11.
\textsuperscript{88} Marshall, \textit{Voir Dire}, supra note 53, at 22.
\textsuperscript{89} Dean Leon A. Green (1888-1979); A.B., Ouachita College 1908; L.L.B., University of Texas School of Law 1915; Visiting Professor of Law, Yale Law School, 1926-1929; Dean and Professor of Law, Northwestern University School of Law, 1929-1947; Distinguished Professor of Law, University of Texas School of Law, 1947-1977.
\textsuperscript{90} Leon Green, \textit{Jury Trial and Proximate Cause}, 35 TEXAS L. REV. 357, 358 (1957).
\textsuperscript{91} See generally Dorsaneo, \textit{Judges}, supra note 12 (discussing further the relationship and role of judges and juries, and concluding "the Texas Supreme Court has otherwise modified the respective roles of judges, juries, and reviewing courts in Texas by revising its treatment of the duty and causation issues in tort cases").
[Contributory negligence] became a favorite method through which judges kept tort claims from the deliberations of the jury. The trouble with the jury (it was thought) was that pitiful cases of crippled men suing giant corpora-
The Texas Supreme Court recently reaffirmed the jury's role in *Lozano v. Lozano*.93 Chief Justice Tom Phillips rejected an application of the so-called "equal inference rule" explaining that "[i]f circumstantial evidence will support more than one reasonable inference, it is for the jury to decide which is more reasonable, subject only to review by the trial court and the court of appeals to assure that such evidence is factually sufficient."94 That is, it is for the trier of fact to determine which, if any, inferences arising from circumstantial evidence are more convincing or probable. Proponents of a more aggressive version of the no evidence standard of review have reasoned that if conflicting inferences may be drawn from the circumstantial evidence, the jury must select the most probable or convincing inference, or none at all.95

Consequently, "[t]he primary function of the trial judge in jury cases is to declare the law in the court's charge."96 Similarly, "[t]he primary function of the jury as the fact finder is to answer the question or questions prepared by the trial judge pursuant to the court's instructions based on

93. 52 S.W.3d 141 (Tex. 2001).
94. Id. at 148 (Phillips, C.J. dissenting and concurring); see also Morton Int'l v. Gillespie, 39 S.W.3d 651, 658 (Tex. App.—Texarkana Jan. 12, 2001, no pet. h.) ("If circumstantial evidence will support more than one reasonable inference, it is for the trier of fact to decide which is more reasonable, subject only to a factual sufficiency review."). But see Pennsylvania R.R. Co. v. Chamberlain, 288 U.S. 333, 340 (1933) (quoting Smith First Nat'l Bank in Westfield, 99 Mass. 605, 611-12 (1868)); ("There being several inferences deducible from the facts which appear, and equally consistent with all those facts, the plaintiff has not maintained the proposition upon which alone he would be entitled to recover. There is strictly no evidence to warrant a jury in finding that the loss was occasioned by negligence and not by theft. When the evidence tends equally to sustain either of two inconsistent propositions, neither of them can be said to have been established by legitimate proof. A verdict in favor of the party bound to maintain one of those propositions against the other is necessarily wrong."); Lavender v. Kurn, 327 U.S. 645, 653 (1946) ("It is no answer to say that the jury's verdict involved speculation and conjecture. Whenever facts are in dispute or the evidence is such that fair-minded men may draw different inferences, a measure of speculation and conjecture is required on the part of those whose duty it is to settle the dispute by choosing what seems to them to be the most reasonable inference.").
95. See *Lozano*, 52 S.W.3d at 158-59 (Hecht, J. dissenting and concurring); see also William V. Dorsaneo, III & Nancy Van Zwalenburg, *The Equal Inference Rule and Reasonable Minds*, 3 TEXAS TORTS UPDATE 47, 50 (2001) ("Under Justice Hecht's view, a jury must select the most convincing inference among the reasonable inferences that may be drawn from the circumstantial evidence. Under this view, a reviewing court or justice must, in effect, decide whether the jury came to the most reasonable conclusion among the range of reasonable choices. If not, the verdict or finding must be set aside on no evidence grounds.").
the evidence presented at trial through the application of the juror's normal reasoning processes during the collective deliberative process.\textsuperscript{97}

Likewise, Judge Marshall explains the roles of juries and judges as follows:

Their[s the jury] is not to be experts in the law or even in the facts of the case. It is for the judge to know the law and for the lawyers to explain the facts of the case to the jurors. To that extent, our task in relation to the jury is to be teachers of the law and the facts. That means that we must explain complex concepts such as 'promissory estoppel' without using terms such as 'detrimental reliance' in such a way that they cannot understand. If we do not, then the verdict is impaired before it is ever rendered.\textsuperscript{98}

Here the function of the bench and bar are explained as they relate to the jury: to educate the jury so that it may perform its task of rendering a verdict intelligibly. Thus is the jury's role.

There have been many noteworthy critics of the jury system. For example, Judge Learned Hand of the Second Circuit Court of Appeals stated that he was "by no means enamored of jury trials."\textsuperscript{99} Similarly, former United States Supreme Court Chief Justice Warren Burger "publicly doubted that jurors were up to the task of understanding complex evidence in technical cases."\textsuperscript{100} Such critics, however, merely "ask the reader to accept their opinions because of who they are rather than the scientific rigor with which they scrutinize the issues they address."\textsuperscript{101}

Studies have proven that "juries may well be as discerning as judges" and have found "no support... for the claim that jurors reach irrational decisions in cases because they do not understand expert testimony and therefore must resort to irrational, extralegal solutions to deciding cases."\textsuperscript{102}

\textsuperscript{97} Dorsaneo, Judges, supra note 12, at 1500.
\textsuperscript{98} Marshall, Voir Dire, supra note 53, at 20-21.
B. Specific Reform Innovations

Calls for jury reform during the trial stage are well-heeded. Consider the following series of questions equating a jury trial to a college or law school course:

Would you like to take a course where you did not even know the name of the course or how long it would last? One that would be taught by at least 15 to 20 different teachers where the information would not be presented in any particular order? Where you were not going to be told what is important or what to listen to until the end of the course? A course where you were not allowed to take notes, ask questions or talk to anyone about what the information might mean? . . . Imagine that, in that course, you also were not shown any course materials. When you were finally shown something that was important, you had to look at it while other teachers were teaching you about things that were also important. During the duration of the course, you were not told what was going to be on the exam until the last day of the course; and you had to come up with an unanimous agreement with the rest of your classmates on what the answer to the exam would be. No reasonable person would take that course. Yet that is our jury trial model.103

When jury service is couched in terms such as these, and the difficulties jurors face daily are described so vividly, it is clear that something must be done to aid jurors in their important task. As Chicago's Chief U.S. District Court Judge John F. Grady stated, "[a]sking juries to passively absorb all the testimony they hear 'is like asking a college student to take a course without any notes and then take a final exam by memory' . . . 'ijudges who try cases without a jury . . . don't sit there and do nothing—they take notes and ask questions.'"104

Among the most popular jury-reform measures during the trial stage are allowing jurors to: (1) take notes,105 (2) ask questions,106 and (3) listen to attorneys provide interim summaries.107


105. See, e.g., The Power of 12, supra note 13, at 83-85; American Judicature Society Guidebook, supra note 5, app. A, 26, 28; Juries for the Year 2000 and Beyond, supra note 33, at 39-41; Texas Final Report, supra note 20, at 96-108.


107. See, e.g., The Power of 12, supra note 13, at 93-96; Juries for the Year 2000 and Beyond, supra note 33, at 56-58; Texas Final Report, supra note 20, at 132-39.
1. Jurors Taking Notes

One of the most innovative jury-reform measures is to allow jurors to take notes during trial. This proposal, however, is not without criticism. For example, as the Supreme Court of Pennsylvania held as early as 1960, "[i]t is when [juror notes are used in deliberations] that the danger of overemphasizing the importance of the notes made by a juror materializes, causing other members of the jury to underestimate, if not totally to disregard, the power and value of their own recollection of the evidence."108 Moreover, the following criticisms have been made of juror note-taking:

[(1)] jurors who take notes may participate more effectively in jury deliberations than those who do not; [(2)] jurors may miss important testimony because they are busy writing down every detail; [(3)] jurors may be less attentive to witnesses' behavior and demeanor, which are important characteristics to note when assessing credibility of witnesses; [(4)] jurors may take notes of inadmissible or stricken material and accentuate irrelevant things while ignoring more substantial issues; [(5)] jurors may attach significance to their notes simply because they are in writing; [(6)] researchers have found a correlation between the best note takers and those who dominate deliberations, which is dangerous because several jurors could come to rely upon one juror's notes, which may include irrelevant or stricken material, or be lacking in significant detail; [(7)] a dishonest juror could sway the verdict by falsifying notes; [(8)] jurors who take notes may be listened to more carefully during deliberations simply because they have what purports to be a summary of the testimony and if inaccurate or selective, this can be dangerous; [(9)] notes, because they are in writing, can fall into the wrong hands and make public a juror's most private thoughts; [(10)] note taking can encourage jurors to write books and such a juror might try to influence the course of deliberations and the outcome of the case to make for a better story to tell.109

While each of these criticisms may be valid, and—when taken together—provide a strong argument against jurors taking notes, the growing consensus is in favor of allowing jury note-taking. For example, the

109. Texas Final Report, supra note 20, at 98 (citing The Honorable B. Michael Dann, Symposium: Improving Communications in the Courtroom “Learning Lessons” and “Speaking Rights”: Creating Educated and Democratic Juries. 68 IND. L.J. 1229, 1251 (1993) (citing SAUL M. KASSIN & LAWRENCE S. WRIGHTSMAN, THE AMERICAN JURY ON TRIAL: PSYCHOLOGICAL PERSPECTIVES 128 (1988) (stating that 90% of federal trial judges are thought to prohibit the practice)); LLOYD E. MOORE, THE JURY: TOOL OF KINGS, “PALLADIUM OF LIBERTY” 177 (2d ed. 1988) (concluding that note taking by jurors is too distracting, but citing no data); Prentice H. Marshall, A View From the Bench: Practical Perspectives on Juries, 1990 U. CHI. LEGAL F. 153 (doubting jurors' abilities to take notes and fearing that those who can might dominate others); R.M. Weddle, Annotation, Taking and Use of Trial Notes by Jury, 14 A.L.R. 3d 831 (1967) (citing numerous state cases that approve of juror note taking); see United States v. Rhoades, 631 F.2d 43, 45 (5th Cir. 1980) (noting that while jury note taking is a matter within the discretion of the trial court, the court emphasized the need to instruct the jury on the proper use of notes during deliberation).
Arizona Supreme Court Report on More Effective Use of Juries found that “experience has shown that the obvious benefits of the practice (aid to memory, increased attention to the trial, etc.) outweigh any supposed drawbacks.” The committee further determined that the advantages of jurors taking notes include: “[(1)] increased attention to the trial by jurors; [(2)] enhanced ability of jurors to refresh their memories from their notes, especially during deliberations; [(3)] reduction in requests, during deliberations, for court reporter readbacks of testimony; and [(4)] increased juror morale and satisfaction.”

