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To: Jim Greiner
From: Yiping Li
RE: Larry Heuer & Steven Penrod, *Juror notetaking and question asking during trials: a national field experiment*. 18 Law Hum. Behav. 121 (1994).
Date: January 24, 2019

Title: Juror Notetaking and Question Asking during Trials: A National Field Experiment
Authors: Larry Heuer and Steven Penrod
Location: 46 states
Sample: N = 160 trials
Timeline: N/A
Target group: Trials in which jury notetaking and question asking are allowed
Intervention type: Jury notetaking and jury question asking
Research papers: https://www-jstor-org.ezp-prod1.hul.harvard.edu/stable/1394033?seq=1#metadata_info_tab_contents
Partners: The American Judicature Society, the State Justice Institute

Abstract

The appropriateness of juror notetaking and questioning in court proceedings remained uncertain due to conflicting court decisions and ambiguity in the law. The paper presented an experiment in which judges who agreed to participate were randomly assigned to allow a combination of notetaking and questioning in their trials and legal actors (judges, attorneys, and jurors) reported their experience with these actions through questionnaires. The researchers found that juror notetaking and questioning had little effect on the verdict and no significant disadvantages or advantages previously thought to be associated with juror notetaking and questioning.

I. Policy Issue

The role of juror notetaking and questioning was controversial due to conflicting court decisions throughout history. Court decisions pointed out both advantages and disadvantages of each method that led to their allowance or prohibition in court. For juror notetaking, some courts ruled that it was permitted because it could serve as a memory aid for the jurors and increase satisfaction of the participants in the court process with the trial and verdict. Others believed juror notetaking led jurors to overemphasize what they

were able to note down, creating a distorted view of the case, based on the assumption that jurors were not capable of identifying what information was important and what was extraneous. Some also worried about the possible negative effects of jurors who were taking notes on those who weren't. In addition, there was concern that juror notetaking favored one side over the other, particularly the prosecution, as it always went first when the jurors had more energy to take detailed notes.

Juror questioning was also the subject of contention because the Federal Rules of Evidence did not explicitly ban or allow juror questioning. Some believed that juror questioning could promote understandings of facts and issues, alert trial counsels to areas that deserve further investigation, and increase satisfaction of the legal actors with the trial and verdict. However, others believed that jurors were not equipped to ask appropriate questions and biases might occur when objected questions were sustained. Objectors to juror questioning were also worried that jurors would no longer serve as neutral factfinder in the criminal justice process because they can take on the position of an advocate with the ability to ask their own questions. Did juror notetaking and questioning have any significant advantages or disadvantages?

II. Context of Evaluation

The study was intended to address the limitations of a previous field experiment conducted by the researchers. The previous study only included a small number of trials and all from the state of Wisconsin. Therefore, the study lacked statistical power and were not generalizable to a broader context. In addition, the trials from the previous study were short. The researchers of this study believed that the effects of note-taking and question asking might be more apparent or different in a longer trial. Finally, this study collected verdict information, which the previous study failed to do.

III. Details

The experiment was a randomized study with a 2x2 factorial design, meaning there were a total of four different conditions from the combination of juror notetaking (present vs. absent) and question asking (present vs. absent). The researchers ensured that both civil and criminal trials were represented in the sample. The instructions to the judges who agreed to participate led the researchers to oversample from longer and more complex trials. This was done intentionally as they believed the effects would be more pronounced in longer and more complex trials where notetaking and questioning might be necessary to follow along. Therefore, complexity was measured as a continuous variable to account for its effects on the results.

The researchers mailed invitations to participate to 2000 state and federal court judges across US along with a 3-page questionnaire asking information such as the number of trials they are willing to include in the study, their years of experience, and their own attitude toward juror notetaking and questioning.

The judges who agreed to participate received either 1 or 2 additional packets (dependent on how many trials they allowed to be included in the study) with instructions on how to administer the study. First, the packet had a letter which explained what condition they

would be running, i.e. whether they would allow juror notetaking only, question asking only, or both. The letter also told them whether they should use the packet at their next trial regardless of length and complexity or to wait until a trial that would either be complex or last longer than a week. Second, the packet included questionnaires on the evaluations of the court and its legal actors to be filled out by judges, lawyers, and jurors after the trial. The judges and lawyers completed the questionnaires during jury deliberation while jurors completed it after. Third, the packet included recommendations on how to enforce or ban juror notetaking and questioning.

For those who allowed juror notetaking, the instructions directed the judges to seek stipulation from the attorneys for agreeing to this. Then they were to inform the jurors of their right to do so after the jurors were empaneled up until closing arguments where the judge could decide whether notetaking should be allowed during closing arguments, though only three judges reported allowing notetaking during the presentation of evidence but not closing arguments. The bailiffs collected the notes and mailed them to the researchers.

