

2002

Empirical Research Report: The Use of Technology in the Jury Room to Enhance Deliberations

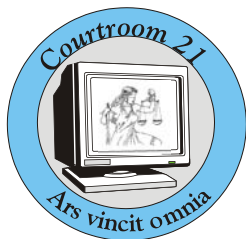
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Courtroom 21 Research Report

The Use of Technology in the Jury Room To Enhance Deliberations



This document was developed under Grant No. SJI-01-N-062 from the State Justice Institute. The points of view expressed are those of the Courtroom 21 Project and do not necessarily represent the official position or policies of the State Justice Institute.

Abstract

Modern courtroom technology permits the use of technology in the jury deliberation room to enhance deliberations in both traditional trials and technology-augmented cases. SJJ-funded research conducted by the Courtroom 21 Project surveyed the law of the United States with respect to statutory and case law governing the use of exhibits during deliberations; surveyed the state courts and, with the assistance of the Federal Judicial Center, the United States district courts concerning their deliberation practices and courtroom technology use; and conducted two controlled studies of the use of deliberation room technology in both traditional and technology-augmented trials.

The Courtroom 21 protocol and technology design formulated as a result of the surveys and experiments was then field-tested in actual cases in Florida's 9th Judicial Circuit and the United States District Court for the District of Oregon. Following the field trial the Courtroom 21 Project prepared the Manual for Jury Deliberation Room Technology for use by court administrators and technologists. The research results include survey and empirical data dealing with jury exhibit practice and courtroom technology use not previously available.

Located in Williamsburg, Virginia, the Courtroom 21 Project is a joint project of William & Mary Law School and the National Center for State Courts. See www.courtroom21.net. Questions concerning this report or the Courtroom 21 Project may be directed to ctrm21@wm.edu, or the Project may be reached by telephone at (757) 221-2494 or via fax at (757) 221-3708.

This report and the research that it reflects was made possible by the assistance of the State Justice Institute. We would like to acknowledge both that assistance and SJJ's consistent efforts to improve the administration of justice in our state courts.

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§ 1-10.00 Introduction

Long accepted as one of our essential civil liberties, the right to trial by jury is one of the key defining elements of our legal system. Recent years have seen a renewed effort to determine how to assist jurors in their highly demanding task. It is no surprise that in our modern, increasingly computer-oriented world technology has been suggested as a potential tool that might be of value.¹ The results of this SJI-funded project support the proposition that technology can be of help to jurors in the deliberation process.

The growing and pervasive use of technology at trial is clear. Although no accurate estimate of the number of integrated high technology courtrooms exists, the Courtroom 21 Project estimated two years ago that the number exceeded 500. To those courtrooms can be added the large number of additional facilities in which technology is used in a less comprehensive manner. The common thread to nearly all courtroom technology uses is technology enhanced evidence presentation. The use of display technologies to visually show evidence to judge and jury is believed to enhance fact finder recollection and understanding and to decrease substantially the amount of trial time. Although we have striven to improve case presentation through the use of technology, we have spent little effort on the all important process of jury deliberation. This study sought to remedy that omission.

After the close of the evidence, submission of final arguments, and receipt of jury instructions, jurors must retire to deliberate and reach their verdict. During deliberations, jurors customarily exchange their memories and interpretations of the key pieces of evidence. Most jurisdictions supply the jurors with at least a substantial amount of the evidence that was formally received during trial. Jurors can then review the evidence and argue its meaning to one another. In some cases in some jurisdictions each juror will have a personal copy of documentary evidence, supplied in a “jury book” or similar compilation.

This study sought to determine two things: whether jury deliberations in traditional, non-technology cases could be assisted through the use of modern technology, and whether jury deliberations in the new technology-enhanced cases could be assisted through the use of technology during deliberations.

The primary experimental hypothesis was that jurors would find helpful the ability to collectively and concurrently see a large displayed image of documentary evidence. The results of this study confirm that hypothesis. Jurors found deliberation room display technology highly useful, whether used in traditional trials in which no courtroom technology was used or in trials that used technology-enhanced evidence presentation. In addition, we were able to create a simple and highly usable system for jurors to review high-end computer-based evidence.

As a result of the data collection and numerous experiments conducted pursuant to SJI’s support, we have formulated recommendations for the use of jury room technology and prepared a brief manual that supplies court administrators with the critical information necessary to enable jurors to have technology-enhanced deliberations.

¹ See Nancy S. Marder, *Juries and Technology: Equipping Jurors for the Twenty-First Century*, 66 Brooklyn L. Rev. 1257 (2001).

This report includes not only the manual but also the data collected from legal research, two national surveys, technology reviews, trial experiments, and real-life field trials, as well as the results of informed consideration of the intersection between deliberations and technology.

§ 1-20.00 Methodology Summary

The study consisted of five primary phases: data collection, jury room technology evaluations, two controlled studies, field trials in real cases, and preparation of this report with an accompanying Manual for Jury Room Deliberation Technology.

As we initially formulated this study it became immediately apparent that we were proceeding from basic *assumptions* about court practice. We held a number of suppositions about both the law and practice governing jury review of evidence during deliberations. All of those suppositions were suspect, and, as events eventually demonstrated, a number proved to be wrong. Among other things, we discovered that jury room technology is already in actual use in some courts.² In order to test the potential use of technology during deliberations it was essential to know what was actually happening in America's courts. To accomplish this, we designed a four part data collection process.

We first conducted legal research to determine the law that governs the use of admitted evidence during deliberations (Appendix B). With the assistance of a panel of experts (the Grant Advisory Panel listed in Appendix A) consisting of Matt Benefiel (Court Administrator, Ninth Judicial Circuit of Florida); the Honorable B. Michael Dann (Visiting Fellow, National Center for State Courts); Gregory P. Joseph, Esq. (New York); Nancy Marder (Associate Professor of Law, Chicago-Kent College of Law); Thomas Munsterman (National Center for State Courts), and the Honorable Donald E. Shelton (Washtenaw County, Ann Arbor, Michigan), we prepared a survey for the state courts (Appendix C) that would collect data dealing with what exhibits went to the jury, the degree to which display or other technology was in use for deliberations, the process by which technology-presented evidence was reviewed by the jury, and related questions. While we were surveying the state courts, we conducted a review of potentially useful jury room technology and carried out first level jury room ergonomic and placement display technology experiments. With the assistance of Dr. Beth Wiggins and her colleagues at the Federal Judicial Center, those questions were included in a national survey of the United States District Courts as well (the results are in Appendix E). Although the critical state court survey was conducted in the Fall, for a variety of reasons the federal survey was conducted in late Spring, 2002.

Based upon the legal and empirical data that we collected, we then conducted three experimental trial phases. Trial Phase I, conducted in the Fall 2001 academic semester, was a controlled study consisting of the repeated trial of an experimental one hour traditionally-tried civil personal injury tort case, *Matthews v. Morton*. Using the results of the data collection phase these trials had three types of possible jury room deliberation technology: none, a 40-inch plasma display linked to a document camera, or a front-projection unit linked to a document camera that displayed evidence on a portable screen. Trial Phase II, conducted in the Spring

² Answers to Question 8 of our state survey, set forth below, show 12 courts with projection devices in the deliberation room and 4 with computers or computer monitors.

2002 academic semester, was a controlled study consisting of the repeated trial of *Matthews v. Morton*, but in these experimental repetitions trial evidence was electronically presented to the jurors. This time two jury room technology options were available: none or full technology (document camera, computer, plasma display, large rear-projection display for annotation, and a chalk board). The case repetitions in Trial Phases I and II were tried by four third-year William & Mary Law School student counsel (two men and two women) and two faculty judges (one man and one woman).³ Jurors came from College of William & Mary psychology students and were predominantly freshmen. To ensure consistency, counsel used the same highly detailed trial sequence. The sequence included all points to be presented and all the evidence to be introduced.⁴ Neither counsel nor judge knew whether any given jury would use technology, or, if so, what type until the very end of the case when during closing instructions the judge would flip over a previously prepared card that indicated the type of deliberation. The data from Trial Phases I and II were analyzed by Dr. Kelly Shaver of the Psychology Department of the College of William & Mary. In Trial Phase III, jury room technology was used in real cases in Florida's 9th Judicial Circuit (Orlando) and the United States District Court for the District of Oregon (Portland).

Based upon all of the data collected, recommendations for jury room technology use were formulated, the Manual for Jury Room Deliberation Technology was prepared, and the Manual and this Report were submitted to the Peer Review Panel and then to the State Justice Institute.

§ 2-10.00 The State of the Law

§ 2-11.00 In general

When jurors deliberate, they consider both the evidence received at trial and the inferences that can be drawn from it. Although much of the evidence is made physically available to the jurors during deliberations, not everything is.

From a legal perspective, the law governing the use of exhibits during deliberations requires a consideration of two topics: the law of evidence, which governs admissibility of information at trial, and the procedural rules dealing with the use of exhibits during deliberations. Ordinarily, the jury may receive an exhibit during deliberations only if it has been received into evidence at trial *and* the judge also sends it to the jury for use during deliberations.

The primary evidentiary issue of significance to juror consideration of exhibits during deliberations is how demonstrative or summary evidence is to be treated. Strictly speaking, “demonstrative evidence” is not “evidence” at all. Rather, it is usually visual material that is

³ Each trial used two counsel, one plaintiff's counsel and one defense counsel. Under Dr. Shaver's guidance, trials were conducted so as to control for gender variations, and each case was tried by two counsel of the same gender. Of the four counsel, three (two men and one woman) were white; one counsel, a woman, was black. Of the two judges, one was male and one female; both were white. We did not control for race.

⁴ The trials were not literally scripted in order to ensure that they appeared realistic. The two judges report that there was a remarkable degree of consistency across all trial repetitions. Although there were differences between the two pairs of opposing counsel, those differences were controlled for as part of the gender control.

used at trial to assist the finder of fact to understand the formally presented evidence. The traditional rules of evidence do not deal directly with demonstrative evidence, although concepts of relevance and unfair prejudice, among others, are applied. Thus, whether a graphic, summary chart, or a high technology animation is “evidence” or “demonstrative evidence” depends upon the court, and perhaps the individual trial judge. Traditionally, demonstrative evidence does not go to the jury room because it “has no independent probative value.”⁵ Notwithstanding, depending upon the court, such a classification may not bar demonstrative exhibits from going to the jury during deliberations.

A survey of the law governing consideration by the jury of various types of exhibits is attached in Appendix B. The material that follows seeks to summarize the applicable federal and state law.

§ 2-12.00 Federal Law

The general rule followed by the federal courts is that the use of exhibits in the jury room is permitted, so long as the exhibits have been admitted into evidence.⁶ The Fifth Circuit has held that the court has discretion in allowing the jury to view summary charts and other visual aids summarizing items already admitted into evidence, but absent consent of the parties, this demonstrative evidence should not go to the jury room.⁷ Other courts, however, have held that sending demonstrative evidence to the jury room is not, at the least, an abuse of discretion.⁸ A district court is not required to send exhibits to the jury room when the jury “has not requested to view any exhibits and only one party has made [such a] request.”⁹

“The circuits are split as to whether a summary chart should be admitted and allowed into the jury room or whether it is just a pedagogical device that should be admitted to aid the jury in weighing the evidence that has already been presented;¹⁰ in the latter case it does not go to the jury during deliberations. In *United States v. Johnson*,¹¹ the Fourth Circuit, applying Federal Rules of Evidence 611(a) and 1006, opined that “the concern is not so much with the formal admission as it is with the manner in which the district court instructs the jury. . . .” Although hinting that formal admission is not required for use during trial, the court resolved the issue of whether the summary testimony chart in question had properly gone to the jury room by simply holding that as it was properly admitted into evidence at trial, it was not error to send it to the jury room.¹² Similarly, “[a]bsent some special circumstances the trial judge should allow the

⁵ Michael Sudman, *The Jury Trial: History, Jury Selection, and the Use of Demonstrative Evidence*, 1 J. LEGAL ADVOC. & PRAC. 172, 178 (1999).

⁶ See generally *United States v. Samples*, 713 F.2d 298 (7th Cir. 1983).

⁷ *United States v. Taylor*, 210 F.3d 311 (5th Cir. 2000).

⁸ *United States v. Salerno*, 108 F.3d 730 (7th Cir. 1997).

⁹ *United States v. Thomas*, 521 F.2d 76 (8th Cir. 1975).

¹⁰ Emilia A. Quesada, *Summarizing Prior Witness Testimony: Admissible Evidence, Pedagogical Device, or Violation of the Federal Rules of Evidence?*, 24 FLA. ST. U.L. REV. 161, 169-171 (1996).

¹¹ 54 F.3d 1150, 1159 (4th Cir.1995), cert. denied, 116 S. Ct. 266 (1995).

¹² *Id.* at n.11.

jury to have access during its deliberations to tape recordings that have been admitted as exhibits during trial.”¹³

Abuse of discretion is the proper standard for reviewing the admission of demonstrative evidence or determining what is actually a “demonstrative exhibit.”¹⁴ The appellate review process examines whether the district court’s decision to allow demonstrative evidence into the jury unfairly prejudiced the defendant.¹⁵ The appellate court will look at such factors as the judge’s instructions regarding the use of the demonstrative evidence and whether the defendant’s objections to the use of the demonstrative evidence were timely.¹⁶

§ 2-13.00 State Law

Most states follow the federal rules that govern what evidence may be taken by the jury to the deliberation room. As discussed above, the general federal rule is that use of exhibits in the jury room is permitted, so long as the exhibits have been admitted into evidence. With only a few exceptions, the states are split into two major camps that divide over the expressed prohibition on the jury taking depositions into deliberations. While it may not be standard practice for those jurisdictions that have no expressed prohibition to allow depositions in the deliberation room, the permissive language is not present in the actual procedural rules of the minority.

