

**Should Jurors Ask Questions in
Criminal Cases?**

**A Report Submitted to the
Colorado Supreme Court's
Jury System Committee**

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Executive Summary

The growing debate over jurors asking questions at criminal trials has raised numerous speculations on how the procedure may impact trials. The Colorado jury reform pilot project was designed to obtain empirical information on the effects of juror questioning from the perspectives of parties involved in the process. The presence or absence of allowing jurors to submit questions was randomly assigned to 239 District and County Court criminal court trials. Following the trial, questionnaires were administered to judges, attorneys, and jurors. Overall, the results reveal that juror questioning has little negative impact on trial proceedings and may, in fact, improve courtroom dynamics.

Major results:

- Actual experience with juror questions at trial increases support from judges and attorneys on the benefits of the procedure.
- Juror questions do not overly influence verdicts.
- Juror questions do not cause excessive or unreasonable time delays.
- Juror questions do not influence a defendant's decision to testify.
- Juror questions do not appear to create prejudice to either party.
- Jurors will submit improper questions, but the screening procedures employed by judges generally are effective in eliminating troublesome inquiries.
- Jurors do not react negatively when their questions are declined.
- Jurors appear to be more engaged, attentive, and empowered when allowed to ask questions at trial.
- Jurors show more favorable reactions to the trial process when allowed to ask questions.
- Jurors believe the procedure allows them to gain further clarification and information on evidence.
- Attorneys become more aware of any confusion surrounding the evidence and, in some cases, are alerted to missing information.

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I. Introduction

Jury reform continues to be the subject of much debate despite seemingly successful efforts by many courts to encourage a more active role by jurors during criminal and civil trials (Ecenbarger, 2000). The role of jurors as fact-finders is well established, though movements to engage the panel as active members of the fact-finding process are less clear and at times ill-defined. Currently, widespread discussions and experimentation by the courts, legal professionals, and scholars are being undertaken to examine the usefulness, procedures, and consequences of allowing jurors to submit questions to witnesses during criminal trials (e.g., Berkowitz, 1991; Lundy, 2001; Valen, 1993). Juror questioning in civil cases has grown exponentially, particularly in complex and lengthy litigation (Cecil, Hans, & Wiggins, 1991). Juror questioning during criminal trials, however, has progressed at a slower pace and still demands empirical and practical investigation.

In September 2000, Colorado Chief Justice Mary J. Mullarkey authorized a statewide pilot study to evaluate the effects of permitting jurors to submit written questions during criminal trials. This first phase of the research collected data from District and County Courts for Class 4, 5, and 6 felonies and misdemeanors trials. The expansion of the study, in September 2001, included Class 2 and 3 felony charges. This project represented one of the initial 26 recommendations of the Supreme Court Committee on the Effective and Efficient Use of Jurors. The recommendations were approved in principal by the Supreme Court in February 1997. The research was designed to evaluate the impact of juror questioning on criminal court trials.

Advantages

The practice of allowing jurors to pose questions is viewed by some legal scholars as a natural progression toward a system that promotes informed decisions based on all relevant facts (Valen, 1993). Those in favor of the practice have speculated that allowing jurors to submit questions might have a number of advantages:

- Allows jurors to better understand the evidence.
- Clarifies confusing or overlooked evidence.
- More deeply involves jurors so they pay more attention to the proceedings.
- May alert parties to what jurors are thinking and provide insight for clarification.
- Enhances jury's confidence in arriving at a verdict.

Disadvantages

Numerous arguments against jurors asking questions also have emerged in the scholarly debates (e.g., Harms, 1977; McLaughlin, 1982; Roberts, 1993). One concern over jury questioning involves violations of a defendant's Constitutional right to a fair trial by an impartial jury. Additionally, opponents argue that juror questioning may have other negative impacts.

- Upsets the adversarial system.
- Delays the trial process.
- The procedure for allowing questions is too cumbersome.
- Jurors will assume the role of advocates and lose their impartiality by becoming overly involved.
- Distracts jurors from attending to trial or evidence presented.
- Jurors may ask questions that are irrelevant, inadmissible, improper, or prejudicial.
- Jurors may attach more importance to questions asked by peers.
- Juror questions might upset trial strategies.
- Attorneys are concerned that if they object to a juror's question that they risk offending or alienating the juror.

Previous Research

Larry Heuer and Steven Penrod (1988, 1994) have conducted the most extensive empirical studies examining trials in which jurors have been allowed to ask questions and take notes. First, the researchers obtained data from judges, lawyers, and jurors that examined 34 civil and 33 criminal trials in the Wisconsin Circuit Courts.

The second research project involved judges, lawyers, and jurors from 160 state and federal court trials conducted in 33 states with approximately equal numbers of civil and criminal cases. In the Wisconsin study, jurors asked a total of 88 questions (average of 2.3 per trial). Sixty-seven percent of the questions were asked of plaintiff's or prosecution witnesses, and 33 percent of the defendant's witnesses. In the national study, jurors asked an average of 5.1 questions per civil trial and 4.4 questions per criminal trial.

Heuer and Penrod (1996) found that jurors' questions to witnesses promotes understanding of the facts and issues, and alleviates doubts about trial evidence. The researchers also concluded that questions (a) do not help jurors to arrive at the "truth"; (b) do not alert trial counsel to particular issues that need development; (c) do not increase juror, attorney, or judge overall satisfaction with the trial or the verdict; (d) do not inhibit attorneys from objecting to inappropriate questions and when objections are made the jurors do not react negatively; (e) do not cause jurors to draw inappropriate inferences from unanswered questions; (f) do not cause jurors to become advocates for one side or the other; (g) do not cause jurors to overemphasize answers to their own questions at the expense of other evidence; and (h) do not have a prejudicial effect. The authors also note that judges and attorneys were convinced after experiencing the procedure that jurors do not ask inappropriate questions, despite their unfamiliarity with the rules of evidence. Heuer and Penrod (1994) found that questions assisted jurors in dealing with trial complexity.

Heuer and Penrod (1996) concluded from their original studies that few of the purported advantages of these procedures were supported by the results of their experiments, but that the findings are overwhelmingly contrary to notions about harmful consequences. Specifically, they note that in contrast to the attorneys, jurors felt the process promoted understanding and alleviated their doubts about the trial evidence. Jurors related that asking questions was "moderately helpful" at uncovering evidence or issues that had been left out either by accident or design. The research also found that judges and attorneys are more favorably disposed to juror questioning after actual experience with the procedure.

Current Research

The Colorado field study was designed, in part, to replicate the Heuer and Penrod studies specifically for criminal cases. The major research questions that were identified included:

- Do juror questions cause delays to the trial?
- Do juror questions influence a defendant's decision to testify?

- Do jurors ask improper questions?
- What happens when a judge determines that a juror question is inadmissible?
- How does the opportunity to ask questions influence jurors' perceptions, final deliberations, and verdicts?
- Do juror questions create a prejudicial impact on the outcome of the trial?
- What effects do questions have on the trial?

The survey groups included judges, attorneys, and jurors who were permitted to submit questions to witnesses in criminal cases according to a defined procedure. Questionnaires also were given to judges, attorneys, and jurors at trials that did not allow questions to serve as comparison groups.

II. Methods

Research Design

This research was conducted under the approval of the Colorado Supreme Court and with the cooperation of the State Court Administrator's Office. The project was designed, in part, to help determine whether or not juror questioning in criminal trials denies the right to a fair trial by an impartial jury. The research also allowed judges, attorneys, and jurors an opportunity to provide feedback on the process. The Colorado Supreme Court Jury Reform Committee recommended the establishment of a pilot program that permitted questions at trial and included survey questionnaires to measure opinions and experiences of the parties involved in the process. The research was conducted in two phases (described in detail below).

Phase I. Colorado District and County Courts, in urban and rural areas participated in the research. The first phase of the study included misdemeanor cases and Class 4, 5, and 6 felony cases. Class 3 felonies for 1st offense property crimes were included at the discretion of the trial judge. Limitations on the use of jury questioning included higher level felonies, multiple defendants joined in a single trial, cases involving Habitual Offender status, and mandatory or enhanced sentencing. The instructional guide provided to the courts also included specific details regarding case selection, advisement to counsel, protocol for trial, and a Fifth Amendment advisement.

The Chief Justice of the Colorado Supreme Court issued an order that all judges participate in the first phase of the study. This specific pilot project was authorized by a Chief Justice Order, September 30, 1998, and the participation of all District and County Courts was directed by the Chief Justice Order of September 21, 2000. The study was expanded on August 27, 2001 to gather data for Class 2 and 3 felonies on a voluntary basis. Two sets of survey questionnaires were provided to participating courts: one set was used in cases where juror questions were permitted and one in cases where juror questions were not permitted. Random selection of cases permitted juror questions in all even-numbered trials and no questions in all odd-numbered trials. Random assignment strengthens the internal validity of the findings so differences can be attributed to the presence or absence of juror questioning, though other variables that influence the outcome cannot be eliminated.

Instructions to the Judges. The following material represents the exact instructions that were provided to all trial court judges.

This pilot project is an effort to evaluate the impact of juror questioning on juror comprehension and decision making, and on the right to a fair trial by an impartial jury. The study will survey jurors who are permitted to submit questions to witnesses in criminal cases according to a defined procedure, as well as jurors in other cases who are not permitted to submit questions, together with the judges and counsel involved in those trials. District and County courts, in both urban and rural areas, will participate.

Limitations on Use

In County Court cases there are no specific limitations on the type of criminal case in which this procedure is to be used. In District Court, however, the pilot project is limited to Class 4, Class 5, and Class 6 felony cases. At the discretion of the trial judge, the study may also include Class 3 felonies, but only first offense property crimes within that classification.

This procedure shall NOT be used in cases involving Habitual Offender status (CRS 16-13-101), or any case involving mandatory or enhanced sentencing (including, by way of example only, CRS 16-11-309 [crimes of violence], 16-13-201, et seq. [sex offenders], 16-13-801, et seq. [sex offenders], 18-1-105 [extraordinary aggravating and extraordinary risk offenses], 16-18-407 [special offender]). The procedure shall also NOT be used where there are multiple defendants joined in a single case.

Materials

A binder containing a master copy of all the necessary questionnaires and forms will be provided to each participating judge. It will be the responsibility of the Court to have the materials copied and distributed to the appropriate parties.

PRE-TRIAL

Random Selection of Cases

You are provided with two sets of survey questionnaires, one set to be used in cases where juror questions are permitted, and the other to be used in cases where juror questions are not permitted. In order to enhance the validity of the study, the following method of random selection of cases must be followed:

Juror questions will be permitted in all even-numbered cases.

Juror questions will **not** be permitted in all odd-numbered cases.

Advise Counsel in Advance (*Questions Permitted*)

As soon as a *Questions Permitted* case is selected, advise counsel that they will be participating in the Pilot Project and provide them with a copy of the ***Juror Questioning Procedure***. This should be done as early as possible so counsel can consider how this may affect their trial strategy. Emphasize to counsel that all objections to juror questions will be considered outside the hearing of the jury, and that there is no need for them to renew their objections on the record in front of the jury if and when the question is actually read.

DURING TRIAL **(*Questions Permitted*)**

Opening Instructions

Instruction A explains the procedure for juror questions and should be included with the general opening instructions given after the jury has been sworn in.

All Questions in Writing

All questions from jurors must be submitted in writing. Each juror should be provided several *Juror Question* forms. No spontaneous oral questions will be permitted. Questions may only be addressed to a witness, not to the Court or to counsel.

Allow Time for Questions

As the trial judge, you should neither encourage nor discourage questions. However, at the end of each witness' testimony—before the witness is excused—advise the jury that you will allow time for them to prepare and submit questions. Jurors need time to gather their thoughts and, if they have a question, to compose it. If one or more jurors seem to be writing questions, allow enough time for them to finish. If—after waiting an appropriate amount of time—it is apparent that no juror is writing a question, advise the jury that you will excuse the witness if there are no questions.

Questions must be submitted before a witness is excused from the stand. Witnesses may not be recalled by a juror. Questions may be submitted either while the witness is testifying or during a recess if the witness will still be on the stand following the recess. The Court will determine the timing of when the question will be asked, but it is recommended that in most instances the question be held until direct and cross-examination have been concluded. The juror's question may by then already have been asked by counsel.

Propriety of Questions

The Court must determine whether a juror's question is proper. It is anticipated that many of the perceived risks or objections to juror questioning will be managed by proper rulings by the Court. In determining the propriety of juror questions, the Court is bound by the same rules of law, evidence, and procedure, as well as fundamental constitutional principles, that apply to questions asked by counsel. If the question would be improper if asked by counsel, then it is improper if asked by a juror.

If the question appears to be relevant and appropriate, but not in the proper form, it should be rephrased by the Court after consultation with counsel.

The primary purpose of juror questioning should be to clarify the testimony and help the jury to understand the evidence. The Court should decline questions if jurors attempt to be advocates, or become argumentative with a witness, the Court, or counsel. Jurors should not be permitted to suggest their own theory of the case through their questions nor should they be permitted to express their own personal bias, prejudice, or skepticism. The Court should be mindful of the jury's role as neutral finders of fact, and should be particularly sensitive to questions which may tend in any way to shift the burden of proof. The Court must always keep in mind the rights of all parties to due process and a fair trial by an impartial jury. Ultimately, it is the trial judge who has the responsibility to maintain the integrity of the adversarial process.

Confer with Counsel on the Record, Outside the Hearing of the Jury

Upon receipt of a question, the judge will confer with counsel to determine if the question is proper. A record shall be made of all conferences on juror questions. It is not necessary, however, to take a recess and excuse the jury each time a question is submitted. Upon receipt of a question, the Court may quietly confer with counsel at the bench or side-bar.

Objections: Counsel must be permitted to make their objections contemporaneously and on the record. That record may be made without excusing the jury if the jury is unable to hear the conversation. The Court may insist that the objection be made succinctly, and may then delay further argument to a later time. If a question is obviously not proper, the Court has the discretion to immediately decline to ask it and may elect to make a more complete record at a later time in order to avoid delay and inconvenience to the jury. However, when it appears that a more lengthy conference with counsel is necessary, the Court shall excuse the jury and make the record outside their presence. **It is not necessary for counsel to renew objections on the record in front of the jury if and when the question is actually read to the witness, and counsel should be instructed not to do so.**

Improper Questions

If a juror's question is deemed improper and cannot be modified to make it proper, it will not be read in open court. The other jurors should not be made aware of the nature of the question. The judge should read *Instruction C* or give a brief, appropriate explanation and cautionary instruction to the jury.

Proper Questions

If a question is proper, or has been rephrased to make it proper, the Court may ask it at that time, or delay it to a more appropriate time during the witness' testimony.

Follow-Up Questions

Once a juror question has been asked by the Court, both counsel are permitted to ask follow-up questions of the witness. It is recommended that the same order of questioning the witness be followed, depending upon which party called the witness. (For example, if the witness was called by the People, then follow-up questions would first come from the People and then the defense.) In any event, this procedure is not intended to allow a party to cross-examine its own witness. Follow-up questions are limited to the issue(s) raised by the juror's question.

Record of Questions

All written questions submitted by jurors, whether asked or not, must be retained in the file as part of the record. Copies of the questions, together with the relevant information requested on the form, should be returned with the completed questionnaires and *Summary Information* form to the State Court Administrator's Office.

Fifth Amendment Advisement

In cases where juror questions are permitted as part of this pilot project, the Court should expand the *Curtis* advisement to also remind the defendant that juror questions may be submitted, but that the same rules of law, evidence, and procedure that apply to lawyer questions will apply to juror questions, and that improper juror questions will not be permitted. Legally proper juror questions, however, may be asked of the defendant if he elects to testify.

Final Instructions

If any juror question has been declined during the trial, *Instruction B* shall be included in the Court's final instructions to the jury.

Questionnaires (*Questions Permitted and Questions Not Permitted*)

All jurors, the judge, and the lead attorney for each side are required to complete the questionnaires. Attorneys are required to complete the questionnaires and return them to the bailiff prior to the verdict being returned, and it is recommended that the judge also complete the questionnaire at that time.

At the conclusion of the trial, the Court should instruct the bailiff to escort the jurors back to the jury room and direct them to complete the questionnaires.

POST-TRIAL

Immediately following the trial, the following completed documentation should be collected and forwarded to the State Court Administrator's Office in the provided envelope.

