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**To:** Jim Greiner
**From:** Hasaan Munim
**RE:** Larry Heuer & Steven Penrod, *Increasing Jurors' Participation in Trials: A Field Experiment with Jury Notetaking and Question Asking*, 12 Law and Human Behavior 231 (1988).
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**Title:** Increasing Jurors' Participation in Trials: A Field Experiment with Jury Notetaking and Question Asking
**Authors:** Larry Heuer and Steven Penrod
**Location:** Wisconsin
**Sample:** N = 67
**Timeline:** N/A
**Target group:** Jurors, attorneys, and judges
**Intervention type:** Juror notetaking and question-asking
**Research papers:** https://link.springer.com/article/10.1007%2FBF01044383
**Partners:** Judicial Council of Wisconsin

**Abstract**

This study sought to test whether jury notetaking and jury question-asking impacted a specific set of advantages and disadvantages. Using a problematic randomization procedure, researchers collected juror, attorney, and judges' self-reports of the case. Ultimately, jurors exhibited few significant differences. The authors concluded that, at the least, there was no evidence in the study that the procedures used were harmful.

## *I. Policy Issue*

The Judicial Council of Wisconsin wanted to understand what would improve communications between juries and judges, lawyers, and other participants in the litigation process. Specifically, they wanted to understand whether allowing notetaking during trial and allowing jurors to submit questions to witnesses would exhibit benefits over the status quo. In the status quo, jurors relied on unaided recall and relied on evidence gleaned from witnesses by direct questioning and cross-examination.

There was a dearth of well-conducted research on jury notetaking and jury questions to witnesses. The authors identified several limitations in past studies, including that they occurred in laboratory rather than field settings, used small sample sizes, did not use random assignment of cases, could not examine the interactions among procedures, and focused on juror reactions. This study sought to address these limitations in a well-powered randomized control trial.

### *II. Context of Evaluation*

Researchers affiliated with the state-sponsored Judicial Council of Wisconsin recruited 29 judges from 9 of 10 Wisconsin judicial administrative districts to participate in the study.

### *III. Details*

Judges agreed to employ random assignment, and if a judge felt as though the experimental condition would make a trial unfair, then the researchers would eliminate the case from the study and the judge would use the assigned condition in the next jury trial.

The study included two experimental conditions, with notetaking and question allowed, and two control conditions, with notetaking and question prohibited. In sum, there were four possible combinations of experimental and control conditions, a 2x2 trial.

In the notetaking condition, researchers asked judges to instruct empaneled jurors to take notes. Judges could provide jurors with a set of instructions for notetaking suggested by the researchers or provide their own set of instructions.

In the questions allowed condition, judges received instructions to field written juror questions after direct and cross examination of witnesses. If the judge deemed a question appropriate, she allowed counsel to object to it. After ruling on objections, the judge posed the jurors' question to the witness. After each question, the judge filled out a brief questionnaire to document the question, the leaning of the witness, and rulings on objections.

Researchers distributed questionnaires to jurors, attorneys, and the judge after the trial. The questionnaire collected demographic information, questions about their evaluative reactions to the trial, and about the experimental procedures. The control condition questionnaires included "what if" questions about the experimental condition to gauge preexisting biases. The questionnaire items were on a nine-point bipolar adjective scales when possible.

Jurors received an additional questionnaire to discern variation in juror understanding of judge-provided instructions.

### *IV. Results and Policy Lessons*

*Juror Notetaking*

In terms of advantages, the researchers hypothesized that notetaking would improve juror memory, their engagement and satisfaction with the trial, confidence in remembering and applying the judge's instructions, and confidence with the verdict. Only two of the measured variables were marginally significant: Jurors in the notetaking condition reported marginally reduced incidence of changing their votes during deliberations in civil trials and were marginally more likely to report being more satisfied with the trial procedure (7.3/9.0 vs. 7.0/9.0, $p < 0.08$).

In terms of disadvantages, researchers also hypothesized that notetaking would reduce attention during case presentation, give notetakers an unfair advantage during jury deliberation, that jurors would take inaccurate notes, that notetaking would favor the prosecution, and would heighten disagreement among jurors. Only variables that measured distraction, based on questionnaires of the jurors, lawyers, and judges, were significant. The variables found that the parties found notetaking to be less distracting than expected (difference on 9-point scale = 2.4, .8, and .8, respectively; all $p < 0.01$). All other hypotheses were not statistically significant.

