REFORMS TO REVIVE THE DYING JURY TRIAL

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FOR YEARS, THE VANISHING JURY TRIAL has been well documented. When the pandemic struck, there were calls by both judges and attorneys to shrink jury sizes, reduce or eliminate peremptory challenges, and pressure litigants to resolve cases through settlement or pleas to avoid the challenge of seating a jury during a national health crisis. Some jurisdictions opted to adopt online jury trial procedures, with overall reported success in adapting the jury trial to a new forum using technology, while others implemented limited uses of in-person jury trials or delayed trials altogether.

The coronavirus pandemic has raised two important questions about our justice system. First, are we still interested in preserving our Sixth an Seventh Amendment rights to a jury trial? Second, if we are still committed to a jury trial, are we only interested in preserving the jury trial the way that it has been traditionally conducted?

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In December of 2020, Shari Seidman Diamond and Jessica Salerno reported on a survey they conducted of 1,460 judges and attorneys about the reasons for the continuing disappearance of jury trials.[1] This study highlights the significant drop in jury trials in recent years; cases now resolved by jury are a fraction of 1% in civil cases and just over 1% in criminal cases. The article points out systemic reasons for the drop and cites respondents' perceptions of the reason for the drop. Namely:

- The perceived cost, time, and unpredictability of jury trials and their outcomes.
- The rise of the use of mediation and arbitration services to resolve cases.
- The increasing use of mandatory arbitration agreements by businesses and the upholding of the use of those agreements by the courts.
- The shifting of decision making on factual issues from juries to District court judges with the increasing frequency of dispositive motions deciding factual issues in the case.
- Tort reform initiatives that have been implemented such as damage award caps.
- The use of mandatory minimum sentences which have prompted defendants and prosecutors to resolve cases through plea bargaining more frequently.
- The perceived pressure on litigants by judges to settle or plead cases.

While recognizing the reasons for the increasing rarity of jury trials, both the judges and attorneys in this study recognized the value of jury trials as both a fair and important aspect of the justice system and even stated a preference for them over other resolution procedures. And this paradox lies at the very heart of the disappearing jury trial. This article seeks to address this paradoxical question: how can we address the perceived barriers to more widespread use of jury trials (cost, time, and unpredictability), given that it is the preferred method for resolving civil and criminal cases?

While many articles like this have noted the decline in jury trials and provided numerous reasons for their discontinued use, very few have put forth suggestions to remediate this precipitous drop. This article does not attempt to propose legislative or legal rule changes, such as arbitration agreements or sentencing guidelines. But it does challenge the accepted belief that jury trials must, by their nature be more costly, lengthy, and unpredictable than other resolution methods. It will also suggest a series of recommended practices to make jury trials more efficient, more effective, less costly, and provide litigants with a better understanding of probable outcomes.

In making these suggestions, we understand the anticipated resistance to some of these recommendations and some of the legal and organizational challenges in making these procedural changes. Even before the pandemic, judges, mediators, and attorneys have used the uncertainty of jury

verdict outcomes to scare litigants into settling cases or accepting plea deals. However, while many attorneys believe that judge's verdicts in bench trials and arbitrator's findings are more predictable and are less costly and time consuming than jury trials,[2] this assumption is not accurate. While a mediation outcome is certainly more predictable because the client controls the outcome, mediation settlements tend to resolve within the mid-range between demand and offer. These settlements may be more predictable as they are agreements which the parties control, but they do not necessarily reflect what a litigant, the attorneys, or even an actual jury believes is the true value of the case. In many instances, the "mid-range" a case settles at in mediation is ultimately a product of the plaintiff's initial demand and the defendant's settlement offer. While arbitration usually involves limited discovery costs, the fees and wide discretion of an arbitrator can make this procedure as, if not more expensive than court litigation.

In addressing the main concerns about the cost, time, and the unpredictability of a jury trial, we will focus on two primary areas:

1. Methods to increase the efficiency of jury trials to address time and cost concerns.
2. Methods to better understand jury decision-making to alleviate the perceived unpredictability of jury outcomes.

In addressing trial efficiency, we are not suggesting random time parameters for trials that could compromise the rights of litigants. Rather, we are defining efficiency as a means of reducing the unnecessary waste of time that can accompany a trial. Additionally, while time and cost concerns are more measurable, unpredictability is more subjective. However, if we think of unpredictability as uncertainty about jury decision-making in general, if litigators and the courts have a better understanding of how juror decision-making may differ from the highly rigorous critical thinking that lawyers and judges are trained in, jury verdicts become much less unpredictable. This is not to say that verdicts will ever be predictable. But lawyers and judges can understand the extra-legal factors that influence jury verdicts aside from evidence and law.