- Juror Questionnaire (*one for each deliberating juror*)
- Judge Questionnaire (*one*)
- Attorney Questionnaire (*two*)
- Summary Information form (*one*)
- Juror Questions (*copy of each juror question submitted, together with appropriate information regarding the disposition of each question*)

Instructions to the Jury. Standardized instructions and procedures for the juror questioning procedures are reproduced here:

Juror Questioning Procedure

- ▶ Questions must be submitted before the witness is excused. (Questions may only be addressed to a witness, not to the judge or to counsel.)
- ▶ Prior to excusing each witness, the judge will allow time for jurors to prepare and submit questions.
- ▶ Proposed questions shall be submitted in writing on the Juror Question form. Jurors will not identify themselves in any way on the form.

- ▶ To submit a question, the juror shall fold the Question form once and pass it to the juror who is seated closest to the bailiff. That juror will quietly signal the bailiff that there is a question. The bailiff will deliver the question to the judge.
- ▶ The judge will review the question and confer with counsel. If counsel wishes to object to the question, such objection and argument will be made on the record but outside the hearing of the jury.
- ▶ The judge will determine whether or not the question is proper by applying the same standards that are applied to questions offered by attorneys. The existing rules of law, evidence and procedure will apply. The judge may modify the language of the question to make it conform to legal standards.
- ▶ If the question is improper—and cannot be rephrased to make it proper—the judge may briefly explain to the jury why the question will not be asked. The jury will be advised not to speculate as to what the answer might have been if the witness had been allowed to answer, or to draw inferences from the fact that the question was not asked.
- ▶ If the question is proper—or can be rephrased to make it proper—the judge will read it to the witness at an appropriate time before the witness is excused.
- ▶ After the witness has answered, counsel for both sides will have the opportunity to ask follow-up questions.
- ▶ At the conclusion of the case, the judge will read a final instruction to the jury that again cautions against speculation or drawing adverse inferences from questions not asked and reminds the jury to consider all the evidence presented.

Immediately following the trial, questionnaires were completed by judges, attorneys, and jurors. Judges also completed a “Summary Information Form” and, if applicable, compiled the juror questions submitted at trial. A separate questionnaire, designed to elicit opinions from judges, attorneys, and jurors where questions were not allowed at trial was used to compare experiences and satisfaction with the judicial proceedings (see Appendices for a complete listing of questionnaires).

Phase 2. Data collection for the second part of the study was undertaken to specifically examine Class 2 and 3 felonies. Class 2 felonies were excluded from the first phase, though the inclusion of Class 3 felonies was left to the discretion of the trial judge in first offense property crimes. After the initial phase of the research, concerns were expressed that higher level felonies cases may present unique problems compared to lower level felonies cases and warranted a preliminary investigation. Participation by judges in the extension study was voluntary.

Data Analysis. The statistical analysis treated unanswered questions as missing data that were excluded from final calculations. Missing data results either because a respondent failed to answer a question or the question did not apply to a certain respondent. The data show a high number of missing responses that may be attributed to time demands, misunderstandings over the actual question, or the length of the questionnaires.

Participants and Trials

The number of questionnaires received from judges, attorneys, and jurors are listed below. A total of 186 judges, 367 attorneys, and 1576 jurors participated in the original, Phase I study. The number of participants varies from the number of trials reported because the same judge may have contributed more than one case or data may be missing.

Table 1: Participants

	Judges	Attorneys	Jurors

	County	District	Prosecution	Defense	
Questions Permitted	43	27	71	70	635
Questions Not Permitted	75	41	117	109	941
Subtotal	118	68	188	179	
Total	186		367		1576

Table 2: Trials

	County	District	Total
Questions Permitted	75	43	118
Questions Not Permitted	78	43	121
Total	153	86	239

Judges. In the questions permitted (QP) trials, questionnaires were completed from 118 trials: misdemeanor and felony cases. The majority of judges, 74 percent, completed the questionnaire before the trial verdict. Experience on the bench for judges who participated ranged from 1 year to 28 years; 11 years represented the average number of years on the bench (median = 9.50; mode = 5.00). Participating judges had less than 1 year to 45 years of experience as practicing lawyers (mean = 14; median = 12; mode = 10). The average number of civil trials presided over by the judges within the past two years was 5.00 (ranging from 0 to 40). The average number of criminal trials within the past two years was 43 (ranging from 0 to 250). Judges indicated that their past experience with juror questions included 85 civil trials and 114 criminal trials with 87 of the criminal trials as part of the current research. One judge commented that question submission is relatively common for this particular courtroom:

Jurors have submitted questions on their own, either in writing or by raising their hands spontaneously. I have never disallowed such action, but have required they write it down and review same with both counsel for admissibility.

In the QNP trials, questionnaires were completed from 121 trials: misdemeanor and felony cases. The majority of judges, 75 percent completed the questionnaire before the verdict. Experience on the bench, years as a practicing lawyer, and average trial experience for judges who answered QNP questionnaires were comparable to the judges in the QP group.

Attorneys. Questionnaires for the QP trials were completed by 165 attorneys representing both the misdemeanor and felony cases. Only 141 attorneys identified which party they were representing in court. Based on the submitted responses, approximately 50 percent (71) of the attorneys were prosecutors and 50 percent (70) represented the defendant. Of those that identified themselves as defense attorneys, almost sixty-five percent specified that they had a private practice and one-third were state public defenders. The majority of attorneys completed the questionnaire before the verdict was finalized.

The median number of years that attorneys had been practicing law was six. Few respondents had actually been involved with court cases that allowed juror questioning prior to the pilot study. Previous courtroom experiences were primarily with criminal cases.

Jurors. A total of 1576 completed juror questionnaires were available for analysis (635 for the QP group and 941 for the QNP group). Jurors were asked about previous experiences: 404 (50% of those who responded) had previous jury experience on either civil or criminal trials and of those, 32 had been able to submit questions during the trial. Jurors (QP) had served previously from 1 to 10 times (mean = 1.61; median = 1; mode = 1). Jurors (QNP) reported that they had performed jury duty in the past from 1 to 13 times (mean = 1.56; median = 1.00; mode = 2).

Table 3: Types of Trials

Most Serious Charge	Frequency QP	Frequency QNP
1 st Criminal Trespassing	7	0
Forgery	7	0
2 nd Burglary	2	1
2 nd Kidnapping	1	1
1 st Assault	0	3
2 nd Assault	0	4
3 rd Assault	12	22
Theft	5	6
Attempted Theft	1	0
Bribery	1	0
Child Abuse/Dependency-Neglect	3	1
Cruelty to Animals	2	1
Drug Possession	3	12
DUI/DWAI/DUR	23	24
Ethnic Intimidation	1	0
Harassment	7	6
Exposure	0	3
Menacing	7	4
Reckless Driving	2	0
Robbery	1	1
TRO Violation	4	7
Sexual Assault	1	3
Other	4	11

Note: Total types of charges differ compared to # of trials because of missing data.

Figure 1: QP Class of Felony, Misdemeanor, Traffic Violation

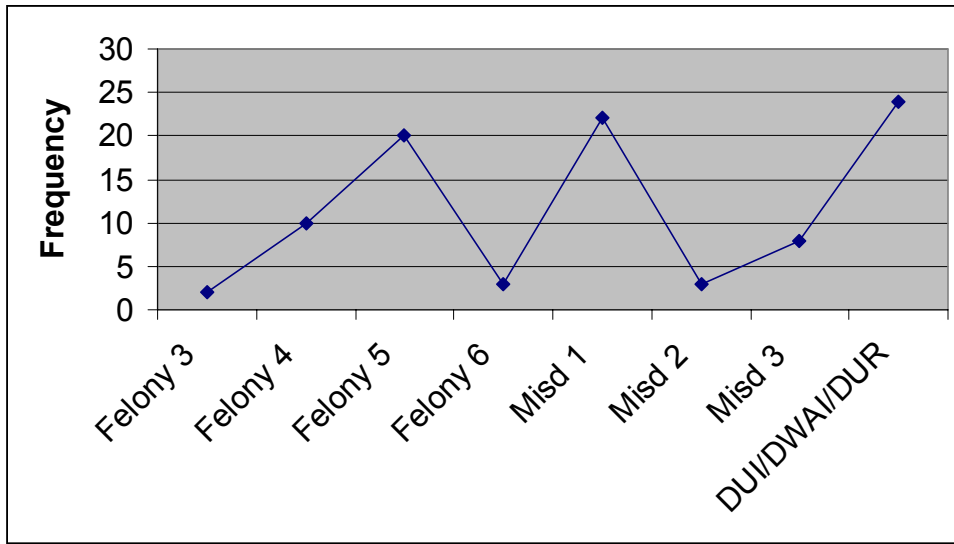
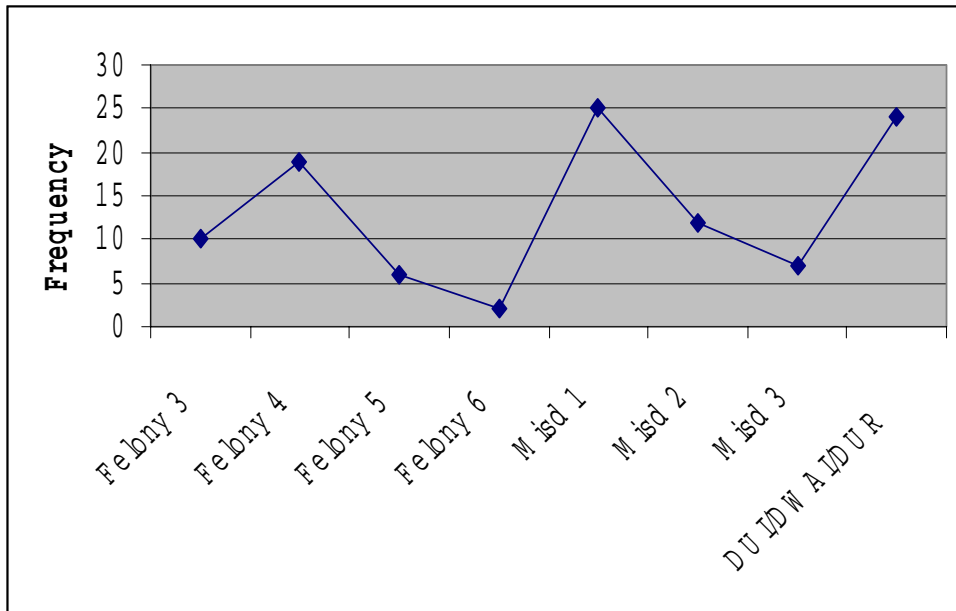


Figure 2: QNP Class of Felony, Misdemeanor, Traffic Violations



III. Phase I: Findings

Verdicts

A summary of the trial data is presented for County and District Courts in both questions permitted and questions not permitted conditions for Phase I. The data analysis shows no statistically significant difference in verdicts between Questions Permitted (QP) and Questions Not Permitted (QNP) trials for County and District Courts ($p > .05$) except for the not guilty verdicts in County Court. A number of confounding variables may be responsible for the differences in not guilty verdicts in County Courts, including, for example, the strength of evidence in the case; the quality of representation; or the type of crime. The available data are insufficient to analyze all possible variables that might influence one type of verdict in separate courts. A positive correlation of both trial courts shows that verdict (guilty versus not guilty) by QP versus QNP condition is statistically significant [$r = .398, p < .001$]. The results of this test demonstrate that verdict by condition accounts for only .58 percent of the variance. The small amount of variance confirms that factors other than juror questions are influencing verdict. Figure 3 shows the verdicts for QP and QNP for all reported trials. Further data analysis for comparisons of QP and QNP include both county and district unless otherwise noted.

Table 4: Verdict Summary County Court Trials

		QP	QNP
Trials Reported		67	78
Verdicts	Guilty	24	28
	Guilty of Lesser Charge	3	7
	Not Guilty	18	30
	Hung Jury	0	1
	Other	4	3
	Verdict Not Reported (Missing Data)	18	9

Table 5: Verdict Summary District Court Trials

		QP	QNP
Trials Reported		43	43
Verdicts	Guilty	22	23
	Guilty of Lesser Charge	1	3
	Not Guilty	10	12
	Hung Jury	2	2
	Other	2	0
	Verdict Not Reported (Missing Data)	6	3

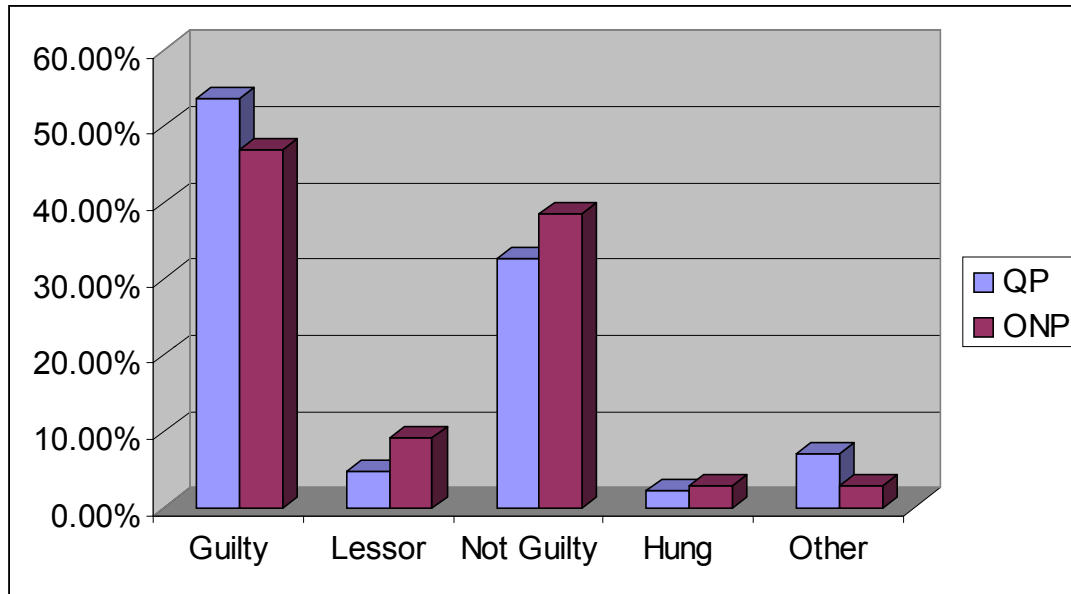
Table 6: Verdict Summary for District & County Court Trials

		QP	QNP
Trials Reported		110	121
Verdicts	Guilty	46	51
	Guilty of Lesser Charge	4	10
	Not Guilty	28	42

	Hung Jury	2	3
	Other	6	3
	Verdict Not Reported (Missing Data)	24	12

Figure 3 shows a percentage comparison of the verdicts for QP and QNP trials. Based on the comparison, allowing jurors to ask questions did not appear to have any undue influence on verdicts.

Figure 3: QP and QNP Verdicts



Do Juror Questions Cause Excessive Delays to the Trial Process?

Questions, when allowed, were submitted in 100 trials—no questions were asked in 18 of the trials that permitted submission. The average number of questions submitted was significantly higher for district courts (mean = 11.41) compared to county courts (mean = 6.9). This difference is reflected in the range of questions asked (outlying data) for district court. One trial included 46 juror questions and another had 64 juror questions. While these cases are problematic for judges, they do not represent an average case. Additionally, the complexity and length of the trial and the size of the jury panel in district courts would promote a higher number of questions. The actual number of questions submitted may also depend on the mannerisms and attitudes of court personnel.

Table 7: Means for Juror Questions

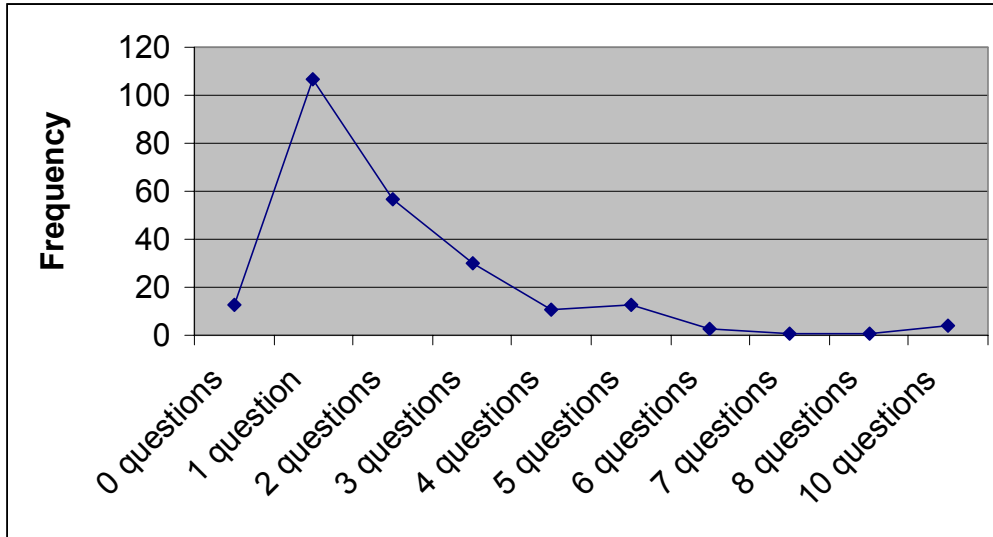
	District Court	County Court	Both Courts
Average # Submitted	11.41	6.90	9.16
Average # Asked per Trial	10.00	4.30	7.15
Average # Declined per Trial	2.79	1.98	2.39
Average # Rephrased & Asked	.58	.64	.61

Note: Missing data from omitted forms or unanswered questions are excluded from the analysis.