The majority of states adopt the standard delineated by the Arizona Court of Appeal stating, “Whether tangible evidence should be given to the jury for use during deliberations is a matter left to the discretion of the trial court.”¹⁷ More than half of the states follow the policy of allowing broad discretion to the trial judge as to what the jury may take into deliberations.¹⁸ In *Thomas*,¹⁹ the Indiana Supreme Court delineated the guidelines that a trial judge should apply to the decision of what materials are permitted to go to the jury room:

- (a) The court in its discretion may permit the jury, upon retiring for deliberation, to take to the jury room a copy of the charges against the defendant and exhibits and writings which have been received in evidence, except depositions.
- (b) Among the considerations which are appropriate in the exercise of this discretion are:
 - (i) whether the material will aid the jury in a proper consideration of the case; (ii)

¹³ *United States v. Scaife*, 749 F.2d 338, 347 (6th Cir. 1984). *See also* *United States v Samples*, 713 F.2d 298, 303 (7th Cir. 1983).

¹⁴ *United States v. Abonce-Barrera*, 257 F.3d 959 (9th Cir. 2001).

¹⁵ *See* *United States v. de Hernandez*, 745 F.2d 1305, 1308 (10th Cir. 1984).

¹⁶ *Id.*

¹⁷ *State v. Snowden*, 138 Ariz. 402, 675 P.2d 289 (Ariz. App. Div. 1983).

¹⁸ In *Thomas v. State*, 259 Ind. 537, 540, 289 N.E.2d 508, 509 (1972), the Indiana court adopted § 5.1 of the Standards Relating to Trial by Jury (American Bar Association Project on Standards for Criminal Justice), which now appears with insubstantial changes as Standard 15-4.1 in 3 AMERICAN BAR ASSOCIATION, STANDARDS FOR CRIMINAL JUSTICE (2d ed. 1980).

¹⁹ *See Thomas*, 259 Ind. at 540, 289 N.E.2d at 509.

whether any party will be unduly prejudiced by submission of the material; and (iii) whether the material may be subjected to improper use by the jury.²⁰

ABA Standard 15 - 4.1, adopted in *Thomas*, is designed "to guide judges in deciding which materials should be permitted in the jury room during deliberations."²¹ In total, at least 29 states use this standard.²²

A few states vary slightly from this general approach. The rule in Illinois was stated in *People v. Blue*²³ when the court applied the following summarization of an earlier intermediate appellate court decision.²⁴

Tangible objects admitted into evidence that are probative of any material issue may be taken into the jury room during jury deliberations. Whenever physical evidence is allowed into the jury room, the proximity of the exhibit to the jury and the potential that the exhibit may be in the jury's possession for an extended period of time give the proponent of the exhibit a distinct advantage over the opposing party. For this reason, the court will closely scrutinize the exhibit to ensure that its prejudicial value does not outweigh its value as evidence.²⁵

Iowa adds a corollary to its procedural rule that states, "Depositions shall not be taken unless all of the evidence is in writing and none of it has been stricken."²⁶ This corollary allows for some depositions to be allowed in the jury deliberation, but ensures that juries will not have access to depositions that may contain information not properly admitted into evidence or read to the jury during the presentation of evidence.

A minority of states differ by not expressly prohibiting depositions in the jury room.²⁷

²⁰ *Id.*

²¹ *Id.* at 541, 289 N.E.2d at 510.

²² See *Robinson v. State*, 699 N.E.2d 1146 (Ind. 1998); ALASKA R. CIV. PROC. 43.1, 48(g) (2000); CAL. CODE CIV. PROC. § 612 (2001); FLA. R. CRIM. PROC. 3.400 (2001); IDAHO R. CIV. PROC. 47(p) (2000); MD. RULE 2-521 (2001); MINN. R. CRIM. PROC. 26.03 (2000); MISS. CODE ANN. § 11-7-151 (2001); MONT. CODE ANN. § 46-16-504 (2000); NEV. REV. STAT. ANN. § 175.441 (2001); N.D. CENT. CODE § 29-22-04 (2001); OHIO R. C. 2945.35 (2002); OR. R. CIV. PROC. 59 (2000); TEX. R. CIV. PROC. 281 (2001); UTAH R. CIV. PROC. 47 (2001); WASH. C.R. 51(h) (2001).

²³ *People v. Blue*, 189 Ill. 2d 99, 123 (2000).

²⁴ *People v. Burrell*, 228 Ill. App. 3d 133, 143-44 (1992).

²⁵ *Id.* The Supreme Court of Illinois found *Burrell* "persuasive in the context of the instant appeal." 189 Ill.2d 99 at 123.

²⁶ IOWA R. CIV. PROC. 198(b) (2001).

²⁷ See *Buckner v. United States*, 154 F.2d 317 (1946); *State v. Corbin*, 759 A.2d 727, 2000 Me. 167 (Maine 2000); *State v. Barnett*, 980 S.W.2d 297 (Mo. 1998); *Wilson v. Williams*, 261 Kan. 703, 933 P.2d 757 (1997) ("Only evidence is allowed into the jury room during deliberations. Thus, the trial court should not permit formula charts, which can be used in oral argument but not admitted into evidence, to be taken into the jury room."); *State v. Robinson*, 79 Haw. 468, 903 P.2d 1289 (Hawaii 1995); *State v. Girolamo*, 197 Conn. 201, 496 A.2d 948 (1985); *Carson v. State*, 241 Ga. 622, 247 S.E.2d 68 (1978); *Barber v. Stratton*, 111 Vt. 43, 10 A.2d 211 (1940); *Iden v. State*, 112 Neb. 454, 199 N.W. 734 (1924); *Krauss v. Cope*, 180 Mass. 22, 61 N.E. 220 (1901); ARIZ. R. CRIM. PROC. 22.2 (2001); ARK. CODE ANN. § 16-89-125(d)(3); COLO. R. CRIM. PROC. 47(m) (2001); KY. R. CRIM. PROC. 9.72 (2001); LA. REV. STAT. 38:379 (2001); MICH. COURT R. CRIM. PROC. 6.414 (2001); N.J. COURT RULES, 1969 R. 1:8-8 (2001); N.M. DIST. CT. R. CRIM. PROC. 5-609 (2001); N.Y.C.P.L.R. § 310.20 (2001); N.C. GEN. STAT.

This represents a broadening of the discretion allowed to the trial courts. The strongest stance may be in the state of Georgia, where in *Carson v. State*²⁸ the Supreme Court stated,

All properly introduced documentary and demonstrative evidence will be taken into the jury room when the jury retires. This includes photographs, guns and other objects . . . The jury may examine and evaluate objects taken to the jury room, so long as their examinations and tests do not have the effect of introducing new evidence. Thus they may use a magnifying glass to examine evidence. The jury may smell and taste the contents of a jug to determine if it contained whiskey.²⁹

The Wisconsin Supreme Court restated the guidelines a trial judge should use in determining what evidence or exhibits may be taken with the jury to the deliberation room in the context of written confessions.³⁰

Written confessions are obviously testimonial in nature. Yet many jurisdictions permit written confessions to be taken into the jury room in criminal cases despite the generally accepted rule that written depositions are not submitted to the jury. These jurisdictions have apparently concluded that a jury should, in some cases, have access to a written confession because the confession is central to the case and because there are adequate safeguards built into the process of admitting confessions as evidence. . . . [W]e conclude that the better rule is that a defendant's written confession should be treated like other exhibits. It is within the circuit court's discretion to determine what exhibits are permitted in the jury room. . . . A circuit court's decision to send a written confession into the jury room should be guided by the same criteria as its decision to send other exhibits into the jury room, including consideration of whether the exhibit will aid the jury in proper consideration of the case, whether a party will be unduly prejudiced by submission of the exhibit, and whether the exhibit could be subjected to improper use by the jury.³¹

Only one state specifically permits the use of depositions in the jury room. West Virginia allows all evidence read to the jurors "to be carried from the bar by the jury."³² The section of the West Virginia Code respecting the carrying from the bar by the jury of depositions or other

§15A-1233(b) (2000); 22 OKLA. STAT. § 893 (2000); PA. R. CRIM. PROC.1114 (2000); S.C. R. CIV. PROC. APP. FORM 3 (2000); S.D. CODIFIED LAWS § 23A-25-7 (2001); TENN. CODE ANN. § 20-9-510 (2001); VA. CODE ANN. § 8.01-381 (2001); WASH. R. SUPER. CT. CIV. C.R. 51 (2002).

²⁸ 241 Ga. 622, 625 (1978)(jurors could determine length of sawed-off shotgun themselves).

²⁹ *Id.* (quoting 11 EGL Evidence, § 91, citing, inter alia, *Moss v. State*, 166 Ga. 517, 143 S.E. 900 (1928); *Smith v. State*, 122 Ga. 154, 50 S.E. 62 (1905); *Union v. State*, 7 Ga. App. 27, 66 S.E.24 (1909).

³⁰ *State v. Jensen*, 147 Wis. 2d 240, 259-60 (1988).

³¹ *Id.* (citations omitted).

³² W. VA. CODE § 56-6-23 (2001).

papers read in evidence “leaves the subject in the sound discretion of the court; and, unless such discretion is clearly abused, the action of the court will not constitute reversible error.”³³

In most states, the decision of a trial judge allowing exhibits not properly admitted into evidence to be taken to the jury room does not necessarily constitute per se reversible error.³⁴

§ 3-10.00 Actual Practice in the Courts

§ 3-11.00 The State Courts

To ascertain state court practice we used a web-based survey. Following input from the Peer Review Panel, an online research instrument (at <http://ctrm21.ncsc.dni.us/jurysurvey.asp>, Appendix C) was sent to the Chief Court Administrators from all 50 states, the District of Columbia, American Samoa, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, and Guam.

A total of 163 responses were received from courts in the following 23 states and protectorates: Alabama, Connecticut, Delaware, Georgia, Guam, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, North Carolina, North Dakota, New Hampshire, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Washington, and Wisconsin. Four states alone (MO, PA, WA, and WI) comprise 61.9% of the response group with an average response per state of 25.25, $\delta \pm = 6.95$. 98.8% responding were trial rather than appellate courts. 93.3% of the trial courts were courts of general jurisdiction.

A searchable database was created by respondent data entry into the web survey form. A detailed analysis of the data, including graphical depictions, is included at Appendix D.

§ 3-11.10 Deliberation Practices

Exhibits available during deliberations

Question 6 of the Survey asked: “*Please indicate which, if any, of the following items jurors take with them to the jury room when they retire to deliberate and which, if any, are made available to them upon request during deliberations.*”

Analysis of the results shows:

³³ Cobb v. Dunlevie, 63 W. Va. 398, 60 S.E. 384 (1908); Burdette v. Maust Coal & Coke Corp., 159 W. Va. 335, 222 S.E.2d 293 (1976).

³⁴ See Janson v. State, 730 So. 2d 734 (1999) (“Janson argues that the trial court erred in allowing the jury, over objection, to have the transcript of two witnesses in the jury room. We agree this was error . . . Having found error, we must now consider whether that error is reversible. Just as the supreme court. . . found that allowing (a) videotape to go to the jury room was not per se reversible error, we find that allowing a witness’s transcribed testimony in the jury room is likewise not reversible.”)

Juror Technology	Take technology to jury room		Available upon request during deliberations		None	
	Number	Percent	Number	Percent	Number	Percent
Evidence and exhibits	92	56.4	58	35.6	13	8.0
One set of written jury instructions	88	54.0	19	11.7	56	34.4
Individual sets of jury instructions	23	14.1	22	13.5	118	72.4
Equipment to view evidence and exhibits	22	13.4	49	30.1	92	56.4
Calculators/spreadsheets	5	3.1	45	27.6	113	69.3
Notes taken by jurors during trial	85	52.1	10	6.1	68	41.7
Worksheets/index for reference to evidence and exhibits	9	5.5	23	14.1	131	80.4

We draw the following conclusions:

1. The availability of evidentiary exhibits to jurors varies markedly by location, even within a given jurisdiction. Full data analysis (see Appendix D) shows that jurisdictions with multiple responses show no consistency in the availability of evidence and exhibits to jurors. In Michigan, for example, six courts show that exhibits are regularly taken to the deliberation room while in five other courts they must be requested. Pennsylvania shows 13 courts which regularly supply exhibits and 13 in which they must be requested. Wisconsin splits 16/13.
2. A surprising 8% of reporting courts do not supply jurors with exhibits, even upon request.
3. In slightly over one third of reporting courts, exhibits are furnished only upon request.
4. In 71.1% of reporting courts, jurors receive one or more copies of the jury instructions. The majority of respondents indicated that they provide one set of jury instructions (65.5%) versus individual sets (27.6%). About one fifth of respondents (22.1%) reported that they provide one set and individual sets of jury instructions, but it is not known if this is determined by the judge, the type of case, or other factors. 28.8% reported that they do not provide any written copy of jury instructions to the jurors in the deliberation rooms.
5. In slightly more than half of the reporting courts, jurors may make use of written notes.

6. Although undefined in the responses to this specific question, approximately one half of the reporting courts are used to supplying jurors with some form of equipment to view evidence and exhibits;³⁵ Although 30.1% of the respondents will do so on request, 22% do so without.

Use of technology to view exhibits during deliberations:

Question 7 of the Survey asked: “*In trials in which technology is used to present evidence and exhibits, how do jurors usually view the evidence and exhibits during deliberations?*”

Analysis of the results shows:

Viewing Method	Number of Court Responses	Percent of Total
Jurors brought back to courtroom to view	77	47.2
Equipment transported into jury room	61	37.4
Not applicable	15	9.2
Sometimes equipment transported into jury room; sometimes jurors brought back to courtroom	4	2.5
Hard copies of evidence/exhibits provided	3	1.8
Equipment permanently installed in jury room	1	0.6
Not sure	1	0.6
None of the above	1	0.6

We draw the following conclusions:

1. Courts are highly accustomed to using equipment to assist jurors in their deliberations.
2. Respondents indicated that most of the time, jurors are brought back into the courtroom to view evidence and exhibits (47.2%) or the viewing equipment is transported into the jury rooms (37.4%). Only 0.6% of respondents indicated that viewing equipment is permanently installed in the jury rooms.

