

How Judges Can Help Deliberating Juries: Using the Guide for Jury Deliberations

Robert G. Boatright and Beth Murphy

Over the past decade, many state reform commissions have recommended reforms designed to make jury service more attractive and to make jury decision making more efficient and effective, but few have actually investigated the jury deliberation process itself. Recommendations that have been made about improving the jury system, which include simplifying and expanding jury instructions, providing jurors with an opportunity to take notes or ask questions during the proceedings, and permitting pre-deliberation discussions and brief opening statements by counsel, have been based upon mock jury research and, frequently, upon common sense. But little has been done to assist jurors with the actual task of deliberating and with the problems that may arise in the discourse as jurors move towards a verdict. This neglect is due in part to the lack of empirical evidence on what actually occurs during the deliberation process. It is also due, however, to a fear on the part of the courts and the public of intruding into the sacred confines of the jury room.

It is the contention of the American Judicature Society that there is much courts can do to assist deliberating jurors without impeding their creativity or negatively influencing the quality of deliberations or of jury verdicts. Through a grant from the Bureau of Justice Assistance, U.S. Department of Justice, the AJS has constructed a guidebook for jury deliberations that provides suggestions to jurors on organizing deliberations, on seeking assistance from the court, and on ways of thinking about jury service after the trial is over. We constructed this guidebook with the input of a focus group of former jurors and jury experts, and we have tested this guidebook across a selection of trials, in order to verify that the guidebook achieves its aims without any negative effect upon the trial outcome or the quality of deliberations. The result of the use of this guidebook, we argue, is more efficient and productive jury deliberations, and more satisfied and confident jurors.

The contents of our guidebook and the process through which we arrived at its suggestions are described in greater detail elsewhere.¹ In this article, we briefly describe the contents of this guidebook, and we then devote greater attention to issues surrounding the reaction of judges, attorneys, and jurors to it. We close with our responses to potential objections to guiding jurors more fully about the deliberation process.

I. The Information in the Guide for Jury Deliberations

The comments we solicited while we were preparing our guide indicated that most jury experts believed any juror guidebook should have a positive, yet benign, effect. That is, it should increase the efficiency of deliberations and increase juror satisfaction with deliberations, but it should not alter the verdict or the manner in which jurors consider the evidence. Jurors are already instructed by judges about how they are to consider the charge and evidence at hand; a guidebook should not present information dramatically different from that which a judge would ordinarily provide them. Instead, a guidebook should present hints on organizing the deliberations and getting assistance from the court in deliberations. Accordingly, we identified the major areas of confusion among the jurors in our focus groups, we verified that we would not be impinging upon the flexibility of jurors in providing suggestions in these areas, and we verified that we would not be transgressing the legal restrictions placed upon jurors by the law. The aim of our guidebook is to provide a set of suggestions that direct jurors towards reducing confusion but do not lead them towards any particular deliberation style. In addition, we have sought in our guidebook to provide a tool that makes broad enough suggestions that it can be used across as many different jurisdictions and as many different types of trials as possible.

Below, we discuss the reasoning behind each set of suggestions in our guidebook.

A. Getting Started and Getting Organized

Before they begin the central task of reaching a verdict, jurors must agree on some ground rules for the sequence of their discussions and for the expected participation of each jury member. The process of getting organized can be beneficial to the jury group by "breaking the ice," by overcoming barriers to discussion within the group, and by taking steps to encourage everyone's participation in the discussions. As in any group decision-making activity, once the jury clearly defines a path to follow in reaching a group consensus, the process of arriving at the eventual verdict will be easier, more efficient, and probably more effective. Our guidelines are intended to provide a starting point for discussion. We chose not to recommend one particular method for organizing deliberations, but we do remind jurors to take a few minutes to get to know each other before

Footnotes

1. See Robert G. Boatright & Beth Murphy, *Constructing a Guide for Jury Deliberations*, 82 JUDICATURE (Forthcoming,

September 1999), and BETH MURPHY & ROBERT G. BOATRIGHT, *BEHIND CLOSED DOORS: A RESOURCE MANUAL TO IMPROVE JURY DELIBERATIONS* (1999).

beginning their deliberations, and we encourage them to talk informally and to present different options for organizing discussions before getting down to business.

B. Selecting the Presiding Juror

A major component of these early discussions is the selection of the presiding juror, who is responsible for overseeing the discussions and creating an atmosphere in which jurors freely express their ideas. The presiding juror can wield power over the deliberations, and at times the presiding juror may even influence the way the jury decides to vote. Most jurisdictions leave selection of the presiding juror entirely up to the jurors. Consequently, we believe it is helpful to the jury to suggest some of the desirable traits a presiding juror should have without placing undue importance on the role of the presiding juror or on the way he or she votes.