*Juror questions to witnesses*

The researchers hypothesized possible advantages of juror questions to witnesses, including alleviating doubts about trial procedure and testimony, uncovering important evidence and issues, involving the juror more in the trial and thereby increasing satisfaction, and signaling to attorneys what the jurors were thinking. The authors found that question-asking alleviated the doubts of jurors about trial procedure and testimony but did not find that question-asking uncovered important information or issues, nor did they find evidence that it helped attorneys understand what the jurors were thinking.

**Alleviating doubts**: Jurors in the question-asking group reported witness questioning to be more thorough and deciding how to vote less difficult (difference on 9-point scale = 1.1, $p < 0.001$; 1.0, $p < 0.001$).

**Uncovering important details**: Jurors in non-question-asking trials expected question-asking to be more helpful than the question-asking jurors reported (difference on 9-point scale = 1.5, $p < 0.001$). The attorneys in non-question-asking trials expected questions to uncover omitted information and for jurors to ask questions on omitted issues, but attorneys in question-asking trials reported this to be false (difference on 9-point scale = 1.9, $p < .03$; 1.7, $p < 0.001$).

**Juror involvement and satisfaction**: They did not find a significant tendency for jurors to report greater satisfaction in the question-asking group.

**Signaling to attorneys**: Although attorneys in the non-question-asking group expected questions to be helpful in signaling to attorneys what jurors were thinking, attorneys in the question-asking group found this to be false (difference in 9-point scale = 1.6, $p < 0.001$).

The researchers hypothesized possible disadvantages of juror questions to witnesses. They hypothesized that juror questions would upset courtroom decorum or the speed of the trial, cause jurors to become overinvolved, upset the lawyers' strategy or result in unwanted surprises, that they would be impractical and a nuisance to the judge and courtroom staff, and that since jurors do not know the rules of law that they would ask inappropriate questions. Overall, no significant findings suggested that juror question-asking had expected or realized negative effects.

**Courtroom decorum and speed**: Attorneys and judges did not significantly report juror disruption as a valid reason to disallow juror questioning. Attorneys in non-question-asking trials expected juror questioning to be a problem, but attorneys in question-asking trials did not report it as so (difference on 9-point scale = 0.9, $p < 0.001$).

**Juror overinvolvement**: Not tested.

**Upsetting lawyer strategy and inciting surprise**: Although attorneys in non-question asking trials expected juror questions to hinder performance, attorneys in juror question-asking trials did not report this as an issue (difference in 9-point scale = 1.5, $p <0.001$).

**Impracticality**: Judges in non-question-asking trials did not expect question-asking to be a nuisance, and judges in question-asking trials reported they were not (difference in 9-point scale = 0.5, $p <0.04$).

**Inappropriate questions**: The researchers did not have data appropriate to address this possibility but suspected that judges and lawyers could spot and disallow them without angering jurors.

### *V. Quality of the Study*

The judges' ability to select the cases which would receive the experimental condition was a problematic randomization procedure. Since judges could eliminate cases from the study at their discretion, one cannot conclude that the study procedure was valid, even in an as-treated analysis, because improper randomization led to invalid comparison groups. Furthermore, it was unclear exactly how many cases judges simply skipped, a possible cause of the low sample size and resultant low statistical power of the study.

Considering the study's low statistical power, using an intention-to-treat analysis, thereby recording cases noncompliant with the study, would improve the rigor of the study. Researchers eliminated 24 cases from the experiment due to a failure to obtain stipulation or attorney objections to the assigned procedures alone.

The low response rate from jurors (69 percent) and attorneys (71 percent) merits a discussion of selectively missing data. Missing data presents a problem in a randomized trial if related to prognostic factors, i.e. factors related to the treatment effect. If nonresponse was due to not liking the procedure used or other important information, it would significantly bias the study's results and provide a "false positive" on the treatment effect. Thus, comparing those who responded and those who did not respond to the

survey would clue researchers in to whether they ought to use a procedure to control for selectively missing data.