QP attorneys were asked to indicate whether jurors submitted questions during their trial. Roughly 86 percent of the attorneys (121) indicated that questions had been proposed. In almost all of the cases judges did ask the submitted questions, according to the lawyers.

Jurors who submitted written questions appeared to feel comfortable with the process and understood what procedure to follow if they decided to submit a question, according to the survey results. Forty-one percent of the jurors (230) indicated that they did submit a question during a trial. The average number of questions per person submitted, as reported by jurors, ranged from 0 to 10 (mean = 2.05; median = 1.5; mode = 1).

Figure 4: Number of Questions Submitted According to Jurors



Time Taken For the Juror Questioning. The average time taken for jurors to prepare and submit questions in District Court was 17.55 minutes (median = 10; mode = 10). In comparison, the average time taken for jurors to prepare and submit questions in County Court was 7.14 minutes (median = 5; mode = 5). This difference is expected given the more complex nature of the trials in District Court. The time taken related to objections was also significantly different between the two courts. The mean time for District Court was 22.29 minutes (median = 10; mode = 10). The time taken hearing objections for County was 7.43 minutes (median = 6.00; mode = 10).

Figure 5: District and County—Time Taken in the Question Process

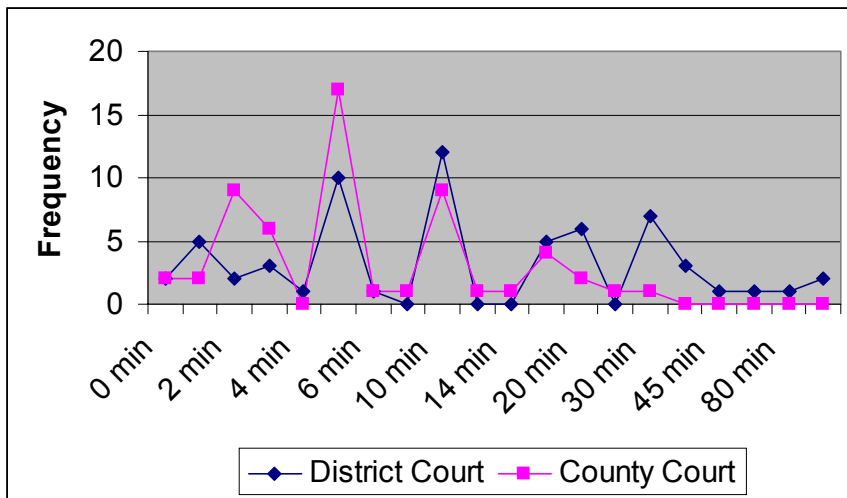
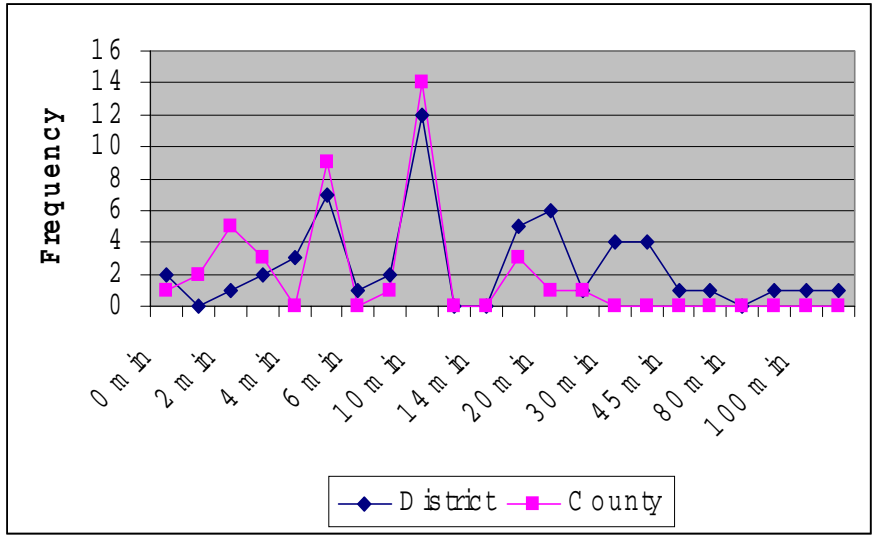


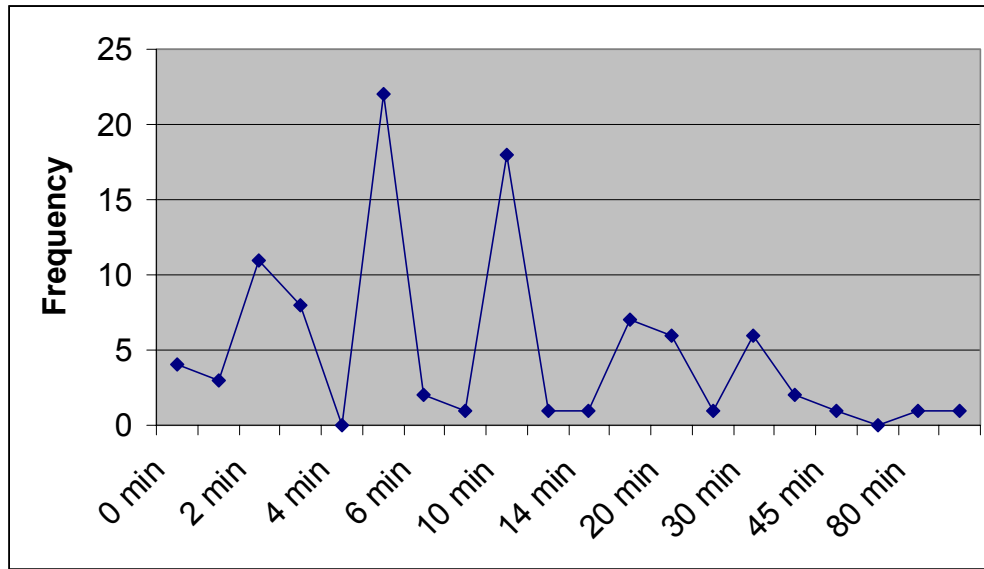
Figure 6: District and County—Time Taken Related to Objections



District and County Courts. Of the many issues related to the jury questioning process, given crowded court dockets and staff shortages, the time taken to include jury questions at trial may represent the foremost concern for judges. A major objective of the current research was to ascertain if the process was burdensome and time-consuming. The data indicate that the majority of judges, attorneys, and jurors do not believe that the delays or interruptions were excessive beyond what was necessary and acceptable. Almost unanimously, jurors agreed that the delays and interruptions caused by the questioning procedure were not excessive beyond what was necessary and acceptable (92%). Seventy-four percent of the attorneys, who responded to the question, did not believe that the delays were excessive.

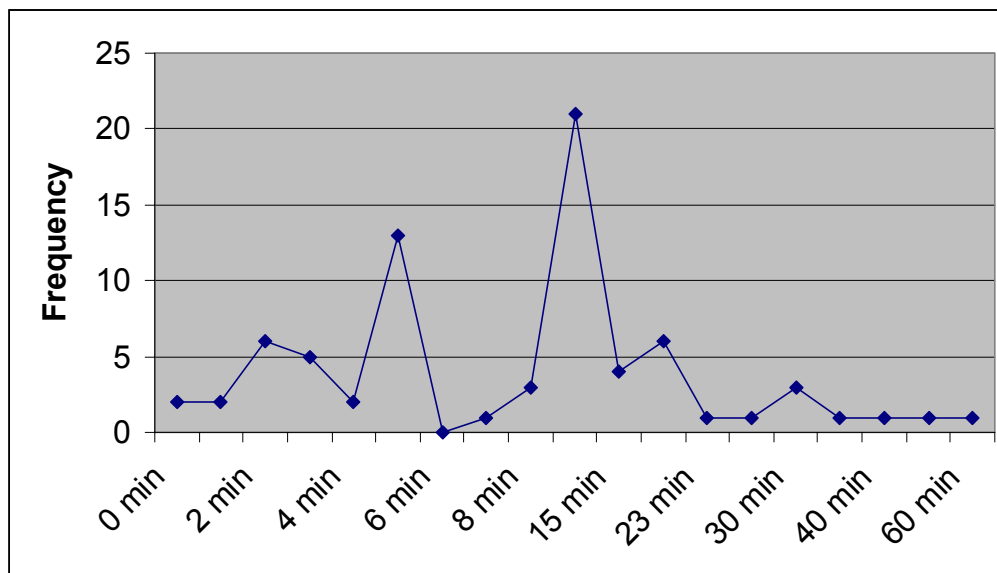
Judges were asked to approximate the amount of time taken that jurors spent preparing and submitting questions. The average (mean) time taken in the questioning process was 12 minutes. The median was 5.50 minutes (the point at which half the cases are above and half are below). The most frequently occurring time was 5 minutes (mode). These measures of central tendency show a skewed distribution for the amount of time. This indicates outlying cases, for example, one case took 1½ hours. Figure 7 shows that the time taken for the questioning process ranged from no time at all to 90 minutes.

Figure 7: Time Taken in the Question Process



Related to the time used to deal with questions, judges were asked to separately track the time taken to hear lawyer’s objections and conduct conferences about the propriety of jurors’ questions. The times ranged from no time at all to 1 hour. Figure 8 shows the time in minutes and the frequency of responses: the average amount of time was 11 minutes (median = 10 minutes; mode = 10 minutes).

Figure 8: Time Taken Related to Objections



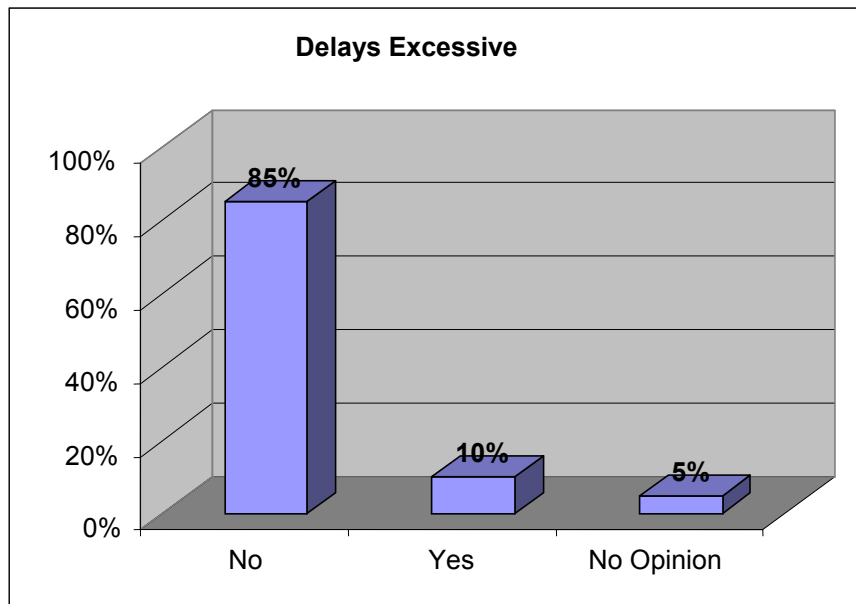
Judges in the QNP trials were asked to indicate their opinion on the whether or not they thought juror questions would cause excessive delays (beyond necessary and acceptable in the trial. Table 8 shows that 41 percent of those who answered did not believe the procedure would cause excessive delays. QP and QNP judges groups cannot be compared because of the different scaling that was employed in the questionnaires. The data for the QP judges,

however, shows that their actual experiences with juror questioning at trial did not cause them to believe that the procedure caused excessive delay (see Figure 9).

Table 8: Were the Delays or Interruptions Excessive?

Response	QNP Judges (opinion based on speculation)		QP Judges (opinion based on experience)	
	Frequency	Percent	Frequency	Percent
No	48	41.4	82	84.5
Yes	20	17.2	20	10.3
Maybe	45	38.8	n/a	n/a
No Opinion	3	2.6	5	5.2
Total	116	100	97	100

Figure 9: QP Judges--Were The Delays Actually Excessive?



Despite concerns expressed by judges prior to and during the study, few commented that the questioning procedure caused excessive delays. These comments were the exception:

- *Caused needless delay.*
- *Caused some delay. Nothing beneficial was gained by the questions in this case and in other cases where I have allowed questions.*

In a trial that involved over 40 questions the judge noted: “*there was some delay in the trial, but in view of the generally good quality of the questions, the delay could not be considered excessive.*”

Several judges expressed concerns about the submission of questions, though, overall, the problems as noted by one judge appeared to be atypical. Nonetheless, the court’s ability to curb a wayward juror resolved a potentially difficult trial situation:

We had a juror who decided he could do a better job than the DA if given the opportunity. He was sending questions one after another. The bailiff would bring me one and he would have another ready when she got back over to the jury box. It distracted the other jurors and the lawyers. I showed the questions to both attorneys and one or the other of them integrated the question into their examination which worked alright. After a while, though, I told the jurors that they should be judicious in asking questions and they should give the attorneys a chance to bring out the facts first and then ask questions that seemed unanswered. That stopped the questions.

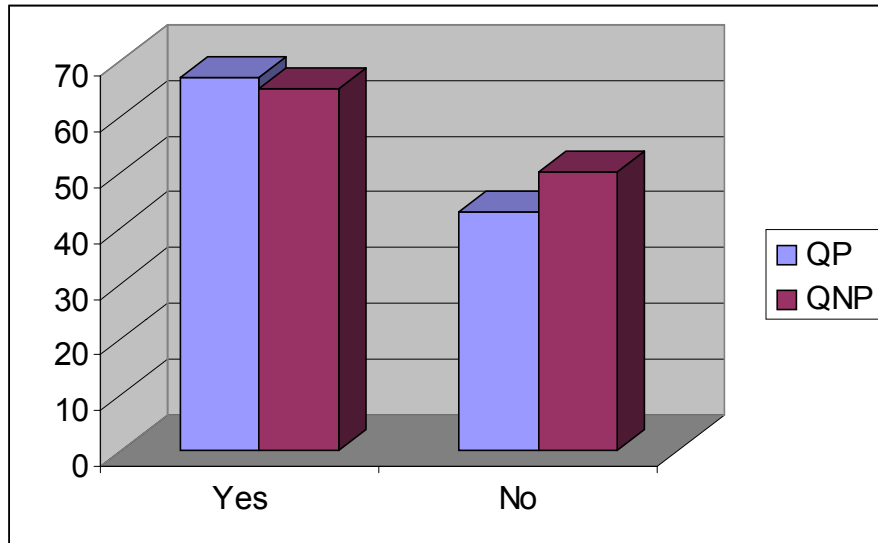
Consequently, the judge's experience was quite negative in this trial, though he had presided over "numerous civil trials where jurors have been quite astute and reasonable in their questions," and grants that this incident may have been an "unusual occurrence."

Did Questions Impact Defendants' Decision to Testify?

Judges' Responses. When advising the defendant about the right to testify and the Fifth Amendment privilege against self-incrimination, 73 percent of the judges reported that they informed the defendant of the juror questioning procedure. Judges also were asked to indicate if the defendant was advised of the rules of law, evidence, and procedure that applied to juror questions. Judges in 61 percent of the trials indicated that defendants were told that the same rules applied to juror questions as they applied to attorney questions. Defendants were told in 63 percent of the trials that improper questions submitted by jurors would not be asked.

No differences were seen between QP and QNP for the number of times a defendant testified, according to the judges. Defendants testified in 61 percent of the QP trials and in 57 percent of the QNP trials.

Figure 10: Judges--Did the Defendant Elect to Testify?



Attorneys' Responses. In the QP group, 87 percent of the attorneys responded “no” when asked if the questioning procedure had an impact on the defendant’s choice to testify and 81 percent indicated that the juror questions had “no weight” in the decision. Defense attorneys reported that in the QP group 62.4 percent of the defendants testified and in the QNP group 50 percent of the defendants testified at trial. These numbers are similar to the data reported by the judges.