Our suggestions on the selection of the presiding juror include only general recommendations on what qualities should be considered in light of the various responsibilities of the presiding juror. Our intent is to show that there are no definitive rules for the selection of the presiding juror, but that certain personal qualities might lend themselves better to performing the role of the presiding juror. The guidebook also emphasizes the equality of everyone's opinions in order to dissuade jurors from attaching too much importance to the sentiments of the presiding juror, especially with regard to the voting process.

C. Discussing the Evidence and the Law

The value of our jury system lies in the jury's ability to be an accurate and reliable fact-finding body that competently applies the law to the evidence at hand in order to reach a verdict. This can be a daunting task, and it is at times complicated by the instructions given by the judge. The consequences of not understanding the law are great, and it is often not apparent whether jurors actually understand how to apply the law to the evidence, or whether they even understand the law. Given the delicate nature of providing assistance to jurors in the use of the judge's instructions, however, any further suggestions must clearly be secondary to those of the judge. Throughout this section, jurors are constantly reminded to follow the judge's instructions because they tell the juror exactly what to do with reference to the case at hand. Our suggestions merely seek to simplify the process with a step-by-step approach, using the judge's instructions as the springboard for discussing the evidence and the law. We remind jurors of the importance of considering each charge or claim separately. Such a procedure should not interfere in any way with the natural discussion of the evidence.

D. Voting

The guideline most frequently recommended by our focus group participants was a section on various methods of voting and on the appropriate time for voting on a verdict. This guideline is controversial, but necessary, because research has shown that the method and timing of the jury's first vote can have significant consequences for the style of deliberations. Numerous studies have shown that the initial verdict preference of the majority of jurors is reversed only a small percentage of the time. If an early open ballot is taken, jurors in the majority may dominate the discussions and all jurors, regardless of whether

they are in the majority or the minority on that vote, could be reluctant to change their votes. Thus, the task of reaching a consensus may be facilitated by suggesting that jurors refrain from voting until after considering the evidence.

We chose a discussion of voting for our guidebook that is suggestive of the value of delaying the first vote without specifically ordering the jury to delay voting. We note the merits of spending some time discussing the evidence and the law before voting, and we indicate that if jurors do this they may feel more confident and satisfied with the eventual outcome than they would if they were to vote immediately. Likewise, we mention various voting techniques – for instance, written and secret votes, or open voice votes – as options available to the jury, not as set ways to vote.

We have also included a short statement directing the jurors to ask the judge for advice about what to do if they cannot reach a verdict. The wording of this section avoids any explanation of when jurors might consider themselves to be at an impasse. We feel it is best to advise jurors how to proceed when they are at an impasse, instead of defining what an actual impasse is. This last function is best left to the trial court and should be addressed by specific state law.

E. Getting Assistance from the Court

If the jury does not understand the judge's instructions, or if it is confused about how to reach a unanimous verdict, it is incapable of performing its deliberative function. Jurors' understanding of the judge's instructions is increased and their general sense of confidence in performing their duties and responsibilities may be heightened when they are able to ask questions and receive reasonable responses. There is considerable variance in the ways that judges respond to the questions juries send to them from the deliberation room. Some judges provide written answers to the jury, while others merely direct jurors to reread the instructions already provided and still others prefer not to respond at all. Some judges ask the jury before deliberations begin whether it has any questions about the instructions and attempt to clarify any misunderstandings at that point. It is rare for judges to specifically invite jurors to come back with questions after they have retired to deliberate.

Consequently, the challenge of providing suggestions to jurors on obtaining information from the court is to balance the benefits of generality, *i.e.*, of information suitable to all jurisdictions, with the demands of the rules of individual courts. In order to meet this challenge, we first tell the jurors, in very general terms, the types of information they may request – lists of witnesses or a read-back of parts of the testimony, for instance – and we then explain the types of information they may not request – police reports that were not received in evidence, for example. In specifying what information jurors may not request, we seek to allay the fears of those judges who anticipate being inundated with information requests from jurors if jurors are told only what types of information they may request.

F. The Verdict

In some instances, the jury may not realize how their verdict becomes official and how to present that verdict to the court. In our focus groups, it became apparent to us that the manner in which the verdict becomes official was a source of concern

and confusion, albeit a confusion that often escapes the notice of judges. Likewise, the matter of the verdict's presentation has not been studied by researchers, in part because it is such a minor aspect of deliberations. In most jurisdictions, once the verdict is read in open court, the judge may elect, at the request of the attorneys, to poll each juror for his or her individual vote. Frequently, jurors are not aware of this practice, and they hear about it for the first time in the jury box after the verdict is entered. Telling jurors about how the verdict is to be delivered seems very fair and practical.