To address these two main areas, this article will go through different phases of a jury trial to suggest implementation of these recommendations. Overall, these suggested reforms entail five fundamental shifts in the way we normally think about jury trials.

1. **Information Management:** Most cases generate a tremendous amount of documentation in the form of filings, motions, exhibits, depositions, reports, and the like. And while courts, law firms, and attorneys have different ways of managing pretrial information, one of the primary goals of a *trial* information management system is to organize and prioritize the information that is needed by an attorney, a judge, or a jury to present or decide a case. Information management protocols are needed to increase the efficiency (time and cost) of jury trials.

2. **Information Quality:** We will look at ways to improve the *quality of information* that the courts and attorneys receive from jurors in the jury selection process to better evaluate and make cause and peremptory challenges. We also want to focus on the *quality of information* that attorneys select for their case presentations to improve juror comprehension of case issues. By focusing on juror comprehension, we reduce the unpredictability that the evidence that attorneys want jurors to consider is being received in the way they intend. This focus on information quality differs from the usual focus on procedural limitations of voir dire as well as attorney or client desires to be overly inclusive of voluminous or complex evidence, which can overwhelm jurors and limit their understanding of case issues.

3. **Communication Clarity:** This principle focuses on *how* evidence and legal instructions are presented to a jury in order to optimize their comprehension and retention of evidence and law that they use to deliberate to a verdict, as opposed to a strictly statutory or procedurally correct presentation of the case. Like *information quality,* communication clarity ensures that jurors are receiving the intended case, reducing the unpredictability of juror verdicts.

4. **Education Instead of Traditional Persuasion:** While a trial is an advocacy forum, many jurors are resistant to case presentations that tell them what they should think or decide. An educational approach engages jurors to evaluate the case for themselves, which increases receptivity and ensures they are again evaluating the intended case, reducing the unpredictability of their verdict decision.

5. **Juror Participation and Control:** In litigation, attorneys endeavor to control the legal and factual

> issues to be decided. In the pre-trial process, judges exert control over the rulings that determine which of these factual and legal issues a jury will decide. Thus, it becomes easy for judges and attorneys to relegate jurors to passive observers of evidence controlled by the judge and attorneys, resulting in juries only receiving information that the judge and attorneys think are important, rather than what may be important to the factfinder. One of the more difficult shifts in the following recommendations is to allow jurors greater participation and control in a trial than is typically allowed. When jurors have greater participation and engagement in the case, it is much easier to understand where they are headed in their decision-making process, thus making their verdict more predictable.

All five of these principles are designed to create trials that are more streamlined, efficient, and targeted toward the needed verdict issues, reducing the overall time and cost of trials, while also improving counsels' understanding of how jurors are receiving the case, which in turn reduces the unpredictability of verdicts as the trial progresses. We will focus these recommendations on two primary areas: jury selection and case presentation. Note that some of the recommendations contained in this article are reforms that have been in place for quite a few years in specific states and/or individual courts but have not seen consistent or wide-spread adoption. There have also been few explanations given as to why some of these reforms may be beneficial.

Jury Selection Improvements

Use an Online Questionnaire and Interviews for Summons and Hardship

One persistent problem with our current jury system is the poor show rate for jury service.[3] It is common for court systems to summon hundreds of jurors each day, only for most of those jurors to be screened out of the jury pool due to hardship after waiting several hours or an entire day. This includes unemployed people looking for work, new mothers nursing infants, students in the middle of finals, people with no transportation or those that care for children, the elderly, ill, or the disabled who have managed to find a way to court for only one day. The most common hardship is a burden placed on people who cannot afford to take a day off from work. Although some juror summonses allow for postponement or ask questions about hardship, the criteria are usually narrow and many jurors do not understand what really qualifies as a hardship. During the coronavirus pandemic, this process was exacerbated by numerous jurors not showing up for service due to health concerns or asking to be immediately excused. Through this common summons process, trials often take a day or more before a judge will even have a pool to start selecting a jury.

