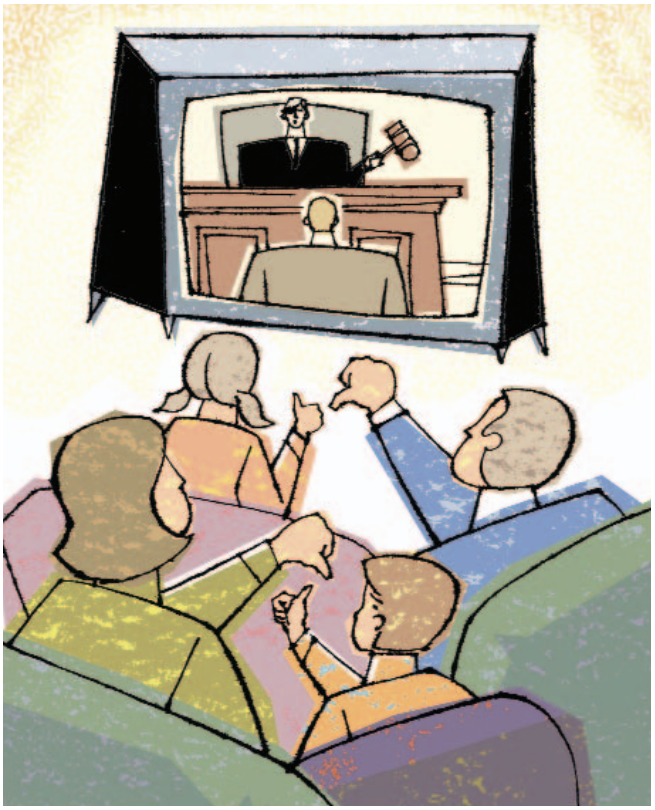

Jury Trial Innovations in New York State

Improving Jury Trials by Improving Jurors' Comprehension and Participation

By Elissa Krauss

In January of this year, 51 New York State civil and criminal trial judges completed a field experiment using innovative jury trial practices. Members of the Unified Court System's Jury Trial Project, these judges, representing 16 counties, participated in a hands-on effort aimed at improving the trial process. The judges tested practices designed to treat jurors as active trial participants, thereby enhancing juror comprehension in the interests of enhancing justice.[1]

The Jury Trial Project judges identified 10 innovative practices for use in trials.[2] Some, such as note-taking by jurors, have long been approved.[3] Others, such as allowing jurors to submit written questions to witnesses may be within the trial court's discretion but are controversial.[4] Others, including providing the deliberating jury with the judge's final charge in writing are widely accepted elsewhere but remain controversial in New York.[5]

Each judge was asked to try any or all of the 10 practices. Judges were urged to consult with counsel and to seek counsel's consent as appropriate. In each trial where the innovative practices were used, questionnaires were to be completed by the judge, attorneys and jurors.

The Report and Recommendations of the Jury Trial Project Committees have recently been released.[6] The recommendations are based on data gathered in 112 trials involving 926 jurors and 210 attorneys in which one or more of the practices were used, as well as past experience in New York and elsewhere.[7] This article focuses on five of the innovative practices studied in the Project and recommended for wider use in New York trials:

1. Permitting jurors to take notes.
2. Allowing jurors to submit written questions for witnesses.
3. Giving substantive instruction on elements of claims or charges at the outset of trial.
4. Providing final instructions in writing to the deliberating jury.
5. Voir dire openings by counsel to the entire panel at the outset of voir dire.

In addition to providing insight into the efficacy and impact of specific trial practices, this effort produced findings of general interest to the bench and the bar. Of greatest interest is the finding that while many jurors viewed trials as very complex, most judges thought the same trials were not at all complex. Attorneys are more likely than judges but less likely than jurors to say that a

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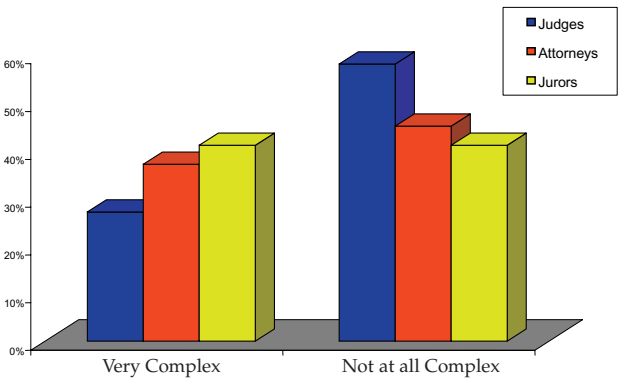
trial was complex. This difference in perspective highlights the importance of efforts to enhance juror comprehension.