G. Once Jury Duty Is Over

For many jurors, jury service is an exhilarating experience, both instructive and stimulating, that provides them with their first contact with our legal system. The feelings they take with them following jury duty are as important as those that preceded jury duty. While jurors may experience a certain amount of anxiety before they begin to serve on a trial – anxiety associated with the anticipated stress and inconvenience of jury duty and with the unfamiliarity of the courtroom and the deliberation room – they may also experience anxiety as they emerge from the courtroom and resume their normal lives. Particularly in difficult or lengthy cases, in high profile cases, or in cases featuring disturbing crimes, jurors may leave the courtroom shaken or uncertain about the verdict they have rendered or potential repercussions of the verdict.

Numerous courts have effectively begun to work to alleviate post-service juror stress. Our comments on what to do once jury service is over were thus kept relatively simple. They are meant primarily to reassure jurors. In order to accommodate jurisdictional differences, our guideline tells the jurors that the trial judge will inform them about her policy regarding speaking to others after the trial while it assures the jurors that they need not talk to anyone if they do not want to do so. This is basic information that is provided as a means of reassuring jurors before, during, and after their deliberations. Its placement at the conclusion of our guidebook also serves as a brief thank-you to jurors for their time and their work.

II. Reactions to the Guidebook

We tested our guidebook in twelve randomly selected cases across six jurisdictions. We surveyed the judges and attorneys in these cases about the use they believed jurors would make of the guidebook, the manner in which the guidebook was presented to jurors, and their beliefs about the likely effect of the guidebook. We then surveyed the jurors about the ways in which they used the guidebook, the manner in which they conducted deliberations, and their satisfaction with jury service. As a control, we also surveyed judges, attorneys, and jurors in a sample of fourteen cases in which our guidebook was *not* used, in order to test for any adverse consequences of the use of our guidebook. The experimental and control groups were relatively comparable – the two groups were similar in type of charge, complexity, and duration. In the experimental group, there were five felony trials, two misdemeanors, one traffic offense, and four civil trials. In the control group, there were eight felony trials, one misdemeanor, one traffic offense and four civil trials.

We received 151 completed surveys from jurors – 75 from the experimental group and 76 from the control group. A total

of 111 jurors who were given the guidebook and 157 jurors who were not given the guidebook were given surveys; hence, we have a 68 percent response rate for the experimental group and a 48 percent response rate for the control group. These survey responses are supplemented by the comments of the judges who presided over these cases; we received 26 completed surveys from judges, although some judges presided over more than one case in the sample. At least one of the lawyers in each case also was surveyed, for a total of 33 completed questionnaires by lawyers.

Our results demonstrate that the guidebook provides enough information that jurors may pick and choose – they are able to focus upon information in the guidebook that is of particular use to them given their level of knowledge of the legal system and given the type of case before them. Judges and attorneys generally did not believe that the guidebook would have a prejudicial effect upon jurors, although in almost all of the cases the guidebook was entered into the trial record as evidence. Our survey showed that the guidebook indeed did not have an effect upon the case outcome or on a number of other factors relevant to the content of deliberations. Instead, the guidebook enabled jurors to devise more organized means of deliberating and to handle disagreements more smoothly than was the case in trials where the guidebook was not used.

The survey text for each of these participants was different. We asked judges questions about the case – how clear the evidence was, how complex it was, what their verdict would have been – and about their jury management techniques. We then asked judges who gave jurors the guidebook their views on the use and effect of the guidebook. The questions we asked attorneys were similar, but we also asked the attorneys to reflect on the abilities of the jury. Were they satisfied with the performance of the jury? Did they believe the jury understood the evidence and the law? How did they rate the jury's fact-finding abilities? How did they rate the strength of their case? Finally, we gave jurors a lengthy survey asking them to describe various aspects of their deliberations. Questions to jurors fell into three broad categories. First, what sort of case was it? How complex was it? Did they believe they understood the relevant evidence and law? How did they evaluate the ability of the judge and the attorneys in providing assistance to them in reaching their decision? Second, how were deliberations structured? How much time did each aspect of deliberations take? How were disputes handled? How well did the presiding juror perform? Third, how did they feel about their experience? Did they feel confident in their verdict? Did they feel that deliberations had been an appropriate length? Had jury service been stressful? Would they do it again?

We now discuss each of these groups of participants in turn.

A. The Judges

Needless to say, the judges who chose to participate in our study were a self-selected sample; no judge who disapproved of the guidebook could be expected to volunteer to distribute it to the jurors. Fortunately, we encountered no judges who declined to participate specifically because of apprehensions about the guidebook; those judges whom we contacted and who chose not to participate instead spoke of time constraints or lack of interest in the project, not of hostility towards it.

Thus, none of the judges in our sample believed the jury

guidebook to be prejudicial or harmful before administering the survey. None changed their views over the course of the trial. While disagreement between judges and jurors certainly cannot be directly linked to use of the guidebook, there were no cases in our experimental group of judge/jury disagreement, and there were only two such cases in our control group.