Similarly, the Supreme Court of Texas Jury Task Force determined that:

the asserted benefits attributable to note taking by jurors substantially outweigh any detriments. The prohibition of note-taking by the jury is based on the misguided belief that note-taking distracts jurors from the testimony and that deliberation would be unfairly dominated by jurors with extensive records. However, this belief, even if true, does not outweigh the benefit of giving jurors the means to highlight key evidence and keep track of their impressions, particularly in long trials.

Hence, the Task Force endorses jurors taking notes for use during jury deliberations.

2. Jurors Asking Questions

One of the most controversial jury-reform innovations is to allow jurors to ask questions during trials. Once the court swears the jury in and provides the preliminary jury instructions, there are essentially two

110. The Power of 12, supra note 13, at 83 (emphasis added).
111. Id. at 84; see also ABA Litigation Section Report, Jury Comprehension in Complex Cases, 34-37 (1989); Leonard B. Sand & Steven Alan Reiss, A Report on Seven Experiments Conducted by District Court Judges in the Second Circuit, 60 N.Y.U.L. REV. 423, 448-49 (1985); Committee on Federal Courts, New York State Bar Association, Improving Jury Comprehension in Complex Civil Litigation, 62 ST. JOHN'S L. REV. 549, 558-60 (1988) [hereinafter Improving Jury Comprehension].
112. Texas Final Report, supra note 20, at 102 (emphasis added).
113. In Texas, the court administers two oaths and admonitory instructions to jurors. The first oath is given before voir dire examination of the venire begins. See Tex. R. Civ. P. 226.

Before the parties or their attorneys begin the examination of the jurors whose names have thus been listed, the jurors shall be sworn by the court or under its direction, as follows: 'You, and each of you, do solemnly swear that you will true answers give to all questions propounded to you concerning your qualifications as a juror, so help you God.'

Id. See, e.g., Appendix 10. The second oath is given after the jurors have been selected to serve on a jury for a particular trial. See Tex. R. Civ. P. 236.

The jury shall be sworn by the court or under its direction, in substance as follows: “You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God.”

Id. The court also administers admonitory instructions to both the jury panel and the jury. See Tex. R. Civ. P. 226a ("The court shall give such admonitory instructions to the jury
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schools of thought regarding how jurors may ask questions. Under one approach:

After both lawyers conclude their respective direct and cross-examination, the trial court asks the jurors for written questions; the jury and witness leave the courtroom while the judge determines the admissibility of the questions; the trial court reads the questions to both lawyers and allows them to object; the jury and witness are brought back into the courtroom and the judge reads the admissible questions to the witness; after the witness answers, both lawyers may ask follow-up questions limited to the subject matter of the jurors' questions.\textsuperscript{114}

Under the other approach:

The juror writes the question and hands it to the bailiff, who then passes it to the judge; the judge (most often at a break) furnishes copies of the question to the attorneys so long as in the judge's opinion, the question—or some variation of the question—is potentially meritorious (having foundation in law as well as being relevant and material to the case at hand); the juror's question now belongs to the attorneys, who are free to handle the question as they deem appropriate and in their client's best interest.\textsuperscript{115}

As Judge Merrill Hartman of the 192nd District Court in Dallas County explains, "If the lawyers wish, they may answer these questions for the jury."\textsuperscript{116} Judge Hartman finds that "questions posed by jurors bring to light elements of the case which the attorneys may have overlooked and protect clients from inappropriate assumptions."\textsuperscript{117}

Jurors asking questions is certainly not without criticism. Opponents of the practice argue that:

(1) jurors' questions will be improper rather than relevant or helpful; (2) jurors will be distracted by thinking of questions rather than more attentive to the trial; (3) questions will not inform the attorneys of the jurors' comprehension of the overall trial issues; (4) if any feedback is given, it is impermissible communication between juror and lawyer; ... (5) jurors will transcend from the role of neutral fact finder into the position of advocate; (6) jurors will improperly aid the attorneys/parties in presenting the evidence; (7) juror

headnotes
questions usually favor the plaintiff or prosecution; [(8)] questioning cannot be controlled through procedure; [(9)] jurors may blurt out questions even though they are instructed to write them down; [(10)] juror questions will be too time consuming; [(11)] jurors will be alienated from the attorney who objects to their questions in their presence; [(12)] jurors will be offended when the court determines the question should not be asked; [(13)] if objections are not made in the jury’s presence, jurors will assume the question was not asked because of an objection by the party whom the question was not favorable towards; [(14)] jurors will assume a question was not asked because the witness’ testimony is not important; [(15)] jurors will speculate unnecessarily as to the answer to their unasked questions; [(16)] juror questioning will cause the deterioration of courtroom decorum; [(17)] jurors will be forced to take positions early on and feel an inability to change their mind during deliberations; [(18)] jurors will take a proprietary interest in, or give exaggerated emphasis to, their or other jurors’ questions; [(19)] criminal trials will be especially tarnished because jurors whose questions clarify issues remaining will no longer have a reasonable doubt.\footnote{118}

But against that, proponents argue that juror questions are helpful because they clarify confusing issues. “If the intent is to make your side of the case as comprehensible and persuasive as possible . . . it can only benefit you to know what outstanding questions the jury has while you still have a chance to do something about it.”\footnote{119} “Most often, jurors’ questions are based on unclear factual issues or on evidentiary points they simply did not understand.”\footnote{120} Attorneys who have participated in trials during which jurors may ask questions have reported “finding the questions consistently helpful in letting them know what is confusing the jury, and which areas they need to zero in on in future direct and cross-examination.”\footnote{121}

Proponents of jurors asking questions also highlight the difficulty juries face in that evidence is presented through one-way communication.\footnote{122} That is, the attorneys and witnesses talk during trials, while jurors only listen. “Researchers have concluded that two-way communication, in which one person talks while the other listens and eventually responds, is

\footnote{118} Texas Final Report, supra note 20, at 110-11; see Improving Juror Comprehension, supra note 111, at 560.
\footnote{119} Mark Thompson, The Witness Will Please Answer the Jurors’ Questions, California Law Week/Cal Law, June 14, 1999 (quoting Paula Hannaford, a senior research analyst at the National Center for State Courts).
\footnote{120} Curry & Krugler, The Sound of Silence, supra note 114, at 442; see generally A. Barry Cappello & G. James Strenio, Juror Questioning: The Verdict Is In, TRIAL (June 2000).
\footnote{121} Curry & Krugler, The Sound of Silence, at 443 (citing Kelso, Final Report, supra note 81, at 1505).
essential to transferring information from one person to another.”123 Similarly, in *United States v. Callahan*,124 the Fifth Circuit held that “[t]here is nothing improper about the practice of allowing occasional questions from jurors to be asked of witnesses. If a juror is unclear as to a point in the proof, it makes good common sense to allow a question to be asked about it.”125 The Fifth Circuit further noted that “if nothing else, the [juror’s] question should alert trial counsel that a particular factual issue may need more extensive development.”126

Opponents of the practice have been quick to note, however, that allowing jurors to ask questions may well disrupt the respective roles of the attorneys and juries. That is, “there is speculation that allowing juror questions undermines the judicial system as we know it by blurring the roles of the attorneys as advocates (the active questioners) and the jury (the passive listeners).”127 Moreover, another concern opponents raise is that “jury members would abandon their roles as neutral fact finders and become advocates for one side over the other.”128 Notably, however, “[r]esearch has failed to substantiate these concerns.”129

In a study involving sixty-seven Wisconsin state court trials and one hundred and sixty state and federal court trials, all of which allowed jurors to ask questions and take notes, the following conclusions were reached regarding the use of juror questions:

[(1)] Juror questions to witnesses promote juror understanding of the facts and issues, and alleviate juror doubts about trial evidence; [(2)] Juror questions do not help get to the truth; [(3)] Juror questions do not alert trial counsel to particular issues that require further development; [(4)] Juror questions do not increase juror, attorney, or judge satisfaction with the trial or the verdict; [(5)] Jurors do not ask inappropriate questions; [(6)] Counsel are not reluctant to object to inappropriate juror questions; [(7)] If the lawyers do object, the jurors are not embarrassed or angry; [(8)] If counsel objects and the objection is sustained, the jury does not draw inappropriate inferences from the unanswered question; [(9)] Jurors allowed to ask questions do not become advocates rather

124. 588 F.2d 1078 (5th Cir. 1979), cert. denied, 444 U.S. 826 (1979).
125. Id. at 1086.
126. Id.
128. Id.
than neutrals; [(10)] jurors do not overemphasize answers to their own questions at the expense of other trial evidence; [(11)] juror questions do not have a prejudicial effect.\textsuperscript{130}

State jury-reform efforts have produced mixed results regarding whether to allow jurors to ask questions. For example, Texas does not allow questions from jurors in criminal cases and the Jury Task Force recommended that "juror questioning in civil trials likewise should be prohibited, or in the alternative, allowed in the trial court's discretion, but with the maximum amount of procedural protection."\textsuperscript{131} Conversely, however, Arizona,\textsuperscript{132} California,\textsuperscript{133} Colorado,\textsuperscript{134} and the District of Columbia\textsuperscript{135} all either endorse or are considering allowing juror questioning in civil trials.