Question 8 of the Survey asked: “*Please check all types of technology available for juror use during deliberations.*”

³⁵ Based on Question 8, *infra.*, this is most likely VCR’s.

Analysis of the results shows:

Technology	Number of “Yes” Responses	Percent of Total
Pen and paper	155	95.1
Chalk boards	77	47.2
Paper flip charts	68	41.7
Video cassette player	50	30.7
Calculators	44	27.0
Television	44	27.0
Audio cassette player	30	18.4
Copy machine	14	8.6
Projection screen	12	7.4
Spreadsheets	10	6.1
Overhead projectors	9	5.5
Transcripts from real-time transcription, voice, or steno	9	5.5
Speaker phones	7	4.3
Computer to view computer- based exhibits	4	2.5
CRT monitor	4	2.5
Printer	4	2.5
Video camera	4	2.5
Computer to calculate damages	3	1.8
Document camera	3	1.8
Computer whiteboard	3	1.8
Other	3	1.8
Scanner	1	0.6
Individual monitors for jurors	0	0.0
LCD monitors	0	0.0
Computer annotation device	0	0.0
Touch screen control	0	0.0
Plasma screen	0	0.0
Laptop computers	0	0.0

We draw the following conclusions:

1. Although electronic technology is less common than chalk boards and flip charts, video cassette recorders are available in 30.7% of the responding courts.
2. Televisions are the most common form of electronic display device.

3. Between 18% and 30% provide video cassette players, televisions, calculators, and audio cassette players. Interestingly, more respondents reported providing video cassette players (30.7%) than televisions (27%).
4. High technology enhanced deliberations are not unknown; three courts are providing document cameras and computer white boards; four are providing computers to view computer-based exhibits. There is a small overlap in technology; courts with document cameras are more likely to be using other forms of technology as well.

Question 9 of the Survey asked: “*When equipment is required to view evidence and exhibits during jury deliberations, who generally operates the equipment?*”

Analysis of the results shows:

Equipment Operator	Number of Responses	Percent of Total
Court personnel assist jurors	96	58.9
Jurors are instructed and operate it themselves	34	20.9
Not applicable	28	17.2
Lawyers	5	3.1
Equipment owner	1	0.6

We draw the following conclusions:

1. Inasmuch as the majority of respondents (58.9%) reported that court personnel assist jurors with technology in the jury room, courts are not likely to find objectionable some form of court personnel involvement in explaining deliberation room technology to jurors.
2. Although the technology that jurors operate themselves is unspecified, a substantial number of responding courts apparently have had sufficiently acceptable experience to trust juror operation of deliberation room technology.

§ 3-11.20 Courtroom Technology

The survey thus establishes a baseline for current jury deliberation room practice. However, in order to deal with the increasing amount of technology-augmented trial practice, we thought it useful to obtain information from the responding courts as to the nature of their courtrooms and trial practice. That yielded the following data:

Question 1 of the Survey asked: “*Please indicate which pieces of technology are currently installed in your courtrooms.*”

Analysis of the results shows:

QUESTION 1 :

Category	Technology	Number Having One or More	Percent of Total
Audio Devices	Speaker Phones	86	52.8
	Audio Cassette Player	74	45.4
Video Devices	Video Cassette Player	97	59.5
	Overhead Projector	44	27.0
	Document Camera	15	9.2
	Video Camera	29	17.8
Computer Devices	Computer Whiteboard	13	8.0
	Scanner	4	2.4
	Desktop Computer for Viewing Evidence	12	7.4
	Laptop Computer and Laptop Connection	58	35.6
	Touch Screen Control System	3	1.8
	Computer Annotation Devices	7	4.3
	Television	110	67.5
Monitors and Screens	CRT Monitor	22	13.5
	Projection Screen	47	28.8
	Individual Monitors for Juror Viewing	6	3.7
	Plasma Screen	0	0.0
Court Record Devices	LCD Monitor	3	1.8
	Real-Time Transcription	65	39.9

Ranking the technologies from most reported to least reported:

Technology	Number Having One or More	Percent of Total
Television	110	67.5
Video Cassette Player	97	59.5
Speaker Phones	86	52.8
Audio Cassette Player	74	45.4
Real-Time Transcription	65	39.9
Laptop Computer and Laptop Connection	58	35.6
Projection Screen	47	28.8
Overhead Projector	44	27.0
Video Camera	29	17.8
CRT Monitor	22	13.5
Document Camera	15	9.2
Computer Whiteboard	13	8.0
Desktop Computer for Viewing Evidence	12	7.4
Computer Annotation Devices	7	4.3
Individual Monitors for Juror Viewing	6	3.7
Scanner	4	2.4
Touch Screen Control System	3	1.8
LCD Monitor	3	1.8
Plasma Screen	0	0.0

Technology in Courtroom by Category

Category	Technology	More	Percent	One	Percent	None	Percent
Audio Devices	Speaker Phones	41	25.2	45	27.6	77	47.2
	Audio Cassette Player	26	16.0	48	29.4	89	54.6
Video Devices	Video Cassette Player	28	17.2	69	42.3	66	40.5
	Overhead Projector	10	6.1	34	20.9	119	73.0
	Document Camera	5	3.1	10	6.1	148	90.8
	Video Camera	17	10.4	12	7.4	134	82.2
	Computer Whiteboard	1	0.6	12	7.4	150	92.0
Computer Devices	Scanner	1	0.6	3	1.8	159	97.5
	Desktop Computer for Viewing Evidence	6	3.7	6	3.7	151	92.6
	Laptop Computer and Laptop Connection	28	17.2	30	18.4	105	64.4
	Touch Screen Control System	1	0.6	2	1.2	160	98.2
	Computer Annotation Devices	3	1.8	4	2.5	156	95.7
	Television	35	21.5	75	46.0	53	32.5
	CRT Monitor	13	8.0	9	5.5	141	86.5
Monitors/ Screens	Projection Screen	14	8.6	33	20.2	116	71.2
	Individual Monitors for Juror Viewing	5	3.1	1	0.6	157	96.3
	Plasma Screen	0	0	0	0	163	100.0
	LCD Monitor	0	0	3	1.8	160	98.2
	Real-Time Transcription	31	19.0	34	20.9	98	60.1
Court Record Devices							

We draw the following conclusions:

1. Over half of the responding state trial courtrooms permit the use of technology-enhanced case presentation in some form.
2. Although televisions were the most common technology with 67.5% of responding courts having at least one and 21.5% having more than one, a substantial number of responding

state courts have computer display capabilities; 35.6 % reported having at least one laptop computer,³⁶ and 28.8% reported a projection screen.

3. Only 8% of the reporting state courts had computer whiteboards,³⁷ and none had the plasma display screens that Courtroom 21 experimentation concluded were the most useful forms of deliberation room display technology.
4. 39.9% had real-time transcription capability, a critical technology for the hard-of-hearing.
5. 6.7% of the courts reported more than 9 of the listed technologies. However, these are not necessarily high-tech courtrooms; the data indicates that most are weighted towards more traditional low-end technologies.

The reader must keep in mind that although this is the first known survey of its type, our data is incomplete, coming as it does from a relatively small percentage of the total number of state courtrooms. Based upon the numerous visitors to the Courtroom 21 Project, we are confident that a much larger number of courts and courtrooms have document cameras, for example, than is substantiated by the above data. We believe that there are more front-projection display units than are reflected in the data.

We know of no source that would allow even a reasonable estimate of the number of integrated high technology courtrooms in the United States; even the Administrative Office of the Courts lacks a formal accounting.³⁸ We define such a courtroom as one with a high technology evidence presentation system (computer based but usually with at least one document camera), court access to electronic legal materials, a high technology court record system, and increasingly, video-conferencing capability. In percentage terms there are few of these courtrooms, although our anecdotal evidence indicates that the absolute number is increasing rapidly. The data above indicates that the number of courts that have at least the core components of such a courtroom are significant.

The courts are not dependent, however, upon their own resources when it comes to technology augmented litigation. With the court's permission, lawyers may bring in their own equipment.

Question 2 of the Survey asked: *"If your court has used any technology listed in Question 1 during trials, who usually provides the equipment?"*

Analysis of the results shows:

³⁶ Note that desktop computers were treated as a separate category. There are a total of 12 courts that reported having at least one desktop, and 58 that reported having at least one laptop. Nine of the 12 that had desktops also had laptops (5.5% overlap in the sample total). 75% of those that had desktops also had laptops. 15.5% of those that had laptops also had desktops.

³⁷ Unfortunately this capability includes products ranging from a high tech chalkboard to high-end rear projection video displays with annotation features.

³⁸ The federal survey that follows is the federal judiciary's current efforts to obtain that data.

Technology Source	Number of Responses	Percent of Total
Court provides	96	58.9
Lawyers/parties bring what they use	35	21.5
Court and lawyers/parties provide	13	8.0
Court obtains from outside source and makes it available	4	2.5
Lawyers/parties bring what they use and local agency or group loans equipment to court as needed	3	1.8
Court, lawyers/parties, and outside sources provide	2	1.2
Court, lawyers/parties, outside sources, and local agencies/groups provide	2	1.2
Local agency or group loans equipment to court as needed	1	0.6
Court and outside sources provide	1	0.6
Lawyers/parties and outside sources provide	1	0.6

We draw the following conclusion:

Although the majority of equipment is provided by the court (65%), 22.7% is provided by counsel while outside sources sometimes also provide technology. In short, courts considering whether they need deliberation room technology to cope with technology-augmented litigation must take into account more than the court's own equipment.

§ 3-12.00 The Federal Courts

Although our primary focus in this SJI-funded study has been the state courts, federal practice is of considerable interest as the United States district courts deal with significant litigation and are, by and large, better supported by courtroom and related technology. We acknowledge with deep gratitude the assistance of the Federal Judicial Center in obtaining critical federal court information.

The questions used in our state court surveys were modified by the Federal Judicial Center and incorporated into a national survey of the technology use of the United States district courts. We are especially grateful to Dr. Beth Wiggins and Dr. Meghan Dunn of the Research Division of the FJC, and their colleagues, for the data that follows. The data made available to us is from a very preliminary report, *Federal Judicial Center Survey on Courtroom Technology, A Draft Report on Selected Survey Questions* (July 2002) (Appendix E), and its conclusions should be considered

subject to modification in the final report. The conclusions and opinions contained within the draft federal report are those of its authors and not necessarily those of the Federal Judicial Center.

The draft report “summarizes the responses to selected survey questions of the thirty-one districts that responded to the survey by the initial due date.” Unless otherwise noted, the reader should assume that the material that follows is taken from the Draft Report in verbatim or near verbatim fashion.

The following table lists the 31 districts that responded to the survey by the due date, the number of courtrooms used by magistrate and district judges in these districts, and the number of those courtrooms about which they were reporting.

District	Number of Courtrooms Used by Magistrate and District Judges	Number of Courtrooms Reported on in this Survey
Alabama Northern	21	2
Arizona	36	36
California Northern	26	26
California Southern	25	25
Colorado	15	2
Connecticut	17	0
Florida Southern	2	2
Georgia Middle	11	11
Guam	1	1
Illinois Northern	47	47
Iowa Northern	6	4
Iowa Southern	7	7
Kentucky Eastern	13	13
Louisiana Middle	6	6
Massachusetts	30	30
Mississippi Northern	8	8
Mississippi Southern	13	1
Missouri Western	17	17
Nebraska	12	12
New York Western	12	12
North Carolina Eastern	11	4
North Carolina Middle	8	8
Oregon	19	19
Pennsylvania Eastern	46	46
Tennessee Eastern	13	13
Tennessee Middle	9	9
Tennessee Western	9	9
Texas Northern	26	26
Virginia Western	15	15
Washington Eastern	10	10
Wisconsin Eastern	8	8
Total	540	446

§ 3-12.10 Deliberation Practices

The federal survey asked in its Question 7:

For each item below, please indicate whether jurors take the item into the jury deliberations room as a matter of course, whether it is available to jurors upon request, or whether it is never available to jurors. If the practice varies by judge, please select the option that describes the most common practice and use the comment section to explain how the practice differs among judges. Also, indicate whether party consent is required before each item is made available to jurors.

Table 7
Availability of Evidence, Illustrative Aids, Written Instructions,
Equipment, and Other Items During Jury Deliberations

Item(s)	Jurors take it with them into deliberations as a matter of course	Available on Request	Never Available	Can't Say
Documentary evidence (e.g., papers, photographs) and non-sensitive physical evidence (e.g., clothing, paint chips)	16	9	0	6
Sensitive physical evidence such as weapons and guns.	3	16	2	10
Illustrative aids, not admitted as evidence	0	3	16	12
One set of written jury instructions	11	4	3	13
Individual sets of written jury instructions for each juror	3	7	6	15
Equipment to view evidence and exhibits	1	18	3	9
Calculators	1	17	3	10
Notes taken by jurors during trial	18	2	2	9
Worksheets/index for reference to evidence/exhibits	9	4	4	14

Courtroom 21 Conclusions

We draw the following conclusions:

1. As in the state courts, there is substantial difference in the way the United States district courts treat exhibits; 16 districts report that customarily documentary evidence is taken into deliberations as a matter of course, 9 supply them on request, and 6 can't say. "Sensitive evidence" which need not be restricted to weapons, is largely made available only on request with 16 districts taking that position, and 3 supplying it as a matter of course, but notably 10 districts "can't say."
2. Although a majority of 18 districts report that "equipment to view evidence and exhibits" is available on request, 3 report that it is never available and 9 can't say; only one makes it available as a matter of course.
3. Interestingly, 16 districts report that "Illustrative aids, not admitted as evidence" are never provided. Although 12 districts can't say what their practice is and 3 districts do make such material available on request, we *may* conclude that many courts would not permit the replay during deliberations of courtroom animations and similar material.
4. Many districts are permitting written copies of the jury instructions to go into deliberations, enhancing the potential utility of deliberation room display of instructions.

The federal survey asked in its Question 8:

In trials in which technology is used to present evidence, how do jurors usually view the evidence during deliberations?