We left the level of emphasis placed by judges upon the guidebook to the judges themselves. Judges were somewhat split in their decision about when to have the guidebook distributed – seven of the twelve distributed the guidebook after the trial, while five distributed the guidebook before the trial had begun. In ten of the twelve cases, the guidebook was made part of the case’s permanent record. Seven of the twelve judges called attention to the guidebook by reading directly from it to the jurors, while five made little mention of it.

The most significant difference between the experimental group and the control group in regard to judges’ behavior that we might attribute to the presence of the guidebook was that judges in the experimental group were far more likely to speak with jurors after the trial had ended than were judges in the control group. Ninety-two percent (or all but one) of the judges who used the guidebook interviewed the jury after the trial, while only slightly more than half (57 percent) of the judges who did not do so spoke with the jurors. This may be attributable to a view by judges who used the guidebook that they should explain the reason for its use to the jurors.

Table One shows the areas in which judges felt the guidebook would be of use. While at least a large minority, if not a majority, of the judges felt the guidebook would be of use in each of these areas, judges seemed to be most substantially in agreement about the effect of the guidebook on juror satisfaction and confidence. If we compare the “efficiency” questions – would jurors take less time to select a presiding juror, would they spend less time deliberating, would they be better informed of the relevant questions they may ask, as so forth – with the two questions on confidence and satisfaction, it is evident that these judges believed this to be the real strength of using the guidebook.

In their open-ended comments on the guidebook, some judges noted particular jurors for whom the guidebook would be most helpful. Several judges asked jurors what they thought of the guidebook; they received rather positive, though undetailed, feedback. Judges noted that the guidebook would be of particular help to first-time jurors:

[The information in the guide] is common sense but this is a new experience for most jurors so the guidebook provides good help.

and to jurors in more complex cases:

This particular case was short and very simple so it’s difficult to say that the guide clearly had a substantial impact [in this case]. In a more complex case, it would have.

One judge who used the guidebook in three different cases noted in the first two that deliberations were longer than he had expected:

Trial one: Afterwards they said it was helpful, but it still took them two and one-half hours to reach their verdicts.

Trial two: It is difficult to know [how the guide might have affected deliberations]. The jury deliberated for five hours, which was unusually long considering the state of the evidence. They did all say they found the guidebook helpful.

But by the end of the third experimental case over which he presided, this same judge noted:

Trial three: After the trial I asked the jurors if they found the booklet helpful. They responded enthusiastically “Yes.” They said it shortened their deliberation time considerably. . . I am now satisfied that this is an extremely helpful booklet.

As we noted above, the guidebook was designed to reduce the length of deliberations, but we have no firm evidence that it did so, and the possibility does remain that it may actually lengthen them. The judge quoted above is one of two judges who raised this possibility. The second judge, however, noted that if the guidebook does have this effect, it is not necessarily a bad thing:

The guide was very helpful. That is why it was a hung jury. They worked very hard but stood firm when the rules were clearly explained to them.

Finally, eight of the twelve judges in the experimental group stated that they would use the guidebook regularly in the future. None claimed that they would not use it; one said he would use it sometimes – absent objections from counsel – and three did not answer the question. All of the judges believed that the jury understood the suggestions in the guidebook, and all rated the guidebook as a whole “very helpful” or “somewhat helpful.” At least as far as the judges who used the guidebook were concerned, the guidebook seemed to have fulfilled our criteria of having a positive but not prejudicial effect.

Table 1: Judges’ and Attorneys’ Expectations about Effects of the Guidebook

	Judges	Attorneys
Reduce deliberation time	43%	31%
Reduce time selecting presiding juror	43%	67%
Enhance effectiveness of presiding juror	67%	67%
Enhance effectiveness of judge’s instructions	56%	75%
Reduce number of questions from jurors	56%	38%
Reduce likelihood of a hung jury	63%	47%
Increase juror confidence in verdict	88%	77%
Increase juror satisfaction with the process	100%	92%
Number of respondents	12	19

B. The Attorneys

The questions we asked attorneys provide a somewhat stronger means of analyzing the effect of the guidebook upon jurors, although we must be wary of attributing too much weight to attorneys’ opinions of jurors because of their vested interest in the trial’s outcome. We asked attorneys several questions about juror performance. While some of these questions did turn up dissatisfaction with the performance of the jury, none of them revealed significant difference in attorneys’ level of satisfaction with the jury between the experimental and the control group. We also found no difference in attitudes towards the jury or the guidebook by the type of attorney (private, public defender, or prosecutor) or by party represented. Unsurprisingly, those attorneys most dissatisfied with the jurors were attorneys who lost their cases.