Instead of using a broad summons that does not account for hardship, having all summoned jurors complete an online questionnaire which allows jurors to attach documentation from employers about paid or unpaid jury service, prepaid travel plans, notes from doctors, or explanations about caring for family or medical problems prior to arriving would identify unqualified jurors in advance, which would save judges and attorneys significant court time. If a juror provides an excuse that requires the court gain additional information, these jurors could be interviewed virtually in advance, which would also prevent providing other jurors with excuses to get out of jury service, a consistent concern for judges. Additionally, fully qualified jurors who have not indicated hardship could avoid wasting time during this initial screening process. For example, in Texas, Judge Emily Miskel of Collin County reported that responses to jury summons increased from 45% pre-pandemic to 86% when they began implementing online procedures.[4]

Standardize and Post Jury Selection Procedures for Counsel

Different judges have different ways of conducting jury selection, including variations in the time permitted for voir dire, whether supplemental questionnaires can be used, whether attorneys will be allowed to ask questions, and how peremptory and cause challenges will be exercised, to name a few. Often, attorneys may not know what these differing procedures are until the first day of jury selection. For counsel to effectively plan jury selection, courts should be encouraged to post their detailed jury selection procedures on the court's website. This will save court time spent on clarifying these procedures in pretrial hearings and sparing attorneys confusion during the selection process.

While judges certainly have individual discretion on many of the procedural elements of how they conduct trials, there are numerous best jury selection practices that should be discussed, standardized, and encouraged within individual courthouses and jurisdictions to create consistency and efficiency.

Pre-Trial Conference on Jury Selection Procedures

A common goal of courts in seating a jury is to gain juror commitment that they can be fair and impartial, despite any life experiences they have had or any beliefs they hold.

However, the process of gaining juror commitment by ostensible authorities (judge and attorneys) in a courtroom setting inhibits rather encourages juror candor, resulting in less information about the jury which reduces the predictability of their decision making.

If, however, the courts were to instead focus the jury selection process on exploring information about jurors that might impair their ability to be fair and impartial in a given case, this would invite jurors to disclose experiences and attitudes that would give both the judge and the attorneys better quality information on which to make cause and peremptory decisions. It would also give attorneys a much more candid and informed picture of their seated jury, again reducing the unpredictability of their verdicts. It stands to reason, if you know more about the people you are speaking to and what is important to them, you have a better idea about how they are receiving the evidence you are presenting.

To set up this primary goal procedurally, judges and attorneys should discuss in a pretrial conference the potential life experiences, opinions, attitudes, or beliefs that might give rise to an impairing bias that would prevent a juror from being entirely fair and impartial in the case. Even in the most complicated cases, there are usually a small number of issues that truly may give rise to a potential bias. The court can then discuss with counsel the best procedures to identify those bias issues, whether it be through a supplemental jury questionnaire, voir dire questions, individualized juror interviews, and the expected time needed to probe into these issues.

In this conference, the judge and attorneys should discuss best voir dire practices, including the use of open-ended rather than close-ended questions, avoiding indoctrination or agreement questions ("Will you agree…?"), the use of follow-up questions to get more detailed responses, and ways to increase juror comfort, candor, and disclosure of information that may give rise to a potential bias. Prior to trial, judges should also discuss their general criteria for cause challenges and clarify any questions by counsel about the jury selection process.

Understanding Bias

There is abundant evidence that people hold biases that they are not consciously aware of,[5] and therefore could not admit to in open court, even when directly asked. In focus group research conducted by Decision Analysis for over a year,[6] mock jurors felt that it would be somewhat difficult (59%) or very difficult (15%) for people to set aside and ignore their past experiences, biases, prejudices, strong beliefs, or opinions. However, many in this same group expressed a belief that they personally do not have any biases or prejudices about other groups of people (43%) or only have a few (46%). Because decades of research demonstrates that *everyone* has bias in some form or another, this self-reported data highlights a lack of self-awareness many people possess. This suggests that, while these mock jurors can acknowledge the difficulty of getting past certain prejudices, many cannot even identify the impact a bias has on them personally.

However, even relevant, *conscious* biases recognized by highly self-aware jurors sometimes go unidentified in court. This is because jurors are reluctant to share a prior negative experience or belief openly, as asserting that one has a bias is mildly stigmatized. In the pre-trial conference, the judge and attorneys can discuss creating an environment for bias detection in which disclosures are encouraged and supported, rather than negatively judged.