3. Interim Summaries

Another jury-reform innovation is to allow attorneys to provide jurors with interim summaries during various stages throughout the trial. Arizona,\textsuperscript{136} the District of Columbia,\textsuperscript{137} and Texas\textsuperscript{138} endorse or are considering allowing this innovation. Notably, on March 30, 1999, Senator Dale Volker introduced a bill, which is currently pending in the Senate Committee on Codes, to the New York General Assembly that allows interim summaries by counsel at the trial court's discretion.\textsuperscript{139}

This reform innovation also draws adversaries. Opponents of the practice argue that:

\textsuperscript{[1]} if not controlled, [interim summaries] can deteriorate into argument that can be highly prejudicial because not all the evidence is in yet; [(2)] the jury may grow bored hearing from the lawyers too often; [(3) they] may waste time; [(4)] if not limited to particular times in the trial, [they] can interrupt the presentation of a witness's

\textsuperscript{133.} See id. at 28.
\textsuperscript{134.} See \textit{id.} at 28.
\textsuperscript{135.} See \textit{Juries for the Year 2000 and Beyond}, supra note 33, at 42-50.
\textsuperscript{136.} See \textit{The Power of 12}, supra note 13, at 93-96.
\textsuperscript{137.} See \textit{Juries for the Year 2000 and Beyond}, supra note 33, at 56-58.
\textsuperscript{139.} See S.B. 4366, 1999 Leg., 222d Sess. (NY 1999) ("(A) When during the course of a trial the court is of the opinion that interim summations by the parties before the close of the evidence will be helpful to the jury in determining one or more material factual issues, it may in its discretion order the parties to provide such summations; (B) In such case, the court shall direct the parties to confine their arguments to specified issues; (C) Prior to any interim summation, the court shall advise the jury that the purpose of such summation is solely to aid the jury in marshaling the evidence and organizing its evaluation thereof; and that the jury is to draw no inference that the evidence thereby summarized is in any way of greater significance than any other evidence offered at the trial."). See also \textit{Texas Final Report}, supra note 20, at 128 (discussing a prior introduction of the bill, which occurred in April 1996).
testimony and influence that witness; [and (5) they are] too repetitive.140

Another critique of interim summations is that they "allow[] lawyers to put a spin on the testimony before all the evidence is in and keep the case alive long after the witnesses have already lost it."141

Against these criticisms, however, in addition to interim summaries being endorsed by the Manual for Complex Litigation,142 proponents of the practice argue that such summaries are most useful in long and / or complex jury trials as they:

[(1)] help[ ] the jury focus on the significance of evidence; [(2)] allow[] the jury to place evidence in context while it is still fresh; [(3)] make[ ] the jury feel more informed about what is happening and understand the case better; [(4)] mirror[ ] the jurors' school experience—where 'review' was common; [(5)] help[ ] the lawyers get their thoughts together and provide[ ] the jurors with cohesion as the trial progresses; [and (6)] help[ ] refresh jurors' memories.143

The Arizona Supreme Court Committee on More Effective Use of Juries concluded that "[i]nterim summaries can enhance jury comprehension, aid juror recall of the evidence and help jurors avoid making premature judgments in the case."144 Similarly, the Maryland Court of Appeals held that "Judge Levin did not abuse his discretion in determining that the benefits of interim argument would, and did, outweigh any problems associated with it."145

The District of Columbia's Jury Project determined that interim summations "will assist jurors in a long, complex case to recall important evidence and testimony, understand how it fits into the parties' theories of the case, and separate relatively significant evidence and testimony from...

140. Texas Final Report, supra note 20, at 125.
141. Id. at 126.

Some judges have found that in a lengthy trial it can be helpful to the trier of fact for counsel from time to time to summarize the evidence that has been presented or outline forthcoming evidence. Such statements may be scheduled periodically (for example, at the start of each trial week), or counsel may be allowed to make one when they think appropriate, with each side allotted a fixed amount of time to use as it sees fit. Some judges, in patent and other scientifically complex cases, have permitted counsel to explain to the jury how the testimony of an expert will assist them in deciding an issue. Although such procedures are often described as 'interim arguments,' it may be more accurate to consider them 'supplementary opening statements' since the purpose is to aid the trier of fact in understanding and remembering the evidence and not to argue the case. The court should remind the jury of the difference between evidence and counsel's statements.

143. Texas Final Report, supra note 20, at 125.
144. The Power of 12, supra note 13, at 93 (citing ABA Litigation Section Report, Jury Comprehension in Complex Cases, 53-54, app. 10 (1989)); see Improving Jury Comprehension, supra note 111, at 557-58.
that which is less important." The District of Columbia’s Jury Project further concluded that a “judge’s decision whether to use [interim summations] should be informed by the projected length and complexity of the trial, the number of witnesses and exhibits anticipated, whether lengthy interruptions in the trial are expected due to special scheduling problems, and the views of the parties concerning the utility of the procedure.”

The Texas Jury Task Force has endorsed interim summations by counsel in lengthy civil jury trials. “The committee expresses no opinion as to whether interim summations should be permitted in criminal cases. With respect to longer civil cases, the judge should have discretion whether to allow interim summations.” The committee further recommended that:

The judge would have discretion to decide whether the summations are done at given intervals or subject to a time restriction or both. However, interim summation ordinarily would not be permitted in the middle of a witness’ testimony in order to avoid disrupting the testimony with argumentative outbursts—only before or after a witness was completely finished with his/her testimony or at the beginning of the trial day.

Hence, the Task Force endorses the use of interim summations by counsel while the court maintains discretion over the process.

Particular advantages of allowing interim summations include “enhancing juror understanding of the evidence, assisting jurors in recalling the evidence, allowing counsel to organize, clarify, emphasize, contextualize, and explain evidence, and aiding jurors in remaining focused.” The Texas study also relied on an article by Judge Hartman, who determined interim summaries “help[ ] the lawyers to get their thoughts together and provide[ ] the jurors with cohesion as the trial progresses.”

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147. *Juries for the Year 2000 and Beyond*, supra note 33, at 56.


149. *Id.* at 129-30.


C. Final Remarks Regarding Trials

Decades ago, the process of a jury reaching a verdict was captured as follows:

In jury trials:

men strive for the mastery not over each other but over the minds of
the triers, not to produce a mild and passive interest in, a tolerance
for, their views, but to induce there an active espousal of them, the
will in short to believe and, believing, to declare.

What gives such a trial its intensely dramatic character is this: that
however much we may hedge trials about, the conclusions of the tri-
ers do not come as the result of cold and careful reasoning upon
data, coolly, carefully, and in wholly nonpartisan way supplied. They
are reached always in the atmosphere of drama, often under the pres-
ure of emotional stress.\textsuperscript{152}

Perhaps by implementing jury-reform innovations such as those dis-
cussed herein—jurors taking notes, asking questions, and listening to in-
terim summaries by counsel—the jury’s laborious task will be simplified
as courts provide them with tools to facilitate their important duty. As
Judge Michael Dann of the Maricopa County Superior Court keenly de-
duced, “[w]hether or not the result is intended, a principal effect of failing
to communicate more effectively with jurors is the disempowerment of
the jury, not only in a particular case but also as an institution.”\textsuperscript{153}

VI. JURY DELIBERATIONS

A. Setting the Stage

Jury reform does not stop merely at the pre-trial and trial stages, but
continues throughout the jury deliberation stage as well. As Professor
Christopher May of the Loyola Law School in Los Angeles insightfully
reminds us, “[i]t is all too easy for those of us who are lawyers or judges
to forget what the world looked like before we entered law school . . . .
We must try to recapture our innocence if we are to make the jury’s task
a meaningful one.”\textsuperscript{154}

B. Specific Reform Innovations

Two noteworthy deliberation stage reform innovations are: (1) allowing
jurors to discuss the evidence before the court has delivered the charge to

\textsuperscript{152} 4 Roy W. McDonald, \textit{Texas Civil Practice} \$ 21.2 (1992) (emphasis added)
(quoting Joseph C. Hutcheson, Jr., \textit{Law and Fact in Insurance Cases}, 23 \textit{Texas L. Rev.} 1,
1-2 (1944)).

\textsuperscript{153} Judge B. Michael Dann, \textit{Symposium: Improving Communications in the Court-
room: “Learning Lessons” and “Speaking Rights”: Creating Educated and Democratic Ju-
ries} 68 \textit{Ind. L.J.} 1229, 1237 (Fall 1993).

\textsuperscript{154} Christopher N. May, \textit{Symposium: The Sound of the Gavel: Perspectives on Judicial
Rev.} 869, 870 (April 1995).
the jury, and (2) providing jurors their own copy of the charge before the court delivers it so they may follow along and take notes.

1. Jurors Discussing the Evidence Before Delivery of the Charge

Perhaps the most controversial jury-reform innovation is to allow civil jurors to discuss evidence before the court has delivered the jury charge to the jury. While some call this practice "a reform that seems to make sense," others call it "unorthodox."

Proponents of the practice argue that: (1) the "passive juror" model is unwarranted; (2) interim deliberations can lead to enhanced understanding of the case; (3) interim deliberations can lead to more thoughtful consideration of the case; (4) interim deliberations can reduce juror stress; and (5) interim deliberations can result in greater efficiency. Critics, however, argue that interim deliberations: (1) would cause jurors to make premature determinations about a case; (2) would jeopardize the jury's impartiality; (3) would cause extra-legal factors to cloud decision-making; and (4) are generally not favored in certain states.

In 1995, the Supreme Court of Arizona approved the use of interim deliberations by jurors to discuss evidence. The Arizona Supreme Court Committee on More Effective Use of Juries concluded that the "limitation of all discussions among trial jurors and the accompanying assumption that jurors can and do suspend all judgments about the case are unnatural, unrealistic, mistaken and unwise." The Committee further determined that jurors should be informed "that it is important to reserve final judgment until all the case has been presented and why it is important to do so."

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155. See, e.g., The Power of 12, supra note 13, at 96-99; AMERICAN JUDICATURE SOCIETY GUIDEBOOK, supra note 5, app. A; 28 Juries for the Year 2000 and Beyond, supra note 33, at 63-64; Texas Final Report, supra note 20, at 132-39.
156. See, e.g., The Power of 12, supra note 13, at 107-09; Juries for the Year 2000 and Beyond, supra note 33, at 69.
158. Hope Viner Samborn, Can We Talk?, A.B.A. J. 22 (December 1997); see generally Hans et al., The Arizona Jury Reform, supra note 13, at 349.
159. Texas Final Report, supra note 20, at 133-34.
160. Id. at 134-35.
162. The Power of 12, supra note 13, at 97.
163. Id.; see, e.g., Meggs v. Fair, 621 F.2d 460 (1st Cir. 1980)
[1] It's only natural that you're going to talk about this case at recesses and probably at lunchtime, and it's perfectly all right to talk about a witness' testimony. In other words, it might be that you might ask another juror did she say that? What was your understanding of what she said. That's perfectly all right. [2] The only thing I want to caution you on is not to come to a conclusion. Don't commit yourself one way or the other until you hear all the evidence and hear arguments and then my instructions. That's all I want to make sure that I get across to you. [3] Don't commit yourself. Don't make up your mind in any way until after the case is over.
Id. at 463.
Similarly, in a seminar conducted in December 1998 discussing jury-reform innovations in Arizona, the topic of jurors discussing the case before the court delivered the charge was addressed. Attorneys who participated in trials that utilized the innovation agreed that “the discussions clarified misinformation and redirected the jurors away from initial strong impressions by imposing the collective thinking of the entire group.”\(^{164}\) Moreover, “[j]urors across the board . . . felt that discussions helped them to understand the evidence better, that they were better able to consider all viewpoints and that it helped in resolving conflicts about the testimony.”\(^{165}\)

The Jury Task Force in Texas recently considered whether to allow jurors to discuss evidence before final deliberations and ultimately decided against the practice. “In recognition of the potential harm to the impartiality of Texas trial proceedings, the Jury Task Force recommends that the current rule of procedure [T.R.C.P. 284] barring discussions among and by jurors about a case prior to deliberations remain in place.”\(^{166}\) Hence, the Jury Task Force opposes pre-charge juror discussion.