How Complex Was this Case? (Civil and Criminal Trials)



Recommendations and Findings

Note-taking

Juror note-taking is approved by all federal circuit courts, has become routine in most federal courts, and is permitted in all states.[8] Though long permitted in New York State, the practice of allowing jurors to take notes is by no means universal. Based on data from 91 New York trials where jurors took notes, the Jury Trial Project's Committee on Note-Taking is recommending that all judges exercise their discretion to permit jurors to take notes. Jurors should routinely be provided with note-taking materials. They should neither be urged to take notes nor discouraged from taking notes. They should be cautioned against trying to transcribe the trial as a court reporter fills that function. Jurors should also be cautioned against allowing note-taking to distract attention from the witnesses.[9] This recommendation is consistent with current Trial Court Rules and also with the American Bar Association Principles on Juries and Jury Trials.[10]

Eleven criminal trial judges, 14 civil trial judges, 167 attorneys, and 757 jurors participated in the 91 trials where note-taking was permitted.[11] Most judges who permitted note-taking thought it helped jurors understand the evidence and that, rather than distracting jurors, note-taking seemed to help them in paying attention.

New York attorneys are skeptical of juror note-taking. Less than one-quarter of those in trials where juror note-taking was not permitted approved of the practice. However, where juror note-taking was permitted nearly half of the attorneys approved. Attorneys' most common concerns are that note-taking might be distracting and that note-takers might gain an unfair advantage in deliberations.

These fears appear to be unfounded. Anecdotal reports from Jury Trial Project judges confirm that jurors who take notes appear to pay closer attention. For example, Bronx Civil Court Judge Wilma Guzman said:

> Before I joined the Jury Trial Project, I thought allowing jurors to take notes was a bad idea, thinking it would distract the jurors. Once I took the risk and tried it, I found that the jurors wanted to take notes and that they remained attentive to witnesses.

Others commented that note-takers appear to be judicious in their note-taking. No judge or attorney thought the procedure interfered with the trial. Several thought note-taking aided the jury in formulating questions during deliberations. For example, Acting Supreme Court Justice Margaret Clancy, a member of the Project's Jury Instructions Committee, allowed note-taking for the first time in an attempted murder case tried shortly after she joined the Jury Trial Project:

> I always believed that note-taking would be a distraction to jurors. To the contrary, it seemed to aid them in following the testimony. About half the jurors started out taking notes. Some continued to take notes throughout while others abandoned it along the way. My point is that the jurors appeared to be self-regulating meaning that those who find it useful do it and those who would be distracted do not. A welcome surprise on that first case was that the jurors seemed to be using the notes as tools during deliberations. Read back requests were much more specific than usual – including the date and approximate time of the testimony.

Kings County Supreme Court Justice Cheryl Chambers agrees. A member of the Project's Committee on Voir Dire, she has allowed jurors to take notes in complex criminal cases for five years. She says that:

> Note-taking appears to improve juror attention to the testimony. Moreover, during deliberations jurors are able to pinpoint the portions of the testimony they want read back. The bottom line is active and focused jurors are more likely to produce a just verdict.

The Jury Trial Project research did not explore note-takers' roles in deliberations. Research elsewhere has examined the impact of note-taking on deliberations and found that note-takers do not have an undue influence on non-note-takers and do not emphasize evidence they noted over other evidence. Jurors' notes have also been found to be accurate and not to favor one side.[12] Mock jury research has found that rather than being distracted, note-takers remember more case facts than do non-note-takers.[13]

In Jury Trial Project trials, New York jurors were enthusiastic about note-taking. Clear majorities found note-taking very helpful in recalling evidence, understanding the

law, and reaching a decision. Moreover, 60% of jurors who were not permitted to take notes would like to do so in future trials.