Do Jurors Submit Improper Questions?

Clearly, some jurors will ask questions that are irrelevant or inadmissible. Improper questions may include issues about suppressed evidence or prior acts, for example. A list of juror questions was compiled from each trial, but out of context and without detailed information regarding the witness and associated testimony determinations regarding the nature of the questions are difficult, if not impossible, to make. The total number of juror questions compiled was 1,068. Seventy-six percent of the questions were asked by the judges. Of those, a total of 60 questions were rephrased and asked. Available data show that 24 percent of the questions were declined.

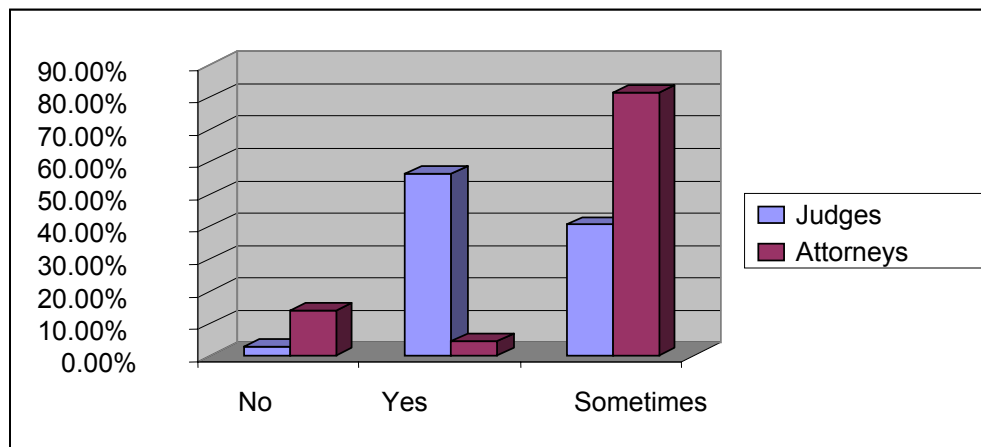
The declined questions indicate that in only one case a juror asked about prior criminal record; 9 questions inquired about prior offenses or actions, and 3 inquired about the source of photo line-ups (this may indirectly relate to a possible prior offense). Eight questions appeared to be related to possible suppressed evidence and 1 asked for an opinion of guilt. Only 4 questions appeared to be cross examination type questions. Other declined questions included (a) requests for police reports, inquired about police procedures and sought information that the police had; (b) “why” questions, for example, why evidence wasn’t available, why someone did something, or why someone engaged in a particular kind of behavior; (c) questions calling for speculation; and (d) questions regarding the victim’s prior behavior.

The data show that judges believed that in half the trials jurors submitted questions that they felt were improper, however, they were generally successful in screening the questions. Attorneys were more likely to question just how successful the screening procedure worked.

Table 9: Did Jurors Submit Improper Questions?

Response	Judges		Attorneys	
	#	%	#	%
No	44	(45.4)	78	(45.1)
Yes	53	(54.6)	95	(54.9)
Total	97	(100)	173	(100)

Figure 11: Did the Procedures Successfully Screen Improper Questions?



Judges, in most cases when improper questions are submitted, can identify which ones are inappropriate and employ successful screening procedures. Attorneys were less optimistic that improper questions were eliminated, with the majority indicating sometimes.

Two experiences, however, demonstrate the difficulties that may occur in the process. The survey allowed judges to offer a retrospective analysis of questions that may or may not have been improper. The inclusion of improper questions in one trial resulted primarily from a lack of experience in handling such issues in the courtroom. The judge commented that “*it was probably my fault that some of the improper questions were not screened out.*” On reflection, some questions that initially were deemed appropriate or harmless left a few judges uneasy with the final determination on admissibility:

- *I felt two questions asked were “harmless,” as the DA agreed, and asked those two questions to the defendant because they were “harmless.” However, on reflection, I’m not sure they were harmless. They were seemingly innocuous, but they made one witness—defendant—look evasive because of the answers.*
- *It can be difficult sometimes to determine if what looks like a proper question may be shifting the burden of proof.*

What are the Dynamics of Declining Jurors' Questions?

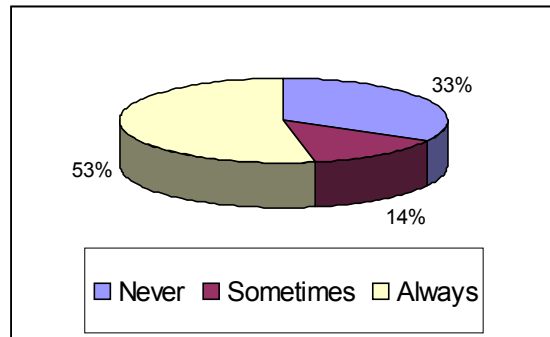
Judges indicated that in 58 instances they declined to ask a question submitted by a juror. If a judge had declined a question, an explanation was offered to the jury 66 percent of the time. In 50 percent of the trials, judges responded that "yes" certain questions were declined.

At some trials, judges declined to ask questions submitted to defendants who testified (see Table 10). Only 21 (23%) of the attorneys, however, reported that the judge refused to ask questions submitted for the defendant.

Table 10: Judges--Questions Declined to the Defendant

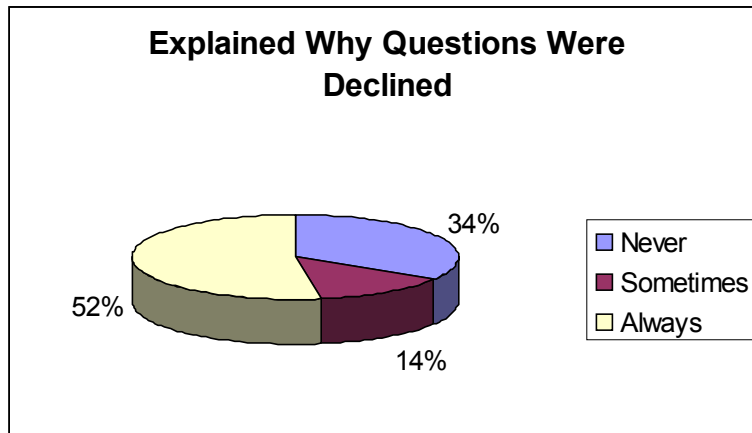
Declined a Question to Defendant		
Response	Frequency	Percent
Never	20	33%
Sometimes	8	14%
Always	31	53%
Missing	87	
Total	166	100%

Figure 12



Judges either always or sometimes explained to the jury why a particular question was declined.

Figure 13



Reactions from Jurors. It was rare for a judge or attorney to observe any unfavorable reactions from the jurors after a question was declined. Jurors appeared to accept the ruling and showed no observable negative reaction to the decision. The data show that there is little concern that jurors may react negatively when a judge declines to answer a submitted question. Jurors indicated that they did not experience any negative reactions to questions that were declined. In over half of the circumstances when a judge declined to ask a question an explanation was offered that jurors viewed as satisfactory. Attorneys also agreed that jurors accepted the ruling with no negative reaction.

Table 11: Observed Reactions When Questions Were Declined

Juror Behavior	# of Judges Indicating	# Attorneys Indicating	# Jurors	
			Yes	No
Frustration	2	1	4	83
Anger	0	0	0	87
Embarrassment	0	3	2	85
Acceptance of the Ruling	20	12	n/a	n/a
No Observable Reaction	35	57	n/a	n/a
Other	4	4	n/a	n/a

For QP jurors, 48 percent of the respondents noted that judges had declined other jurors' questions during the trial. Virtually none of those jurors were affected by the decision not to allow a question from a fellow juror.

Reaction	No	Yes
Embarrassed	286	1
Frustrated	279	3
Angry	281	1

Judges' & Attorneys' Perceptions of Jurors who Asked Questions

QP participants were asked to indicate if they believed that the questioning procedure resulted in any of the following behaviors or situations with jurors. Perhaps, most interesting is that from the judges and attorneys' perspective the jurors appeared to be focused on relevant issues and stayed on task. QP judges were asked to indicate if a behavior or situation applied to a trial. For data reported here, respondents were asked to check all circumstances that applied.

Table 12: Signals from Jurors' Questions

Question	Number of Judges Who Agreed	Number of Attorneys Who Agreed
Signal confusion concerning the evidence	31	68
Provide feedback on juror perceptions	53	90
Indicate jurors taking sides in the case	17	34
Indicate argumentative or hostile behavior from a juror	13	16
Express a juror's opinion regarding witness credibility	12	25
Indicate jurors were focused on relevant issues	78	86
Indicate jurors were focused on non-relevant issues	29	50
Alert you that the jury was missing information	68	72

The data would suggest that the majority of attorneys agreed that jurors were able to obtain clarifying information--pertaining to the case--through this process. One could also argue that the submission of juror questions assisted the attorneys in understanding what the jurors were thinking. Although it was clear that the majority of attorneys believed that the jurors' questions provided insight into their thought patterns, it was not as obvious to assume that attorneys believed the related answers were significant. Only one-fourth of the attorneys indicated that the answers provided necessary information to the jury.

QP judges were asked, in their opinions, what benefits may have resulted from the questions. Overwhelmingly, the judges believed that juror questions clarified witness testimony and provided additional information.

Further results related to the effectiveness of the process appeared to support many of the projected advantages. The following table presents signals that judges and attorneys received from jurors who submitted questions. Submitted questions, in some cases, gave the attorneys insight into the perceptions of jurors, what issues were relevant, and alerted them to information that was missing from their case. Table 13 indicates the number of judges (n = 186) and attorneys (n = 367) who indicated they noticed the following.

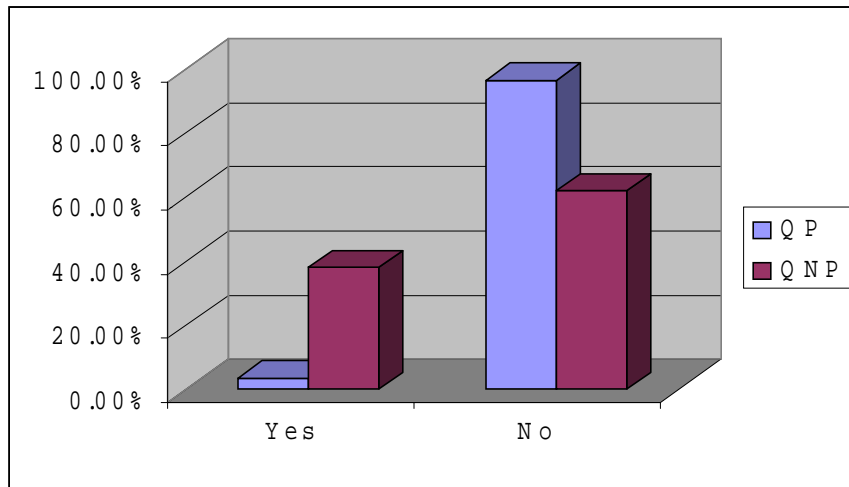
Table 13: The Value of Jurors Questions

Question	Number of Judges Agreement	Number of Attorneys Agreement
Clarified testimony of a witness	68	68
Provided additional relevant information	66	74
Cleared-up confusion in the evidence	42	42
Clarified relevant issues in the case	25	33
Assisted in the truth finding process	51	49

Do Juror Questions have a Prejudicial Impact?

In the QNP group, judges were asked to indicate, in their opinion, if the questioning would likely cause actual prejudice to any of the parties. In contrast, the QP judges responded yes or no if they believed the questioning actually resulted in prejudice. In order to compare perceptions between the two groups, QNP responses for prejudice to the defense (n = 25); the prosecution (n = 0); and both sides (n = 15) were collapsed to represent a “yes” response. Judges were more likely to believe that the process was fair to both sides after an actual experience with jury questioning. Judges, overwhelmingly, agreed that the juror questioning procedure followed at trial did not result in actual prejudice to any of the parties involved (97%). Jurors did not indicate that the judge appeared to favor one side (99% responded no).

Figure 14: Judges—Opinions vs. Experiences on Perceptions of Prejudice



Judges were asked if answers to juror questions assisted the defense in the trial by helping to create reasonable doubt. QNP judges were asked to offer an opinion on these matters. Similarly, they were asked to comment, in their opinion, if the prosecution was assisted in meeting its burden of proof. Overall, QP judges saw no evidence that the questions helped or hindered a particular side.

Table 14: Assist in Creating Reasonable Doubt

Response	QP Judges (opinion based on experience)		QNP Judges (opinion based on speculation)	
	Frequency	Percent	Frequency	Percent
No	52	58	26	22.4
Yes	10	11	3	2.6
Maybe	n/a	n/a	76	65.5
No Opinion	28	31	11	9.5
Total	118	100	116	100

Figure 15: QP Assisted in Creating Reasonable Doubt

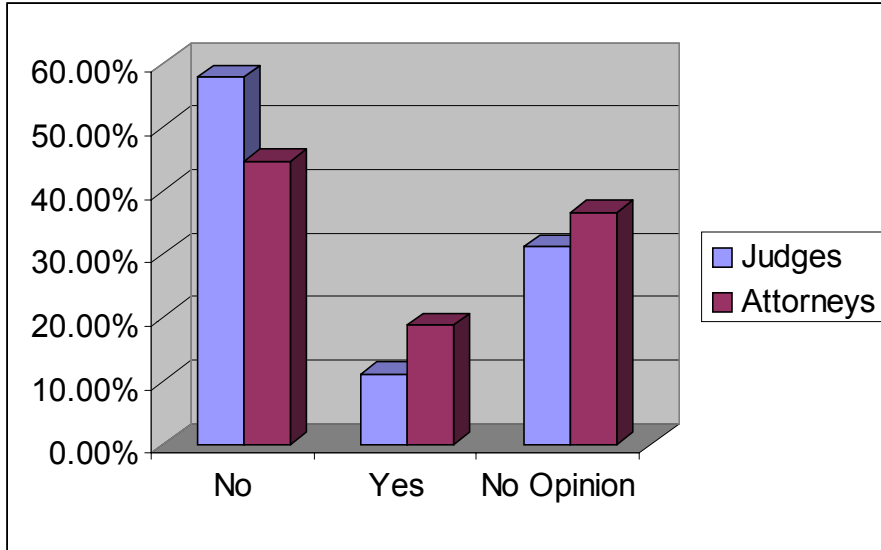


Figure 16: Defense and Prosecutors--Answers to Questions Assisted in Creating Reasonable Doubt

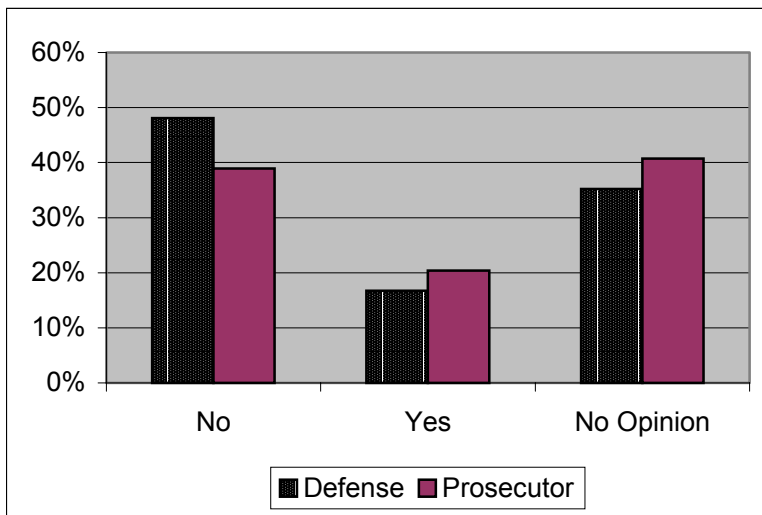


Table 15: Assisted in Meeting Burden of Proof

Response	QP Judges (opinion based on experience)		QNP Judges (opinion based on speculation)	
	Frequency	Percent	Frequency	Percent
No	43	47.8	10	8.6
Yes	16	17.8	25	21.6
Maybe	n/a	n/a	73	62.9
No Opinion	31	34.4	8	6.9
Total	90	100	116	100