Those in favor of allowing pre-charge deliberations, however, argue that: “[t]he traditional instruction forbidding any and all discussions about the case by jurors until deliberations commence is a corollary of two assumptions or expectations: jurors’ minds might become contaminated with outside information and jurors’ discussions of the evidence might cause them to make premature judgments about the case.”\(^{167}\) That is, proponents of the practice contend that in the jury system, jurors are merely passive fact-finders because “the system currently forces juries to sit passively and absorb, comprehend, and integrate facts, testimony, and evidence” without allowing them an opportunity to play an active role; consequently, their comprehension and learning abilities are impaired as well as their overall effectiveness.\(^{168}\)

The National Center for State Courts’ report, *Jury Trial Innovations*, determined that allowing jurors to discuss the evidence during trial resulted in five primary benefits: (1) “[j]uror discussions about the evidence can improve juror comprehension by permitting jurors to sift through and mentally organize the evidence into a coherent picture over the course of the trial”; (2) “[j]uror discussions about the evidence may improve juror recollection of evidence and testimony by emphasizing and clarifying im-

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\(^{165}\) *Id.* at 36.

\(^{166}\) *Texas Final Report*, supra note 20, at 138.


portant points during the course of the trial”; (3) `juror discussions about
the evidence may increase juror satisfaction by permitting an outlet for
jurors to express their impressions of the case before retiring for deliberations”; (4) “`jurors discussions about the evidence may promote greater
cohesion among the jurors, reducing the amount of time needed for de-
liberations”; and (5) “`jurors find it difficult to adhere to admonitions
about not discussing evidence. Permission to engage in such discussions
bridges the gap between the court’s admonitions and jurors’ activities.”

The undeniable reality is that jurors, particularly in lengthy trials, almost
invariably discuss the evidence during breaks in the trial so that a “feel”
for the case develops long before the court formally retires the jury.

2. Jurors Receiving Individual Copies of the Charge

Another jury-reform innovation is to provide jurors their own individ-
ual copies of the charge, which is not a novel concept. Proponents of
the practice argue that when jurors are provided their own copies of the
charge: (1) jurors experience an increased understanding of the instruc-
tions; (2) juror deliberations are facilitated; (3) there is a reduction in the
number of questions regarding the instructions during the deliberations;
and (4) jurors experience greater confidence in their verdict.

The Fifth Circuit, however, does not appear to endorse providing jurors
copies of the charge. “The weight of our precedent has, in fact, disap-
proved of the practice of providing written copies of the instructions to
the jury in certain circumstances.” Among the Fifth Circuit’s concerns
about providing jurors individual copies of the charge is that the practice
“is conducive to dissection of the charge by the jury and overemphasis of
isolated parts rather than consideration of the charge as a whole.”

Other commentators have noted this worry as well.

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169. Hans et al., The Arizona Jury Reform, supra note 13, at 361-62 (citing JURY TRIAL
INNOVATIONS 139 (G. Thomas Munsterman et al., eds., 1997)).
170. See, e.g., Haupt v. United States, 330 U.S. 631, 643 (1947) (finding that it did not
“warrant the inference of unfairness or irregularity in the trial” to allow “the jury to have a
typewritten copy of the court’s charge.”).
171. The Power of 12, supra note 13, at 107-08 (citing ABA Litigation Section Report,
Jury Comprehension in Complex Cases, 51-52 (1989); Improving Jury Comprehension,
supra note 111, at 564-65; Leonard B. Sand & Steven Alan Reiss, A Report on Seven Ex-
periments Conduction by District Court Judges in the Second Circuit 60 N.Y.U.L. REv. 423
(1985)); see also Juries for the Year 2000 and Beyond, supra note 33, at 69 (citing The Power of
12, supra note 13, at 107-08).
172. United States v. Oreira, 29 F.3d 185, 191 (5th Cir. 1994) (citing United States v.
Perez, 648 F.2d 219, 222 (5th Cir. Unit B 1981), cert. denied, 454 U.S. 970 (1981); United
States v. Hooper, 575 F.2d 496, 498-99 (5th Cir. 1978), cert. denied, 439 U.S. 895 (1978);
United States v. Schilleci, 545 F.2d 519, 526 (5th Cir. 1977).
173. United States v. Schilleci, 545 F.2d 519, 526 (5th Cir. 1977). This concern, how-
ever, must be targeted toward general jury charges as it is not applicable to special verdicts,
which are increasingly more common.
174. See, e.g., Janessa E. Shtabsky, Comment, Has Arizona Set the Standard for Reform
With Its New Jury Rules?, 28 ARIZ. ST. L.J. 1009, 1024 (Fall 1996) (citing Leonard B. Sand
& Steven Alan Reiss, A Report on Seven Experiments Conducted by District Court Judges
in the Second Circuit 60 N.Y.U.L. REV. 423, 453-54 (June 1985)).
While there are critics of this reform innovation, studies have shown that jurors prefer having their own individual copies of the charge. For example, "[w]hile admittedly the most time-consuming of the innovations . . . [m]any [jurors] specifically state . . . that the individual copies saved time during deliberations, provided a format for research by jurors and allowed jurors to refocus when discussion drifted into speculation."175 Another significant point determined "was the consistent experience of the courts that when individual copies were provided, there were no legal questions posed by the jurors during deliberations."176 Finally, individual copies of the charge make meaningful souvenirs for jurors, if the court permits the jurors to retain their copies. Perhaps Judge Jacqueline A. Connor of the Los Angeles Superior Court best summarized how proponents of providing jurors their own copies of the charge view the practice's benefits: "[r]ecognizing that most people learn the least by simply listening to information, it is increasingly evident that comprehension is improved substantially by permitting jurors to see what they are hearing."177

C. Final Remarks Regarding Jury Deliberations

While two of the most noteworthy deliberation-stage jury-reform innovations are allowing jurors to discuss the evidence before the court delivers the charge and providing jurors their own copies of the charge, other such reform innovations exist. For example, other deliberation-stage jury innovations include the use of clearer jury instructions178 and the use of a guide for jury deliberations.179 Recently, the American Judicature Society drafted and tested such a guide—entitled Guide for Jury Deliberations—with input from jurors, jury experts, and judges.180 The guide is divided into nine sections that walk jurors through the service process from beginning their deliberations through what to do when their jury service is complete.181

176. Id.
177. Connor, Notes on the Arizona Seminar, supra note 132, at 36.
179. See generally American Judicature Society, Behind Closed Doors: A Resource Manual to Improve Jury Deliberations (1999); see also The Power of 12, supra note 13, app. E.
181. Id. at 26-29. The nine sections are entitled: (1) Suggestions from the Judge, (2) Getting Started, (3) Selecting the Presiding Juror, (4) Getting Organized, (5) Discussing the Evidence and the Law, (6) Voting, (7) Getting Assistance from the Court, (8) The Verdict, and (9) Once Jury Duty is Over.
While it is generally accepted that the jury's duty to reach a verdict is not an easy one, "[d]espite overwhelming evidence from social science research and accepted truths about the educational process, the legal establishment remains largely resistant to proposals that would modify the present trial model to allow for more juror participation in general and improved communications with jurors in particular."\(^{182}\) As Judge Dann stated "[t]he fear of losing total control over the trial and fact-finding processes prompt too many lawyers and judges to reject even the most modest of proposals."\(^{183}\) Perhaps opponents of jury reform should remember how Francis Bacon used to instruct judges on their role during trial: "[t]hat you be a light to the jurors to open their eyes, but not a guide to lead them by the nose."\(^{184}\)

**VII. CONCLUSION**

Jury reform is an ongoing debate. Just as there will always be advocates for both sides of a trial, there will always be opponents and proponents of every jury-reform innovation. What is essential, however, is that jury-reform notions are continually brought forth and the reform debate continues.

In an effort to continue the jury-reform debate, the legal profession should look beyond itself to learn from other fields. As Walter Gibson so eloquently explained:

To the literary man, the language of the law is likely to seem abstract, cumbersome, and remote from life, though alarmingly powerful over the actions of human beings. On the other hand, the legal man, who often believes himself sympathetic to books and the arts, thinks of literary study nevertheless as irrelevant to his own profession, fuzzy in its definitions, and essentially a frivolous 'escape.' Both of these judgments are more than half wrong. The two worlds of discourse are certainly different, and should be, but they may have something to learn from one another, and an effort to open communications might actually provide some useful consequences for both parties.\(^{185}\)

Just as lawyers have much to learn from literati about clear writing, law has much to learn from other academic fields. That is, by encouraging legislators, courts, and advocates to utilize research beyond the legal


\(^{183}\) Id. at 1236-37 (citing David U. Strawn & G. Thomas Musterman, Helping Juries Handle Complex Cases, 65 JUDICATURE 444 (1982), reprinted in IN THE JURY BOX 181, 186 (Lawrence S. Wrightsman et al. eds., 1987)).


field, they will facilitate jurors’ important task of reaching verdicts in trials.

Breaking the trial into stages and analyzing specific noteworthy jury-reform innovations highlights the need jurors have for assistance in jury trials. Marc Whitehead’s compelling analogy equating jury service to an overly-confusing college or law school course emphasizes the difficulty of the task jurors are asked to perform daily. The jury-reform innovations previously discussed—protecting jurors’ identities; conducting individual voir dire; allowing jurors to take notes, ask questions, and hear interim summaries by counsel; allowing jurors to discuss the evidence before the court delivers the charge; and allowing jurors to receive individual copies of the charge—are among the most noteworthy and frequently discussed measures. Additional innovations considered by Arizona, California, Colorado, the District of Columbia, New York, and Texas are attached hereto as appendices. Further development of such reform measures by these states and others should be encouraged. Only by weighing the criticisms against the endorsements of specific jury-reform proposals will an opportunity be created to improve the current system.

In addition to those jury-reform innovations discussed herein, another measure is the Juror Bill of Rights. Such documents are intended “to aid in educating all concerned and to better assure that the rights [of jurors] are observed.” The Arizona Supreme Court Committee on More Effective Use of Juries endorsed the adoption of such a document. “The committee recommends that a ‘Jurors’ Bill of Rights’ be promulgated by the Supreme Court, one that lists certain fundamental rights and legitimate expectations of jurors that judges, attorneys and court staff are expected to honor.” Similarly, the Foundation of the American Board of Trial Advocates (ABOTA) has also developed a Juror Bill of Rights. While acknowledging such documents, the Texas Jury Task Force declined to adopt such a Bill of Rights. “The committee decided not to draft a juror bill of rights. Such an instrument would raise expectations more than it would produce results. The cause of reform would be better served by identifying problems and solving them, by changing practices and policies, than by making pronouncements about rights.”