Juror Questions

Allowing jurors to submit written questions for witnesses is the most controversial Jury Trial Project practice. The Committee on Juror Questions is recommending a Trial Court Rule clarifying the trial judge's discretion to permit jurors to submit written questions for witnesses. The rule would allow jurors to submit written questions. The questions would be reviewed by the court and counsel. And, where a question is proper, the court would address the juror's question to the witness and permit counsel the opportunity to follow up. This recommendation is based on the following: the positive experience of judges, jurors and attorneys in 74 Jury Trial Project trials where jurors were permitted to ask questions; the lack of authority prohibiting the practice; and, widespread experience and research about juror questions in other jurisdictions.

Judges and jurors in the trials where jurors were permitted to submit written questions were overwhelmingly positive. Attorneys remained skeptical, fearing that jurors might become advocates, derail attorneys' trial strategy, or provide information (through the questions) to opponents. There is no evidence that this occurred in the New York trials where juror questioning was permitted or elsewhere.[14] Moreover, attorneys who participated in trials where juror questions were permitted were twice as likely to approve the practice as those in trials where juror questions were not permitted.

Among the 130 attorneys who participated in a trial where juror questions were permitted, majorities agreed that the questions provided information about jurors' comprehension; gave insight into how well jurors understood evidence; or alerted the court and counsel to missing information. Two-thirds said that no improper questions were submitted. Notably, among 347 questions submitted by jurors only 41 were objected to and only four of the objected-to questions were asked. Finally, only a few questions were typically asked. Most jurors who submitted questions said they submitted one or two. In civil trials an average of 2.5 questions were submitted and in criminal trials an average of 4.7 questions were submitted.

Jurors are permitted to submit written questions at the trial court's discretion in 31 states. Only five states prohibit the practice.[15] No federal circuit prohibits the practice. The ABA Principles Relating to Juries and Jury Trials recommend that jurors in civil cases "should, ordinarily, be permitted to submit written questions."[16]

In New York State, the First Department has long held that permitting jurors to submit questions is a matter within the trial judge's discretion.[17] The Second Circuit agrees, though it discourages the practice.[18] On the civil side there is virtually no reported case law in New York State on the issue.[19]

Judges who allow jurors to submit questions are pleasantly surprised by the ease of the procedure and the quality of the questions. For example, Erie County Supreme Court Justice Donna Siwek says:

> Permitting juror questions was an extremely positive experience for the court, the lawyers and the jurors. Despite their initial skepticism, the lawyers were pleasantly surprised at how smoothly the process worked and how insightful most of the questions were. The jurors universally appreciated the opportunity to ask a question that helped clarify or that was not covered on direct or cross. My initial concern that permitting questions would bog down the trial was completely allayed. Very often, when I read the submitted question with the attorneys at side-bar, we all agreed, "Good question."

The 16 judges generally agreed that permitting juror questions was helpful to jurors in paying attention, understanding the evidence and reaching a decision. Most also felt that juror questions had a positive effect on the fairness of the trial. Some Jury Trial Project participants had been permitting jurors to submit questions before the project began. For example, New York County Supreme Court Justice Stanley Sklar explains:

> I began allowing jurors to ask questions after attending the Jury Summit in 2001. But only for the last 18 months, have I instructed jurors that they may ask questions. The lawyers in all of my medical malpractice trials have agreed to the procedure. The maximum number of juror questions I've had in a trial is four. Only one lawyer objected to one question, and I sustained the objection. After the trials the lawyers, with one exception, felt that juror questions were "No big deal." A few commented that some of the questions were excellent.

Despite their disapproval of the practice, most attorneys participating in trials where questions were allowed thought the questions contributed to jurors' paying atten-

"Despite their initial skepticism, the lawyers were pleasantly surprised at how smoothly the process worked and how insightful most of the questions were."

tion and provided attorneys with useful information about the jurors' thought processes and concerns. And more than 80% of the jurors who were permitted to ask questions found the opportunity very helpful in providing relevant information, helping them understand the evidence, and clarifying witness testimony.