Figure 17: QP Assisted in Meeting Burden of Proof

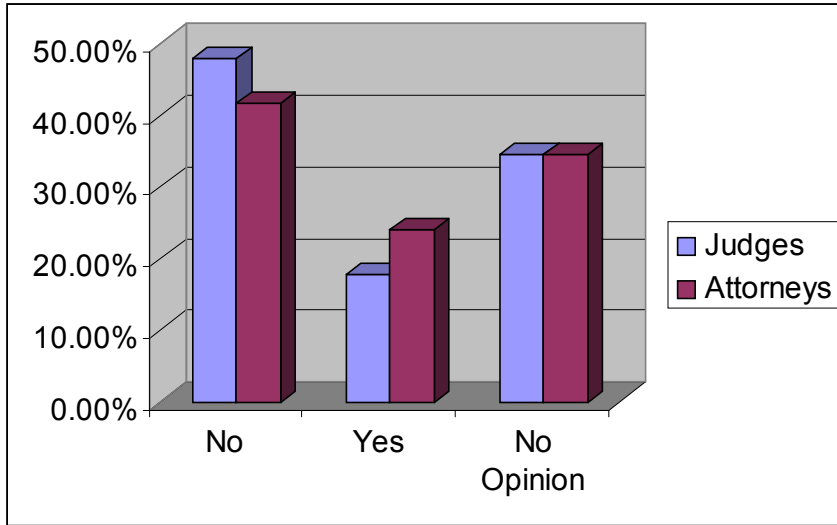
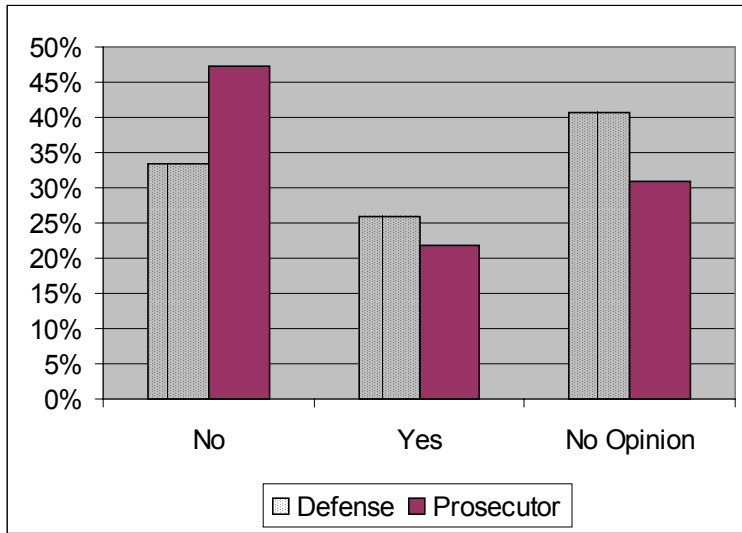


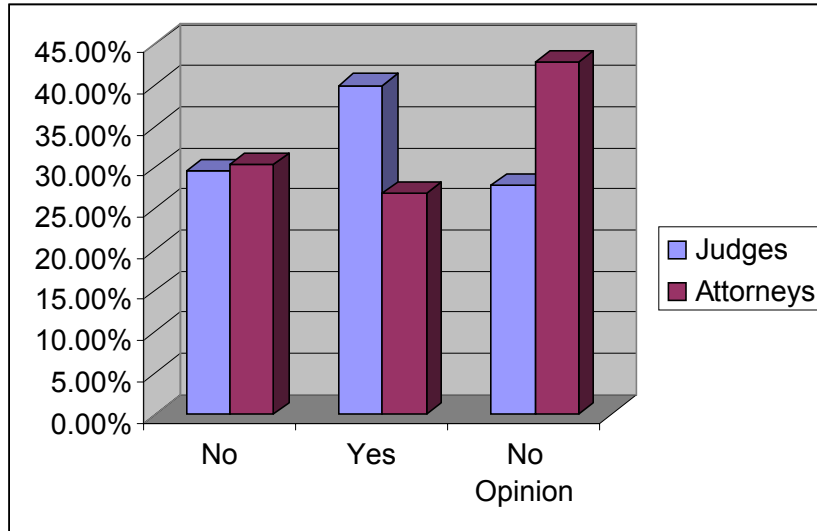
Figure 18: Defense and Prosecutors--Answers to Questions Assisted in Meeting Burden of Proof



What Impact Did Questions Have on the Trial?

Overall, there was less agreement by judges on the positive implications of juror questioning on the trials, though 40 percent indicated a favorable outcome. In contrast, only 16 percent believed that the procedure had an unfavorable effect on the trial. Attorneys were less sure about the favorable effect that juror questions had on trials. Even though a higher percentage of respondents agreed that questions had a favorable effect on the trial, it was still a relatively low percentage (26.9). The majority of responses either indicated that the attorneys did not believe questions had an effect on the trial or simply had no opinion.

Figure 19: Questions Had a Favorable Effect on Trial



Judges were asked to comment on whether or not the questioning procedure had a favorable effect on the trial. The majority of comments reflected that questioning by the jurors increased attention and lessened confusion:

- *Helped to keep the jurors interested and involved.*
- *Jury is much more engaged!*
- *Allowed jurors to be active participants.*
- *Jurors paid more attention.*
- *I felt jurors were more attentive because they had to decide if additional questions might help them in making decisions about the facts.*
- *Clarified witness testimony and cleared up confusion in the evidence.*
- *Shows that jurors are searching for the facts necessary to reach a verdict.*
- *Jurors asked good, relevant questions.*
- *Evidence that would be helpful to the jury was elicited that had not been elicited by the attorneys. Good specific questions were asked, which I felt were very enlightening.*
- *The jurors seemed to appreciate the ability to submit questions and to more fully participate in the evidentiary proceedings.*

- *The questions were short and on-point and were helpful to the triers of fact.*
- *I had previously, basically considered that it was worth a try. I thought it had been successful in the civil cases I had and that it might work in criminal. It did.*

One judge's comment notes the many advantages the question procedure had on jurors' attitudes and on the trial overall:

Provided the jury with, what they perceived, as additional information, in an attempt to corroborate witnesses' testimony—a good cross-examination question not asked by counsel. They were extremely attentive throughout the two day trial and much more astute as to the details of the case. Jurors were outstanding litigators. Additionally, the jurors expressed extreme satisfaction knowing they would just have the opportunity to ask questions, whether they did so or not.

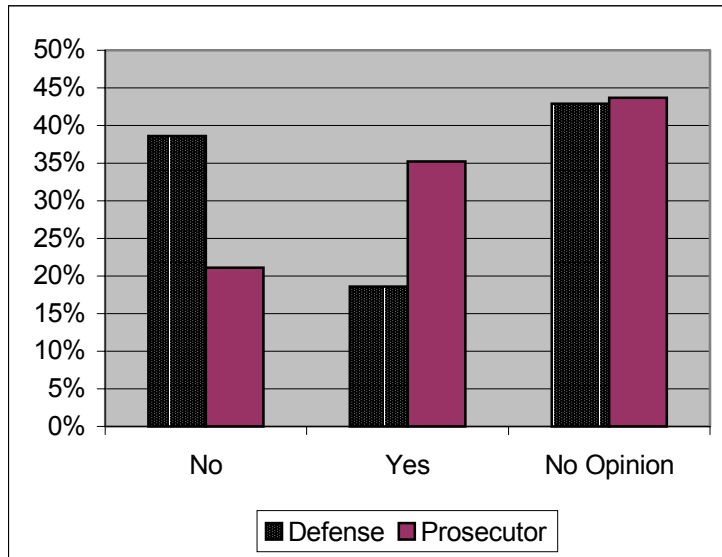
Of the 21 written comments four judges commented that no positive effects were present. One stated that the questions were disruptive and clearly benefited the prosecution. Others wrote, for example:

The trial was a mess, with prosecution evidence poorly prepared, so we already had many delays, and this made it slower still. It took 3 days for a 3 witness trial (including deliberation).

Questions were disruptive and clearly benefited the prosecution.

Prosecutors were more likely to express approval of the favorable effect of juror questioning compared to defense attorneys, though a large percent of the attorneys indicated that they had no opinion.

Figure 20: Defense and Prosecutors Questions had a Favorable Effect on Trial



Prosecuting attorneys in the QP group made numerous positive comments on the effect juror questions had on the trial:

- *I believe jurors felt part of the process more.*
- *Allows the truth to come out.*
- *This allowed both Defense and Prosecution to present a more complete trial for the jury.*
- *Jurors are the fact finders and they feel included in the process by the opportunity to ask questions. It shouldn't be a mystery about the jurors' mental process.*

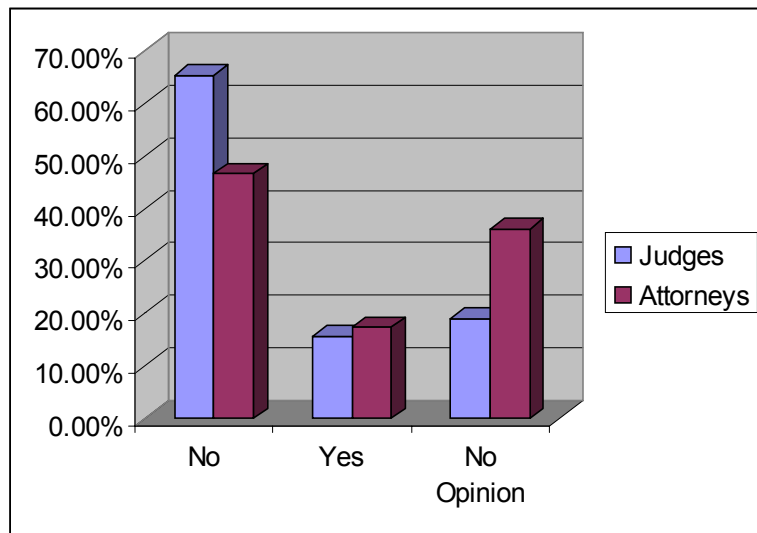
Despite a myriad of concerns associated with the defendant's right to testify, defense lawyers recognized the favorable effects on jurors' attitudes:

- *Good for jurors.*
- *Jurors were encouraged to be more involved in the testimony, since they knew they would ask questions.*
- *Gave the jurors a sense of involvement and importance.*

I think that allowing jurors to have input enhances the legitimacy of jury trials. Whether the jury asks questions or not, it engages the jury more and this makes them more attentive to the evidence in general.

Respondents also were asked in a separate question if the juror questions had an unfavorable effect on trial. Assuming that a judge or attorney, for example, believes that the process may have a favorable effect does not negate the possibility that the same person may also see negative aspects to the juror questioning. Judges and attorneys, who participated in the procedure, however, were more likely to believe that the questions did not have an unfavorable effect.

Figure 21: Questions Had an Unfavorable Effect on Trial



Prosecuting attorneys noted a number of unfavorable effects associated with the questioning process in their comments. Individual concerns expressed by counsel, however, are not supported by the data as a problematic aspect of juror questioning.

- *The juror questions mostly focused on irrelevant details. I think telling them we're going to allow them to ask questions and then telling them their questions are irrelevant is more of an insult to them than not allowing their questions in the first place. In addition, when the judge asked if they had questions, they seemed to feel they had to ask something and cast about for a question to ask. It was time-consuming to go into chambers, go over each question, make a record, then come back in and go through the explanation of why we weren't asking certain questions.*
- *Addressing each question is extremely awkward. We did a sidebar on each question which appears to be contrary to the intent of the questions. Each sidebar creates an environment of secrecy and excludes the jury. However, there is no better way to handle these questions. Also, it completely interrupts the flow of a trial.*
- *The questions were sometimes violations of rules of evidence or motions in limine which further frustrate the effort to open the courtroom.*

Defense attorneys also made numerous comments that juror questions had a negative effect on the trial. These examples are reflective of the type of comments offered.

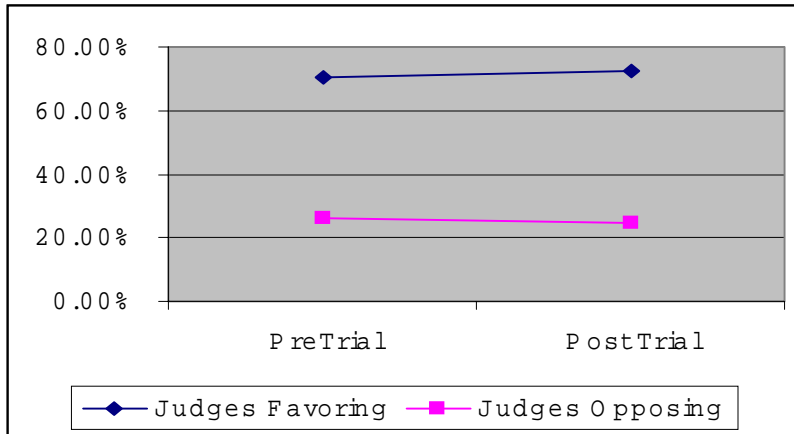
- *Waste of time. Nothing the jurors asked wasn't already covered on direct and cross examination of any witnesses. This is not a good idea in criminal trials since several questions only lead to continuing direct and cross of areas already covered before the question was asked.*
- *Some jurors and both attorneys seemed to get frustrated with a particular juror. Slowed things down and hard to get a flow.*
- *Jury wants "soap opera" facts. It's hard to suppress evidence when a jury is going to ask about that evidence.*

Judges commented on just a few of the problems that the questions presented. Ten written comments related to the unfavorable effect questioning had on the trial, for example (many related to delays):

- *Only to the extent that attorney objections to the question and objections to the procedure made by the attorney to preserved the record are time-consuming.*
- *Only to extend the additional time from 20-30 minutes, including reading extra instructions at the beginning and end of the case, plus all bench conferences and waiting for juror questions. The value of the questions to clarify relevant evidence was outweighed by extra time required for trial when trying to complete a typical county court case in one day.*

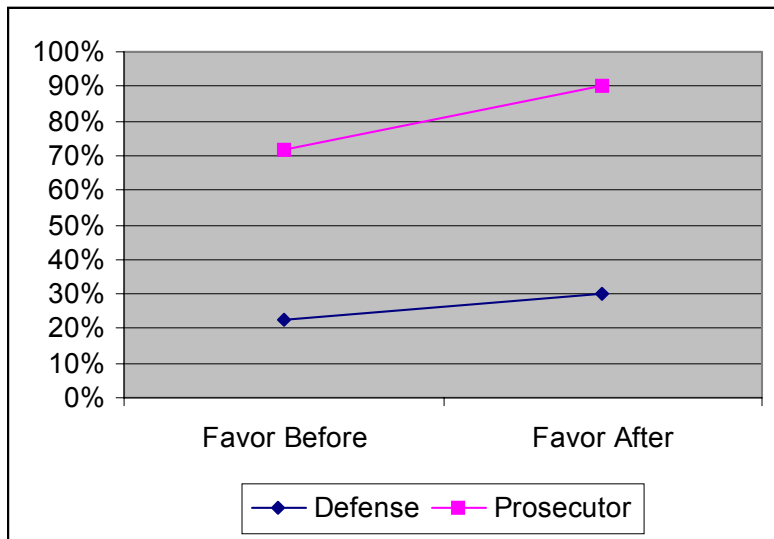
One of the most interesting findings related to this survey is the increased favorable attitudes toward the juror questioning process. Judges who favored juror questions show an even higher rate of approval after the experience in the current research. The number of judges who opposed the procedure dropped slightly.

Figure 22: Judges--Comparison of Favor/Opposition Before and After Trial



Approximately 40 percent of all attorneys indicated that they were in favor of allowing questions prior to their trial experience. When the same attorneys were questioned after the trial, the percentage of individuals in favor of this process increased to almost 49 percent. This finding would suggest that attorneys who may have been opposed or had not identified a previous opinion changed their perception of juror questioning because of a positive experience during trial.

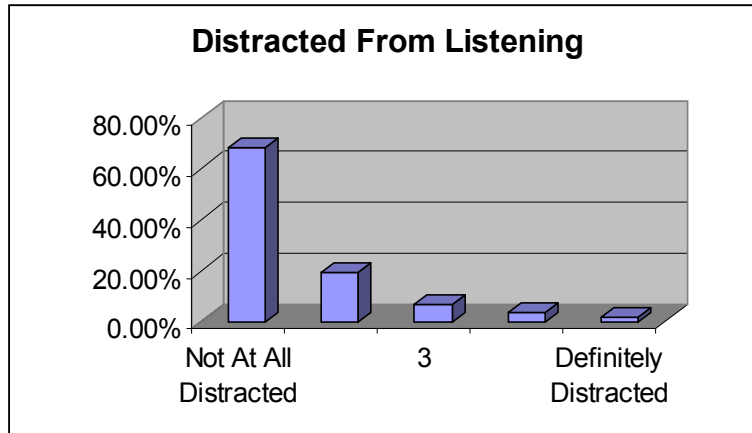
Figure 23: Attorneys--In Favor Prior to Trial vs. After Trial



Jurors on Juror Questioning

Almost all the jurors expressed their appreciation for the opportunity to submit questions (96%) and the majority did not believe that formulating and asking questions distracted from their ability to pay attention to the testimony and evidence that was presented.