The attorneys we surveyed demonstrated rather cautious acceptance of the guidebook. None of them made direct reference to it in their statements to the jurors, but few of them found anything in it to dislike. All of the attorneys we surveyed were given the guidebook during voir dire or before trial proceedings began, and 83 percent, or fifteen out of eighteen, felt this was sufficient time to look over the guidebook. Only 11 percent of the attorneys we surveyed were opposed to any part of the guidebook, and only one attorney claimed that the guidebook was potentially prejudicial.

The handful of negative comments we received about the guidebook addressed both the broader issue of whether jurors need guidance and the more narrow issue of the guidebook's effect on the length of deliberations. The lone attorney who was opposed to use of the guidebook did not believe the guidebook would be prejudicial, but he merely noted that he did not believe jurors needed to be guided. As was the case for the judges, some attorneys felt that the guidebook might extend the length of deliberations – again, a matter that is difficult for us to test because of the large number of intervening variables. In at least one case in our experimental group, both attorneys believed that the use of the guidebook may have led to requests to review testimony. In this case, the attorney for the eventual victor did not regard this as a problem, while the attorney for the losing party did. The losing attorney felt that jurors had been encouraged to ask to be reread testimony by the guidebook, and that this had been counterproductive.

The attorneys were also somewhat more skeptical about the potential uses and effects of the guidebook than were judges, but their views on the strong points of the guidebook were similar to those of judges. Table One also shows the responses of attorneys about the areas in which they thought the guidebook would be most helpful.

The attorneys we surveyed agreed with the judges that the primary influence of the guidebook would be in the area of juror confidence and juror satisfaction. The attorneys also, however, thought that the guidebook would be of particular use to the presiding juror. They were skeptical about the overall effect of the guidebook upon deliberation time and reducing juror questions. In some of their open-ended responses, attorneys noted that the guidebook would be of particular use in complex cases and to first-time jurors. Finally, all but one attorney – the same attorney who believed the guidebook to be prejudicial – claimed that they would be positively disposed toward using the guidebook again, either regularly (65 percent) or sometimes (26 percent).

C. The Jurors

It is only among the jurors in our survey that we are able to analyze meaningful distinctions between particular groups of individuals. In particular, we are able to study differences in deliberation behavior between jurors who received the guidebook and those who did not, and we are able to identify differences in the way the guidebook was used by different types of jurors. Before we present these differences, however, two general statements are in order.

First, our guidebook was designed to address the general needs of the deliberating juror. We expect, then, that jurors will pick and choose among the individual suggestions in the

guidebook what best suits the particular case over which they are deliberating and the particular concerns that they have. As a result, our data indicate that different types of jurors consulted the guidebook for different reasons. The most salient distinction was between first-time jurors and individuals who have served as a juror before. First-time jurors reported that the guidebook was more helpful in understanding the relevant law governing the case, the way to structure a vote, and the way in which to consider evidence than did those who had served before. Jurors who had served before were somewhat less concerned with the suggestions on how to consider the judge's instructions on the law and the evidence, but both groups were equally interested in what the guidebook had to say about selecting a presiding juror and getting deliberations started.

Second, the effects of the guidebook should be primarily at the margins. That is, the guidebook is intended to bring order to an otherwise potentially chaotic procedure. While it is difficult to compare jurors' reflections on the proceedings because of measurement problems – that is, it is difficult to measure levels of satisfaction between the experimental and control groups, or to measure the performance of the presiding juror – it is possible to identify differences in the ways in which deliberations are structured. Comparison of the two populations reveals that jurors using the guidebook structured deliberations differently in two ways. First, the jurors using the guidebook were more likely to devise an organizational theme for deliberations, whether it be around the evidence, around specific charges, or merely by taking turns commenting on the case – than were those without the guidebook. They were less likely to consider the case chronologically and more likely to address alternate means of organization. Second, the jurors using the guidebook were more likely to develop a formal procedure for addressing disagreements among jurors than were those without the guidebook. Few jurors explicitly linked these formal procedures to the guidebook's suggestions, but the existence of these patterns, coupled with the fact that, as noted above, the cases in which the guidebook was used were actually somewhat more complex than those without it, lends suggestive evidence to our claim that the guidebook was beneficial to jurors.

In order to address these general findings, we again focus upon the use and the effect of the guidebook in summarizing data on the jurors.

1. Use of the Jury Deliberation Guidebook

Virtually all of the jurors, 97 percent, reported that the judge had discussed the guidebook with them and had encouraged them to consider it in their deliberations. Almost all jurors eventually did use the guidebook; 99 percent said that they had read the guidebook. We also asked jurors how helpful they found the guide. All of them rated the guidebook at least somewhat helpful; 46 percent rated the guidebook “very helpful.”