Given the nature of the way that bias operates, jurors who state a potential bias should be questioned about the stated experience or belief and its importance in their lives. If the bias is a strongly or long-held belief or has had a significant impact on the juror's life or outlook, serious consideration for cause should be given – despite a juror's statements they can "try" to be impartial, or their agreement to "set aside" the bias. Some states have implemented restrictions on rehabilitation efforts, and this should continue. Biases (conscious or unconscious) cannot be eliminated or set aside with a single conversation, and parties are guaranteed to have impartial jurors listen to their case, per their 6th Amendment right.

Utilizing Online Questionnaires

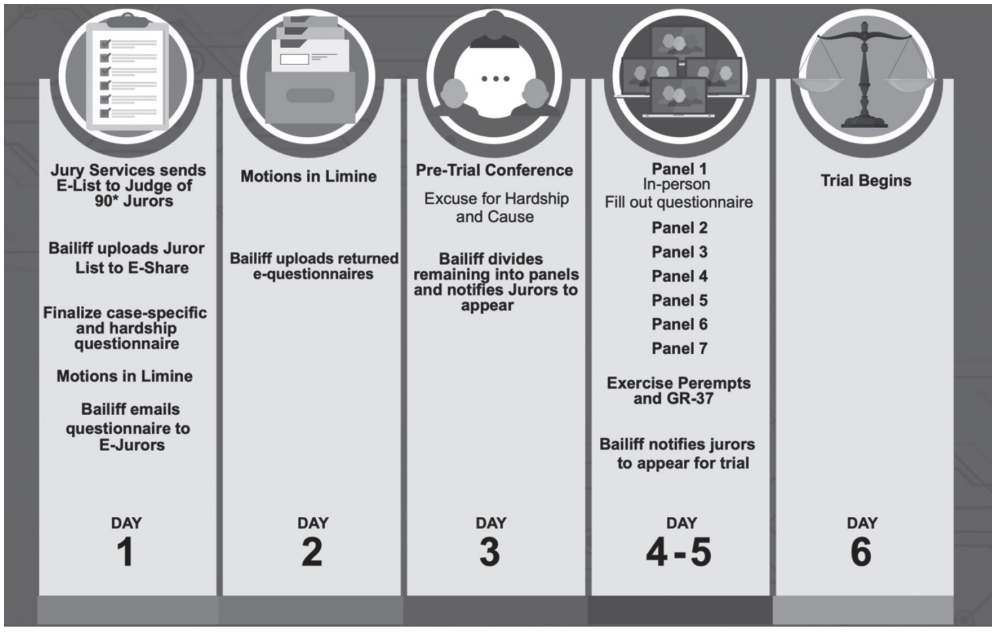
Another method to save time and give attorneys better information about jurors is the use of online supplemental jury questionnaires. If attorneys had information about potential juror biases before voir dire, it would allow them to plan their questions more carefully or to submit more targeted questions for the judge to ask. Early in the coronavirus pandemic, the Online Courtroom Project conducted a demonstration trial in which they tested the use of an online supplemental jury questionnaire. In their report on that exercise, they outlined the methodology they employed to distribute and collect juror responses online prior to voir dire.[7] In a recent issue of Southwestern Law Review, Dr. Jeffrey Frederick outlines many of the concerns, considerations, and benefits of using online supplemental jury questionnaires.[8]

Ideally, these questionnaires would be sent to and filled out by jurors days before the scheduled jury selection. This would also allow counsel time to review the questionnaires

and discuss with the court whether there are identified jurors that should be stipulated to as cause challenges. If the questionnaire were to also include hardship questions, the judge and counsel could discuss and make determinations on these issues prior to the first day of selection, further streamlining the process. This exact procedure was developed by King County courts during the pandemic and has been used to conduct over eighty civil trials. Numerous judges have commented that they have seen greater juror response to jury summons, greater diversity in the jury pools, and more efficiency in the jury selection process. In fact, they have found this this procedure so successful, that they have proposed continuing this procedure even after the pandemic is over.[9] A graphic representation of their online jury selection procedures is included in Figure 1 below.

The use of online supplemental questionnaires on specific case issues can save time for all trial participants and give the attorneys and judge a more meaningful starting point to conduct voir dire questioning.