Figure 24: Ability to Listen



Ninety-five percent of the jurors did not feel pressured to submit a question and 94 percent reported that they felt free to submit questions. The majority agreed that the procedure to submit a question was convenient (89%) and that they had ample time to write and submit questions (97% responding favorably). Twenty-two percent (n = 128) of the jurors indicated that they wanted to ask a particular question, but decided not to submit one. These jurors selected from the following reasons to explain why they did not submit their questions. Table 16 shows jurors' response to a Likert scale that ranged from 1 to 5. The means shows the majority of responses were at the ends of the scale (the standard deviation (SD) shows the measure of dispersion from the mean).

Table 16: Summary Statistics on Jurors' Experiences & Perceptions of Questioning

Question	M	SD
Appreciate Opportunity (5=very much)	4.83	.550
Distracted from Listening (1=not distracted)	1.52	.916
Pressure to Submit Question (1=no pressure)	1.00	.673
Free to Submit Question (5=extremely free)	5.00	.651
Difficulty of Procedure (1=not at all difficult)	1.00	.817

Table 17: Reasons for Not Asking Questions

Reason For Not Asking Question	Number of Jurors who Agreed
Did not want to delay or interrupt trial	31
Felt too embarrassed or shy	11
Did not want to be identified as person asking the question	20
Too late: witness had been excused	78
Did not want to ask an improper question	42

Jurors made a number of comments explaining why they decided not to submit a question:

- *Did not want to be seen as helping either side more than the other.*
- *Thought I would have an opportunity later and wanted to make sure it was worded properly.*
- *Did not want them to think I would bring out more information or questions asked that should have been brought out in the case that I felt should have been brought out by the attorneys. Stepping on toes so to speak.*
- *I wanted to ask the question verbally.*
- *Not sure the legality of question was intact.*
- *They didn't adequately answer my previous question anyway.*
- *The judge did not ask if there were any questions before excusing witnesses; 2 to 4 times.*
- *The time it would have taken to make a written question of the complexity necessary would have distracted me from the trial. If the judge had made the effort to make the questions as clear as possible, or better yet, hand the question to one of the lawyers to pursue the issue, it would have made this much better.*

Jurors most commonly asked questions on issues that had yet to be answered, were omitted in the examination of a witness, or would help determine the truth.

Table 18: Why Submit a Question?

Reason	Number of Jurors
	(n = 635)
Didn't understand what the witness said	32
Wanted information that had not yet been provided	199
Wanted to know what this witness would say about a particular issue	103
Wanted the witness to clarify something	57
Wanted information to help determine the truth about what actually happened	130

The few comments by jurors that explained why they had submitted a question included the same types of reasons:

- *The lawyers were unclear at times and I needed clarification.*
- *I wanted the witness to clarify something that had been eluded [sic] to in the prosecutor's opening statement.*

For jurors who asked questions, 10 percent indicated that either the prosecution or defense lawyer objected to the question. This reflects that 90 percent of the jurors were unaware that either counsel had raised an objection to their question. Consequently, it was rare that a juror had a negative reaction to a lawyer's objection.

Table 19: Jurors' Reactions to Objections to Own Questions

	Yes	No
Feel Embarrassed	10	28
Feel Frustrated	4	20
Feel Angry	2	20
Total	16	68

Jurors who submitted questions that were approved and asked by the judge indicated that the answers to their questions were beneficial, particularly in acquiring new information. Almost eighty percent of the jurors who submitted questions indicated that the judge had approved and asked the question submitted.

Table 20: Benefits and Salience for Jurors

Reason	Number of Jurors
Helped understand what witness said	68
Provided new information	166
Provided testimony for comparison	50
Clarified testimony	119
Assisted in finding the truth	109
Caused you to form an opinion about the outcome of the case based mainly on the question and answer	18
Caused you to focus on that question and answer to the exclusion of other evidence	7

If questions were asked, 44 percent of the jurors indicated that the lawyers in the case engaged in follow-up questions and 87 percent of those responding felt that the answers to the follow-up questions were helpful.

Questions From Fellow Jurors. Judges approved and asked other juror’s questions to witnesses, according to the respondents, in the majority of cases (90%). Only 7 (n = 471) jurors indicated that other juror’s questions caused them to think that a particular juror was taking sides in the case. Six jurors (n = 466) noted that a fellow juror appeared to be argumentative with the prosecutor or the defense lawyer.

Table 21: Response and Reaction to Other Jurors Questions

	Response Frequency	
	Yes	No
Did other jurors submit questions?	491	33
Did the judge ask the question?	452	53
Did the questions indicate that the juror was taking sides in the case	7	464
Did the questions seem argumentative toward one side?	6	460

Jurors indicated that other questions posed by panel members were beneficial and caused few detrimental effects.

Table 22: Benefits of Other Juror’s Questions

Did Other Juror’s questions ever:	Yes	No
Clarify testimony	382	78
Provide important information	391	64
Cause you to form an opinion about the outcome of the case based mainly on the questions and answer	38	408
Cause you to focus on that question and answer to the exclusion of others	25	409

Jurors’ Views of their Own Questions Versus Attorney Questions. Concerns over how much emphasis jurors place on their own questions compared to the questions asked by lawyers was explored in the current study. Eighty-one percent of the jurors reported that they did not engage in speculation if a juror question remained unanswered and 80 percent reported that they did not speculate when attorneys’ questions remained unanswered. Additionally, there was little speculation or discussion on unanswered questions during deliberation and, in the few cases when it did occur, the unanswered questions could have easily come from a juror or an attorney. Twenty jurors admitted to this type of speculation regarding questions asked by the jurors, however, only 9 jurors specified that their final verdict was influenced. Four jurors indicated that speculation about unanswered lawyer questions influenced their final verdicts.

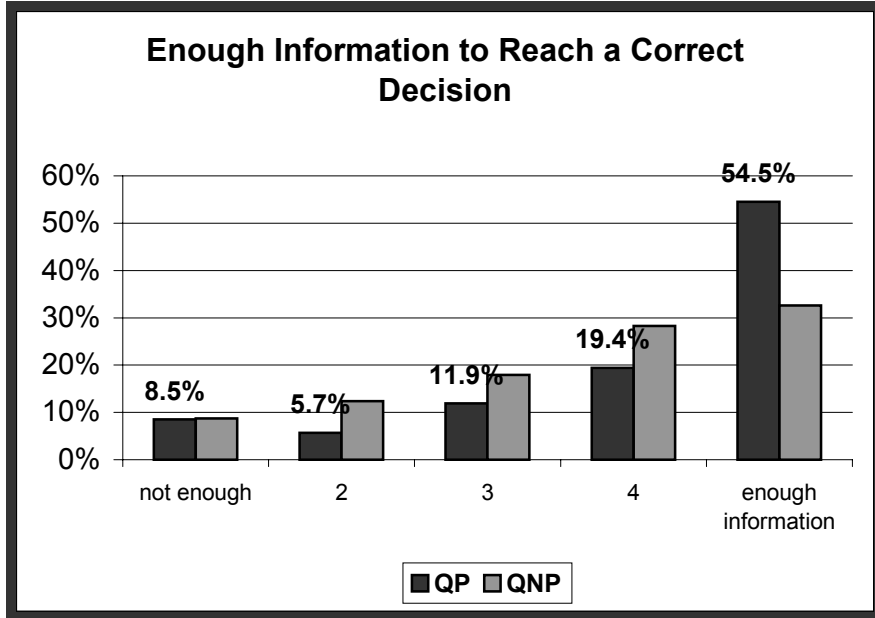
Final Deliberations. Jurors in the QP group were more likely to agree that they had sufficient information to reach a correct decision compared to the QNP group. These findings suggest that when permitted to submit questions jurors have fewer unanswered items on the table during deliberations.

Table 23: Enough Information to Reach Correct Decision

	QP	QNP
Response	Frequency	Frequency
Not Enough Info	73	81
2	49	116
3	102	167
4	167	264
Enough Info	468	304

No significant difference was found in mean scale scores among respondents by QP trials or QNP trials on the amount of information needed to reach a correct decision [$t(1768) = 11.86, p > .05$].

Figure 25



Though a single juror may have submitted more than one question (21% indicated yes), that same juror was not perceived by fellow jurors as having a greater effect on the verdict (71%) during deliberations.

In very few trials, were juror questions that had been declined brought up during final deliberations. Most jurors (n = 345) indicated that this type of question was not discussed. During deliberations in which a declined question was raised, jurors noted that the issue rarely influenced the final verdict.

Figure 26: Were Declined Questions Raised in Deliberations?

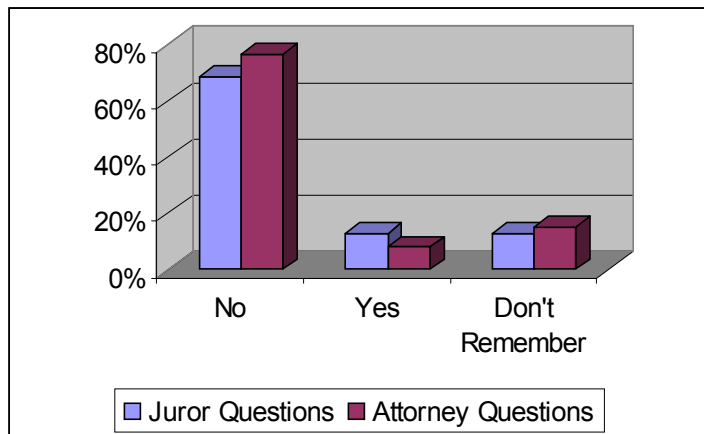
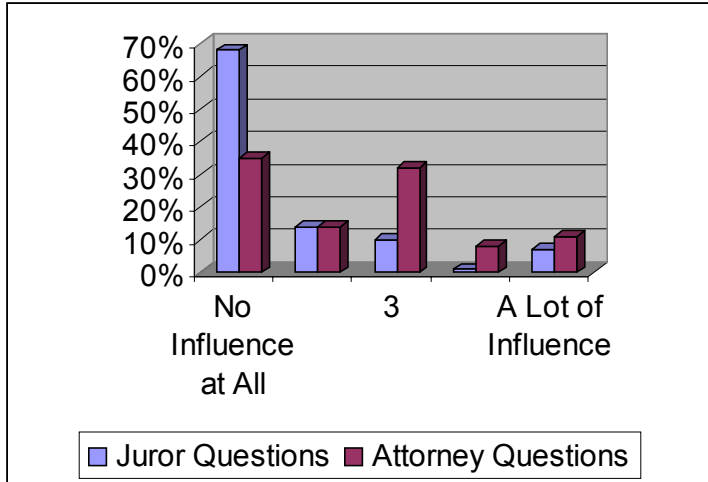
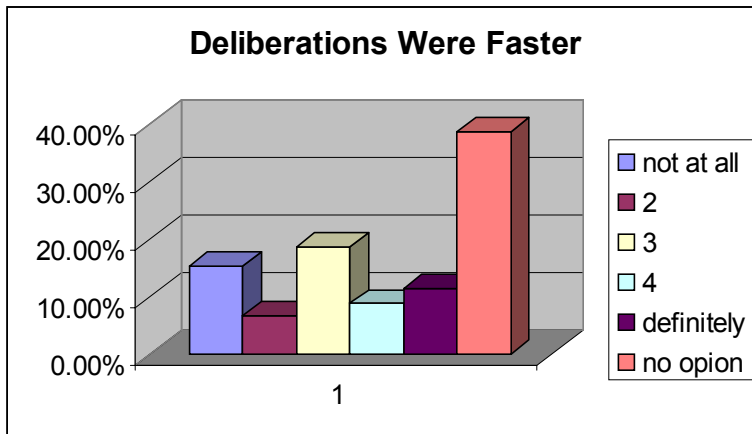


Figure 27: Did Declined Questions Influence Verdict?



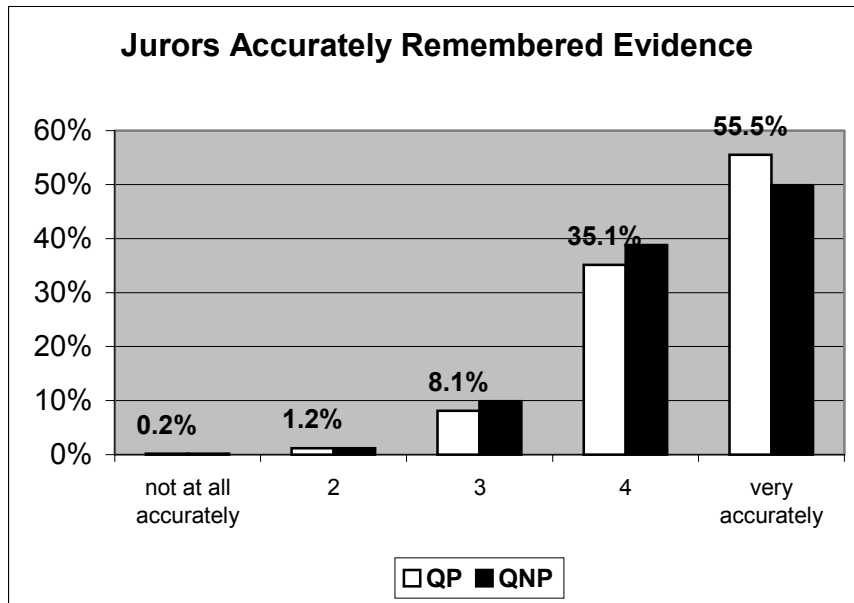
The influence of juror questioning on the speed of deliberations was less clear. Thirty-nine percent of the jurors indicated that they had no opinion on this matter. The results for this question are likely influenced by a juror’s past experience. Juror also may readily recognize that deliberations depend on the type of case and the strength of evidence and therefore, were reluctant to speculate.

Figure 28: Questions Sped-Up the Deliberations



Jurors (QP) reported that, in 91 percent of the cases, they accurately remembered evidence during deliberations. They also felt that they had enough information to reach what they believed was a correct decision (75.4%).

Figure 29

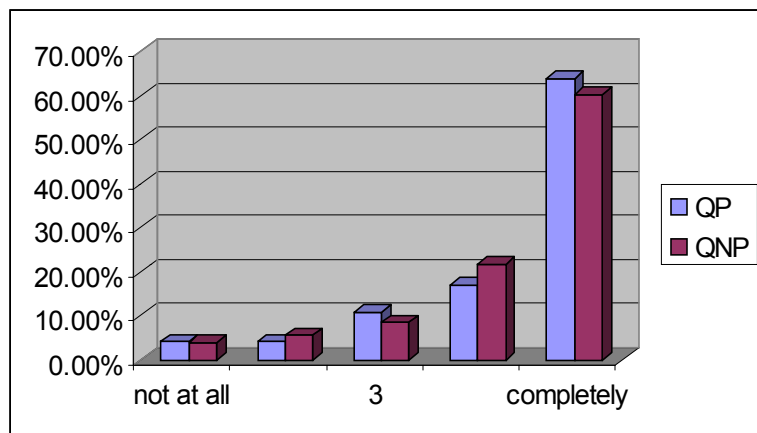


A significant difference was found in mean scale scores among respondents by QP trials or QNP trials for how accurately they remembered evidence. Jurors in the QP trials reported remembering evidence more accurately compared to the QNP group [$t(1766) = 2.13, p = .03$].

Final Outcomes for QP and QNP Trials

Satisfaction with Verdict. Several of the survey questions were asked of both QP and QNP group. Comparisons show that jurors in the QP group reported a slight increase, based on percentages, with their verdict satisfaction and the way in which the trial was conducted compared to the QNP group. Additionally, jurors who were allowed to ask questions at trial had a more positive overall reaction to their experience. Jurors in both conditions indicated that, in most cases, they were satisfied with the verdict. A comparison of means when the data are collapsed showed no significant difference was found for satisfaction with verdict in mean scale scores among respondents by QP trials or QNP trials [$t(1765) = .243, p > .05$].

Figure 30: Satisfaction with Verdict



QP jurors wrote nearly 100 comments explaining why they were somewhat unsatisfied by the verdict. None of the remarks, however, were related to the questioning procedure. The comments reflected dissatisfaction with the attorneys, the amount of evidence, and the physical environment.

Confidence in Verdict. Additionally, the majority of jurors reported that permitting them to submit questions increased their confidence in the final verdict (66%).