Table 8
How Jurors View Evidence During Deliberations in Trials in Which Technology is Used

Viewing Method	Number of Districts
They view most evidence in physical form in the jury room (e.g., actual paper documents, photographs, physical objects), but are brought back into the courtroom to view/hear evidence such as videotapes and audiotapes and perhaps also to view certain types of physical evidence such as drugs and guns.	15
They view most evidence in physical form in the jury room (e.g., actual paper documents, photographs, physical objects), but view and hear evidence such as videotapes and audiotapes using equipment in the jury deliberation room.	3
They view most evidence using equipment in the jury deliberation room.	3
Jurors are brought back to the courtroom when they ask to view evidence.	4
Can't Say or Missing	6

Courtroom 21 Conclusions

We draw the following federal conclusions:

1. Deliberation room technology, including VCR's and the like, appears to be rare.³⁹
2. We cannot surmise whether the absence of deliberation room technology embodies past traditional reality, reflects limited technology resources, or is the result of judicial decision that prefers especially careful judicial control.

The federal survey asked in its Question 9:

Please indicate whether the following types of equipment and technology are available as needed for juror use during deliberations.

³⁹ Subject to the number of "can't say or missing" districts.

Table 9
Districts Having Equipment and Technology Available as Needed for Juror Use During Deliberations

Equipment	Available as Needed	Not Available	Can't Say or Missing
Pen/pencil and paper	27	0	4
Calculators	22	3	6
Chalk boards	20	7	4
Paper flip charts	25	2	4
Analog audiotape player	18	7	6
Analog videotape player	17	6	8
Laser disk player	2	23	6
Traditional slide projector	3	22	6
Overhead projector	12	13	6
Television	17	8	6
Copy machine	6	20	5
Scanner	3	22	6
Laptop or desktop computer for making calculations of, for example, damages	2	22	7
Evidence camera	7	18	6
Laptop or desktop computer for evidence retrieval and viewing	5	20	6
Digital monitors for use by group of jurors (CRT, LCD, or plasma monitors)	7	19	5
Individual monitors for juror viewing of evidence	3	22	6
Digital projector and projection screen	5	20	6
Color video printer	2	24	5
Other printer attached to computer	3	23	5
Annotation equipment (e.g., touch screen, light pen, or telestrator)	3	23	5
Electronic whiteboard	1	24	6
Transcripts from real-time court reporting	9	15	7
Digital audio recording	5	19	7

Some notes have been omitted.

Courtroom 21 Conclusions

We draw the following conclusions:

1. Most districts do not have available high end display technology for jury room use.
2. A number of districts do have available high end display technology: 7 reflect document cameras and at least 5 report computer availability; for display 7 report digital monitors, 5 report front projection equipment, and 3 even have individual monitors available for jurors. Although the data available to use does not allow us to determine whether the same districts have multiple forms of technology for deliberations, it is apparent that the potential exists in at least some districts for high technology deliberations.

The federal survey asked in its Question 10:

When equipment is required to view evidence during jury deliberations, who generally operates the equipment?

Table 10
How Equipment is Operated During Jury Deliberations

Equipment Operator	Number of Districts
Court personnel assist jurors	10
Jurors are instructed and operate it themselves	11
Equipment is never used	2
Can't Say	2
Other	2

Courtroom 21 Conclusions

We draw the following conclusions:

1. Table 10 suggests that 21 of the 31 reporting federal districts use some type of equipment during jury deliberations, although the type of equipment used is unspecified.
2. In almost half of these 21 districts, court personnel assist jurors with the operation of the equipment. In the other half, the jurors operate the equipment themselves. The survey does not tell us the type of equipment jurors operate. A similar pattern of results was seen in the reporting state courts.

§ 3-12.20 Courtroom Technology

As was true of the state courts, federal court use of courtroom technology can suggest the degree to which jurors will have to deal with digital and other forms of high technology evidence. The federal data shows:

The federal survey asked in its Question 1:

Listed below are a number of technologies that can be permanently installed in courtrooms, shared between courtrooms, or brought into the courtroom by attorneys. For each technology, please indicate (1) in how many of your district's courtrooms, if any, the following technology is permanently installed; (2) whether the technology is shared between courtrooms and if so, the number of courtrooms with access to the shared equipment; and (3) finally, whether attorneys have brought any of the equipment into a courtroom within the past twelve months. We understand that your district most likely does not keep a record of when attorneys bring equipment into the courtroom; your best estimate in response to the third question is sufficient.

The following is taken verbatim from the draft report:

The first number in the cells of the second column of Table 1 (labeled “Number with permanent installations”) indicates how many of the 31 districts that responded to the survey have at least one courtroom with the indicated technology. The second number in the cells indicates how many of the 904 courtrooms reported on by the 31 districts have the technology (see the shaded rows).

Similarly, the first number in the cells of the third column (labeled “Number with shared access”) indicates how many of the 31 districts that responded to the survey have at least one courtroom with shared access to the indicated technology. For some technologies, a second number indicates how many of the 429 courtrooms reported on by the 31 districts have shared access to the technology.

The number in the cells of the fourth column (labeled “Brought in by attorneys”) indicates the number of districts that reported an attorney brought the indicated technology into a courtroom in the past 12 months.

Table 1
Permanently-Installed, Shared-Access, and Attorney Provided Technology

Technology	Number with permanent installations ¹	Number with shared access ²	Brought in by attorneys ³
Evidence Camera	27/103	15 ^c	17 ^a
Wiring to Connect Laptops	26/97	22 ^c	18
Laptop computers	2/15	5 ^b	27 ^a
Desktop Computers	7/26	5 ^b	13 ^b
Monitors built into jury box	14/54	-	-
CRT Monitors outside the jury box	13/41	10 ^b	14 ^b
Plasma Monitors outside the jury box	8 ^a /25	6 ^b	9 ^d
Other types of Digital Monitors outside the jury box	4 ^a /7	3 ^c	6 ^e
LCD/Digital monitor at the Bench	26/163	9 ^b	9 ^c
LCD/Digital Monitor at Witness Stand	25/105	8 ^b	9 ^c
LCD/Digital Monitor at Counsel Table or Lectern	25/116	9 ^b	12 ^b
Digital Projector and Projection Screen	12/26	13 ^a	16 ^b
Monitors or screens targeted at audience	19/44	9 ^b	8 ^d
Color Video Printer	21/76	6 ^b	2 ^f
Annotation Equipment	26/90	10 ^b	8 ^b
Sound (Audio) Reinforcement System	27 ^a /418	7 ^d	5 ^a
Noise Masking	27/166	7 ^d	0 ^c
Signaling System	25/161	5 ^d	1 ^d
Time Over Lights	9 ^a /53	0 ^d	1 ^b
Telephone Interpreting System	13/70	7 ^c	0 ^d
Infrared Interpreting System	29/188	12 ^d	3 ^d

Table 1 continues on next page.

Table 1
Permanently-Installed, Shared-Access, and Attorney Provided Technology (cont'd)

Technology	Number with permanent installations ¹	Number with shared access ²	Brought in by attorneys ³
Kill Switch and Control System	26 ^a /120	8 ^e	4 ^b
Scanner	0/0	2 ^c	1 ^g
Electronic Whiteboard	7/11	4 ^d	3 ^h
Integrated Lectern	23/70	12 ^d	4 ^b
Audioconferencing Equipment	28/248	12	0 ^b
Videoconferencing Equipment	17/43	12 ^c	1 ^a
Control Room (Hub-based) Support for Videoconferencing	2 ^a /10	-	-
Echo Cancellation System	12/23	3 ^d	0 ^c
ISDN lines for Videoconferencing	20/174	8 ^c	1 ^b
Real-time software for use by a real-time court reporter	20/136	11 ^c	5 ^e
Real-time transcript viewer annotation system	18/130	7 ^d	5 ^c
Digital Audio Recording	18/60	7 ^d	0 ^d
Internet Connections for Lawyers	4/25	2 ^d	1 ^d
Wireless Technology other than Wireless Microphones	4 ^b /25	0 ^f	1 ^g
Analog Audiotape player	17/122	14 ^d	16 ^e
Analog Videotape player	27/124	18 ^c	13 ^d
Laser Disk Player	2 /2	0	1 ⁱ
Traditional Slide Projector	0/0	2 ^c	10 ⁱ
Overhead Projector	4/9	16 ^b	17 ^d
Television Set	9/34	21 ^c	14 ^d

a = 1 missing or can't say response responses

b = 2 missing or can't say responses responses

c = 3 missing or can't say responses responses

d = 4 missing or can't say responses responses

e = 5 missing or can't say responses responses

f = 6 missing or can't say responses

g = 7 missing or can't say responses

h = 8 missing or can't say responses

i = 9 missing or can't say responses

j = 10 missing or can't say responses

k = 11 missing or can't say

l = 12 missing or can't say

m = 13 missing or can't say

n = 14 missing or can't say

o = 15 missing or can't say

[Table Notes continue on the next page:]

Table notes

1. The first number in the cells indicates how many of the 31 districts that responded to the survey have at least one courtroom with the indicated technology. The second number in the cells indicates how many of the 446 courtrooms reported on by the 31 districts have the technology.
2. The first number in the cells indicates how many of the 31 districts that responded to the survey have at least one courtroom with shared access to the indicated technology.
3. The number of districts that reported an attorney brought the indicated technology into a courtroom in the past twelve months.

The federal survey asked in its Question 2:

In approximately how many trials and evidentiary hearings has each of the following technologies been used during the past 12 months? In approximately how many other hearings and non-ceremonial court proceedings has each of the following technologies been used during the past 12 months? We understand that your district most likely does not keep a record of how often equipment is used. Your best estimate is sufficient.

The entries in the second column of Table 2 (labeled “Trials and evidentiary hearings in the past year”) are: (1) the number of trials and evidentiary hearings in which technology has been used in the last 12 months across all reporting districts, and (2) the lowest number of such matters reported by any given district through the highest number reported (i.e., the range).

The entries in the third column of Table 2 (labeled “Other hearings and non-ceremonial hearings in the past year”) are: (1) the number of other hearings and court proceedings in which technology has been used in the last 12 months across all reporting districts, and (2) the lowest number of such matters reported by any given district through the highest number reported (i.e., the range).

The numbers provided in Table 2 are lower than the actual number of trials and evidentiary hearings and of other hearings and court proceedings in which the indicated technologies have been used in the past 12 months, and should be interpreted only as lower bounds. They represent the lower bound because (1) some districts responding to the survey did not provide a count of the number of times the technology had been used or provided a count that could not be quantified (see Table 2b and lettered notes in Table 2), and (2) some districts indicated their estimate was a lower bound (e.g., they responded 100+). In addition, the counts for some technologies are largely due to just one district. For example, of the 1325 other hearings and proceedings in which an infrared interpreting system was used, 1113 were from one district.

Table 2
Use of Technology in Court Proceedings

Technology	Trials and evidentiary hearings in past year¹	Other hearings and non-ceremonial court proceedings in past year²
Evidence Camera*	809 ^f , 0-160	596 ^k , 0-300
Computer and Monitor or Screen for Evidence Retrieval and Presentation	785 ^g , 0-180	542 ^k , 0-300
Color Video Printer	76 ^g , 0-10	37 ^l , 0-20
Annotation Equipment (e.g., touch screen, light pen, or telestrator)	662 ^e , 0-150	455 ^k , 0-300
Telephone Interpreting System	753 ^g , 0-706	226 ^h , 0-185
Infrared Interpreting System*	207 ^h , 0-89	1325 ^m , 0-1113
Audio-conferencing Equipment*	202 ⁱ , 0-50	1442 ^l , 0-755
Videoconferencing Equipment*	105 ^g , 0-25	259 ^h , 0-75
Real-time software for use by a Real-time Court Reporter	500 ^l , 0-120	1937 ^o , 0-1497
Real-time Transcript Viewer Annotation System for Judges and/or Attorneys*	340 ^k , 0-120	340 ⁿ , 0-150
Digital Audio Recording*	92 ^e , 0-50	1422 ^h , 0-500

a = 1 district gave missing, can't say, or nonquantifiable response
b = 2 districts gave missing, can't say, or nonquantifiable responses
c = 3 districts gave missing, can't say, or nonquantifiable responses
d = 4 districts gave missing, can't say, or nonquantifiable responses
e = 5 districts gave missing, can't say, or nonquantifiable responses
f = 6 districts gave missing, can't say, or nonquantifiable responses
g = 7 districts gave missing, can't say, or nonquantifiable responses
h = 8 districts gave missing, can't say, or nonquantifiable responses
i = 9 districts gave missing, can't say, or nonquantifiable responses
j = 10 districts gave missing, can't say, or nonquantifiable responses
k = 11 districts gave missing, can't say, or nonquantifiable responses
l = 12 districts gave missing, can't say, or nonquantifiable responses
m = 13 districts gave missing, can't say, or nonquantifiable responses
n = 14 districts gave missing, can't say, or nonquantifiable responses

Table Notes:

1. Table entries in this column are (1) the number of trials and evidentiary hearings in which technology has been used in the last 12 months across all reporting districts, and (2) the lowest number of such matters reported by any given district through the highest number reported, i.e., the range.
2. Table entries in this column are (1) the number of other hearings and court proceedings in which technology has been used in the last 12 months across all reporting districts, and (2) the lowest number of such matters reported by any given district through the highest number reported, i.e., the range.

Table 2b summarizes the number of districts that reported that a particular technology was used in all trials and evidentiary hearings and in all other hearings and court proceedings, or reported that the technology was used daily in such matters.