An extensive body of research has examined the impact of juror questions.[20] A key finding is that jurors permitted to ask questions *do not* become advocates or embark on hypothesis-confirming searches. This finding was confirmed in New York, where three-quarters of those who submitted questions submitted only one or two. Moreover, jurors do not react negatively when their questions are not asked.[21] This was also true in New York where the vast majority of jurors in trials where questioning was permitted found the practice helpful to understanding or clarifying evidence whether they submitted questions themselves and whether questions they submitted were asked. Field experiments in Massachusetts, Colorado and New Jersey also confirm that juror questions are limited and take little time.[22]

Jury Instructions and Order of Trial

Substantive Preliminary Instructions The Project's Jury Instructions Committee concluded that there are times when both parties and the jurors can benefit from pre-instruction of jurors on elements of the charges or claims, penal law definitions, or complex legal concepts. This hypothesis was supported by data collected from 35 trials where judges gave such preliminary instructions. Judges and attorneys thought pre-instruction was helpful to jurors' understanding of the law and had a positive impact on trial fairness. Erie County Supreme Court Justice John P. Lane, a member of the Committee on Juror Questions commented:

> Jurors appreciate receiving preliminary instructions on the principles of substantive law. They find the evidence easier to understand when they know the underlying principles of the case. Things that we take for granted are new to jurors. For example, we may assume that jurors know what negligence is. The fact is that most do not. Similarly, early explanations of the burden of proof and the no-fault threshold are also effective. Of course, instructions are repeated in more detail at the end of the case.

Most attorneys also felt that substantive preliminary instructions had a positive effect. Criminal trial attorneys were more positive than were civil trial attorneys. Attorneys commented that "it helps the jurors put the proof into context" and "the more times they hear what the law is the better chance they will understand the law."

These findings are supported by research elsewhere.[23] In New York, the Second Department has held that giving preliminary instructions that define the elements of a crime was a "mode of proceedings error."[24] The Third Department upheld preliminary instructions where they did not outline the elements of a crime, but "merely quoted verbatim from the Penal Law" and the court admonished the jury to wait until it heard all the evidence before forming an opinion.[25] The ABA Principles for Juries and Jury Trials recommend that preliminary instructions include the elements of the charges and claims.[26]

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Written Final Instructions Based on data from 39 Jury Trial Project trials, and near universal acceptance elsewhere, the Committee on Jury Instructions is recommending that judges routinely supply deliberating jurors with a written copy of the final charge. Though permitted in civil trials by Trial Court Rule, this procedure requires consent of the parties in criminal cases.[27] While jurors are permitted to take their own possibly inaccurate notes about the charge into the jury room, they are prevented from receiving the correct charge in writing.

The Office of Court Administration is pursuing legislation permitting judges in criminal trials to provide deliberating jurors with written copy of the charge. This procedure is endorsed in the ABA Principles for Juries and Jury Trials[28] and has long been endorsed by the New York State Bar Association's House of Delegates.[29] The practice is recognized as increasing jurors' confidence in their verdicts and saving valuable court time. At least 29 states permit or require instructions to be supplied to jurors in writing. All of the federal circuits have approved the practice, as did the U.S. Supreme Court.[30]

Extensive research elsewhere has examined jurors' and judges' reactions to providing final instructions in writing to deliberating juries. Jurors experience less confusion

about the instructions and more confidence in their verdict when they have a written copy of the charge in deliberations. They report that written instructions are helpful in resolving disputes about what the instructions mean or how to apply them and that they looked at the written copy an average of five times in deliberations, spending an average of 25 minutes (or 16% of their deliberation time) discussing the written copy. Total deliberation time is about the same with or without written instructions but fewer questions about the content of instructions are asked by deliberating juries who have instructions in writing.[31]

In 39 Jury Trial Project trials, the deliberating jury was given the final charge in writing. Judges felt that the written instructions had a positive impact on fairness and were very helpful to jurors. For example, Erie County Supreme Court Justice John P. Lane commented:

> Jurors say that having a copy of the final charge facilitates their deliberations. When I supply jurors with written copies of the charge, there are no requests for read backs of the charge.