Alexis de Tocqueville observed, “I do not know whether the jury is useful to those who have lawsuits, but I am certain it is highly beneficial to those who judge them; and I look upon it as one of the most efficacious
means for the education of the people which society can employ.” 192 By
continuing jury-reform efforts, courts will improve the advocacy system
for the benefit of all involved—litigants, advocates, judges, and juries
alike. To this end, as a trial judge Texas Supreme Court Justice Nathan L.
Hecht “was fond of telling prospective jurors that they were privileged to
participate in a judicial system that was not only the finest on earth, but
the finest in the history of the earth.” 193

192. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 285 (Phillips Bradley trans.,
Alfred A. Knopf, Inc. 1945) (1994); see AKHID REED AMAN & ALAN HIRSCH, FOR THE
PEOPLE: WHAT THE CONSTITUTION REALLY SAYS ABOUT YOUR RIGHTS 58 (1998)
In all the above-mentioned ways—preventing tyranny, playing a role in the
formation of public policy, bringing citizens together in a vital public forum

to exercise and improve their capacity for self-government—the jury serves
an inherently populist and republican function far transcending the role of
meting out justice to the parties in a case.

193. Id.; ANATOMY OF A MURDER (Columbia 1959).

Twelve people go off into a room. Twelve different minds, twelve sets of
eyes, ears, shapes, and sizes. And these twelve people are asked to judge
another human being as different from them as they are from each other.
And in their judgment they must become of one mind—unanimous. It’s one
of the miracles of man’s disorganized soul that they can do it. And in most
instances do it right well. God bless juries.

Id.

Southern Methodist University School of Law, SMU School of Law Honors Distin-
guished Alumni, The Brief, Fall 2000 at 10. But see Chief Justice Phil Hardberger, Juries
Under Siege, 30 ST. MARY'S L.J. 1, 9-10 (1998) (“Justice Hecht has made no secret of his
belief that a jury should not be permitted to consider certain issues.”). Id. at 9.
APPENDIX 1:

Sample Jury Summons

JUROR INFORMATION

STATE OF TEXAS
COUNTY OF DALLAS

Jury Summons

Please see exemptions and disqualifications on the back of this form. (Fieno de leer list
exemptions y descalificaciones en el reverso de este documento.)

Parking information and map are on back.

03/28/2001

CIRCUIT CLERK

2001

1-1

TUN

JUROR INFORMATION

CERTIFICATE NO. 0206637

JUROR NO. 464

OL OR ID NO. 08462666

YOU ARE ASSIGNED STANDBY JURY DUTY. ON THE DATE GIVEN BELOW BETWEEN
11:00 AM AND 12:30 PM CALL 214/653-5879. LISTEN TO THE COMPLETE MESSAGE FOR
INSTRUCTIONS. THE MESSAGE WILL TELL YOU IF YOU NEED TO REPORT AT 1:00 PM ON THE
SAME DAY. CALL ONLY ON THE DATE BELOW.

TIME:

DATE: 03/28/2001
PLACE: CENTRAL JURY ROOM
FRANK CROWLEY COURTS BUILDING
133 N. INDUSTRIAL BLVD., LB25
DALLAS TX 75207-4313

BY ORDER OF THE HONORABLE
JANICE WARDER PRESIDING JUDGE

WILLFUL DISOBEDIENCE OF YOUR SUMMONS IS SUBJECT TO CONTEMPT ACTION PUNISHABLE
BY A FINE OF $100 TO $1000. TEXAS GOVERNMENT CODE SEC. 62.0141.
(Business reasons are not lawful excuses.)

214/653-3595

FREE BUSINESS RIDE COUPON
(Daylight Only)

03/28/2001

Attach coupon and present to
bus operator upon boarding or
to train fare inspector upon
request. Good for one round trip,
including transfer to downtown
Dallas. Valid on all DART
scheduled bus and DART (Dart
local) and presto) and on
Paratransit service between the
Hours of 6:00 a.m. and 9:00
p.m. on weekdays only. Call
(214) 978-1111 for schedule
and route information.

Valid without Dallas County seal.

FREE BUSINESS RIDE COUPON
(Daylight Only)

03/28/2001

Attach coupon and present to
bus operator upon boarding or
to train fare inspector upon
request. Good for one round trip,
including transfer to downtown
Dallas. Valid on all DART
scheduled bus and DART (Dart
local) and presto) and on
Paratransit service between the
Hours of 6:00 a.m. and 9:00
p.m. on weekdays only. Call
(214) 978-1111 for schedule
and route information.

Valid without Dallas County seal.

Mailing Address:

JURY SERVICES
FRANK CROWLEY COURTS BLDG.
133 N. INDUSTRIAL BLVD., LB25
DALLAS TX 75207-4313

If you have any questions or need accommodations regarding jury

duty, information is available using your "push button phone. If you
do not have a push button phone, special instructions are given.

JUROR INFORMATION FORM

Before you report for jury duty, fill out this form in black ink and separate at the perforation (above).

Turn this form in when you arrive at the Central Jury Room.

NAME ________________________________ DATE 03/28/2001

CERT
NO. 0206637
OL
NO. 08462666
JUROR
NO. 464

TIME

SIGNATURE ________________________________

If you involve yourself with a juvenile court
COURT
NUMBER
DATE OF BIRTH
SEX
AGE

You can become a juror in a
CIVIL, CRIMINAL, OR
MAGISTRATE COURT

Have you ever been party to a lawsuit?

If yes, enter name of party and ter in parenthesis.

Have you ever been convicted of a crime?

If yes, enter name of offense and date of conviction.

If you are under 18 years old, please sign below.

If you are over 18 years old, please sign below.

Signature ________________________________

Please sign and check the following box if you desire to
donate your jury fee to the juvenile department and holiday
gifts for children in foster care.

YES ☐

NO ☐

(120x300)

(120x300)
ATTIRE: PLEASE DRESS APPROPRIATELY. NO SHORTS OR TANK TOPS.
A PRIVATE EMPLOYER MAY NOT TERMINATE THE EMPLOYMENT OF A
PERMANENT EMPLOYEE BECAUSE THE EMPLOYEE SERVES AS A JUROR
CIVIL PRACTICE AND REMEDIES CODE 122.001
APPENDIX 2:

Arizona Jury-Reform Recommendations

A. PUBLIC AWARENESS
   1. Undertake Programs of Public Education About Juries and Jury Service

B. SUMMONING JURORS
   2. Improve Current Juror Source Lists
   3. Use Additional Juror Source Lists
   4. Improve Jury Diversity Through “Random Stratified Selection”
   5. Study Summoning Jurors on Regional Basis
   6. Striking of Grossly Unrepresentative Jury Panels
   7. Obtain More Demographic Information from Jurors
   8. Supply More Information To Persons Summoned
  10. Deal with Failures To Respond To Jury Summons
  11. Handling and Monitoring Requests for Deferral of Service and for Excusal
  12. Update and Expand Initial Courthouse Orientation
  13. Improve Rate of Utilization of Potential Jurors
  14. Show Appreciation To Potential Jurors Not Needed for Juries
  15. The Needs Of Jurors Who Are Disabled Should Be Met
  16. Reform and Improve Juror Pay and Mileage
  17. Juror-Supplied Locating Information Should Remain Confidential During Jury Selection and Thereafter

C. JURY SELECTION
   18. Encourage Mini-Opening Statements Before Voir Dire
   19. Allow Judges To Choose Between the “Struck” and the “Strike and Replace” Methods of Jury Selection
   20. Assure Lawyers the Right To Voir Dire in Criminal Cases
   22. Protect Juror Privacy During Voir Dire
   23. Continue Peremptory Strikes in Present Form and Number
   24. Vigorously Enforce Batson Safeguards

D. TRIAL
   25. Set and Enforce Time Limits for Trials
   26. Guidelines for Severance in Complex Cases Are Needed
   27. Jury Trial Time Should Be Maximized
   28. Trial Interruptions Should Be Minimized
   29. Juror Notebooks Should Be Provided in Some Cases
   30. Expand Use of Preliminary Jury Instructions
   31. Ensure Notetaking By Jurors in Civil Cases
   32. Improve Management of Trial Exhibits

33. Deposition Summaries Should Be Used
34. Allow Jurors To Ask Questions
35. Educate Attorneys and Judges Concerning Interim Summaries During Trial
36. Use Modern Information Technology More Often in Trials
37. Allow Jurors To Discuss the Evidence Among Themselves During the Trial
38. Use Only Plain English in Trials, Especially in Legal Instructions
39. Do Not Keep Jurors Waiting While Instructions Are Settled
40. Make Jury Instructions Understandable and Case-Specific and Give Guidance Regarding Deliberations
41. Do Not Instruct Juries on Jury Nullification; However, the Rules of Evidence Ought To Be Expanded in Recognition of The Jury's Power To Nullify
42. Give Jurors Copies of the Jury Instructions
43. Read the Final Instructions Before Closing Arguments of Counsel, Not After
44. Alternate Jurors Should Not Be Released From Service in Criminal Cases Until A Verdict Is Announced or the Jury Is Discharged
45. Allow All Jurors Remaining At The End of A Civil Trial To Deliberate and Vote

E. JURY DELIBERATIONS
46. The Trial Judge Should Decide on A Schedule for Jury Deliberations and Inform Jurors in Advance
47. Encourage Juror Questions About the Final Instructions
48. Fully Answer Deliberating Jurors' Questions and Meet Their Requests
49. Offer the Assistance of the Judge and Counsel To Deliberating Jurors That Report An Impasse
50. When Juries Reported To Be At Impasse Are Returned for Further Deliberations They Should Not Be Instructed Any Further

F. POST-VERDICT STAGE
51. Become Proactive in Detecting and Treating Juror Stress
52. Assist Jurors in Coping With Fears of Contact Or Retaliation
53. Solicit Jurors' Reactions To Their Courthouse Experience
54. Advise Jurors Concerning Post-Verdict Conversations With the Judge, Attorneys and the Media