Table 2b
Number of Districts Using the Technology in All Proceedings or on a Daily Basis

Technology	Used in All . . .		Used Daily . . .	
	Trials and Evidentiary Hearings	Other Hearings and Court Proceedings	In Trials and Evidentiary Hearings	In Other Hearings and Court Proceedings
Evidence Camera	1	1	-	-
Computer and Monitor or Screen for Evidence Presentation	1	1	-	-
Infrared Interpreting System	-	-	1	1
Audio Conferencing Equipment	-	-	1	1
Real-time Software for Use by a Real-Time Court Reporter	2	2	2	1
Real-time Transcript Viewer Annotation System for Judges and/or Attorneys	1	1	2	1
Digital Audio Recording	2	1	-	-

Courtroom 21 Conclusions

We draw the following conclusions:

1. The United States district courts have adopted courtroom technology to a substantially greater degree than have the reporting state courts discussed above.
2. A substantial number of courtrooms have evidence display technology such as document cameras that could possibly be relocated to jury deliberation rooms. Fifteen of the reporting districts, for example, report sharing of document cameras among courtrooms.

3. The large number of high technology federal courtrooms implies an increasing need for the federal courts to consider how jurors might most efficiently review digitally presented evidence during deliberations

§ 4-10.00 Jury Room Deliberation Room Technologies

Survey data established that jurors regularly review exhibits, either as a matter of course or upon request. The nature of those exhibits is somewhat less certain. The detailed federal data shows that documents are customarily available to the jurors. Case, statute, and rule analysis suggest that courts disfavor juror review during deliberations of testimonial or demonstrative exhibits.⁴⁰ Some courts, for example, will be unwilling to permit jury review of a videotaped or multi-media deposition, reasoning that such a practice would give the deposition more weight than the testimony of those witnesses who actually testified at trial. Again, the federal data supports this; far fewer courts permit demonstrative exhibits in the jury room compared to documents and other forms of formal evidence. We can conclude therefore that documents are the single most fundamental and traditional form of evidentiary exhibit. Further, they are less likely than photographs or videotapes to be subject to unfair prejudice objections. Accordingly, any form of jury room deliberation technology must at minimum be able to display paper documents to the jurors. Similarly, technology augmented trials and courtrooms are more likely to display documents than more sophisticated forms of evidence, such as computer-created animations. We therefore conclude that any form of deliberation room technology must have as its minimum ability the capability of displaying documents to the jurors. At the same time, the substantial number of courts that responded to our state court survey that provide VCR's for deliberations makes it clear that other forms of technology are also needed for deliberations.

§ 4-11.00 Potential Technologies for Use in Deliberations

Our review of those technologies of potential value during deliberations resulted in formulating the following categories:

- “Input” technology - e.g., those devices which provide information (exhibits) to the jury when displayed electronically;
- Display technology;
- Annotation technology - e.g., the ability to write and/or place markings on exhibits; and
- Assistive technologies - e.g., those technologies helpful to jurors with difficulties, hearing, seeing, and the like.⁴¹

There are, of course, critical differences between traditional largely non-technology trials and technology-augmented trials, and these differences can affect what may be desirable in the deliberation room. Technology augmented trials are predominantly visual.⁴² Counsel use document

⁴⁰ See § 2-10.00 *supra*.

⁴¹ These are addressed separately at § 6-10.00 below.

⁴² See generally Fredric Lederer, *The Road To the Virtual Courtroom? A Consideration of Today's – and Tomorrow's – High Technology Courtrooms?* (1999 State Justice Institute), 50 S.C. L. Rev. 799 (1999).

cameras and computers to display electronically most or all of the evidence. Increasingly, much of the evidence, e.g., e-mails, electronic charts, data compilations, or computer graphics, may not even have existed in physical form. From an evidentiary standpoint, technology augmented-trials are best characterized by the use by counsel of notebook computers to display evidence and argument to the fact-finder.

§ 4-12.00 Input Technology

If we assume a traditional trial, the evidence will consist primarily of witness testimony, documents, photographs, charts, and, possibly, audio or video tapes. The type of technology that will most easily permit the presentation of documentary evidence to jurors is the document camera:

Most document cameras consist of a vertically mounted color television camera aimed downwards at a horizontal base upon which a document or object can be placed. . . . Most document cameras have at least a manual or autofocus control as well as the ability to zoom in or out so as to enlarge or diminish the area of the document or object to be displayed. Sophisticated document cameras increasingly tend to have hand-held remote controls.

Many document cameras provide overhead lighting of the base in order to enhance the visibility of the item to be displayed. In some cases this lighting is provided by bulbs that are mounted on moveable arms; the arms may take up significant vertical space.

Nearly all document cameras are designed so that they can show transparencies, x-rays, and slides. Some cameras come equipped with internally illuminated bases for this purpose; others have optional light boxes that can be placed on the base to provide similar functionality.



WolfVision Visualizer

Document cameras must be connected to some form of display device. Ordinarily this would be one or more televisions, monitors, or projection units.⁴³

⁴³ Leigh Kades, *Document Cameras*, COURTROOM 21 COURT AFFILIATES TECHNOLOGY WHITE PAPER 2002-06-01 (Draft June, 2002).

Document cameras are simple to operate. The most basic provide zoom-in, zoom-out, and autofocus. During Trial Phases I and II we used a portable WolfVision Visualizer, which proved ideal for the purpose.⁴⁴ All that a juror need do is place a document, photo, chart, etc., on the base, and an image immediately appears on the display device.

Other input devices of potential application to deliberations are audio tape players and video tape players. As law enforcement increasingly shifts to CD recordings, CD players will be necessary for wiretaps and the like. We can anticipate a similar move from tape to DVD in the years to come; we have already moved some video footage to CD's.

When a trial is truly high tech, much or all of the evidence will be in digital form. Other than printing it out and supplying the printed copies to the jurors as evidentiary exhibits, the only easy way of permitting juror review of computer-based evidence is through the use of a computer in the jury room. The computer then becomes a highly desirable input technology.

§ 4-13.00 Display Technologies

If the primary goal of deliberation technology is to enable the jurors to collectively view evidence at the same time, display technology is critical. The primary display means available are traditional televisions, television monitors,⁴⁵ computer monitors capable of displaying traditional video, LCD or plasma displays, and rear-projection and front-projection devices.

Traditional televisions are inexpensive and as noted above, common in the courts. They are, however, potentially limited to showing ordinary video,⁴⁶ such as the image sent from a document camera or a VCR. Television monitors and video-capable computer monitors permit the display of both ordinary video and computer output. At present, most LCD screens are designed for personal use, and those that are reasonably priced will range up to 18 inch inches in diagonal measurement. Use of these monitors is customary in high-tech courtrooms, where jurors often use them either on a one juror to one screen basis or two jurors to a single screen. So long as these monitors were linked to equipment that could also show traditional video,⁴⁷ they would be highly desirable. Given the need for multiple monitors ordinarily they would best be used in a permanent or semi-permanent installation.

Plasma screens are large, high-resolution screens, usually with diagonal measurements ranging from 40 to 61 inches. Customarily they can display any usual video image. Although they are fairly common in high-technology courtrooms, none of the responding state courts in our survey reported possessing one. They can be wall-mounted or placed on any large flat surface via an optional stand. Their chief (perhaps sole) disadvantage is their cost; high-resolution units frequently cost \$15,000 or

⁴⁴ The Courtroom 21 Project used its in-house (loaned) equipment for this study. The Project uses document cameras supplied by DOAR Communications, Samsung, and Wolfvision. All would have been highly usable. The WolfVision was used in deliberations primarily because it was the simplest of the models available.

⁴⁵ Capable of displaying computer output as well as traditional video.

⁴⁶ Unless computer output is supplied to them with a converter. Such converters are easily available and inexpensive; some notebook computers can output composite or S video.

⁴⁷ It is easily possible to design a deliberation room in which all display images are digital in nature. However, this would entail such expense or complexity that we believe that most courts would *for the moment* prefer the ability to show a document camera or VCR images more easily, especially as equipment must often be moved from one jury room to another.

more apiece. They are becoming cheaper, however, as manufacturers position them for home TV use.⁴⁸

Projection units are simply units that display images on a flat surface. They range in size from small models the size of a large hard-cover book to the enormous desk-sized units often used in rock concerts; most are highly portable. Projection units can display images from either the rear or the front. Rear projection is highly desirable because viewers do not see the projection unit - only the screen. Unfortunately, rear projection is not ordinarily possible except in large rooms where the projector can be located far enough to the rear of the screen. The critical exception to this statement takes place when manufacturers install projection units in special enclosures with mirrors that eliminate the need for a large physical distance between projector and screen. Although a number of manufacturers produce these products, SMART Technologies is best known in the legal world for their rear-projection SMART Boards. These single-unit rear- projection displays are especially useful in conference/jury room sized spaces. Although technically portable, their size makes significant movement difficult, and they range in price from \$10,000 to about \$20,000.⁴⁹ Front-projection units are usually placed on stands or tables and project their images onto screens or, if need be, walls. They can cost from about \$5,000 to \$15,000 for units of potential interest in jury rooms. Critical concerns include resolution, the fact that cheaper models may not be able to handle all customary computer outputs, and brightness. Those units that cannot cope with bright indoor lights or the results of windows will require dimming room light or using drapes, or both. Their noise and often the need to put them on the jury room table are problematic. However, inasmuch as many high-tech courtrooms were equipped with such projectors and many courts are now replacing those units either with more capable devices or alternative display devices, a number of courts are likely to find themselves with available projectors that could be used in jury deliberation rooms.

As part of this study, we compared the relative utility of using televisions, rear-projection units, plasma screens, and front-projection units as a primary jury deliberation room display device. Our results are discussed below in the Comparative Advantages of Display Devices. As a result of that evaluation in Trial Phases I and II, we used plasma screens and front-projection units.

§ 4-14.00 Annotation Technology

Question 8 of our survey established that many courts supply jurors with chalk boards or flip charts; nearly all supply them with paper and pencil/pen. Giving jurors the ability to communicate with each other through writing would seem to be an important need - especially when jurors are attempting to present their views of physical relationships, create visible calculations, or visually argue their points. Annotation technology permits this electronically though what are usually called "whiteboards." Speaking generally, there have been four "generations" of electronic⁵⁰ whiteboards. The first generation permitted a person to write on the board, and the writing was then subject to either being printed out electronically or displayed electronically, or both. The second generation

⁴⁸ In July, 2002 the Courtroom 21 Project agreed to install Polyvision plasma screen units, capable of annotation, that retail for about \$12,000.

⁴⁹ Units that can be built into the wall are less expensive.

⁵⁰ The original whiteboard, of course, was exactly that - a flat white surface, usually wall-mounted, that could be written on with erasable colored markers.

added a separate front-projection unit so that the writer could also mark or annotate on a displayed image, such as a street intersection.⁵¹ Third-generation whiteboards are rear-projection display units that provide the writer with the ability to write on the display screen, with or without an underlying image. Fourth-generation whiteboards are large plasma display screens fitted with overlays that turn the screen into a touchscreen. Coupled with the proper software this permits the writer to mark or annotate on the screen, with or without an underlying image. Both third- and fourth-generation whiteboards may be capable, as are SMART Boards, of controlling a remote computer via the writer's use of a finger or lightpen. All generations of whiteboards are commercially available and have potential use in a jury deliberation room. A number of firms now market inexpensive products that can be placed on or over flat surfaces to convert them into first-generation whiteboards.⁵²

Although features such as the ability to print out what a juror has written on a whiteboard may be desirable, it is unclear that that capability alone would justify the price differential between a piece of electronic equipment and a traditional plain whiteboard or chalkboard. And, indeed, in Trial Phase II experiments, most jurors chose not to use a rear-projection whiteboard configured solely to display writing. Where electronic whiteboards are especially useful is in their ability to permit a juror to display a video or computer image and then write on the image. One can easily imagine, for example, jurors debating how an intersection collision could have occurred, with differing jurors drawing electronically a still photograph of the intersection.

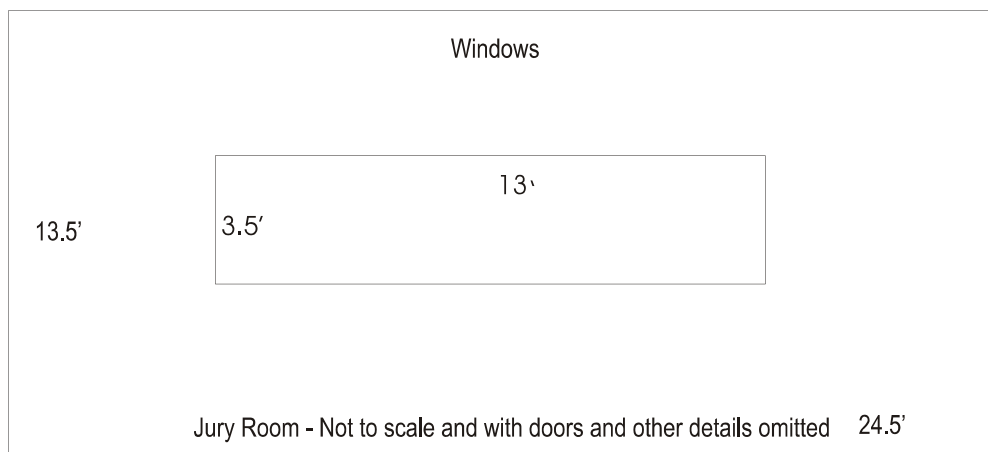
⁵¹ This requires careful projector location to keep the writer from stepping between the projector and the whiteboard. The Courtroom 21 Project has considered these boards relatively undesirable because of that concern.

⁵² Polyvision, for example, has a "CopyCam" that "is an image capturing system that uses NASA-level optical technology in a wall-mounted arm to snap pictures of everything written on an ordinary white board or chalkboard. . . . [U]sers can send the contents of the board to a diskette, a Web site, or a wireless color printer. . . ." I The Insider News, # 1, Summer, 2002 at 4 (Infocomm promotional materials). The Courtroom 21 Project will install and test a copycam to be loaned by Polyvision in the Courtroom 21 jury room.

§ 4-20.00 Comparative Advantages of Selected Display Devices

After having evaluated potential deliberation room technologies, we concluded that the single most important issue was the relative utility of the varying display devices.⁵³ In light of their ready and inexpensive availability, we began with televisions. Based on our prior evaluations and experience, we then experimented with rear-projection units, plasma screens, and front-projection units. We did not consider individual jury monitors in light of the likely need for at least a semi-permanent installation and probable lawyer and judicial concern that such an approach would interrupt jury cohesion.