Though barely a majority of attorneys approve of providing jurors with instructions in writing, nearly two-thirds of those who actually used the practice in a trial approved it. An overwhelming majority of the 286 jurors who sat on these trials believed that the written instructions were very helpful for understanding the law, understanding the evidence, and in reaching a decision.

Majorities of jurors sitting on both civil and criminal trials who did not have written instructions said they would like to have such instructions in the future. The more complex a juror thought the trial was, the more likely the juror was to want written instructions.

There is debate about the most effective and efficient way to provide the jury with the charge in writing.[32] Steuben County Surrogate Marianne Furfure distributes copies of her charge to all jurors, with counsel's consent, in both criminal and civil trials over which she presides. The Steuben County District Attorney consented to the procedure. Judge Furfure notes: "Jurors take their responsibility seriously. Judges should be allowed to give them the tools they need to make decisions in accordance with the law." In Judge Furfure's experience:

> Giving the jurors the charge in writing to review while I'm reading makes them more attentive. They tell me post-trial that they use the charge throughout their deliberations. It saves time during deliberations by avoiding multiple requests from jurors to repeat the elements of a crime or cause of action. It's well worth the extra time it takes to prepare the charge for distribution.

Voir Dire

The Committee on Voir Dire is recommending use of "voir dire openings." With this procedure, sometimes called a "mini-opening," the attorneys are each allowed a brief period – an average of five minutes – to speak to potential jurors about the case at the outset of voir dire.

Although questionnaires were completed for only 22 trials in which voir dire openings were used, the practice was enormously successful. Attorneys and judges agreed that voir dire openings improve juror candor, increase jurors' willingness to serve, and improve jurors' understanding of why voir dire questions are asked. Jurors who heard voir dire openings were more likely than those who did not hear them to understand what the trial was about. The use of voir dire openings has been applauded by representatives of the Public Defense Bar and the District Attorneys' Association, who were invited to comment on the innovations.[33] Most attorneys responding to questionnaires agreed. As one attorney said about voir dire openings:

> It let the jury understand where voir dire was going and it helped them in responding more openly. It also helped eliminate jurors who should not be on the panel.

Nassau County District Justice William O'Brien, a member of the Project's Voir Dire Committee says:

> At first, I was skeptical. After using voir dire openings in several criminal trials and then sitting on a trial where they were not used, I can't envision a case in which I would not like the attorneys to give brief voir dire openings. Jury selection is clearly improved by letting attorneys tell the venire a little bit about the case before questioning begins. Jurors who understand what the case is about pay closer attention to the questions and give more complete answers. Best of all, it seems to help jurors be more forthcoming about bias and at the same time reduce the number of jurors looking for reasons to avoid jury service.

For civil trials, Fourth Judicial District Supreme Court Justice Joseph Sise reported that though he leaves the courtroom once the questioning begins, he remains on the bench during the voir dire openings. He notes that:

> The practice is enthusiastically embraced by the trial bar. The attorneys find that after delivering a voir dire opening before they question the panel, the prospective jurors understand the theory of the case and thus are more fully engaged in the voir dire.

The committee recommends that the time for voir dire openings be added to the allotted voir dire time and that in criminal matters *Rosario* material[34] be given to the defense before voir dire openings.

Conclusion

For many years New York State has been in the forefront of jury reform. Years ago we took steps to improve the composition of juror pools and enhance juror satisfaction

with reforms that have since become routine nationwide. By limiting the term of service required of jurors, increasing juror pay, requiring employers of more than 10 to pay the jury service fee for three days, and eliminating all exemptions from jury service, New York State led the way in jury composition reform. But when it came to providing jurors with modern tools to enhance their effectiveness, New York had fallen behind. Now, through the Jury Trial Project recommendations, New York is joining other states in adopting tried and true innovative practices that improve juror comprehension, satisfaction, and, most important, enhance justice.