Table Two presents the overall use of the guidebook in each relevant area, as well as differences between first-time jurors and more experienced jurors. The framing of these questions to jurors was somewhat different from the manner in which we inquired about potential effects of the guidebook in our sur-

Table 2 : Juror Use of the Guidebook by Level of Experience

	All Jurors Jurors	First-Time Jurors	Experienced
Suggestions from the judge	66%	74%	52%
Getting started	87%	88%	84%
Selecting the presiding juror	62%	61%	64%
Getting organized	73%	74%	72%
Discussing the evidence and the law	66%	74%	52%
Voting	54%	59%	44%
The verdict	41%	37%	48%
Once jury service is over	27%	25%	32%
Number of respondents	74	49	25

veys of judges and attorneys. The first column of this table shows that a majority of jurors reported that the guidebook was of use in every area of deliberations except for actually arriving at a verdict and in the aftermath of jury service. These aggregate results are unsurprising; they provide encouraging evidence that the guidebook was of use during deliberations. Most previous research has shown that the verdict itself is at times instinctual for jurors; jurors may be willing to consider suggestions on technical matters in deliberation but not on how to arrive at a verdict. In addition, we might also expect that after service, jurors know best how to go about returning to their daily routine and only need suggestions in the rare instance of a particularly traumatic trial or a trial about which the media are highly concerned. Few of our experimental cases met this criterion, so this section of the guidebook would only have been of interest to a small number of jurors.

Our results nonetheless indicate that providing information about arriving at a verdict and coping with difficulties after jury service can be of use for many jurors. While the stress level of the individual juror during the case was not related to post-verdict use of the guidebook, a greater percentage of jurors in felony cases (34 percent) used the guidebook after jury service than was the case for jurors in civil trials (18 percent). This finding indicates that jurors who must preside over potentially more disturbing cases may need additional reassurance of options for counseling or of ways to think about jury service after the trial is completed.

The second and third columns of Table Two show the use made of the guidebook by jurors depending on whether they had served as a juror before or not. This variable might be considered a measure of prior knowledge of the courts and of the nature of jury deliberations. We did ask jurors other questions that might be construed in a similar manner, such as their education level, but this is the most direct means in our survey of measuring knowledge about jury service. Unsurprisingly, the general suggestions from the judge that open the booklet were far more useful to first-time jurors than they were to those who had deliberated before. Both groups reported that the guidebook was useful in speeding the organizational aspects of getting deliberations started. First-time jurors found the guidebook more useful in considering evidence and in devising a means of voting than did those with prior jury service. Those who had served before had experience with these matters before

receiving the guidebook and might be expected first to consider how well these two issues had been confronted in their prior service before turning to the guidebook.

2. Effects of the Jury Deliberation Guidebook

On a large number of measures, our experimental group was little different in its behavior than was the control group. One way to explain these findings would be to say that the deliberation guidebook was certainly not harmful to deliberations. It did not prolong deliberations unnecessarily or produce less satisfied jurors. Such a finding should reassure those who feared that there would be negative consequences to the guidebook, but it is scarcely an argument in favor of using our guidebook or, for that matter, any deliberation guidebook.

Marked differences in trial outcomes or procedures between those jurors who used our guidebook and those who did not are not plentiful, nor should they be. Yet there are several aspects of deliberations among those who received the guidebook that present suggestive evidence that the guidebook does increase juror efficiency, confidence, and satisfaction, and that it reduces juror conflict.

First, jurors using the guidebook were more likely to develop formal procedures for handling juror disagreements than were jurors without the guidebook. Those using the guidebook did not all share one particular procedure for resolving disagreements, but they did indicate a greater propensity to respond to disagreements by going over the charges of the case, the evidence, the judge's instruction, or merely by voicing opinions in an orderly fashion than did jurors without the guidebook. Jurors using the guidebook were also less likely to disagree at all, a finding that could not be attributed to the complexity of the case, the clarity of the evidence, or any other case-specific factors. Our guidebook does not directly address resolving disagreements, but we hypothesize that the step-by-step presentation of suggestions in the guidebook inspires jurors to impose order upon their arguments. Table Three presents a breakdown of disagreement resolution methods by guidebook usage. Few jurors specifically mentioned resorting to the guidebook when disagreements arose, but the presence of the guidebook may have led them to seek more orderly dispute resolution techniques.

Table 3: Organization of Deliberations by Guidebook Usage

	Control Group	Used Guidebook
Around each count	4%	11%
Around each element of the charge	8%	6%
Around the judge's instructions	7%	8%
Around the evidence	18%	11%
Around each lawyer's story	4%	0%
Around the witnesses	7%	2%
No set pattern	31%	25%
Took turns going around the table	19%	36%
Number of respondents	72	64

Note: not all of the judges and attorneys answered each question about the effects of the guidebook; percentages reported are for those who responded to each question.