Figure 1 – Illustration of Online Jury Selection Procedures[10]



Allow Mini-Opening Statements by Counsel

Mini-opening statements are a jury innovation that allows counsel the opportunity to give brief (2-5 minute) overview of the issues that each side expects to present in the case. While jurors may be able to be generally impartial in a case involving medical negligence, a car accident, or a DUI, there may be some individual case issues which hit close to home for a juror, causing them greater difficulty in remaining impartial. Mini-opening statements allows jurors to better assess what personal opinions and experiences they possess that could impact their view of a particular case, which in turn allows attorneys to have better quality information with which to exercise their peremptory or cause challenges. Juror reactions to some of the specific claims and facts allows judges better information to evaluate cause challenges, and the reactions give counsel a more accurate assessment of the seated jury, potentially reducing surprise about their reaction to the presented case issues.

Online Voir Dire

Having an online voir dire option offers a number of benefits for a trial court. Studies suggest that more jurors would be willing to show up for service when it begins online,[11] improving juror diversity and participation. Depending on the size of the called panel, groups of jurors can also be more easily scheduled at preset times (see Figure 1), so smaller groups of jurors can be interviewed, while other jurors can keep working or taking care of loved ones until the time they have to report online. Online voir dire eliminates commute times and reduces inevitable delays for all trial participants, and it allows jurors to avoid having to take off an entire day from work or to arrange child-care for the voir dire process.[12]

Online voir dire may also be more comfortable and elicit greater participation for a number of different groups: minority or lower socio-economic jurors who may have a negative association with the justice system or who may be intimidated by a courthouse; jurors with social anxiety, are introverted, or just don't feel comfortable in bigger groups; jurors who do not have transportation to get to the courthouse; or disabled jurors. Jurors may also be more comfortable answering questions honestly and openly when speaking online from a space of their choice, compared to speaking in open court. Additionally, attorneys may gain more insight into a juror by interviewing them in their home environment.

If online jury selection were implemented widely, the courts could also offer the option of having jurors who do not have proper equipment or internet access show up in person and participate at a designated facility. This possibility is worth exploring because of the potential benefits of online voir dire – the promise of greater efficiency in the jury selection process and better information about jurors to reduce the unpredictability of their verdicts.

Trial Presentation Improvements

Conduct Pre-trial Conferences on Case Presentations

One of the greatest costs associated with jury trials is related to trial length. Some judges give attorneys wide discretion in trying their cases, while others impose strict time limits on testimony and evidence. Some trial estimates are driven by the scope of discovery; more witness depositions and more exchanged documents tend to drive the need for more trial time. Many attorneys tend to be overly inclusive of evidence, simply due to the understandable fear of leaving out something crucial. Yet, jurors commonly comment on the redundancy of testimony, the unnecessary minutiae of what attorneys consider to be "critical," and the burden that lengthy trials place on their personal lives. This can have an adverse effect of confusing, boring, or even angering jurors, which can negatively impact the way they listen to the case.

Pre-trial conferences tend to gravitate around the legal parameters of why a witness or evidence should be allowed or excluded. While it is important to ensure that evidence either does or does not meet legal or evidentiary standards, rarely is the simple question asked, "Why does the jury need this?" This question demands orienting the trial toward information that *jurors* need to make a desired verdict decision, rather than just what the attorneys and the clients think could be important.

If pre-trial planning is conducted around a series of questions to identify the *jury* necessity of requested evidence or witnesses, the length of trials could be significantly shortened along with reducing the attendant costs. Judges or attorneys should ask:

- What is your/my case about? (Maximum of two sentences)
- What do you/I want the jury to decide? (Key verdict questions)
- What are the three main points that this witness will testify to that will help prove/disprove the case?
- How long do you/I need with this witness to cover those three main points?
- What documents/exhibits do you/I need to cover those three main points?
- How will this be useful for the *jury*?

By asking a series of clarifying questions, counsel and the court can avoid imposed arbitrary time limits, focus the case presentations, and reduce the length and cost of trials.

Recently, Allison Brown of Skadden, Arps, Slate, Meagher & Flom was interviewed about her work defending Johnson & Johnson in their talcum powder litigation. In that interview, she opined that the coronavirus pandemic has made jurors less patient with long presentations of evidence and tend to hold it against the litigants. She stated that it is important, especially in more complex matters to be "super-efficient with jurors' time."[13]

Ms. Brown also said that jurors in her trials did not mind a witness "Zooming in" to the trial for their testimony. Remote testimony, although seldom used before the pandemic, may be more widely employed in the future. This will save a tremendous amount of time, assist trial scheduling, and save significant costs for out-of-jurisdiction witnesses or out-of-state experts.