Many New York judges and lawyers remain skeptical about these trial practices – as is demonstrated by the Jury Trial Project research. However, a key finding of the research was that among attorneys, those who participated in a trial in which an innovative practice was used were much more likely to approve of it than attorneys in trials where the innovation was not used. Thus, implementation of the Jury Trial Project recommendations requires more than court rules or statutes. Ongoing judicial and bar education are key. The Jury Trial Project recommendations will be highlighted in judicial training. In addition, staff and judges of the Jury Trial Project are making themselves available to local bar associations to make CLE presentations on the role of innovative trial practices in New York State jury trials. ■

1. See Munsterman et al., *Jury Trial Innovations* (1997), for advantages and disadvantages of more than 50 innovations. See also Dann, *'Learning Lessons' and 'Speaking Rights': Creating Educated and Democratic Juries*, 68 Ind. L.J. 1229 (1993) for a discussion of jurors as active trial participants.

2. The Project's Committee on Alternatives to Trial examined an 11th practice, Summary Jury Trials, which has been used in Chautauqua County for several years. *See* Sharon Townsend, Summary Jury Trial Project Introduction, *at* <http://nycourts.gov/8jd/internet/html/sjt.html> (last visited Mar. 28, 2005). Because Summary Jury Trials require cooperation on many levels of the court system, the Jury Trial Project could not systematically evaluate them. However, the Committee is recommending that summary jury trials be among the routinely recommended alternative dispute resolution methods.

3. *People v. Hues*, 92 N.Y.2d 413, 681 N.Y.S.2d 779 (1998); Uniform Rules – Trial Courts, 22 N.Y.C.R.R. § 220.10, Note-taking by Jurors.

4. *People v. Miller*, 8 A.D.3d 176, 779 N.Y.S.2d 187 (1st Dep't 2004).

5. Uniform Rules – Trial Courts N.Y.C.R.R. § 220.11 Copy of Judge's Charge to Jury (permitted at discretion of court in civil cases); *People v. Owens*, 69 N.Y.2d 585, 516 N.Y.S.2d 619 (1987) (consent of counsel required in criminal cases).

6. Available at <http://www.nyjuryinnovations.org>.

7. Some judges used some recommended practices in trials without participating in the data gathering aspect of the project.

8. The American Judicature Society maintains a list of federal decisions and all state court statutes and rules concerning note-taking <http://www.ajs.org/jc/juries/jc_improvements_notetaking_statutes.asp> (last visited Mar. 28, 2005). Apparently, every state permits juror note-taking, although Pennsylvania is still experimenting with the practice.

9. Procedures outlined in Uniform Rules – Trial Courts, 22 N.Y.C.R.R. § 220.10, CJI instruction on note-taking *available at* <http://www.nycourts.gov/cji/1-General/cjigc/html> (last visited Mar. 28, 2005).

10. Principle 13-A recommends that "[j]urors are allowed to take notes during the trial" and that they are supplied with note-taking materials. The full Principles, adopted in February 2005, can be viewed at <http:// www.abanet.org/juryprojectstandards/principles.pdf> (last visited Mar. 28, 2005).

11. Several Jury Trial Project judges who routinely permit jurors to take notes did not participate in the data collection phase of the project. Many of the 25 judges who permitted note-taking had not allowed it in the past.

12. Penrod & Heuer, *Tweaking Commonsense: Assessing Aids to Jury Decision Making*, 3 Psychol., Pub. Pol'y & L. 259 (1997).

13. Forster Lee & Horowitz, *The Effects of Jury-Aid Innovations on Juror Performance in Complex Civil Trials*, 86 Judicature 184 (Jan.–Feb. 2003).

14. *See* Mott, *The Current Debate on Juror Questions: "To Ask or Not to Ask: That is the Question*," 768 Chic.-Kent L. Rev. 1099 (2003).

15. Georgia, Minnesota, Mississippi, Nebraska, and Texas prohibit submission of questions.

16. Principle 13-C. In criminal cases the court should take into consideration reasons why some courts have discouraged the practice and the experience in jurisdictions that have allowed it. *Id.*

17. *See, e.g.*, *People v. Miller*, 8 A.D.3d 176, 779 N.Y.S.2d 187 (1st Dep't 2004); *People v. Knapper*, 230 A.D. 487, 245 N.Y.S.2d 245 (1st Dep't 1930).