G. JURORS' BILL OF RIGHTS
55. Promulgate A Jurors' Bill of Rights
APPENDIX 3:

California Jury-Reform Recommendations

1. Create A Task Force To Implement Recommendations
2. Use the National Change of Address System To Update Jury Source Lists
3. Review the Cost, Feasibility and Efficacy of a Statewide Master Jury List
4. Provide for Mandatory Procedures for Enforcing Juror Summons, Including Placing A Hold on Driver’s License Renewals
5. Enact A Statute Making Jury Service Mandatory
6. Develop A Standard Jury Summons With Consumer Appeal
7. Develop A One-Step Summons Process
8. Promote the Importance of Jury Service
9. Adopt A Rule of Court To Require Jury Commissioners To Apply The Standards Regarding Hardship Excuses As Set Forth in Section 4.5 of the Standards of Judicial Administration
10. Enact A Statute Making Jury Service Mandatory
11. Adopt A Rule of Court for Mandatory Judicial, Court and Other Staff Team Training On Juror Treatment
12. Create A Juror Handbook To Explain Their Rights and Responsibilities
13. Require Each Court To Create Some Reasonable Mechanism for Responding To Juror Complaints
14. Offer Free Public Transportation for Jurors
15. Provide Free Parking for Jurors
16. Bring Juror Facilities Up To Minimum National Standards
17. Ensure Juror Security Within Courthouse
18. Identify Juror During Juror Selection By Number Rather Than By Name; and Do Not Elicit Juror-Identifying Information During the Voir Dire
19. Enact A Statute Giving Jurors the Right To Respond To Personal Questions During the Voir Dire in the Judges’ Chambers
20. Ensure That Personal Juror-Identifying Information Is Safeguarded
21. Adopt One Day/One Trial
22. Implement “On-Call” Telephone Stand-By System
23. Presiding Judge Should Discuss the Topic of Case Predictability and Late Settlements With Participants in the Criminal Justice System
24. Excuse Eligible Persons From Service for A Minimum of 12 Months Following Jury Service
25. Increase Juror Fees
26. Require All Employers To Continue Paying Usual Compensation for First Three Days of Jury Service
27. Develop Tax Credits for Employers Continuing To Pay Employees During Jury Service

28. Permit Employees To Make A Claim for Employment Disability During Jury Service, Except for the First Day
29. Systematically Monitor and Study Critical Components of the Jury System
30. Produce Educational Materials and Programs On the Conduct of Voir Dire
31. Include A List of Factors Judges Should Use When Making the “Good Cause” Determination In the Standards of Judicial Administration
32. Do Not Change the Rules of Court Which Give the Trial Court Discretion To Determine the Appropriate Method of Supplementing the Court's Voir Dire
33. Use Statewide Juror Questionnaires
34. Grant A Reasonable and Equal Number of Peremptory Challenges To Each Side; Trial Court Should Be Able To Increase the Number For Good Cause
35. Provide Each Side With 12 Peremptory Challenges In Cases Where the Offense Is Punishable With Death Or With Life Imprisonment, 6 Peremptories In All Other Felonies, and 3 In All Misdemeanors
36. Provide Proportional Reduction In Number of Peremptory Challenges in Multi-Defendant Cases
37. Provide Each Party in A 2-Party Suit With 3 Peremptory Challenges and 6 In All Other Civil Actions
38. In Capital Cases and Felonies, Provide For 12 Person Juries
39. Amend Constitution To Provide For A Jury of 8 Persons In All Misdemeanor Cases or Lessor Number Agreed On By the Parties
40. Eliminate Juries From Misdemeanor Cases Without Possible Jail Sentences
41. Require Juries of 12 Persons or Lesser In Civil Cases Within the Jurisdiction of the Superior Court, If Agreed On By the Parties
42. Require Juries of 8 Persons or A Lesser Number in Civil Cases in the Jurisdiction of the Municipal Court, If Agreed Upon By Parties
43. Conduct A Study On Various Issues Surrounding Hung Juries
44. Require Unanimous Verdicts for Criminal Cases in Which the Punishment Is Death or Life Imprisonment
45. Require Unanimous Verdicts if Jury Size in Misdemeanor Case Is Reduced From 12 To 8
46. Reemphasize the Importance of Arriving At A Verdict After Jury Reports It Is Deadlocked
47. Accept 11-1 Verdicts After the Jury Deliberated for A Reasonable Period of Time, Not Less Than 6 hours in All Felonies, Except Where The Punishment Is Death Or Life in Imprisonment, and in All Misdemeanors Where the Jury Consists of 12 Persons
48. Produce A Statewide Juror Orientation Video
49. Inform Jurors of Their Right To Take Notes
50. Permit Jurors To Submit Written Questions To The Court
51. Encourage Judges To Experiment With Scheduled Predeliberation Discussions in Long Civil Trials
52. Oppose Legislation That Would Permit Or Require Trial Judges To Inform the Jury of Its Power of Nullification
53. Allow Pre-Instruction To the Jury On the Substantive Law
54. Provide A Glossary of Common Terms To Give To Jury Before Trial In Highly Complex Cases
55. Appoint A Task Force On Jury Instructions To Rewrite Jury Instructions
56. Judges Suggest Specific Procedures For Conducting Deliberations In Final Instructions
57. Give Trial Judge Discretion In Civil Cases To Permit Alternate Jurors To Observe, But Not Participate In Deliberations
58. Manage Trial Proceedings With Particular Emphasis On the Needs of the Jury
APPENDIX 4: Colorado Jury-Reform Recommendations

1. Improve Education Efforts
2. Use Jurors' Time Efficiently
3. Improve and Standardize the Jury Examination Process
4. Limit Public Access To "Juror-Supplied Locating Information"
5. Encourage Standardization of Procedures for Peremptory Challenges
6. Use Sequestration In Extraordinary Cases Only
7. Encourage Trial Judges To Provide A Process For Debriefing Jurors After Their Service Is Completed
8. Expand Sources of Names For Master Juror List
9. Develop Procedure To Insure Exemption From Jury Pool After Service
10. Establish Effective Procedures for Dealing With People Who Fail To Appear For Jury Service
11. Eliminate Occupation As A Lawyer As A Ground For Challenge for Cause in Criminal Trials
12. Use Plain And Clear Language
13. Update and Improve Initial Courthouse Orientation
14. Update and Improve In-Court Orientation
15. Permit Jurors To Submit Written Questions in Civil Cases and Upon Agreement, Or in Pilot Projects, in Criminal Cases
16. Encourage Use of Juror Notebooks
17. Instruct Jurors That Note Taking Is Permitted
18. Consider Interim Summaries During Trial
19. Encourage Use of Technology
20. Experiment With Allowing Juror Pre-Deliberation Discussions
21. Allow Use of Deposition Summaries
22. Allow Portions of Exhibits To Be Highlighted
23. Allow Portions of Exhibits To Be Used
24. Develop Standardized Instruction To Inform the Jury About Asking Questions During Deliberations
25. Add Lay Members To Civil and Criminal Pattern Jury Instruction Committees
26. Designate A Permanent Standing Committee To Monitor, Refine, and Continue Improvements To the Jury System

APPENDIX 5:

District of Columbia Jury-Reform Recommendations

EDUCATE THE PUBLIC ABOUT JURY SERVICE

1. Focus On Positive Means To Encourage Citizen Participation
2. Provide Orientation Information With Initial Summons
3. Expand Use of Orientation Videos
4. Establish A Jury Pride Task Force

BROADEN THE SCOPE OF THE JURY POOL

5. Improve Juror Source List Management Practices
7. Allow Citizens To Volunteer For Inclusion On the Juror Source List
8. Increase Level of Cooperation Between U.S. District Court For D.C. and D.C. Superior Court
9. Exempt Citizens Who Have Serve Within Two Years
10. Increase Juror Compensation in D.C. Superior Court
11. Reduce Term of Jury Service in U.S. District Court For D.C.

ACCOMMODATE JURORS IN THE COURTHOUSE

12. Provide Jurors With Accessible and Comfortable Facilities
13. Minimize Juror Pre-Trial Waiting Time
14. Insulate Jurors From Contact With Witnesses Or Parties
15. Provide Meaningful Expressions of Gratitude To All Jurors
16. Regularly Seek and Respond To Juror Feedback

IMPROVE JURY SELECTION PROCEDURES

17. Excuse Jurors Unable To Serve On Any Trial After Initial Voir Dire
18. Protect the Privacy of Jurors During Jury Selection
19. Improve the Fairness, Efficiency and Utility of the Voir Dire Process
   a. Use A Standard Juror Questionnaire in All Cases
   b. Expand Opportunity For Individual Voir Dire of Each Juror
   c. Expand Legal Standard For Cause Strikes
   d. Eliminate Or Drastically Reduce Peremptory Strikes

PROVIDE JURORS WITH TOOLS TO MAKE BETTER DECISIONS

20. Allow Jurors To Take Notes During Trials
21. Allow Jurors To Submit Written Questions for Witnesses
22. Minimize Juror Waiting Time During Trial
23. Improve Management of Trial Exhibits
24. Provide Jurors With Exhibit Notebooks in Extended Trials
25. Permit Counsel To Make Interim Summations in Extended Trials
26. Give Final Substantive Jury Instructions Before Closing Arguments
27. Use Case-Specific Instructions and Use Preliminary Interim Instructions

197. Juries for the Year 2000 and Beyond, supra note 33, at i-ii.
28. Consider In April 1998 Whether To Allow Pre-Deliberation Discus-
sions Among Jurors

ENHANCE THE EFFECTIVENESS OF JURY DELIBERATIONS

29. Include Guidance On the Deliberation Process in Final Instructions
30. Provide Written Jury Instructions For the Jury's Use in Deliberations
31. Provide Assistance To Deliberating Juries Who Report To Be At An
    Impasse
32. Personally and Informally Thank Jurors After A Trial and Assist
    Them In Dealing With Stress
APPENDIX 6:

New York Jury-Reform Recommendations

1. Add Names To the Master Jury Source List From Social Services and Unemployment Insurance
2. Update Master Source List Annually Using Data From U.S. Postal Service
3. Endorse Senate Bill To Require Taxpayers To Identify All Adult Residents in Their Households On Their Income Tax Forms
4. Abolish the Practice of Summoning Jurors From Permanent Qualified Lists
5. Monitor Questionnaires Returned By Post Office To See if Disproportionate Number Are From Particular Zip Codes and if So Use Weighted Random Sampling To Draw Names For Receipt of Questionnaires
6. Continue Efforts To Recruit Jurors and Enlist Aid of Local Bar Associations To Help With Education and Outreach
7. Convert To the Shortest Possible Term of Service—One Day/One Trial Being the Goal and One Week or One Trial Being the Maximum
8. Establish Eligibility Criteria Including Persons Who Have Not Served As A Juror In the Past Four Years
9. Eliminate All Occupational Disqualifications
10. Eliminate All Exemptions From Jury Service
11. Provide For A Uniform and Strictly Enforced State-Wide Policy On Deferral; One Deferral As of Right To A Date For Service Specified By the Juror
12. Provide That All County Jury Boards Consist of the Presiding Justice of the Appellate Division, the Administrative Judge of the Judicial District and An Elected Supreme Or County Court Judge
13. Convert To A One-Step Summoning and Qualification System
14. Convert To Computerized Qualification Questionnaire and Remit the Power To Design Their Contents To the Chief Administrator of the Courts and the County Jury Commissioner
15. Simplify the Enforcement Procedures for Nonresponse To Jury Questionnaires and Summons
16. Place Criminal Voir Dires On the Record
17. Conduct A Pilot Study In Which Some Trial Judges Supervise Voir Dire In Civil Cases They Hear
18. Conduct An Experimental Program To See if Supervision By Judicial Hearing Officer Of Voir Dires Conducted Under the Uniform Rules Is Necessary Or Desirable
19. Adopt Uniform Rules For Civil Voir Dire That: Mandate the Use Of Written Jury Questionnaires To Cover Basic Background Information and To Pre-Screen Jurors For Cause; Use the “Struck” Jury