Every judge determines their own trial schedule. Most opt for full day schedules with a morning session, an hour and a half for lunch, and an afternoon session with breaks in the morning and afternoon. These breaks often get extended for various reasons (resolving trial issues, judicial calendars, jurors back late from a break), further shortening the trial day. This full day schedule can often eliminate the participation of many jurors whose employers do not allow for time off for jury service or cannot arrange for childcare, care for parents, or the disabled. By moving to a half-day or partial day schedule (e.g., a continuous five-hour block with two twenty-minute breaks, which some courts do), the courts can accommodate more jurors who may be able to arrange time with their employers or care for loved ones.

Improving Juror Case Comprehension

One of the factors that makes it more difficult to evaluate verdict outcome is case complexity. Even in smaller cases, jurors can be confused by evidence, testimony, exhibits, and judicial rulings and instructions. They may be shown content that is too technical, too complicated, or too riddled with jargon to be easily understood. Jurors may also be unsure of the legal standards they'll be applying to the case, making it difficult to understand the relevance of some kinds of evidence. Many courts allow jurors to take notes, and they

count on a jury's collective recollection of evidence. But by increasing juror comprehension of the respective cases, courts can more easily evaluate how jurors are receiving the case, reducing the unpredictability of verdicts. Again, this requires judges and counsel to focus on making important information clear for the jury and anticipating what is necessary for the *jurors* to understand the case.

By focusing on juror comprehension, attorneys and judges can monitor juror reactions to the case to see whether jurors seem to be following and understanding the evidence. There are a number of questions for attorneys and the judge to consider as they are planning case presentations:

- Are jurors paying attention and engaged in the testimony?
- How easily and accurately will jurors be able to recall and retain the testimony or evidence in deliberations?
- How well organized is the presentation of evidence? Does it have a logical and easy to follow sequence?
- Will jurors easily understand the meaning of the testimony or evidence? Will they know the context for the provided information?
- Will jurors be able to easily utilize the information? Will juror know how the testimony or evidence will apply to the verdict questions they must answer?

To better gauge juror comprehension, judges and attorneys should think of case presentations on a scale:

1. The jury completely understands what the witness/attorney is trying to communicate.
2. The jury somewhat understands what the witness/attorney is trying to communicate.
3. The jury doesn't understand very much of what the witness/attorney is trying to communicate.
4. The jury doesn't understand any of what the witness/attorney is trying to communicate.

All case presentations should be designed to accomplish the first category of juror comprehension. And while most attorneys presume that jurors *should* understand their case as presented, they often do not ask themselves some of these basic questions.

The following are several methods to increase juror comprehension and reduce verdict unpredictability.

Provide evidence or testimony previews to jurors. Opening statements provide a crucial roadmap to jurors, orienting them to the issues in the case and the evidence to expect. However, openings are not the only time jurors benefit from previews of evidence. Wherever possible, the courts should allow directing attorneys to provide a brief introduction of each witness prior to testifying – identifying who the witness is and a summary of the main points they will cover. This provides a helpful framework to jurors in contextualizing the testimony and identifying relevant information.

Allow witnesses to give more narrative answers. Attorney control in both direct and cross-examination can often limit witness candor and affect juror assessment of the witness' credibility. If the judge allows a witness more narrative answers in response to both direct and cross-examination questions, jurors may feel that they are getting a fuller picture of a witness' testimony, rather than only the narrow picture controlled by the attorneys.

Provide jurors with exhibits. While jurors often get to view and take notes on presented exhibits, they often don't get to view the exhibits for themselves until they request them in deliberations. Allowing jurors to have their own exhibit notebooks (in paper versions for in-person proceedings or electronic form if conducting an online trial) during trial has the potential to increase juror accuracy in notetaking and retention of testimony.[14]

Encourage jurors to ask questions and pay attention to those questions. We traditionally think of jurors as passive observers in a trial rather than active participants. Jurors are technically "fact-finders." They should be encouraged – not just allowed – to ask questions during the trial to ensure they are getting the information they need to make the most informed decision in a case. There is also evidence to suggest that jurors actively prefer to be able to ask questions. For example, in focus group research conducted by Decision Analysis for over a year, 77% of mock jurors said they would find it helpful to be able to ask questions of attorneys and witnesses.[15]

By encouraging jurors to ask questions about substantive trial issues that may need clarification, the parties can gain useful insight into the thought process of jurors, their impressions, or confusion as they are listening to the case. By paying close attention to juror questions, counsel can adjust case presentations during the trial and reduce the unpredictability of the outcome.