Table 24: Increased Confidence in Verdict Because of Questioning Procedure

Response	Frequency
No Effect	157
Yes	363
Not Applicable	35

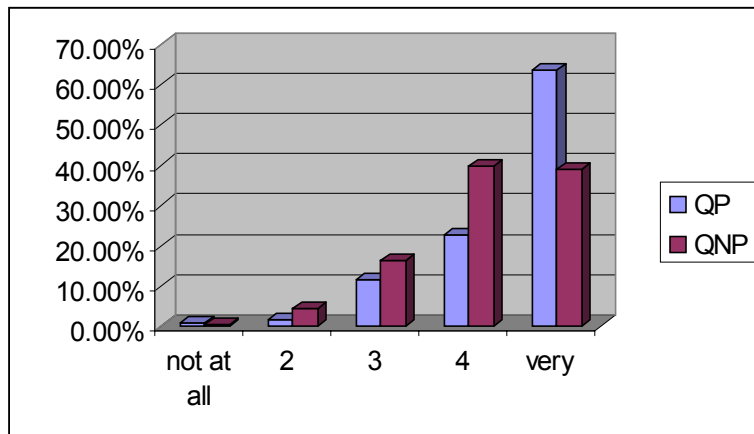
An overwhelming number of jurors, who were permitted to submit witness questions, believe that the process resulted in a fair trial (88% = definitely fair). The comments from jurors included, for example:

- *In a previous trial, as a juror, I found it frustrating not to be able to get the answers to some of the questions I had.*
- *The jury naturally has questions in their minds—it makes the courtroom proceedings an interactive experience. All parties benefit!*
- *The jurors are not under the same pressure the attorneys are and they may find something the attorneys have missed.*
- *I believe that sometimes attorneys do not ask particular questions because it could hurt their case. This method allows the people who are making the decisions to ask what is on their minds and adds clarity for the jurors.*
- *The jury is basing its final decision on all information and having these questions answered is necessary and fair to both parties.*
- *If jurors are to be the “fact-finders” then we must be allowed to discern some facts for ourselves—lawyers may present only what they want to present.*

- *The process of understanding must include clarification—feedback. This is a linguistic theory of understanding/comprehension.*
- *I think it helped to shed light on the case that perhaps the lawyers might have missed. Thirteen people of sound mind would surely think of something a few lawyers might omit purposely or miss in their planning of questions.*

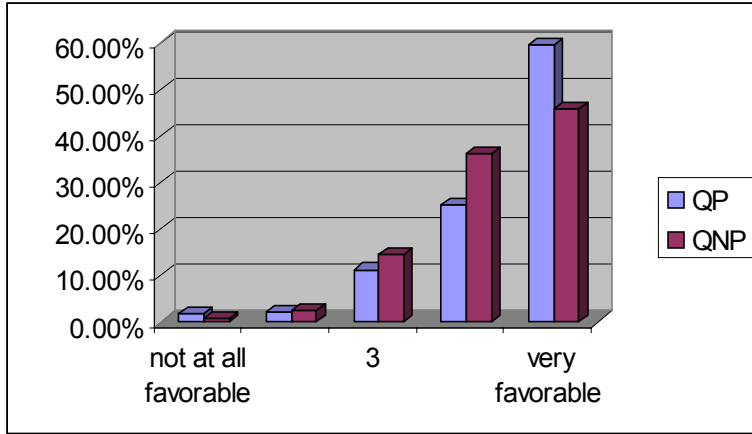
Satisfaction with Trial. When asked if they were satisfied with the way the trial was conducted, jurors in the QP group were much more likely to express a positive opinion. In fact, 62 percent of the QP jurors indicated “very satisfied” compared to 39 percent of the QNP jurors. Jurors in both groups indicated that their overall trial experience was favorable. Jurors who submitted questions, however, indicated a stronger positive reaction. A significant difference was found in mean scale scores among respondents by QP trials or QNP trials for satisfaction with the way the trial was conducted. Jurors in the QP trials reported being more satisfied with the trial process [$t(1823) = 8.08, p. < .001$].

Figure 31: Jurors’ Satisfaction with the Way the Trial Was Conducted



Overall Reactions. Jurors indicated in both QP and QNP groups that their overall reactions to the trial experience were favorable. Their opinions regarding the judicial system were about the same but when they did have a change the change was for the better. A significant difference was found in mean scale scores among respondents by QP trials or QNP trials for overall reaction to the trial experience. Jurors in the QP trials reported a more favorable trial experience compared to the QNP group [$t(1817) = 3.72, p. < .001$].

Figure 32: Overall Reaction to Trial Experience



Jurors were split on whether or not their opinion of the judicial system changed as a result of the trial experience. Most jurors indicated that, if their opinion had changed, it was for the better in both QP and QNP groups.

Figure 33: Opinion Regarding the Judicial System Changed

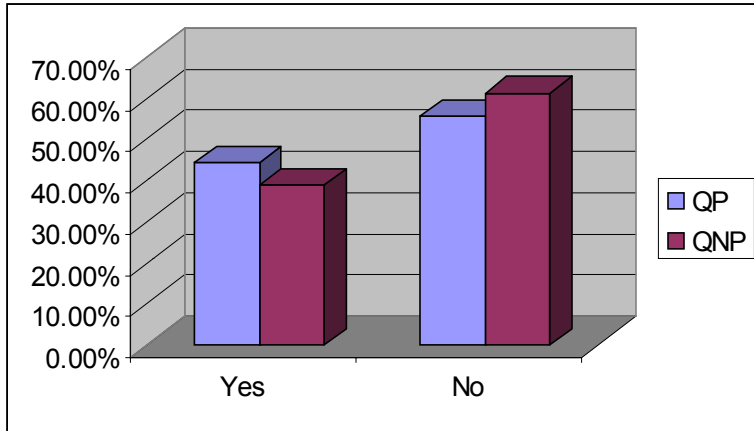
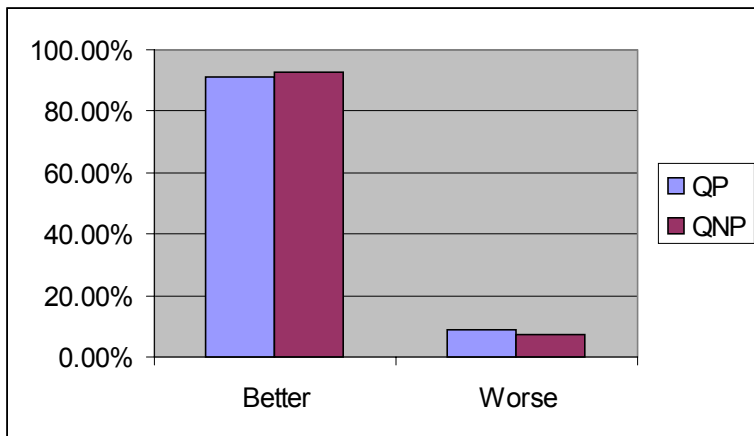
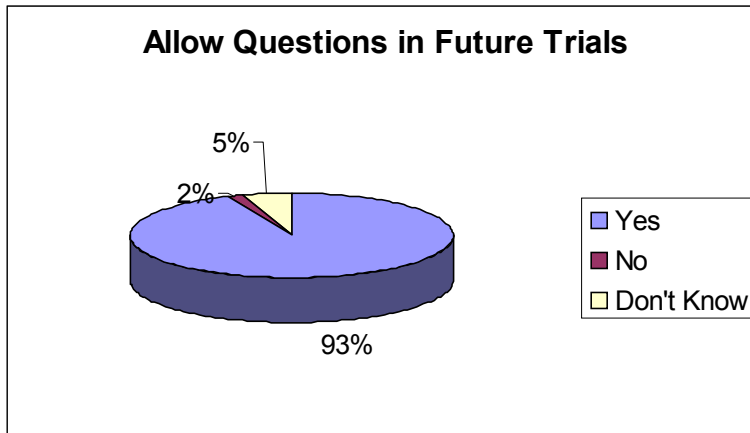


Figure 34: How Opinion Has Changed



Overwhelmingly, jurors in the QP group agreed that questions should be allowed in future trials (93%).

Figure 35



The questionnaires allowed jurors to provide any additional comments. Jurors offered written comments that provided positive feedback on the questioning process.

Comments related to asking questions included the following:

- *One aspect of being allowed to ask questions was that the whole process of listening became more active for me. This was positive.*
- *I feel it allows questions in jurors' minds to be answered that allows them to make decisions on guilt or innocence with more complete and accurate information.*
- *Juror questions are very worthwhile and a step in the right direction. I would have been frustrated if we had not been allowed to submit them. The judge's method of dealing with them was great—he stopped, gave us time and made us feel at ease.*
- *I have felt frustrated with our legal system, believing that law and justice are two different things. The law always seemed to be just a word game having little to do with right and wrong. Being permitted to ask questions was a very good experience for me since I've always thought that juries are expected to make a decision based upon incomplete information and selected truths. My attitude toward the system improved today!*

One negative comment from a juror surfaced:

- *I don't think that the jury should submit questions, that it is entirely the job of both the prosecuting and defending attorneys. That responsibility is for the attorneys and them alone, not for lay people.*

Procedural Issues

Many of the items on the questionnaires dealt with procedural issues and interactions in the courtroom.

Presiding judges advised attorneys that questions would be allowed at trial in 99 percent of the cases. Attorneys were advised of the questioning procedure from immediately preceding the trial to one week in advance. In 37.3 percent of the trials, attorneys were advised the day of the trial. The juror questioning procedure was explained to counsel prior to trial in all but 5 trials and in all cases the attorneys appeared to understand the procedure. Judges indicated that in 10 trials the attorneys referenced the questioning procedure during *voir dire*. The questioning procedure did not appear to influence, according to the judges, opening statements (97% reported “no”) or peremptory challenges and challenges for cause (98% reported “no”). Judges indicated that in 5 percent of the trials the questioning procedure did influence attorneys’ direct and cross examinations. The most frequent comment from judges indicated that these cases involved follow-up questions on redirect or re-cross examinations.

Table 25: Judges--Attorney Advisement, Process, & Influence

Question	Response	
	Yes	No
Advise prior to trial that questions would be allowed	115	2
Explain prior to trial questioning procedure	113	5
Attorneys appeared to understand procedure	103	0
Attorneys referred to questioning during <i>voir dire</i>	10	108
Influenced peremptory challenges	0	116
Influenced opening statements	3	114
Influenced direct and cross examinations	6	111

Counsel objected to the submission of juror questions in 65 percent of the cases. Judges noted that in 97 percent of the cases the objections were always handled so that the jury could not hear the objections. In the majority of cases, 88 percent, a formal record was made of all objections to juror questions and conferences with the attorneys.

An overwhelming number of attorneys (99%) reported that the judge had advised them that jurors would be able to submit questions during the trial. The majority of attorneys indicated that they were given sufficient notice regarding the permission of jury questions. For those attorneys who did not agree that appropriate time was given, a high percentage had reported receiving notification on the day of trial.

Table 26: Attorney--Judge's Notification and Process

Question	Response	
	Yes	No
Advised that jurors would ask questions	98.6%	1.4%
Sufficient notice was given	88.2%	11.8%
Did you fully understand the question process	98.6%	1.4%

Influence Attorneys' Courtroom Performance. Survey results would suggest the majority of attorneys did not alter their courtroom performance to accommodate the integration of jurors' questions. The most noticeable difference surfaced when witness-related questions were reviewed. The following table presents data regarding the courtroom conduct of attorneys.

Table 27: Attorneys' Courtroom Performance

Question	(n)	Response	
		Yes	No
Process affected your conduct in <i>voir dire</i>	143	11.2%	88.8%
Process affected your preemptory challenges	142	6.3%	93.7%
Process affected your opening statement	145	8.3%	91.7%
Process affected the witnesses you called	144	6.9%	93.1%
Process affected how you examined witnesses	144	18.8%	81.3%
Process affected advise of the 5 th Amendment	73	32.9%	67.1%

Jurors Questions Permitted (QP) Trials. A high percentage of the jurors (97%) in the questions permitted group indicated on the questionnaire that they completely understood the procedure for submitting questions on a scale where 1 = did not understand at all and 5 = understood completely (mean = 4.85; median = 5.00; mode = 5). Thirty-one individual comments from jurors on whether or not they understood the procedure, however, reflected some confusion over the process. The following seven issues are representative of the comments:

- | |
|---|
| <ol style="list-style-type: none"> 1. How many questions a juror could ask. 2. When a question should be submitted. 3. How to signal when they had a question. 4. How much time was allowed to write questions. 5. How to submit the question to the judge. 6. What types of questions could be submitted. 7. Lack of understanding of the legal issues. |
|---|

Phase II: Class 2 and 3 Felonies

After the completion of Phase I, questions were raised regarding possible differences in trials involving more serious cases. As a result, for Phase II trial judges were asked to voluntarily participate in contributing data for higher level felonies. The results from the data collection are exploratory and final conclusions or interpretations based on the findings should be done with caution. First, judges who allowed questions at higher level felony trials were those who are more likely to favor the procedure. Second, a small sample creates less reliable and valid results. Fourteen Class 2 trials and 10 Class 3 trials from District Court were reported (n = 24). Jurors submitted questions in 23 of the trials. Thirteen judges, 57 attorneys, and 328 jurors completed questionnaires for Phase II.

Table 28: Types of Trials

Most Serious Charge	Frequency
1 st Assault	3
1 st Burglary	1
1 st Sexual Assault	2
1 st Murder	1
Assault and Kidnapping	1
2 nd Assault	1
2 nd Burglary	1
Armed Robbery	2
Attempted Murder	1
Juror Retaliation	1
Sexual Assault on a Child	1
Drug Related	5
Other	4

Verdicts

Given the available data, jury verdicts do not appear to be overly influenced by the questioning procedure. Higher level felonies show a comparable number of guilty versus not guilty verdicts when contrasted to the data for other District Court Trials.

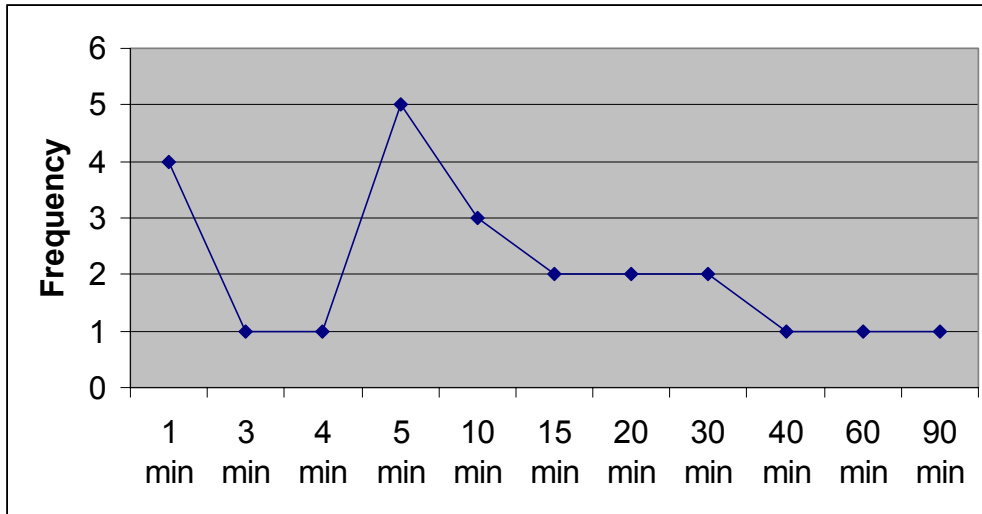
Table 29: Verdicts

	Frequency
Guilty	15
Guilty of Lesser Charge	1
Not Guilty	7
Other	1

Do Juror Questions Cause Excessive Delays to the Trial Process?