Second, jurors using the guidebook devised a similar, although less obvious, means of organizing discussions in general. While numbers in each of the categories used to code responses are small, the data do suggest a greater tendency for jurors in the experimental group to use elements of the judge's instructions, the charges, or the evidence than was the case in the control group, and a lesser tendency to merely talk about the case at random or to orient discussion around the chronological proceedings of the stories that they were presented. Table Four presents a breakdown of self-reported discussion organization techniques.

	Control Group	Used Guidebook
No strong disagreements	13%	35%
Went back over the evidence	21%	20%
Went back over the judge's instructions	10%	3%
Went back over each element	0%	3%
Just talked it out	57%	35%
Consulted the jury guidebook	N/A	4%
Number of respondents	72	69

Our guidebook does not coach jurors about any particular way to structure deliberations or resolve disagreements. Instead, it merely advises them that they should specify means of doing so when they organize their deliberations. While the results in Tables Three and Four do not necessarily indicate a preference for any particular sort of organization, they do indicate that jurors in the experimental cases experienced less conflict and developed means of resolving disagreements and discussions that did not merely rely upon open, informal debate.

It is unfortunate that we are unable to directly measure the effects of the guidebook in the two areas which attorneys and judges felt the guidebook would be most helpful – in the areas of juror confidence and satisfaction. Our survey instrument does not allow us to do this because, while we did ask jurors about how confident they felt in their verdict and how satisfied they were with their experience as a juror, we have neither a large enough sample of cases nor a detailed enough measurement tool to locate differences in these variables. Because of our small sample size, it is impossible to control for all of the other factors that might influence jurors' attitudes on these two variables. Because jurors who did not receive the guidebook have no way of knowing how their experience would be improved had they used the guidebook, we cannot truly measure whether the guidebook made a difference. We are thus forced to rely upon the comments of the jurors on the guidebook, which, as we note above, were overwhelmingly positive.

III. Why We Should Provide Assistance to Deliberating Jurors: Answering the Objections

The comments of the judges, attorneys, and jurors discussed above indicate that our guidebook does indeed have the effect and the flexibility we desired when we created it. It does not have a strong effect on the conduct of jurors, nor should it.

Extensive research surely remains to be done on means of improving the quality and efficiency of jury deliberations, yet the reflections of these individuals upon our guidebook indicate that it has a positive, yet benign, effect upon deliberations. It is of use to different types of jurors in confronting a number of potential problems inherent in deliberations, but it does not unduly diminish the freedom of jurors to adapt their deliberation style to the case at hand nor to steer them towards any particular style or deliberation outcome.

Our data indicate that the guidebook may make a subtle, yet important, difference in the organization of deliberations in that it steers jurors toward more formal and explicit means of organizing their discussions and resolving disputes. At the very least, it advises jurors to consider these issues before they begin their deliberations. With some rudimentary principles of group dynamics and discussion procedures in mind, jurors appear in our experimental cases to exert greater control over the form of deliberations without altering the substance of deliberations.

When we began this project, we expected to encounter resistance both to some of the specific suggestions in our guidebook and to the idea of providing a guidebook to jurors at all. We were encouraged by the low amount of resistance we faced. We had, however, spent much time preparing ourselves to defend our project against those who would object to providing assistance in deliberations. In conclusion, we believe it is important for us to note some of the objections we encountered, and our responses to them. These responses, coupled with the evidence presented above, will hopefully be of assistance for those readers who wish to make use of our guidebook.

Objection No. 1: Jurors don't need to be guided.

We do not contend that our guidebook alone will make a difference in the verdict of a case. It is not intended to. It is true that all of the deliberations in cases in which our guidebook was used reached the same verdicts that the judges expected the jurors to reach, and it seems highly unlikely that our guidebook altered the outcomes of any trials, for better or for worse. This is a rather narrow reading of the purpose of providing a guidebook to jurors, however. Jury service is a vital aspect of citizen participation in government. The more assistance courts can give jurors in making jury service a satisfying, fulfilling experience, the better served our courts will be in the long run. Most of the judges, attorneys, and jurors whom we surveyed contended that our guidebook would increase juror satisfaction with and confidence in their jury service. This alone seems like an important reason to provide a guidebook to jurors. In addition, if jurors are provided with hints on ways to make deliberations more productive and efficient, the possibility still remains that jurors will reach verdicts in a more efficient manner.

Objection No. 2: Telling jurors how to conduct deliberations may bias the deliberations.

Indeed, specific instructions to jurors may have an effect upon the outcome. They may constrain jurors from arranging their deliberations around the particular evidence they have at hand. This is why our guidebook does not tell jurors anything about how to organize their deliberations. Instead, our guidebook instructs jurors about non-controversial aspects of court proceedings – *i.e.*, how the verdict is read, or what information

they may request from the court – and it only suggests various options for organizing discussion, selecting a presiding juror, and voting. A better informed jury is a better jury, but jurors should not be told how to deliberate. Our guidebook provides options for jurors to consider, but it does not rein in the choices jurors have about how to deliberate. As such, bias resulting from our deliberation guidebook appears highly unlikely.