Pre-instruct jurors on the legal issues they will be deciding. Often jurors have no idea of the legal principles they will have to apply to a case until the end of a trial. At

that point, they are loaded with case information and already may have strong opinions about the evidence. They are then given a long set of verbal instructions, issued in legal language, which may be hard to understand and then apply to what they already believe about the case. We charge jurors with making important decisions in cases. Yet it is remarkably counterintuitive for jurors to get days, if not weeks of testimony only to be told after they have heard everything what they should have been paying attention to from the beginning. Jurors should receive clear, simplified judicial instructions early in the case to improve their comprehension of the legal issues they will be deciding, which will in turn improve the attorneys' ability to link their evidence to the verdict issues *during the case*.

Jurors want to know what they will be deciding in the case at the beginning of the trial in order to focus on the evidence for those key verdict questions. In Decision Analysis focus group jury research listed above, mock jurors were asked when they would want to get legal instructions from the judge about how to interpret the evidence in a case. The mock jurors overwhelmingly preferred to get the instruction at the beginning (34%) or during the case (46%), compared to at the end of the trial before deliberations (20%).[16] Additionally, jurors should be given their own individual copies of the instructions to read and refer to as well as shown a copy of the instructions on a screen to read along with the judge. Reading the instructions along with the judge as well as having a reference copy will increase juror comprehension of these key legal principles.

Increase the use of demonstrative and graphic exhibits. Attorneys are trained to focus on verbal forms of communication – seeking powerful rhetoric and building clear arguments to persuade a judge or a jury. However, attorneys often miss the potential for visual aids to add clarity and impact in their case. Some research suggests that 65% of the population are visual learners.[17] Visual aids are tremendously helpful to jurors in understanding complex issues or case evidence. In preparing for trial, the judge and the attorneys should always be asking themselves how they can make the testimony and the information they are presenting to the jury more visual to assist juror comprehension.

Utilize jury research. One of the easiest ways to alleviate the unpredictability of trial outcomes is to conduct jury research. This entails gathering a group or groups of citizens in the venue, presenting the case to them from both sides in a balanced way and watch them deliberate and/or discuss which issues, evidence, and testimony influenced their verdict preferences.

Conclusion

The jury trial is a fundamental part of our justice system and our country's Constitution. And while a jury trial is not ideal for resolving all civil and criminal disputes, we also should not dismiss or minimize its use through oft repeated myths or misunderstandings. We also should not be afraid to change our thinking about the way we have traditionally conducted jury trials or to apply common sense reforms, even if it conflicts with common practice. More importantly, we should make the effort to train attorneys and the courts in best practices in order to revitalize this essential system.

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1 https://www.americanbar.org/content/dam/aba/administrative/american_jury/2020-reasons-for-the-disappearing-jury.pdf

2 https://www.advocatemagazine.com/article/2020-november/the-risks-and-rewards-of-bench-trials

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6 Our data set features responses from 522 mock jurors, gathered through 38 focus groups covering content from 21 cases. The groups

were collected from 14 different venues across seven states, from September 2020 to October 2021.

[7] https://www.onlinecourtroom.org/demonstration-report

[8] Online Jury Selection: New Tools for Jury Trials – Jeffrey T. Frederick, Ph.D. – Southwestern Law Review 1/22

[9] https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=5838-

[10] Graphic by Noah Wick of Trial Exhibits - 2020

[11] https://www.ncsc.org/__data/assets/pdf_file/0021/70581/SoSC-Analysis-2021.pdf

[12] https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=5838, https://www.jdsupra.com/legalnews/advice-on-virtual-jury-trials-from-3033796/

[13] https://www.law.com/2022/01/07/jury-selection-strategy-was-key-to-string-of-jj-missouri-talc-wins-skaddens-allison-brown-says/?utm_source=email&utm_medium=enl&utm_content=20220110&utm_campaign=morningminute&utm_term=law

[14] https://link.springer.com/article/10.1007/BF01499143

[15] This comes from the same sample of 522 respondents described previously.

[16] This comes from the same sample of 522 respondents described previously.

[17] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6513874/