For those assigned to juror questioning, the judges asked jurors to write down their questions and the judges decided whether the question was appropriate before convening with the counsels to see if they would like to raise an objection. If the objection was sustained, the judges explained why the objection was sustained and asked the jurors not to make assumptions from the fact that the question was not posed. If the objection was not sustained, the judge posed the question to the witness.

IV. Results and Policy Lessons

560 judges completed the questionnaire included in the invitation to participate in the study. 228 judges from 46 states agreed to contribute 1 or more trials to the study. 103 judges out of 228 actually contributed 1 or more trials. While there was a significant correlation between the judges' attitudes toward notetaking ($r = 0.11$, $p < 0.05$) and question asking ($r = 0.19$, $p < 0.001$) and whether they agreed to participate, the magnitudes of the correlations were too small to cause a meaningful selection bias.

Juror Notetaking

The researchers did not find a significant tendency to convict or not in the presence of jury notetaking and/or question asking. However, the researchers conceded that the study did not have enough statistical power to detect a difference if the conviction rate differed by 30 percent or less. There was also no significant effect on the differences between the verdict of the jury and the preferred verdict of the judge. Furthermore, there was no significant difference in the quantity of notes taken during the defense or the prosecution portion of the trial.

The researchers also examined whether the data could speak to the various opinions held by others regarding the advantages and disadvantages of notetaking and questioning.

Advantages of Juror Notetaking

There were no significant differences between notetaking and non-notetaking jurors on any measure of trial satisfaction or memory of the trial information.

Disadvantages of Juror Notetaking

For notetaking, most jurors were able to keep pace with the trial and only the complexity of the trial negatively affected the ability of the jurors to keep up ($p < 0.01$). Notetakers participated more during jury deliberations than non-notetakers ($p < 0.05$), which might speak to the worries of notetakers exerting greater control over the verdict, but both notetakers and non-notetakers felt that this was not the case ($p > 0.10$). However, the researchers noted that the statistical test picked up on small effects that were most likely meaningless in the real world.

Furthermore, the researchers found that for 90 percent of jurors notetakers did not distract others, nor are they distracted by themselves or other notetakers. The notetakers believed their notes reflected an accurate record of the trial. There was no difference in the jurors' perception of the helpfulness of the lawyers on each side in helping the jurors understand the law and the case.

Juror Questions Advantages

With regards to question asking, jurors felt that it promoted their understanding of the facts and issues, as there was a positive correlation with helpfulness and number of questions actually asked ($p < 0.001$). They also felt better in formed when juror questions were allowed ($p < 0.05$). However, question asking did not increase juror, judge, or lawyer satisfaction with the trial.

Based on surveys of judges and lawyers, question asking did not significantly impact whether the jurors were able to get to the truth of the case, nor did they alert counsel to issues in need of further development.

Juror Questions Disadvantages

In addition, jurors mostly asked appropriate questions and attorneys were not reluctant to object to inappropriate questions. Jurors did not feel embarrassed or angry when their questions were objected, nor did it influence their satisfaction with either the prosecution or defense. While juror questioning did not seem to have a prejudicial effect, defense attorneys were more likely to see the procedure as favoring the prosecution ($p < 0.01$). Judges ranked the proceedings as more disruptive as the frequency of the questions increased ($p < 0.004$).

Overall, the researchers did not find juror questioning and notetaking to significantly impact the jury's verdicts. The results indicated that many of the concerns regarding the disadvantages of these actions were unwarranted. Lastly, juror notetaking and questioning did not appear to increase feelings of procedural justice or satisfaction with the court proceedings more so than if they were absent.

V. Quality of the Study

The researchers were careful with response bias and conducted follow-up survey in case that the judges who decline were systematically different from those who agreed to participate and would lead to an inaccurate picture. Most of them did not participate because they no longer hear jury trials (66.5 percent). 17.7 percent was because of uneasiness with randomized design. The researchers also controlled for deviation from experimental design in the data analysis model to ensure that they were not making claims not supported by the data.

However, one problem with the study was the subjectivity of the measures. Most of results concerned the perception of fairness and biases by the legal actors involved (i.e., jurors, judges, attorneys). The researchers could bolster the results of the study by devising an objective measure or by using archival data to compare similar cases in the past that did not have juror notetaking and questioning. Finally, the researchers oversampled from complex trials but did not conduct a thorough analysis between simple and complex trials to examine the relationship of complexity with advantages and disadvantages of notetaking and questions.