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To: Jim Greiner
From: Hasaan Munim
RE: Paula Hannaford-Agor et al., *Permitting Jury Discussions During Trial: Impact of the Arizona Reform*, Cornell Law Faculty Publications (2000).
Date: August 15, 2018

Title: Permitting Jury Discussions During Trial: Impact of the Arizona Reform
Authors: Paula Hannaford-Agor, Value P. Hans, Nicole L. Mott, G. Thomas Munsterman
Location: Maricopa, Pima, Mohave, and Yavapai County, Arizona
Sample: N = 161
Timeline: June 15, 1997 to January 30, 1998
Target group: Jurors
Intervention type: Trial Discussions
Research papers: <https://scholarship.law.cornell.edu/facpub/401>
Partners: State Justice Institute, National Center for State Courts, Arizona Supreme Court

Abstract

Legal theorists long debated the merits of allowing jury discussions of evidence using anecdotal evidence. This study sought to determine whether jury discussions would cause adverse effects on decision-making in a randomized trial. Researchers found no significant findings, likely due to flawed study design.

I. Policy Issue

Stakeholders in the legal process did not understand when jurors formed their verdict on a case, leaving them to speculate based on biased assumptions colored by personal experience. Most jurisdictions forbade jurors from discussing the case until final deliberations in fear that conversations would cement biased judgments. Some appellate courts criticized the practice of juror discussions during criminal trials as conducive to premature decision making. In some cases, judges defended the practice of juror discussions during trial as beneficial to jury decision making, arguing that it improves jury performance by reinforcing their understanding of the evidence.

Legal texts assumed that jurors passively absorbed all information and only formed judgments at the deliberation stage, but social science research contradicted this timeline formed by legal theorists. Instead, research on mock juries indicated that jurors actively formed a narrative from evidence presented early on that biased their acceptance of later evidence.

Did the timing of group discussion affect jury behavior and decision making?

II. Context of Evaluation

In 1995, a committee at the Arizona Supreme Court explicitly allowed civil jurors to discuss evidence during trial, citing improved jury comprehension, submitting timely questions, and avoiding cliques and forbidden conversations among jurors. At the time, only Arizona allowed civil jurors to discuss evidence during trial.

In 1997, the Arizona Supreme Court allowed civil trial judges to forbid jurors from discussing the evidence until final deliberations for an experimental evaluation of the reform.

This evaluation took place in Maricopa, Pima, Mohave, and Yavapai County Superior Courts, collectively accounting for 80% of all civil trials in Arizona.

III. Details

Each county's court staff received a different number of packages based on their usual caseload over a 6-month period containing instructions for the discussion condition the no discussion condition. As a randomization procedure, court staff without knowledge of the package contents distributed packages to judges.

After jury selection, the court staff gave the case information and judge's survey to the trial judge. In case of mistrial, the judge did not complete the survey. After final deliberations began, court staff distributed attorney and party questionnaires. After the jury reached the verdict, court staff distributed the juror surveys. The trial judge could give jurors the questionnaire while waiting for the attorneys and parties to return to the courthouse or wait until after the jurors announced the verdict in court. The court staff collected all surveys and gave the envelope to the court administrator, who then returned it to the National Center for State Courts.

Out of 202 distributed packets, court administrators returned 161 assessable cases with evidence that the judge followed the randomization procedure. The authors excluded cases not treated as assigned.

IV. Results and Policy Lessons

Ultimately, the findings of the study did not produce findings significant to evaluating the effects of trial discussions on juror behavior and decision making. Although most jurors in both conditions believed trial discussions would or did help them better understand the evidence, the findings did not indicate so. The difference between perceived and reported

results could imply that perceived effects did not exist or that the study had a weak methodology. The following is a summary of the key outputs:

Test of Prejudgment: Legal theorists feared that allowing trial discussions would lead to premature verdicts by jurors. Researchers provided asked jurors to indicate their leanings throughout the case and which point they decided their opinion. A MANOVA analysis on the percentage of jurors who responded affirmatively in each trial segment as variables found no significant differences as a function of trial discussions. Adding covariates such as the judicial assessment of the evidence, case complexity, and site did not increase statistical significance.

Primacy and Recency Effects: If trial discussions reduced prejudgment, they would reduce the influence of the first witness and increase the influence of the last witness in the jury discussions. The Discussions and No Discussions conditions did not produce significant differences in their ratings on the importance of the first and last witnesses. The No Discussions juries produced only a slight but significantly greater rating of their memory of the second half. This study did not demonstrate that jury discussions reduced prejudgment in terms of the influence of the first and last witness.

Juror preferences at the beginning of deliberations: At face value, it appeared that Discussions group jurors were significantly more likely to report that they favored the plaintiff at the start of deliberations ($p < 0.05$). For this analysis, the authors separated Discussions participants into those who actually engaged in discussions during the case and those who did not – comparing these two groups to the No Discussions condition showed no significant differences in their leanings towards the plaintiffs at the beginning of deliberations.

Tests of Improvement in Understanding of Evidence and Law: One justification for trial discussions was that it ought to increase understanding of the evidence. Both groups were confident about their understanding of the evidence and the law. Controlling for case complexity, jury comprehension did not significantly increase in the Discussions condition.

Jury, Attorney, and Litigant Assessments of Juror Comprehension: Judges, attorneys, and litigants reported perceptions of jury comprehension of the major evidentiary and legal issues in nearly all cases with no significant differences between groups.

Judicial assessments of the jury verdict: The researchers did not find significant differences in judge agreement with the Discussions and No Discussions juries.

Conflict and Unanimity: Although the Arizona Committee argued that trial discussions would improve jury cohesion in voting, the Discussions group reported marginally more conflict ($p = 0.08$).

V. Quality of the Study

The large, unexplained 25% disparity between the distributed packages (214) and the returned packages (161) considered valid for analysis by the researchers merits

discussion. Additionally, the Discussions and No Discussions condition differed significantly in the complexity of the case ($p < 0.019$) and in the judge's assessment of the effectiveness of the plaintiff's attorney ($p < 0.03$), indicating that randomization may have not resulted in two comparable groups of cases. The authors did not discuss how the presumably non-random loss of participants might have biased the results. Furthermore, summing the sample sizes from "Table 2: Site Characteristics" produces a total sample of 155, 6 fewer than the cases reported to have followed random assignment, raising questions as to the final sample size for analysis. Overall, this study's use of a per-protocol analysis exacerbates the missing data problem by producing invalid comparison groups for analysis.

The authors discussed the overall limited validity of retrospective, self-reported data. What they did not discuss was the effect of the difference between cases who filled out questionnaires before delivering the verdict and those who filled it out after doing so. Delivering a verdict may alter the mental state of jurors. Perhaps, for example, jurors may more hastily – and therefore less accurately – fill out the questionnaire when given an incentive to leave the court sooner after protracted deliberations. The authors did not discuss the implications of keeping this procedure lax for the judge.