Method; Impose Time Limits; Limit Examination To Relevant Material; and Adopt the "Non-Designated Alternate" System

20. Protect Juror Privacy During and After the Voir Dire
21. Reduce the Number of Peremptory Challenges in Criminal Cases
22. Reduce the Number of Peremptory Challenges in Civil Cases
23. Increase the Number of Peremptory Challenges in Appropriate Cases
24. Encourage Civil Settlements Prior To Voir Dires
25. Promulgate A Rule That Limits the Number of Civil Juries That Can Be Selected and Held for Trial
26. Expand the Use Of The Telephone Call-In Systems So That Jurors Who Will Not Be Needed for Voir Dire Do Not Have To Report On A Particular Day
27. Provide For Earlier Disclosure By the District Attorney of Rosario Materials

28. Adopt Practice That No Juror Should Be Sent Out for A Second Voir Dire Until All Jurors Have Been Sent Out for A First Voir Dire
29. Improve Dilapidated Courtroom and Jury Facilities
30. Bring Courthouses Into Compliance With New York State Handicapped Access Requirements
31. Increase Funds For Court Maintenance
32. Support Legislation That Would Give the State Responsibility For Courthouse Cleaning, Maintenance and Repairs
33. Encourage Creative Subcontracting
34. Increase Daily Juror Fee To $40 and Abolish Separate Reimbursement For Transportation Costs
35. Employers With Over Ten Employees Should Pay Juror-Employee's Fee for the First Three Days
36. Guarantee Prompt Payment of Juror Fees
37. Create Ombudsman To Administer and Enforce Law Prohibiting Employers From Penalizing Employees Who Miss Work Because of Jury Service
38. Encourage Construction and Use of Courthouse Child Care Facilities
39. Ensure That Jury Summonses Contain All Necessary Information Including Directions To Courts and Parking, and Explanation of Compensation
40. Use Cable TV/Local Access Channels To Provide Juror Orientation
41. Revise Orientation Video and Require Its Use in All Courthouses
42. Revise Pattern Jury Instructions
43. Implement Mandatory Education Programs On Importance of Jury Service

199. Rosario materials refer to the prosecution's last minute production of prior statements of prosecution witnesses which under current law can be disclosed after the jury is sworn, but before the prosecutor's opening statement. Under current practices, this can result in unnecessary delay so that the defense can digest the materials.
44. Increase Public Service Announcements, Seminars, and Employer Education Programs

45. Continue To Give Judges Discretion To Allow Juror Note Taking

46. Give Judges The Discretion To Supply A Copy of the Charge To Jurors During Deliberations

47. Abolish Mandatory Sequestration

48. Retain A Budget Line Item For Sequestration So That Judges Will Have Funds Available Where Appropriate

49. Use Money Saved By Abolishing Mandatory Sequestration To Increase Juror Fees

50. Judges, Attorneys, and Court Personnel Should Treat Jurors With Courtesy and Respect

51. Jury Commissioners of Jurors and Court Personnel Shall Regularly Examine Their Practices To Ensure That Routine Matters Are Carried Out in Ways That Maximize the Convenience of Jurors
APPENDIX 7(a):

Texas Jury-Reform Recommendations200

1. Allow A Jury Questionnaire for Voir Dire
2. Create A Uniform Jury Summons With Questionnaire
3. No Reduction of Peremptory Challenges ("Strikes")
4. Allow Leading Questions During Voir Dire Examination
5. Jury Voir Dire Examination: No "Committing" Or "Contracting With" Jurors
6. Allow Rehabilitation of Jury Panelists
7. Eliminate the Jury Shuffle—Except When Panelists Have Been Reassigned After Participating in Jury Selection in Another Case
8. Adopt Time Limits On Trials
9. No Interim Deliberations By Jurors
10. Trial Courts Have Discretion To Allow Jury Note Taking
11. Trial Courts Have Discretion To Allow Interim Arguments By Counsel In Civil Cases
12. Prohibition of Or Grant Trial Courts the Discretion To Permit the Questioning of Witnesses By Jurors In Civil Cases
13. No Reduction in Jury Size
14. Continue To Require Unanimous Verdicts in Criminal Trials
15. That Non-Unanimous Verdicts Be Allowed in the Punishment Phase of Criminal Cases, Only After Both An Allen Charge and Court's Instruction That Jury May Accept Verdict Despite One Dissenting Vote
16. Request the State Legislature To Conduct A Study Regarding Jury Pool Sources Focusing On the Voter Registration List and the Drivers License List
17. Revise the Juror Qualifications Such That All Jurors Must Be Able To Read, Speak, and Understand English as Well as Revise the Juror Exemptions To Raise the Exemption Age From 65 To 70 and Permit Judges To Excuse Jurors For "Undue Hardship"
18. Implement One Day One Trial for Counties With A Population of 100,000 and Exempt Jurors Who Have Been Called and Qualified As Jurors Within the Previous Two Years
19. Revise Jury Management Focusing On: (a) Respecting Juror Privacy; (b) Minimizing Juror Waiting Time; (c) Providing Comfortable Juror Waiting Areas; (d) Using Fresh Jurors Before Reusing Jurors; (e) Presenting Juror Information Programs On Cable Television; (f) Sending Second Juror Summonses When the First Are Returned; (g) Encouraging Jurors To Recommend Improvements To the Jury System
20. Implement Juror Orientation
21. Suspend the First Day of Juror Compensation

22. Increase Juror Compensation To $40 Per Day After the First Day of Service
23. Tax All Jury Payments As Costs
24. Increase Jury Fees To $200 for County Court Trials and $400 for District Court Trials
25. Allow Counties To Offer Incentives To Jurors Who Appear At the First Call For Venirepersons Such As Free Movie Passes, Reduced Airline Fare, Food Certificates, and Possibly Lottery Tickets
26. Establish A Jury Commission To Review Jury Fees, Jury Compensation, and Rules Regarding Juries Every Two Years
APPENDIX 7(b):

Texas Jury-Reform Recommendations for Disabled Jurors\textsuperscript{201}

1. Reasonable Accommodations Should Be Made For Jurors With Disabilities In Courthouse Facilities and Procedures
2. Judges Should Ensure That Attorneys Do Not Exclude Otherwise Qualified Jurors Because of Disability
3. Educational Programs for Judges and Court Personnel Should Include Information On Legal Requirements and Creative Means of Accommodating Jurors With Disabilities

\textsuperscript{201} Texas Final Report, supra note 20, at 37-38.
APPENDIX 8:

A Proposed Bill of Rights202 For Arizona Jurors

JUDGES, ATTORNEYS AND COURT STAFF SHALL MAKE EVERY EFFORT TO ASSURE THAT ARIZONA JURORS ARE:

1. Treated with courtesy and respect and with regard for their privacy.
2. Randomly selected for jury service, free from discrimination on the basis of race, ethnicity, gender, age, religion, economic status or physical disability.
3. Provided with comfortable and convenient facilities, with special attention to the needs of jurors with physical disabilities.
4. Informed of trial schedules that are then kept.
5. Informed of the trial process and of the applicable law in plain and clear language.
6. Able to take notes during trial and to ask questions of witnesses or the judge and to have them answered as permitted by law.
7. Told of the circumstances under which they may discuss the evidence during the trial among themselves in the jury room, while all are present, as long as they keep an open mind on guilt or innocence or who should win.
8. Entitled to have questions and requests that arise or are made during deliberations as fully answered and met as allowed by law.
9. Offered appropriate assistance from the court when they experience serious anxieties or stress, or any trauma, as a result of jury service.
10. Able to express concerns, complaints and recommendations to courthouse authorities.
11. Fairly compensated for jury service.

_202_. The Power of 12, supra note 13, at 9.
A JUROR SHALL HAVE THE RIGHT:

- To privacy, to be free from harassment and to choose whether or not to discuss the verdict.
- To be treated courteously and with the respect due an officer of the court and to serve in a jury room with attention to physical comfort and convenience.
- To have the trial process explained.
- To safe passage to and from the courthouse.
- To proper compensation for jury service.
- To have input into scheduling and have schedules kept when possible.
- To be randomly selected for jury service and not excluded on the basis of race, sex, religion, physical disability, or country of origin.
- To be instructed on the law in plain language.
- To have judges and lawyers be sensitive to and supportive of the needs of jurors resulting from jury service.
- To express concerns, complaints and recommendations to courthouse authorities.
- To be free from exposure to billboards erected in proximity to the courthouse, placed by special interest groups or actual parties to a lawsuit who are attempting to influence their verdict.

Adopted 17 October 1992
Foundation of the American Board of Trial Advocates (ABOTA)
THE COURT: Ladies and gentlemen, would you please stand and raise your right hands.

You and each of you do solemnly swear or affirm that you will true answers give to all questions propounded to you concerning your qualifications as a juror, whether in this room or in the court to which you may be sent, so help you God?

(Panel indicates the affirmative.)

THE COURT: Thank you. Please be seated.

Good morning, ladies and gentlemen. On behalf of the people of this state and of this county whom you are here to represent and serve, I want to welcome you to the Central Jury Room and express our appreciation for your acceptance of the invitation that you received in the mail to participate in your government.

Indeed, it is literally true that without your acceptance of that invitation, this branch of your government could not function at all, and the reason is very simple:

You will recall that in 1791, the Bill of Rights was promulgated, and among them is the right to trial by jury. Our founding fathers considered it so important that of all of those rights, it is the only one mentioned twice, once in the Sixth Amendment where it pertains to criminal proceedings and then again in the Seventh Amendment where it pertains to civil proceedings in which the amount in controversy exceeds $20.

From that, you can, and correctly, conclude that they perceived this to be the only opportunity that we as private citizens acting in our private capacity were going to have, not merely to participate in our government, but to cause it to do exactly what we wanted it to do.

Or put another way, it is the only chance that we have to protect for ourselves and for all of our fellow citizens all of the other rights that we enjoy as Americans, and that is the long and the short of what you are doing here today.

The first thing we need to do is make sure you are indeed at the right place and the right time. If you would please take out that portion of the jury summons that remains with you, and let's have a look at it.