18. *United States v. Bush*, 47 F.3d 511 (2d Cir. 1995).

19. *Sitrin Bros., Inc. v. Deluxe Lines*, 35 Misc. 2d 1041, 1042–43, 231 N.Y.S.2d 943 (County Ct., Oneida Co. 1962) (holding that jurors' questioning of expert witness was not prejudicial).

20. *See, e.g.*, Penrod & Heuer, *Tweaking Commonsense: Assessing Aids to Jury Decision Making*, 3 Psychol., Pub. Pol'y & L. 259 (1997).

21. A recent study of Arizona jurors found that when questions were rejected the most common reaction from jurors was "no reaction at all." Diamond et al., *Jurors' Unanswered Questions*, 41 Ct. Rev. 20, 25 (Spring 2004).

22. *See* Final Report of the Massachusetts Project on Innovative Jury Trial Practices (Jan. 30, 2001); Dodge, "Should Jurors Ask Questions in Criminal Cases? A Report Submitted to the Colorado Supreme Court's Jury System Committee" *available at* <www.courts.state.co.us/supct/committees/juryreformdocs/dodgereport.pdf> (last visited Mar. 28, 2005); New Jersey Pilot Project on Allowing Juror Questions, Final Report of Jury Sub-Committee of the Civil Practices Committee (2001). Colorado has since adopted rules permitting jurors to submit written questions in criminal and civil cases. Colo. R. Civ. P. 47(u), Colo. R. Crim. P. 24(g). New Jersey now permits juror questions in civil trials. N.J. Ct. Rules R. 1:8-8c.

23. Heuer & Penrod, *Instructing Jurors: A Field Experiment with Written and Preliminary Instructions*, 13 Law & Hum. Behav. 409 (1989); *see also* Forster Lee & Horowitz, *The Effects of Jury-Aid Innovations on Juror Performance in Complex Civil Trials*, 86 Judicature 184 (Jan.–Feb. 2003).

24. *People v. Davis*, 12 A.D.3d 456, 783 N.Y.S.2d 850 (2d Dep't 2004).

25. *People v. Morris*, 153 A.D.2d 984, 545 N.Y.S.2d 427 (3d Dep't 1989), *appeal denied*, 75 N.Y.2d 922, 555 N.Y.S.2d 40 (1990).

26. Principle 6-C.1.

27. Uniform Rules – Trial Courts 22 N.Y.C.R.R. § 220.11, Copy of Judge's Charge to Jury; *People v. Owens*, 69 N.Y.2d 585, 516 N.Y.S.2d 619 (1987).

28. Principle 14-B.

29. NYSBA Committee on the Jury System, Report to the House of Delegates approved on April 3, 2004 at 6.

30. *Haupt v. United States*, 330 U.S. 631, 643 (1947).

31. Heuer & Penrod, *Instructing Jurors: A Field Experiment with Written and Preliminary Instructions*, 13 Law & Hum. Behav. 4009 (1989); *see* Dann, *'Learning Lessons' and 'Speaking Rights': Creating Educated and Democratic Juries*, 68 Ind. L.J. 1229 (1993); Final Report of the Massachusetts Project on Innovated Jury Trial Practices.

32. Some judges project their charge onto a screen so that jurors can follow along while the charge is being read. The Fourth Department held that no potential for prejudice arises from the simultaneous projection of the charge while it is being read. *People v. Williams*, 8 A.D.3d 963, 778 N.Y.S.2d 244 (4th Dep't 2004). Other approaches to providing the charge in writing include: providing copies to the jurors to follow along while the judge reads; and, providing one or more copies of the transcribed charge to the jury after deliberations begin.

33. These comments available from the author at <ekrauss@courts.state.ny.us>.

34. *People v. Rosario*, 69 N.Y.2d 56, 511 N.Y.S.2d 580 (1961) (prosecution at trial must turn over to the defense all statements of a prosecution witness relating to the witness's trial testimony).