Objection No. 3: Judges already provide instructions to jurors that are tailored to the case at hand. Providing extra information to jurors is redundant and a waste of time.

We have two responses to this objection. First, nothing in our guidebook should contradict judges' instructions. Our guidebook takes the average juror five minutes to read, so the actual activity of reading the guidebook seems unlikely to unduly lengthen deliberations; even were it to do so, lengthening deliberations so that evidence is considered more carefully can hardly be considered a bad thing. Our guidebook has been tested and commented upon by jurors and former jurors for readability and clarity. Many jurors complain about the technical language of judges' instructions. If judges are instructing jurors about the same matters that we consider in our guidebook, they should feel free to refer jurors to the guidebook and drop those sections from their standard instructions. Judges should view the guidebook as a starting point for their own instructions; in all trials there will be particular matters about which only the judge should instruct jurors and about which our guidebook is silent. The guidebook need not interfere with or reiterate judges' instructions.

Second, we include within our guidebook information that is traditionally covered by many judges' instructions and information that judges rarely discuss with jurors. Few judges, for instance, give jurors advice on how to begin deliberations, what procedure to follow in requesting assistance, or how the verdict is to be read. It may be that it never occurs to court personnel that jurors would be in doubt about such matters. The jurors in our focus groups and in our impact studies, however, did indicate that the guidebook can alleviate confusion about matters that are rarely addressed in judges' instructions to jurors.

A major benefit of this guidebook, however, is that it can be of use to jurors both during and after deliberations. Rarely are jurors allowed to bring the instructions from their case with them when they leave the courthouse. Our guidebook is meant to be kept by jurors, enabling them to reflect upon their jury service after they leave the courthouse. Jurors may review the guidebook's contents and reflect upon the quality of their own deliberations: were there alternate ways their deliberations could have been organized? Did they make the right choice in selecting a presiding juror? Would they have been within their rights to request additional help from the court? Could they have organized their voting differently? Helping jurors to ask such questions will lead, we argue, to a more informed populace – and hence a better qualified pool of potential jurors in the future.

Allowing jurors to keep our deliberation guidebook also serves as a convenient public relations tool for courts. Former jurors may show the guidebook to acquaintances when they are asked about jury service, and the guidebook may serve to allay the fears of others about jury service. Many of the jurors in our

focus groups reported being unaware of what to expect when they went into the deliberation room. For those who are fearful of jury service, our guidebook should be reassuring.

Finally, our guidebook also contains information about how jurors might reflect upon jury service and whether they may discuss their case after deliberations are completed. Many courts provide jurors with information about speaking with others once a case is completed, but some do not. Our guidebook should supplement such materials. Jurors should leave the courthouse confident in their comportment and satisfied with their jury experience.

The costs to our courts of confused or inadequately prepared juries are high. For the parties, they include nullification or incorrect verdicts. For the court, they include feelings of uncertainty or unhappiness on the part of jurors; citizens may leave the court with a feeling that their needs during deliberation were not met by the judge and by the court. Much work has gone into improving the jury system in recent years. It is time for courts to leave behind their timidity about seeking to improve the deliberation process as well. Our guidebook represents a first step – and, we would argue, a successful first step – towards improving the competence, confidence, and efficiency of deliberations. Our guidebook is by no means the last word on the subject. We encourage judges to try our guidebook in their courtrooms and to give us feedback on its impact.



*Robert G. Boatright is a research associate at the American Judicature Society and an American Political Science Association Congressional Fellow. His work at the American Judicature Society has been about jury summons responses and jury deliberations. He is the author of *Improving Citizen Response to Jury Summonses*, a report funded by the Henry R. Luce Foundation that surveys the attitudes of citizens towards jury service and the steps courts nationwide have taken to improve responses to juror summonses. He is co-author of *Behind Closed Doors: A Guide for Jury Deliberations*. Boatright recently received his Ph.D. in political science from the University of Chicago, where he wrote a dissertation on the issue positions and campaign strategies of congressional challengers.*



*Beth Murphy is currently a research associate at the American Judicature Society, where she has recently completed two national jury research projects. This article is based on a larger study she directed - *Behind Closed Doors: A Resource Manual to Improve Jury Deliberations*. She also co-authored *Enhancing the Jury System: A Guidebook for Jury Reform*, which presents an overview of national jury reform efforts and provides recommendations to states for establishing and operating jury reform commissions. Ms. Murphy has completed a master's degree and doctoral coursework in sociology at the University of Illinois.*