If what you have looks approximately like this, eight-and-a-half by eleven, letter-size, with a seal kind of off in the corner printed by a computer and not signed by a human being, you are 15-and-a-half blocks and 43 minutes away from where you should have gone this morning.

On the other hand, if what you have is sort of horizontal and relatively square and has a very impressive federal-looking eagle on it, you are only two-and-a-half blocks from where you need to be in about 17 minutes.
This by way of telling you that there are, in fact, two other court systems in simultaneous operation in downtown Dallas, each of which utilizes jurors. We have a very simple arrangement. We don’t keep theirs, and they don’t keep ours.

If you should have one of these other types of summonses, please come forward immediately, let us make a notation that you, in fact, appeared down here, and we will be glad to send you on your way.

Now, don’t be embarrassed by this, don’t be hesitant. It’s a lovely morning outside. And after all, as you walk up the street towards your other destination, you are unquestionably going to see other people looking similarly embarrassed and similarly well-dressed coming down here from up there. That’s how it works. Don’t worry about it.

The next thing we need to do is to check the date. It is November the 30th of the year 2000.

Now, if your jury summons says November 16th and you are now trying to slide under the wire on jury service, please don’t try it. If you are running late, the computer doesn’t always self-correct. So at the appropriate time, you need to come forward, speak with me, and we will sort out the necessary steps to make sure that you get credit for having shown up. More importantly, you do not start getting a series of really nasty letters from us about what’s going to happen to you if you don’t show up.

On the other hand, if your jury summons says December the 5th and you have appeared early out of a burst of enthusiasm or because your spouse or secretary misinformed you as to when you were supposed to be here, don’t worry about it. If you turned in your information card at the front door, the computer will get corrected automatically. You can go ahead and serve today. You don’t have to go home and come back another day.

Now, we need to review the qualifications or exemptions from jury service. If you will please turn your jury summons over, and let’s look at them on the reverse side.

Now, the qualifications for jury service are very simple, very straightforward, and very strict. They are mandatory. You must meet each of these criteria or else you are not qualified to serve as a juror in Dallas County, and it’s just as simple as that.

Now, the first three summarized are:

You must be a citizen of the United States and qualified under the Constitution and laws to vote.

“Qualified under the Constitution and laws to vote” means over the age of 18 and breathing. Now, it’s true that in some parts of South Texas, they don’t require that you be breathing in order to vote. Right now, we are not too sure about Florida, but nonetheless, we do insist upon it in Dallas County.

You must also be a resident of Dallas County. Now, let’s say that the movers came to your house over the weekend and took all of your stuff
to Rockwall. You no longer reside in Dallas County. You are not qualified to serve.

If the movers are coming to you house next weekend to take all of your stuff to Rockwall, welcome to the Central Jury Room.

If the movers are at your house this morning loading up your stuff while you have escaped coming down here, please come forward at the appropriate time, and we will sort out whether or not you still reside in Dallas County.

Next, you must be of sound mind and good moral character. Well, this is a Catch-22, because if you come forward and proclaim to us that you are not of sound mind or good moral character, then you are obviously sane enough to know that you are not and honest enough to declare it and, therefore, qualified for jury service.

Get the picture? You are not getting out.

Next, you must be able to read and write English.

What is the test? How did you know to get here today? If you read the jury summons, regardless of how long it might have taken you to do so, you read well enough. If you filled out most, not necessarily all, of the information card, and you can sign your name in something resembling English—we don’t require that of doctors—then you write well enough.

Next, you must not have served as a juror for six days in the preceding six months in a district court or the preceding three months in a county court. Six days means total elapsed time. Three two-day trials or the one six-day trial, same difference.

District and county courts are those courts that are served by this Central Jury Room or by the Central Jury Room located over at the Frank Crowley Courts Building. This does not include service on a federal court jury, city court jury, or a grand jury.

Next, you must not have been convicted of a felony or a theft or must you be under indictment or other legal accusation of a felony or theft. We need to break that down a little.

"Felonies" are those offences against the penal laws of the State of Texas that carry with them as part of the punishment either placement with the U.S. Bureau of Prisons or incarceration in the Texas Department of Criminal Justice institutional division. These are such things as arson, burglary, rape, homicide, counterfeiting, enslavement, tax evasion, securities fraud, and one that is unfortunately too popular in Dallas County, multiple convictions for driving while intoxicated.

We need to talk about that. If you have been charged or convicted only once of DWI and no one was killed or seriously injured, that is misdemeanor. You need not come forward and discuss it with me. If one the other hand, you have been charged or convicted more than once or if someone were killed or seriously injured, then you will need to come forward and discuss that with me at the appropriate time.
"Theft" means theft. It is not what you took; it is that you took. A piece of bubblegum, hot check, Mercedes Benz, it is all the same in the eyes of the law.

"Under indictment or other legal accusation" means that you have been charged and not yet come to trial, or you came to trial and you were placed on probation and you are now serving out your probation, you are still under legal accusation.

Now, again, those are the qualifications for jury service or disqualifications from jury service, depending on how you to view it. You must meet each of those standards, or else you are not qualified to serve.

Now we come to the exemptions from jury service. These are options that are provided to you by the legislature so that if you should fall into one of these categories, you can get out of here just for the asking. It's that simple.

But if this should truly be an option in your life, I want to urge you, please exercise that option in favor of remaining on jury service for a very simple reason: We need you. People demand the right to trial by jury. You have got to have jurors. It's that straightforward. Except that, of course, all of you are sitting out here saying, "That's fine, but why me?"

Well, all right. I'll cop to it. The fact is, we have an option. And that is, if you had not shown up here today, or if we run out of you during the day, we have the power to send the bailiffs out to simply find people who have nothing better to do today than be jurors and bring them in for service.

Now, as recently as about 25 years ago, it was customary to begin this process every morning by sending the bailiffs out to the south side of the courthouse where as you can see it's nice and sunny and toasty. They would go out there and scoop up all the drunks that spent the night there the night before and bring them in. They'd pay them six bucks a day, and that buys them enough Thunderbird to keep them through the next morning where they would scoop them up again.

Ask yourself this question: "If it were your case on trial, what kind of juror do you want?" Do you want you, or do you want that?

First, persons who are over 70 years of age, who I happen to think make excellent jurors because of their experience, but if you want to walk out, don't let me make you feel guilty about walking down here in front of a whole room of your fellow citizens and asking to leave.

Next, persons who have custody of a child or children under the age of 10 years, if jury service by you necessitates leaving that child or those children without adequate supervision.

Let's break that down a little bit.

"Legal custody" means that you are the person who has the power to consent to medical treatment or put a child into or take a child out of school. It does not mean little brothers and sisters, nieces, nephews, grandchildren you take care of, neighbors kids you take care of. No.
“Legal custody” means legal custody. You have five children, one of them is under the age of 10, so far so good.

“Adequate supervision.” If you brought your child with you to the Central Jury Room this morning and he or she is stuffed under the seat next to you or you left your child down in the cafeteria with a reasonable supply of money and a promise that you would indeed return or you left your child locked in the car in the car in the parking lot across the street, run, do not walk, up here, and let me let you go right now. That is not anybody’s idea of adequate supervision and certainly not ours.

Next, students of public or private secondary schools, institutions of higher education. You must be enrolled in actual attendance and a full-time student.

Institutions of higher education are those that are accredited by recognized accreditation agencies such as the Southern Association of Colleges and Schools. You notice I don’t spend a lot of time on the high school deal. I have been in your service for 20 years. I have never had a high school student come up and ask me, “Please send me back.” Don’t think it’s going to happen today, either.

Finally, there is one that if it should apply to you, I do want you to take this option and leave. I mean this is all sincerity. I’m not kidding you at all in this one.

If you should be a primary caregiver for someone who cannot take care of themselves, go take care of them. We’ll get you another time. Anyone who is taking care of an elderly parent knows exactly what I’m talking about. You go do that. That’s no problem.

Again, those are the exemptions. With the exception of the last one, if any of those should apply to you and be a true option in your life, please exercise that option in favor of remaining with us.

Now, there are a couple of questions that we need to address that I’m sure are on your minds. The first and foremost among these is, “How long am I going to be stuck down here?” Well, the answer is summed up in the phrase, “one day, one trial,” which is shorthand for a system we developed in Dallas County to try to minimize the impact on your private and professional lives that we know jury service has.

What it comes down to is this: If you should not be selected for a jury, then your jury service will be for one day, which on Thursday happens to end around noontime, 12:30, 1:30, somewhere in there. That’s it. You don’t have to come back tomorrow or next week or next year unless, of course, the computer summons you.

On the other hand, if you should be selected for a trial jury, your jury service will be for the duration of that one trial, which leads immediately to the next question: “How long is a trial?” And the answer is, “beats me.”

Historically, in Dallas County jury trials have lasted as little as 20 minutes and as much as 17 weeks. Now, before you go into cardiac arrest on the 17 weeks, I want to hasten to reassure you that in the 160-year history
of Dallas County, there has only been one 17-week-long trial, so the odds are very much in your favor that you will not, in fact, be here for 17 weeks.

Now, sometime around Easter, I don’t want to see any of your smiling faces in my office door saying, “You promised us.” I have promised you nothing. I have told you what the odds are. Once in 160 years. On the other hand, there has only been one 20-minute jury trial.

So what are we really talking about? We’re talking about two-and-a-half to three-and-a-half days on the average in a civil district court. And I stress the phrase “on the average” because there are many factors that can cause that to change quite dramatically either direction, but nonetheless, that is what you should expect.

Now, at the conclusion of your jury service, you are going to receive a check in the sterling sum of $6 representing your service in Dallas County—that’s your daily pay by the way—but don’t think for one minute that we thought that’s what your time was worth. Because whether you are employed in the home or a corporate executive or even if you are drawing unemployment compensation, we know that you are doing better than $6 a day. We certainly hope so.

But you remember at the beginning I suggested to you that a jury summons is really invitation to participate? So now I suggest to you that that check is really a sort of thank-you note, a very modest expression of appreciation on behalf of all of the people of Dallas County whom you serve by your presence here today.

Keep in mind that someday you might be a party to a lawsuit or even a defendant in a criminal case, and you would be depending upon others to come forward and sacrifice of themselves and their time as you have. I think that puts your service in a little bit different light.

Now, in a moment after I conclude, I’m going to be down here at the end of the bench for a few minutes to answer whatever questions you might have concerning the qualifications or exemptions as they might apply to you or really any questions about your jury service or if you just want to grill a public official for a minute or so, well, here I am. So I will do that, then I have to back to the court and take care of your business there.

So ladies and gentlemen, I will close by reminding you as Robert E. Lee said, “‘Duty’ is the sublimest word in our language,” and you are performing yours in this courthouse today.

For that, on behalf of the people of Dallas County, the officers of your courts, I thank you very much.

(End of Jury Orientation)