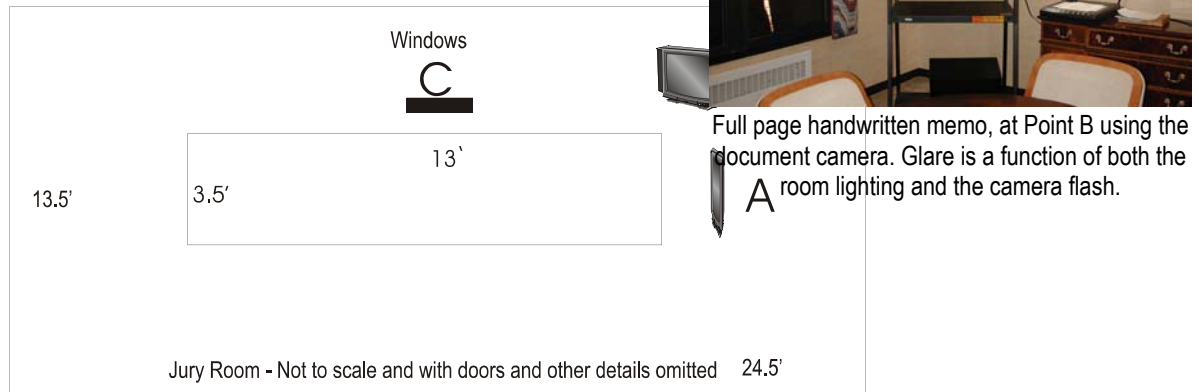
We first ascertained that the Courtroom 21 jury deliberation room's size and shape reasonably replicated a functioning deliberation room. A rectangular room of 24.5 feet x 13.5 feet, our jury room is lit by overhead incandescent lights and has windows along one long wall. The center of the room is filled by a conference table, of 13 feet x 3.5 feet, surrounded by upholstered chairs.



Using both a DOAR Communicator, later a WolfVision Visualizer, and a Dell Inspiron 7500 (running TrialPro software) notebook computer, we displayed evidentiary exhibits, photographs and documents (both “type-written” and with handwriting) used in past experimental Laboratory Trials. By using the same input devices and exhibits with the varying display devices, we were able to ensure a valid means of comparison. We then rotated the display device around the table to at least

⁵³ One can expect significant differences among different products and models of any given technology. Flat-screen televisions will likely yield a somewhat different picture of a document than would a television with a curved picture tube, for example. Conceding that such variation is inevitable, we believe that our comparisons furnish valuable information to courthouse users. It is critical, however, for the reader to keep in mind that the actual utility of any display device cannot be determined until it is actually tried out in the very room in which it is to be used. Not only may the device display differently than anticipated, but room-specific conditions such as lighting may be determinative of the devices' value.

points A, B, and C, as noted in the diagram below, checking for visibility from various distances. We viewed paper exhibits first as a full page, then from margin to margin, and then with a closeup of half the page as close to margin-to-margin as possible.



§ 4-21.00 Televisions

We first connected a 25 inch television on a wheeled stand and then checked the image for visibility with the set at points A, B, and C, as shown in the above illustration. We then displayed paper documents. We did not attempt computer output, as the TV was not capable of it.

We determined the following:

1. The curved TV screen causes visible distortion of the image, the severity of which depends upon the overhead lighting and the location of the jurors; in position C (with the set near the window wall), jurors at the far ends of the table on the same side as the TV had problems seeing, although jurors next to the TV could see.
2. Room lighting is a major factor that can best be evaluated only with equipment in place, as display screens vary.
3. Position A, as close to the end of the table as possible, minimized lost space; end jurors could see the image; subject to the amount of overhead lighting, all exhibits were at least visible, although the handwritten memo was just barely readable from the far edge of the table. The half-page manual was readable at about seven feet.
4. Position B, 42 inches from the corner of the TV, was problematic. A full 8.5" x 11" "typed" page of text displayed in whole page mode was unreadable at

almost any distance, even if the room lights were dimmed, although the 6.5" text line could be read at 12 feet when the document camera was zoomed to display the line and nothing else. The half-page engine manual with a large font was barely readable at eight feet although a close-up of its margin-to-margin text was acceptable; the handwritten memo with large handwriting was readable in some form at ten feet in full-page mode; close-ups of individual lines and words were more effective, especially when the room lighting was dimmed. When the set was repositioned to the far corner (on the same side of the table), the image was unreadable from the side of the table the TV was on.

5. The effectiveness of Position C depended upon how close the TV was to the table. When the TV was placed as close to the window wall as possible, all jurors could see the screen. However, the jurors on the far ends of the table on the same side as the TV had difficulties seeing the TV image because of the curve of the screen. With the set moved so that it adjoined the table, the TV was highly effective for jurors on the other side of the table with about a 45% viewing angle; however, it may inhibit juror discussion because of the difficulty that jurors on the same side of the table as the TV would have seeing the TV.

§ 4-22.00 Plasma Screen

We tested a 40-inch low-resolution (640x480) diagonal Pioneer flat-panel plasma screen with both a portable WolfVision document camera and a Dell Inspiron 7500 computer.

We determined the following:

1. Placing the plasma screen at Point A but as close to that wall as possible by standing it on a credenza and using the document camera, photographs were easily visible from throughout the room and of good quality. The large-font engine inspection report was fully readable at all angles from the end of the table, even with full margins; the handwritten memo was also readable throughout the room, and a pen pointer was effective. The full-text page was fully visible from the end of the table without any glare when it was zoomed to eliminate margins; with one inch margins the document was readable but was of poorer quality than when viewed without margins.

When using the notebook computer, the full text page was visible throughout the room but was not readable. due to the small size of the text. Enlarging part of the image made it fully readable throughout the room. The same occurred when viewing the handwritten memo; it had to be enlarged to be readable. Notably, the low



Largely full page handwritten memo, at Point C using the document camera. Glare is a function of both the room lighting and the camera flash.

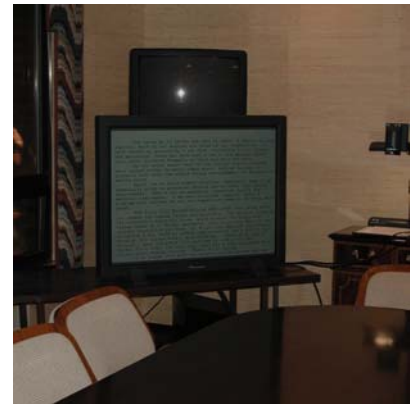
640x480 resolution of the display was not a problem, much to our surprise. Further, the enlargement feature of the TrialPro software was easy to use and highly effective.

Subsequent use of the plasma screen in Trial Phases I and II placed the plasma on the very end of the table. This proved to be far more effective and made every document readable in at least some form.

2. We next placed the plasma screen at point B in the corner of the room, with the document camera. The picture was visible from throughout the room. The full 8.5" x 11" text page was readable for up to 6.5 feet; zooming to eliminate margins made it readable down the entire table. The handwritten note and engine manual page were similarly readable once they were zoomed to eliminate margins.

When using the computer, the full text document was only visible to about 6 feet; once enlarged it was fully readable. The handwritten note could be seen in full size from all around the room.

3. With the plasma screen placed at point C but close to the window wall (three feet from the horizontal



Zoomed engine inspection form at Point B



Part of full page text letter zoomed without margins at Point C

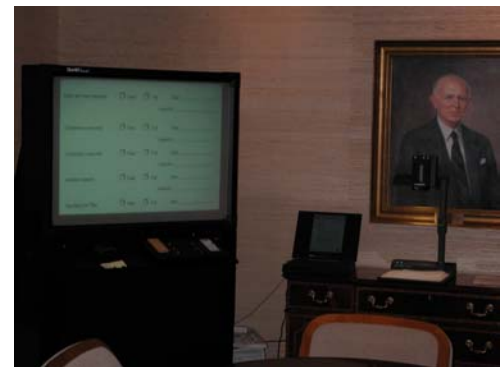
midpoint of the table),⁵⁴ the document camera made the full-text page readable from across the table, but readability diminished as the viewer moved towards the ends of the table. The same document was readable from throughout the room when it was enlarged to show it without margins. The engine inspection report was visible but not readable from the ends of the table; readability improved as the exhibit was enlarged and was easily visible throughout the room when enlarged to text without margins. The photograph was visible throughout the room.

When using the computer the full page of text was easily visible from directly across the table but unreadable from the far ends of the table; readability diminished the closer the viewer got to the ends of the table. Enlarged, the document was more readable. Viewers at the end of the table could read the document when it was enlarged to the point that the text filled the screen without margins. Similarly, the large-type engine manual was viewable but largely unreadable from the ends of the table in full page mode.

§ 4-23.00 Rear-Projection Display

For comparison purposes we tested a 40-inch rear-projection SMART Board,⁵⁵ using it as a display device without use of its annotation capabilities.

SMART Boards are composed of two primary parts: the internal projector and the shell, which, with its parts, surrounds the projector. Although the external shell is fixed for any given model, the projector is not, and different results could be obtained by varying the projector. We used a 3M Projector.



Engine inspection form zoomed without margins, at Point B

We determined the following:

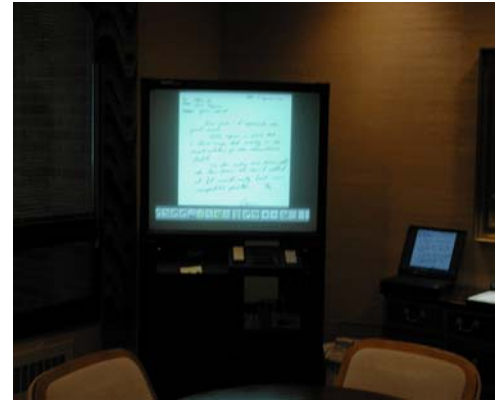
1. Using the WolfVision document camera with the Dell laptop computer yielded a slightly sharper image than did using the camera's composite video output.⁵⁶ The computer's 640x480 resolution was quite useful. Enhancing the resolution to 800x600 and then 1024x768 improved readability only mildly, if at all. Dimming or turning off the room lights yielded only a small improvement in readability.

⁵⁴ Because the plasma screen is very thin, it would not be visible from the sides when placed on or adjacent to the table.

⁵⁵ During Trial Phase II, we used the much larger and more effective 3000i model. As these are very large and relatively new, we used the smaller and more available model for testing.

⁵⁶ The camera has both a y/c and a computer output, both of which likely would have yielded a superior image.

2. The SMART Board's readability was greatest in position A, where the entire jury could face the image. Point B, probably the most aesthetic and functional location in the room, yielded quality readability. Point C, however, made the image unreadable unless the viewer was seated across the table from the SMART Board; viewers at the ends of the table would have difficulty reading documents.



Handwritten memo zoomed without margins, at Point B

3. When using the document camera, full-page documents with large amounts of small text were not readable. Zooming the document was required. The full-text page was visible to the entire table when it was enlarged enough to eliminate all marginal white space. The engine inspection report, with its relatively large font, was only readable to the first half of the table closest to the display; when zoomed to eliminate the margins, it was fully readable to the entire table. The engine maintenance manual, filling only the left half of a landscaped 8 1/2" x 11" page was readable around the table.
4. The laptop computer yielded results similar to those of the document camera. Full-page text was unreadable except, perhaps, by those sitting immediately in front of the SMART Board. The same was true of eliminating the margins but leaving the full page of text. Partial page enlargements, especially call-outs designed to eliminate all marginal white space, were generally readable around the table. When the SMART Board was at Point B, the image was poorer for those at the far end of the table. The handwritten note was visible on a full-page basis for only the closer half of the table. Eliminating the margins made it readable from the entire table.

Had we used the much larger 67-inch diagonal 3000i SMART Board, we would have had substantially different results. The 3000i's screen size is such that substantially greater readability would have been available. Our experience with the 3000i during Trial Phase II indicates that a



3000i SMART Board in jury room in preparation for Trial Phase II

Point B position should be fully functional.



Petra Kemmack tests 3000i in jury room.

§ 4-24.00 Front-Projection Display

We tested a 3M projector. The projector was placed on the table and aimed across the length of the table at a seven-foot diagonal portable screen a few feet from the end of the table (Point A). We did not test other locations because the distance from the projector to the screen would have been too little for an adequately sized image. This was the largest image available in the comparison experiments.

We determined the following:

1. When using the document camera, fine focus problems in the document camera became apparent, likely due to the large size of the image. Individuals close to the screen but viewing it from the sides had difficulty in reading documents. Paragraphs of the full-page text and the handwritten note were fully readable; the full-page letter was not, likely due to focus difficulties.
2. When using the computer, the full-text letter was readable only from the far end of the table; turning off the lights yielded only a minor improvement. The engine inspection report was visible to the end of the table.

Conclusions

The comparison experiments are clearly dependent upon the room, lighting, and specific equipment used. Further, visibility and readability are affected by the viewer's eyesight. With these caveats in mind, we concluded the following:

1. The dimensional size of documents, their text density, and the width of the relevant portion of the exhibit are determinative of readability.
2. Room lighting is especially important and can be determinative of the utility of any given display.
3. The ability to enlarge part of the image or zoom into an image is critical; some documents may not be readable at all without that capability.



Full page "typed" memo displayed by computer.



Document "call-out" displayed by computer using TrialPro software.