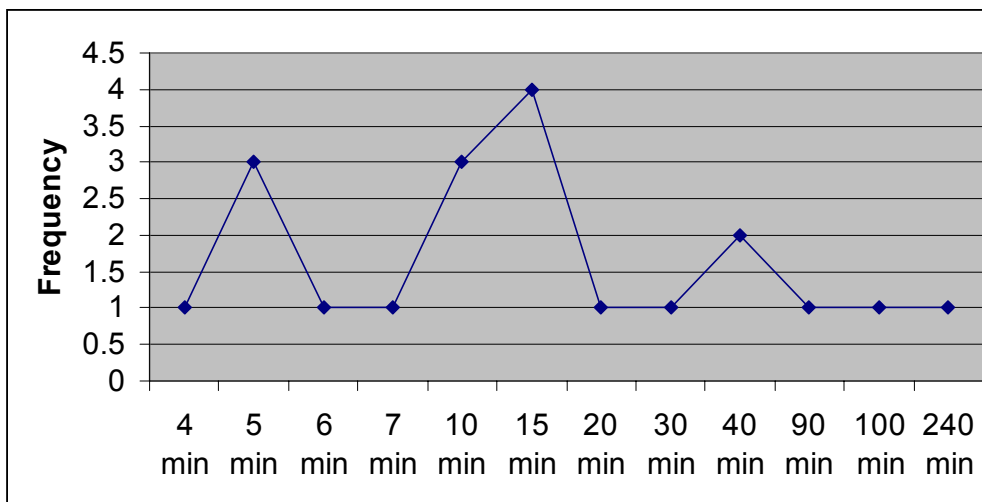
The time taken in juror preparation and submission of questions exceeds the average times reported for the first phase of the study (Phase II: mean = 16.78 minutes; median = 10.00; mode = 5 versus Phase I: mean = 12 minutes; median = 5.5; mode = 5). Higher level felonies will take more time, but the amount of time is not viewed by the parties involved as unreasonable. Twenty (83.3%) judges responded that the time taken for the questioning procedure did not cause excessive delays. The majority of attorneys (60%) also reported that delays were not excessive or unreasonable. Ninety-three percent of the jurors did not feel that the delays were excessive.

Figure 36: Time Taken in Question Process



The average time taken to hear objections (33 minutes) was longer than the time report in Phase I (11 minutes).

Figure 37: Time Taken Related to Objections



Did Questions Impact the Defendant’s Decision to Testify?

According to the judges, the defendant elected to testify in 9 of the trials (37.5%). The percentage of defendants (61%) who testified at higher level felony trials compared to Phase I defendants is significantly lower. Defense lawyers reported that the defendant testified in 40 percent of the trials and that the questioning procedure did not effect the defendant’s choice to testify (77% responded “no”).

Do Jurors Submit Improper Questions?

Fifty percent of the judges reported that jurors did submit improper questions, but, similar to the reports of Phase I, the questions were “sometimes” or “always” successfully screened 79 percent of the time. Sixty percent of the attorneys reported that jurors asked improper questions and that the procedure for screening usually was effective (56% indicated “sometimes”).

What are the Dynamics Surrounding Jurors' Questions?

Declining Jurors' Questions. Seventeen judges reported that they declined questions asked by jurors and 4 indicated that they specifically declined questions that were submitted to the defendant. None of the judges indicated that the jurors showed any frustration, anger, or embarrassment when their questions were declined. Only one attorney noted that jurors appeared to be frustrated after a question was declined. Only eight jurors (2.4%) self-reported that they were frustrated by the judges' decision not to ask a question.

Judges' and Attorneys' Perceptions of Jurors who Asked Questions. Ninety-six percent of the judges felt that the submitted questions indicated that jurors were focused on relevant issues and 79 percent were alerted that jurors may be missing information. Similar to the results of Phase I, attorneys agreed that the questions alerted them to jurors' perceptions (61%) and that jurors were focused on relevant issues (58%). Sixty-three percent of the attorneys who responded indicated that the questions alerted them to missing information.

Table 30: Signals from Jurors' Questions

Question	Number of Judges Who Agreed	Number of Attorneys Who Agreed
Signal confusion concerning the evidence	7	20
Provide feedback on juror perceptions	14	35
Indicate jurors taking sides in the case	1	10
Indicate argumentative or hostile behavior from a juror	1	5
Express a juror's opinion regarding witness credibility	2	10
Indicate jurors were focused on relevant issues	23	33
Indicate jurors were focused on non-relevant issues	5	26
Alert you that the jury was missing information	19	36

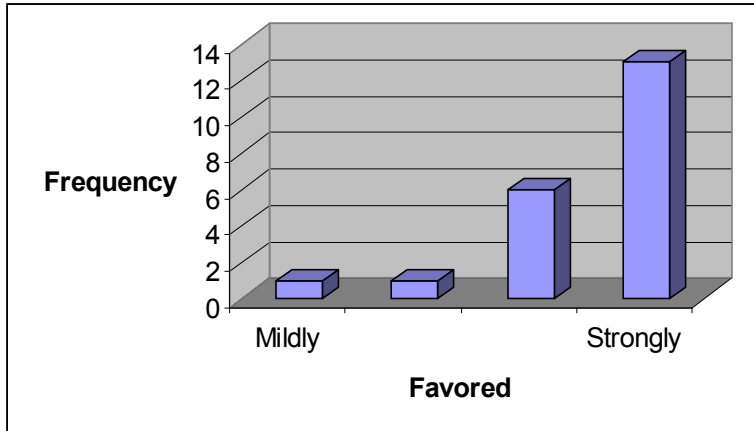
Do Juror Questions have a Prejudicial Impact? Twenty-two of the judges reported that the questions did not result in actual prejudice to any party. In fact, only one judge responded yes to an incident that may have resulted in prejudice. Similarly, only 4 attorneys reported that the questions may have resulted in some type of prejudice to a party.

What Impact Did Questions Have on the Trial?

Seventy percent of the judges indicated that juror questions had a favorable effect on the trial. This indicates that only 4 of the 24 judges who responded with an opinion believed that the procedure did not have a favorable result.

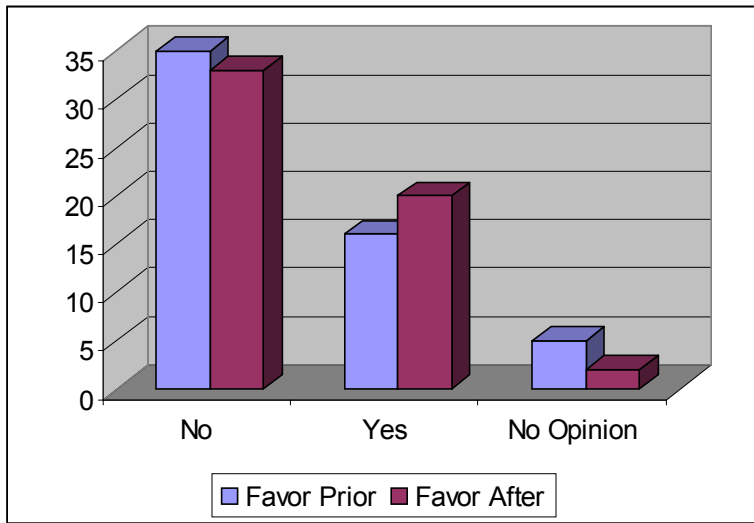
Judges, as previously mentioned, who conduct QP trials in Phase II tend to favor the procedure. When asked if they favored the procedure after the trial experience, 19 responded "yes" and 4 responded "no." The numbers for judges who favored questioning mildly to strongly also remained consistent. Three judges indicated that after their experience in trials in which questions were permitted that they strongly opposed the procedure.

Figure 38: Judges—Favor Juror Questions after Trial



Sixty-one of the attorneys indicated that they did not favor allowing juror questions before their actual experience at trial. This percentage stayed virtually the same when asked after actual experience with the procedure if they now favor questions.

Table 31: Attorneys Favor Before and After Experience



Jurors on Juror Questioning

A total of 336 juror questionnaires were available for analysis. Jurors stated that 92 percent of the time they completely understood the procedure, felt no pressure to submit questions, and “very much appreciated” having the opportunity to submit questions. The procedure, to submit questions, was not at all difficult, according to 83 percent of the jurors. Seventy-five percent of the jurors indicated that they were “not at all distracted from listening” to witnesses as a result of formulating questions.

Of the 323 jurors who responded, only 21 percent indicated that they wanted to ask a question, but decided not submit it to the court.

Table 32: Reasons for Not Asking Questions

Reason For Not Asking Question	Number of Jurors who Agreed
Did not want to delay or interrupt trial	17
Felt too embarrassed or shy	13
Did not want to be identified as person asking the question	14
Too late: witness had been excused	37
Did not want to ask an improper question	33

Forty-two percent of the jurors indicated that they did submit a question during trial. Each juror reported submitting from 1 to 10 individual questions (mean = 2.51; median = 2.0; mode = 1). The majority of questions were asked to gather more information that they jurors felt had not been provided by the testimony of the witness.

Table 33: Why Submit a Question?

Reason	Number of Jurors
	(n = 138)
Didn't understand what the witness said	25
Wanted information that had not yet been provided	124
Wanted to know what this witness would say about a particular issue	55
Wanted the witness to clarify something	56
Wanted information to help determine the truth about what actually happened	75

Eighty-one percent of the jurors indicated that they did not speculate about an answer for a question that was declined and only 3 jurors indicated that the speculation influenced their final verdict.

Final Deliberations. Not surprisingly, jurors were unsure if deliberations went faster because of their particular questions. Only 9 percent indicated that the speed of deliberations was increased because of the questions and 33 percent had no opinion. In the case of a single juror submitting more than one question, only 6 percent of the participants felt that this particular juror had a greater effect on the verdict (4 jurors).

Jurors appeared to be satisfied with their verdicts and 69 percent indicated that the questions increased their confidence that they had reached a correct decision in the case. Additionally, 96 percent of the jurors believe in the fairness of permitting jurors to ask questions at trial. The jurors reported satisfaction with the way the trial was conducted (90%) and their overall reaction to their experience was favorable (89%). Perhaps most important, 91 percent of the jurors indicated that their opinion of the judicial system changed for the better.

Conclusion

The primary purpose of examining the Phase II data was to look for any “red flags” that might suggest that higher level felonies are in some ways unique or ill-suited for the juror questioning procedure. Although no distinctive problems were indicated, with the exception of one case, the results must be interpreted with caution.

One case example raises many of the potential disadvantages with juror questions, though the trial is unique among the many that were collected for the research. In the most serious case that was charged--attempted 1st degree murder--the jurors submitted a total of 103 questions. The approximate time taken by jurors to prepare and submit questions during the trial took 1½ hours. The same amount of time was spent hearing lawyers’ objections and conducting conferences. The judge indicated “no opinion” on whether or not he felt this was an excessive time delay, but made the following comment:

A lot of time was used. We were supposed to be done in a week. The trial lasted 7 days. The questioning interrupts the flow of the examination by the attorneys. Most jurors did not ask questions—only a few did. The bench conferences on a question were awkward and difficult. It would have been worse if jurors had been taken out of the courtroom after each witness.

The two attorneys involved expressed dissatisfaction with the procedure, but held the judge in high regard indicating that he had conducted the trial in the “most fair way possible” and should be the “model for any implementation” of the procedure.

Only two jurors offered any comments on the case and one was not related to the questioning procedure. The other expressed frustration over the length of the trial, but ended on a positive note:

The only problem that I saw regarding questions was that it seemed to make this trial last so much longer. I'm sure that the lawyers and judge had to discuss them for legal reasons but sometimes it was over an hour and I felt like it wasted some time. I felt we were on a roll and focused and then we took a long break. However, I was glad that I had the chance to ask, it did help to clarify testimony.

The most important lesson from this case example is that this trial stands alone as anecdotal evidence of the problems that may be encountered in the courtroom.

IV. Discussion

The most significant aspects of this study show that allowing jurors to ask questions has very few negative aspects, though individual cases indicate that implementation is a learning process that requires an initial investment of time by the parties involved and refinement based on actual trial experience. This position is most strongly reflected by judges and attorneys who participated in trials that allowed juror questions. In contrast to those without actual experience, the inclusion of juror questions resulted in more favorable attitudes toward the procedure. Jurors also appreciate the opportunity to become active participants in the process and appear to be more focused and attentive.

Delays in the trial process, based on approximation of the time taken by jurors to prepare and submit questions and the time used to hear objections, were not overly excessive or unreasonable. These results also reflect the learning process involved in the logistics of submitting questions to witnesses and handling attorneys' objections and that judicial discretion should be employed, at times, in determining the most effective procedures for the questioning process. One judge commented, for example, that courts should be allowed to use discretion in how an improper question is handled. The more minor problems may include, for example, the lack of anonymity when questions were generated from one juror to be passed along to the bailiff or judge. A juror commented that “*the present system of having the jurors write questions and pass them to another juror, defeats any ability to have the*

questions anonymous. Everyone knows who asked the question.” Generally, however, the majority of judges agree that the procedure used in the study for allowing questions at trial was successful.

Jurors will ask improper questions in some instances, but, in this study, judges were able to screen problematic questions without creating any visible negative reactions from the jurors. Juror questions directed at defendants who testify are more problematic and in some cases judges decided not to pose these questions. Although the results show that juror questioning does not interfere with a defendant’s decision to testify, the outcome is ultimately a legal questions to be answered by the courts. The dynamics of declining questions depends a great deal on judges and their demeanor in the courtroom.

The strongest case for allowing the procedure is derived from the jurors’ self-reports. The questioning procedure empowers the jurors and actively engages them in the trial—judges and attorneys also agree on this point. Even the opportunity to submit a question is viewed positively by jurors since the process is more inclusive and interactive. Most significant are data that indicate jurors are more satisfied with the trial process and have more favorable reactions to the trial experience. Jurors, overwhelmingly, believe that the opportunity to ask questions should be included in all trials.

The results of the research indicate that allowing jurors to ask questions at trial will have positive effects with few detrimental results. The procedure does not appear to cause any “harm” to the lawyers or the witnesses and the “worst fears” were realized only in the exceptional case.

The research design and findings of the study carry several caveats. The selection of judges and trials in Phase I depended on random assignment to increase the validity of the findings. It is entirely possible, however, that judges self-selected to participate or not participate in the study. The degree to which judges opposed the procedure prior to trial was significantly higher in the “questions not permitted group.” In comparison, the judges who allowed questions to be asked at trials expressed less initial opposition. This indicates that some judges may have decided not to include questions at a trial, despite its eligibility.

The instructions for the research were standardized for all judges. Judicial discretion, however, was employed in minor ways. Several judges, for example, gave the lawyers an opportunity to cover any questions that jurors submitted. At least two judges in the QP group indicated that they employed this method. One judge noted: “I give the attorneys the first opportunity to ask jurors’ questions as part of their redirect or re-cross examination.” Another judge also felt that attorneys could deal with the juror questions in a more appropriate manner and “submitted the

questions to the attorneys to be recast in accordance with the law and earlier rulings of the court.” This and other uses of judicial discretion for what worked best in the courtroom probably had little impact on the results of the study. Clearly, in some instances, judges will prefer to utilize their own procedures and what works best in each courtroom may vary to some degree.

A frequently heard complaint about the procedure was that the experimental design was burdensome. Unarguably, the design of the questionnaires left much room for improvement and the length contributed to further delays for the parties involved. This type of comment was common: “Questionnaires for jurors after verdict is too long! One juror spent 20 minutes on it. He explained that he was a slow reader.” In some cases, judges either modified the juror question form or used pages from the jurors’ notebook. A judge commented, for example: “I just had jurors use paper they had in their notebooks to write questions. Form seems forbidding and intimidating.” Second, the inconsistent choices for possible answers for the questions permitted and questions not permitted interfered with group comparisons.

References

- Berkowitz, Jeffery (1991). "Breaking the silence: Should jurors be allowed to question witnesses during trial." Vanderbilt University School of Law, 44:117-147.
- Cecil, Hans, Wiggins (1991). "Citizen comprehension of difficult issues: Lessons from civil jury trials." The American University Law Review, 40:768, 769.
- Ecenbarger, William (August 2000). "The Jury Jumps In." Reader's Digest, pp.120-133.
- Harms, Lisa (1977). "The questioning of witnesses by jurors." American University Law Review, 27, 127-159.
- Heuer, Larry and Penrod, Steven (1988). "Increasing jurors' participation in trials: A field experiment with jury notetaking and question asking." Law and Human Behavior, 12, 231-262.
- Heuer and Penrod (1994). "Trial Complexity: A field investigation of its meaning and its effects." Law and Human Behavior, 18: 29-51.
- Heuer and Penrod (1994). "Juror notetaking and question asking during trials: A national field experiment." Law and Human Behavior, 18:121-150.
- Heuer and Penrod (1996). "Increasing juror participation in trials through note taking and question asking" Judicature, 79(5):256-262.
- Lundy, Kara (2001). "Juror questioning of witnesses: Questioning the United States Criminal Justice System." Minnesota Law Review, 85: 2007.
- McLaughlin, M. (1982). "Questions to witnesses and notetaking by the jury as aids in understanding complex litigation." New England Law Review, 18:687-713.
- Roberts, Mark C. (1993). "Evidence—witnesses—jurors may not pose written questions to witnesses in criminal cases." St. Mary's Law Journal, 24:1421-1432.
- Valen, Anthony (1993). "Jurors asking questions: Revolutionary or evolutionary." Northern Kentucky University Law Review, 20:423-439.

Appendices