4. Because the readability of any given image is image-, hardware-, display-, and room-dependent, few assumptions can be made about readability without field tests in the room to be used with the equipment to be used.
5. Document cameras with zoom capability and computers with software zooms are both highly useful for reading documents and viewing images.
6. Televisions are of limited use in viewing documents, although they may be adequate or better for photographs or pictures in which fine detail is not critical.
7. Traditional televisions with curved screens are especially likely to be affected by glare from lighting.
8. Plasma screens are highly effective when placed at the end of a table.
9. Although 800x600 or higher resolution plasma may be desirable when displaying computer output, 640x480 are effective, and the difference in readability between 800x600 and 640x480 is of minimal consequence.
10. Rear-projection units are highly effective. They are far less susceptible to glare than are televisions and far less susceptible to overhead or outside lighting than are front-projection units. Their size, however, potentially makes them difficult to use, especially at the end of a table, which is the best position for them
11. Front-projection units provide the largest image ordinarily available. However, unless the room is especially large the only reasonable display position is the far end of the room. Placing the projector on the table, rather than hanging it from the ceiling, is fully functional but likely to be a disturbing element to jurors.
12. Assuming a rectangular jury deliberation room, unless a room is large enough (in which case images other than those displayed via large projection are likely to be too small), the most usable display location is at the end of a jury room table.
13. In rank order of the most likely utility to least, court administrators should consider as jury room display devices plasma screens, rear-projection units, front-projection units, and televisions.

We note that our experiments were conducted in a traditional rectangular room with a rectangular conference table. Different room or table shapes and sizes permit different display outcomes. We speculate, for example, that using a V-shaped combination of tables with a plasma screen in the large gap between the two tables forming the V, might be highly effective.

In light of the results from our comparison studies, we moved to Trial Phase I, the first of our controlled studies. We concluded that our display devices should be placed at Point A with a document camera adjoining the far left end of the table (near the display device). We decided to use

Trial Phase I to test the consequences of using plasma screen displays, front projection units, and no technology at all.

§ 5-10.00 The Impact of Display Technology In Trials - the Controlled Studies

Having determined the types of jury room technology that appeared most likely to be of value to jurors, we proceeded to test the utility of jury room technology in simulated trials. Our initial goal was to determine whether jury room display technology was pragmatically workable in a realistic setting and whether jurors would perceive it as helpful.

We conducted two controlled studies, one dealing with traditional trials tried without technology, and one dealing with basic technology-augmented trials (trials that use technology for all evidence presentation). We used the same mock case for both studies, a Courtroom 21 Litigator Training case, *Matthews v. Morton*, a personal injury case in which both liability and damages were controverted.⁵⁷

§ 5-20.00 Trial Phase I - The Traditional Trial Study

In Trial Phase I (the traditional trial study) we proceeded to try *Matthews v. Morton* nine times, four times with a document camera and plasma screen for display, twice with a document camera and front projection unit and screen for display, and three times without technology. All Trial Phase I trials were traditional with paper evidence and no technology-based evidence display.

§ 5-21.00 Methodology

§ 5-21.10 Participants

The jurors in the experimental trials were 92 undergraduate students (44 female, 48 male) enrolled in Introductory Psychology courses. To ensure that each experimental jury had 8 people, extra participants were recruited for the study. These “alternate” jurors heard all of the testimony, completed the predeliberation questionnaire, and were then dismissed. The remaining participants were run in mixed-sex juries of 8 people per jury; all participants received experimental credit of 2 hours for taking part in the research. Nine sessions were run, with the result that a total of 72 participants (36 female, 36 male) took part in the deliberations. As a precaution against selection bias, we compared the predeliberation questionnaire answers of the dismissed participants to those of the participants who stayed to deliberate. This multivariate analysis of variance did not produce an overall difference between dismissed and remaining participants, so there is no indication of biased selection of participants to deliberate.

Counsel were four especially skilled third-year law students (two men and two women) and two faculty judges (one man and one woman).⁵⁸ Each trial consisted of one plaintiff’s counsel, one

⁵⁷ See § 5-21.30 *infra*.

⁵⁸ Each trial used two counsel, one plaintiff’s counsel and one defense counsel. Under Dr. Shaver’s guidance, trials were conducted so as to control for gender variations, and each case was tried by two counsel of the same gender. Of the four counsel, three (two men and one woman) were white; one counsel, a woman, was black. Of the two judges,

defense counsel (always of matching gender), one judge, the plaintiff (male) and the defendant (female),⁵⁹ and the jurors. A bailiff was available to assist the jurors.

§ 5-21.20 Facility and Equipment

The research was conducted using the facilities of the Courtroom 21 Project's McGlothlin Courtroom at the College of William & Mary Law School. The McGlothlin Courtroom is the world's most technologically advanced courtroom. However, in Trial Phase I, none of the courtroom's technology was used other than sound reinforcement.

As noted earlier, there were three experimental variations in Trial Phase I. The first condition was conducted without technology. The second allowed jurors to display evidence by using a document camera and a projection unit and screen (this is the most likely "typical" technology condition, as it requires only equipment that many courtrooms already possess, but difficulties inherent in room placement and lighting make it inferior in many ways to that of a plasma screen). The third permitted jurors to display evidence by using a document camera and a plasma display screen (this is the "best" technology condition, as plasma screens are especially easy to view from nearly any angle, even in a small room). The plasma screen, a Pioneer 40-inch diagonal unit, was placed on the jury room table at the very end.

§ 5-21.30 Procedure

The experimental design was a 3x2x2 factorial design (Technology Condition x Participant Sex x Before/After Deliberations), with repeated measures on the last factor. It was initially intended that there be four replications of each between-subjects condition to permit complete counterbalancing of the sex of the two teams of counsel. Each replication required eight jurors (four males and four females). So that group size was not a factor in the deliberations, each trial was "overbooked" as noted above. A research assistant called male participants the night before their scheduled session in an attempt to increase the response rate among males. All sessions did, in fact, have eight-person juries, but cross-scheduling of the courtroom to be used for the research made it desirable to stop the experiment with only the replications of each condition that occurred in nine trials, and result consistency permitted this. Nevertheless, it is still fair to argue that the sex composition of the two legal teams should not have played any part in the results.

Participants in the research were met in an anteroom by one of the Law School's graduate research fellows (or other staff), who provided a brief description of the research, noted that the results were confidential, and obtained participants' permission to videotape the jury deliberations. Participants who agreed to continue (all did) were ushered into the Courtroom and seated at the eight flat-screen monitors that serve as the "jury box" (alternate jurors were seated in the auditorium-style seating located behind the jury positions). The graduate research fellow then provided an introduction to the case, described what the participants would be asked to do, and turned the proceedings over to the Law School faculty member who was serving as judge for that particular

one was male and one female; both were white. We did not control for race. Each of the faculty judges had substantial prior trial experience; one had been a part-time judge for seven years.

⁵⁹ The plaintiff was constant throughout all trials. Two women played the part of the defendant.

replication of the trial. (Two faculty members, one female and one male, served as judges in an order counterbalanced across sessions within conditions.)

The judge then initiated the proceedings, describing the civil case in which Plaintiff Matthews, “a farrier in Jedburgh County, was suing defendant Morton, a public stable owner, for injuries sustained when plaintiff was thrown from one of defendant's horses on March 5, 2001. Plaintiff claimed that defendant negligently hired out a vicious horse without telling plaintiff of the animal's true disposition.” The plaintiff was suing the defendant for damages in the amount of \$13,907.50, which consists of \$1,707.50 in medical expenses, \$2,200.00 in lost wages and \$10,000 for pain and suffering. The defendant denied any negligence, denied that the horse was vicious, asserted that plaintiff acted negligently himself, and had assumed the risk of riding. Defendant claimed that plaintiff's actions were the direct cause of the accident. To ensure consistency, counsel used the same highly detailed trial sequence. The sequence included all points to be presented and all the evidence to be introduced.⁶⁰ Neither counsel nor judge knew whether any given jury would use technology or if so what type until the very end of the case when during closing instructions the judge would flip over a previously prepared card that indicated the type of deliberation.

When the case had concluded (in slightly less than one hour), the jurors were given jury interrogatories (specific questions to be answered) as well as a general verdict form. The graduate research fellow or other staff member explained the instructions for the predeliberation questionnaire, and all participants completed this questionnaire. Then the eight participants who constituted the deliberating jury were ushered into the jury room, where their deliberation task was described. All deliberating jurors were told to discuss the case and evidence and to arrive at a unanimous verdict. As the deliberating jurors were led to the jury room, the alternate jurors were interviewed by another assistant, thanked for their participation and excused.

The jury room was set up for the technology condition relevant to that particular trial. Accordingly, the control (non-technology) jurors found no technology in the jury room. The questionnaire, however, necessarily made it clear that the experiment involved technology.⁶¹ The deliberating jurors discussed the case, often for up to about an hour, reached a verdict, and then completed the post-deliberation questionnaire. Upon completing this questionnaire jurors were interviewed, thanked for their participation and excused.

⁶⁰ The trials were not literally scripted in order to ensure that they appeared realistic. The two judges report that there was a remarkable degree of consistency across all trial repetitions. Although there were differences between the two pairs of opposing counsel, those differences were controlled for as part of the gender control.

⁶¹ Being psychology students, the non-technology jurors assumed that they were the controls.

§ 5-22.00 Dependent Variables and Analysis

We did not formally time deliberations. However it is our perception that the nature of the jury room technology or lack thereof had no effect on the length of deliberations. Rather, the psychology of the individual jury seems to have been the controlling factor. The first jury (no technology), which awarded Plaintiff the single largest verdict of \$1,500 was also by far the fastest and in the judgment of staff showed an interest in completing its requirements and leaving as soon as possible. This was unrepresentative; the other jury panels took their task quite seriously and often spent a great deal of time deliberating.

Perceptions of the deliberation process were measured by changes in answers to the questionnaire. The questions were the same from predeliberation to postdeliberation, although the tense of items was changed appropriately. Most of the items had been used in previous studies conducted in the Courtroom, including Schutte (1997), Stegall (1998), and Griffin, Gonzales, Smith, & Lion (2001). The items (scored on 5-point scales, 1 = “not at all,” 5 = “extremely”) were as follows (postdeliberation format):

How easy was it to review the evidence?

How much did you think the deliberation process addressed the important issues presented in the trial?

How much do you think your opinion was taken into account by other jurors during the deliberation process?

How much did the exhibits assist your deliberations?

How helpful were the jury instructions in guiding your deliberations?

How helpful to your deliberations was the technology used during trial?

How much did the jury room technology simplify your tasks during deliberations?

How much did operating the technology in the jury room add significantly more time, beyond what you would have spent otherwise?

How much did your ability to use technology during deliberations enhance your confidence in the deliberation process?

How comfortable did you feel in your ability to personally use the technology to display exhibits?

How helpful was it (or in the non-technology condition, “Would it have been helpful”) to the

deliberation process for (if) all jurors to view (had been able to view) evidence and exhibits at the same time?

How helpful was it (or in the non-technology conditions, “Would it have been helpful) to be able (to have been able) to enlarge exhibits and evidence for better viewing during the deliberation process?

In addition to asking these questions, we videotaped the deliberations. The videotapes are discussed below.

§ 5-23.00 Results

§ 5-23.10 Verdicts

Because our interest in the research was in perceptions of the extent to which available technology might have aided the deliberation *process*, we did not particularly care about the actual verdicts rendered. The case had been designed to produce a mixed set of verdicts. Of the nine trials held, there were four verdicts for defendant and five verdicts for plaintiff. Verdicts for plaintiff awarded judgments of \$1,500, \$1, \$185, \$750.⁶²

The verdict breakdown by technology condition was: control (no technology) - \$1,500 for plaintiff and two defense verdicts; plasma screen: two defense verdicts, a \$1 verdict for plaintiff, and a \$185 verdict for plaintiff; front projection - 750 for plaintiff and unrecorded (25% liability for defendant. Insofar as we can tell, the jury room technology had no effect on verdict.

§ 5-23.20 Analysis

The predictions were tested using the 12 questions asked of the mock jurors both prior to deliberation and following deliberation. In order to minimize experimentwise error, we first determined whether the number of items could be reduced into a series of meaningful scales. This was done by subjecting the items (on the predeliberation questionnaire only) to a principal components factor analysis (varimax rotation). The factor analysis used an eigenvalue criterion for terminating the analysis, and cases were deleted on a pairwise basis. This factor analysis produced four separate factors, together accounting for 58% of the overall variance. The factor loadings, initial eigenvalues, variance accounted for, and Cronbach reliabilities for all of the scales are shown in the Table below.

⁶² The dollar verdict was not recorded in one case. In that case Defendant was viewed as being 25% liable.

Factor Loadings For Questionnaire Items

Factor:	Benefit	Deliberations	Evidence	Time
Initial eigenvalue:	3.16	1.64	1.15	1.09
Variance accounted for:	26.39%	13.64%	9.54%	9.04%
Cronbach alpha:	.76	.37	.44	n.a

Item

Expected benefit from enlarging exhibits	0.76	-0.05	-0.08	0.04
Expected benefit from all jurors seeing evidence	0.74	0.01	0.11	-0.05
Expected technology to increase confidence	0.73	0.06	-0.02	0.28
How much technology might simplify tasks	0.70	0.35	0.13	0.24
Expected personal comfort in using tech	0.54	0.21	0.25	-0.31
Expected weight of own opinion	-0.01	0.79	-0.15	0.04
Degree deliberation will address issues	0.12	0.66	0.31	-0.02
Expected value of technology in deliberations	0.19	0.51	0.20	0.51
Expected helpfulness of instructions	0.12	0.21	0.76	-0.08
Expected help from exhibits	0.11	0.04	0.65	0.12
Expected ease of reviewing evidence	0.35	0.22	-0.56	-0.23
Time technology expected to add to process	0.09	0.03	0.09	0.83

Items were considered part of scales if (a) their loadings on the primary factor exceeded an absolute value of 0.4, and (b) they did not have cross-loadings on non-primary factors that exceeded an absolute value of 0.4. The second part of this inclusion criterion would have had one item listed as part of the second factor (the expected value of technology in the deliberations) excluded from that factor. To determine the internal reliability of each factor, we conducted Cronbach α reliabilities on the elements of each factor. As it happened, only the first factor – which we term “overall benefit” of using technology – showed an acceptable level of internal consistency (Cronbach $\alpha = .76$). No other factors showed satisfactory reliabilities (Cronbach $\alpha > .70$) so although the elements of the first factor were combined into a single scale for analysis, all remaining items were treated as individual dependent variables. Mean scores for all variables testing the effects of the deliberation-room technology are shown in the Table below.

Mean Scores For Overall Benefit, Characterization Of Technology, And Impressions Of Process

	Judged Before Deliberation			Judged After Deliberation		
	No Technology	Camera and Projector	Camera and Plasma	No Technology	Camera and Projector	Camera and Plasma
n:	24	16	32	24	16	32

Variables Showing Interaction Of Technology Condition And Before/After

Combined factor score for overall benefit (5 items)						
<i>M</i>	3.38	3.26	3.08	2.00	3.26	3.00
<i>SD</i>	0.85	0.54	0.73	0.56	0.71	1.13
Technology's helpfulness in deliberations						
<i>M</i>	1.79	1.56	1.88	1.21	2.25	2.28
<i>SD</i>	0.72	0.81	0.98	0.51	1.06	1.22
Extra time added by operating the technology						
<i>M</i>	2.63	2.31	2.13	1.04	1.63	1.50
<i>SD</i>	0.71	1.08	0.91	0.20	1.20	1.05

Variables Showing Difference From Before To After Deliberations

One's own opinion taken into account during deliberations						
<i>M</i>	2.96	3.13	3.22	3.71	3.63	3.56
<i>SD</i>	0.55	0.72	0.66	0.75	0.72	0.91
Deliberation addresses important issues presented in trial						
<i>M</i>	3.79	3.75	3.84 ^a	4.04	4.38	4.00 ^a
<i>SD</i>	0.66	0.68	0.73	0.75	0.50	0.93
Helpfulness of the jury instructions						
<i>M</i>	3.54	3.31	3.26 ^a	3.04	3.13	2.90 ^a
<i>SD</i>	0.72	0.79	0.97	0.81	0.81	0.87

^a Count in this cell is reduced by one person.

§ 5-23.30 Tests of Technology Conditions

All analyses were 3x2x2 (Technology Condition x Participant Sex x Before/After Deliberation) with repeated measures on the last factor. Because of the number of separate analyses, we have elected to set the alpha level at .025 (more conservative than the typical .05). Two items, having to do with the ease of reviewing the evidence and the usefulness of having everyone view the exhibits, showed no differences whatsoever. But this means that 10 of the 12 questionnaire items reflected significant differences based on conditions.

The first analysis was conducted on the combined overall assessment of the benefit of technology (created from the 5 items that constituted the first factor). This analysis showed an interaction between Technology Condition and Before/After. Specifically, before the deliberations, participants in all technology conditions estimated that the technology would prove to be moderately valuable (average scores slightly greater than 3.0). After the deliberations, participants in both technology conditions found their expectations upheld, whereas participants in the no-technology

condition now thought that they had previously overestimated the value of technology (mean score for this condition was 2.00), $F(2, 66) = 14.60, p < .001$. The analysis also revealed a main effect for Before/After, $F(1, 66) = 16.11, p < .001$; and a main effect for Technology Condition, $F(2, 66) = 3.93, p < .024$, but both of these main effects are properly regarded as consequences of the significant interaction.

The nature of the display technology used did not appear to be significant. Results using either the plasma screen or the front projection approach were similar.

Two other dependent variables showed comparable Technology Condition x Before/After interactions. On the variable assessing technology's helpfulness in deliberations, participants in the No Technology condition lowered their estimates of technology's value from before to after the deliberations, whereas participants in both of the technology conditions *raised* their assessments of its value, $F(2, 66) = 9.03, p < .001$. The same pattern appeared on the variable measuring participants' views concerning the extra time that using technology might take. Not surprisingly, the amount of time estimated decreased most sharply in the No Technology condition, decreasing by a lesser amount in the two technology conditions, $F(2, 66) = 5.05, p < .01$. What is more interesting is that *all* estimates of the amount of extra time that the technology had taken decreased from before to after deliberations, $F(1, 66) = 44.33, p < .001$. Taken together, these findings suggest an interesting combination of "pleasantly surprised" and "sour grapes." Specifically, judgments in the two technology conditions were more positive following deliberation than those estimates had been prior to deliberation – people were pleasantly surprised that the technology was more valuable than they had anticipated. On the other hand, people in the condition where no technology was used appear to have decided that "it wouldn't have helped much anyway."

§ 5-23.40 Other Effects of Deliberations

Three of the dependent variables showed only a main effect for Before/After deliberations. These were the extent to which people believed their opinions would matter, the extent to which they thought the deliberations would touch all of the important issues, and the rated helpfulness of the instructions to the juries. On the opinion item, regardless of technology condition, participants said after the deliberation that their opinions had mattered more than they had predicted before the deliberations, $F(1, 66) = 23.57, p < .001$. On the item asking about the likelihood that important issues would be addressed in the deliberations, there was a similar pattern, with scores in all conditions being higher following the deliberations than they were in advance of the deliberations, $F(1, 65) = 12.73, p < .001$. Finally, on the question about the value of the jury instructions, this pattern was reversed: Regardless of technology condition, participants thought the instructions were *less* valuable following deliberation than they had expected the instructions to be prior to deliberation, $F(1, 65) = 11.30, p < .001$. Taken together, these three findings suggest that mock jurors found the deliberations a valuable experience, although the jury instructions were not as helpful as they had been expected to be.

§ 5-23.50 Analysis of the Videotapes

We reviewed the deliberation videotapes and transcribed a number of them (Appendix F). A summary of the tape reviews follows:

Trial 1 (no technology; \$1,500 verdict for plaintiff):

No comments of interest

Trial 2 (plasma, defense verdict)

Was there any discussion about using the technology? Yes

If so, what was the general substance of the discussion?

The jurors did not believe that they needed to use any technology, since the trial itself did not use much technology. They believed that they were a control group. If the outcome was disputed, they might have used the technology. But the group was in agreement from early in the deliberation process.

Did jurors use any of the technology during deliberations? No

Trial 3 (no technology, verdict for defendant)

Was there any discussion about using the technology? Yes

If so, what was the general substance of the discussion?

Although the group came to a decision without technology, it would have been cool if they could have used it.

Trial 4 (plasma, \$1 for plaintiff)

Was there any discussion about using the technology? No

Did jurors use any of the technology during deliberations? Yes

If so, what did they use? Overhead projector and screen

Who ran the technology? The person seated closest to the document camera.

Is there any evidence that using the technology influenced or changed any of the jurors' opinions?

The technology was used to display the defendant's affidavit, the contract, and the plaintiff's affidavit so that all could see the documents at once. Although the person operating the document camera used the zoom feature, one document was still unreadable by some jurors sitting far away so that it had to be read aloud to the group. Even though the group used technology, at times, some individuals read over documents on paper. The group used the technology to review the documents to

determine what each party exactly alleged, what the contract contained, to discover new facts and to highlight conflicts between live testimony and the affidavits. The technology seemed to be extremely helpful for this group and a way in which they could all approach the evidence together for discussion.

Trial 5 (no technology, verdict for defendant)

Was there any discussion about using the technology? Yes
If so, what was the general substance of the discussion?

One juror wondered if juries could use technology to remember testimony. Also, a juror felt that technology would probably not be very helpful in such a simple trial.

Trial 6 (plasma screen, verdict for defendant)

Because of human error, these deliberations were not taped; the post-verdict interview was, however, and that is discussed below. The jury did use the technology, with the juror closest to the document camera operating it, but not having read the instructions found it difficult to use and frustrating.

Trial 7 (plasma screen, \$185 for plaintiff)

Was there any discussion about using the technology? Yes
If so, what was the general substance of the discussion?

The technology was helpful to have. They did not read the instructions nor did they notice that the zoom feature was present.

Did jurors use any of the technology during deliberations? Yes
If so, what did they use? Document camera and screen
Who ran the technology? The person closest to the document camera
Is there any evidence that using the technology influenced or changed any of the jurors' opinions?

The jurors initially used the document camera due to a suggestion by one juror. They placed the jury questions on the screen since there were so many of them and everyone could see them at once there. They next placed the defendant's affidavit on the projector for all to read and discuss. The group used the pointer to highlight key phrases. The group also put up the medical bill for all to see. Finally, the group completed the jury questions on the document camera. The technology was used to foster their deliberations, not have to rely upon reading the questions out loud and so that the group could work together more efficiently and as a team.

Trial 8 (front projection, 25% defense negligence)

Was there any discussion about using the technology? Yes
If so, what was the general substance of the discussion?

The case is too simple to really use the technology. The jurors decided that they could read most things out loud to one another. They believed that if the case involved more visual evidence, they would probably use the technology to a greater extent. However, the technology that they did use was easy.

Did jurors use any of the technology during deliberations? Yes
If so, what did they use? The document camera, screen and projector in middle of table
Who ran the technology? Juror closest to the overhead projector
Is there any evidence that using the technology influenced or changed any of the jurors' opinions?

There is little evidence that the technology influenced the jury's deliberations. The group did not use the technology as much as other groups did. They used it to place the contract on the overhead for the group to see at once and the picture of the horse (in a joking manner), but not in any deliberate or facilitating way. The group seemed to rely more on vocalization between each other rather than visualization of the evidence.

Trial 9 (front projector, \$ 750 for plaintiff)

Was there any discussion about using the technology? Yes
If so, what was the general substance of the discussion?

The use of technology saved the group time since they could view the evidence all at once. This method made it easier for the group to discuss the documents together.

Did jurors use any of the technology during deliberations? Yes
If so, what did they use? Document camera and screen and projector in middle of table
Who ran the technology? Juror closest to the document camera
Is there any evidence that using the technology influenced or changed any of the jurors' opinions?

A juror suggested placing the documents on the overhead projector, since "that's what it's here for." They used it initially to put up the jury questions to see what they were required to accomplish. They also used the technology to display the contract and the pointer to highlight key phrases. They did not use the zoom feature. The technology assisted the group by allowing them to discuss the evidence together and not wait until each juror had individually read the documents. At the end of the deliberations, a juror was interested if other technology existed so that people's testimony could be replayed for the jury during deliberations.

§ 5-23.60 Post-Deliberation Interviews

The jurors were interviewed by Professor Lederer or Professor Warren after reaching verdict. These interviews proved to be essential to understand the interaction, or lack thereof, between the jurors and the technology.

When we planned Trial Phase I we reasoned that as the document camera was extremely simple to operate with only three optional buttons (zoom in, zoom out, and autofocus), it should be sufficient to place a page of large font instructions on the document camera for jurors to be able to operate it without assistance. Accordingly, we placed a simple set of very large instructions on the camera's base, augmented by a physical pointer that was aimed at the word "Instructions." The image was displayed so that it was the first thing that the jurors saw when they walked into the jury room. We were wrong; the juries had problems operating the equipment. Although most juries noticed the camera and used it, many completely failed to recognize the ability to zoom in or out on the exhibit.

The videotape of the post-trial interview of Trial 6 records the following:

The jurors stated that they tried to use the technology but became frustrated. It was too difficult to use. No one read the instructions on the document camera, nor did the person operating the technology (who initially was the juror closest to it) notice the zoom feature. The group did place one document on the overhead which seemed beneficial for the group to view together. But another document, this one with handwriting on it, was hard to see. They wished that the bailiff could have demonstrated the technology before they began their deliberations.

From this and other post-deliberation interviews we concluded that we could not rely on jurors reading and complying with even the simplest of instructions. In most cases the existence of the instructions did not "register" with the jurors.

To resolve this problem, we reformulated our approach for Trial Phase II. In Trial Phase II, we had the judge include in the closing jury instructions a statement to the effect that the jurors would have deliberation room technology available to them should they care to use it. Upon entering the deliberation room, the bailiff then showed the jurors the camera (with the instructions on it) and demonstrated its features. That completely cured the problem.

When we designed the experiment, we had been concerned that the absence of a designated document camera operator might be problematic. That did not prove to be the case. Juries resolved this in all relevant trials. Ordinarily the person nearest the document camera automatically took over its operation.

During the post-verdict deliberation interviews, it became apparent that the juries strongly endorse the use of deliberation room technology, consistently explaining to the interviewing professor that it was very helpful for the jurors to be able to collectively view exhibits and that that utility would be enhanced in cases with more evidence.

§ 5-24.00 Conclusions from the First Controlled Study - Trial Phase I

We concluded the following from Trial Phase I:

1. Most jurors appreciate and find useful deliberation room display technology;
2. A document camera linked to a display device is highly useful for deliberations and likely the most essential item for technology enhanced deliberations;
3. Absent interaction with a member of the Court staff, most jurors will not be able to take advantage of a document camera's zooming feature, a feature that is essential for proper review of much documentary evidence and the absence of which is frustrating for jurors;
4. The mere fact that a deliberation room has technology does not mean that it will be used by jurors, even if they fully understand its use;
5. There is no need to appoint an operator for a document camera; and
6. Jurors given deliberation room technology tend to value it more highly after deliberations than they expected to before deliberations.

We would also add that in two separate high technology experiment trials (the Courtroom 21 Laboratory Trials), jurors had found especially helpful the ability to use a document camera to review jury interrogatories. In those trials jurors argued over the exact terminology of the questions they were to answer. One of the Trial Phase I juries used the document camera to view the instructions. Given the inability to use the zoom feature, it is unclear whether the others would have done so had it been clear to them that they could have done so usefully.

§ 5-30.00 Trial Phase II - The Technology Trial Study

Having established that deliberation room display technology was functional and perceived as useful in traditional trials, we then proceeded to test whether that would be the case in high technology trials (trials in which the evidence was presented digitally).⁶³

Technology-augmented litigation is most commonly characterized by the electronic display in court of evidentiary exhibits. Although there are a wide range of possible courtroom technologies, *see generally* www.courtroom21.net, the core function is the display of documents, photographs, charts, and similar exhibits. Anecdotal evidence indicates that such trials are substantially faster than traditionally presented cases, and the federal courts are moving rapidly to wholesale adoption of the

⁶³ During Trial Phase I, we had discovered jurors would not read document camera instructions and that their performance was adversely affected as a result. During Trial Phase II we also wished to confirm that our solution to that problem (an addition to the closing jury instructions and demonstration operation by a court officer) was effective. It proved to be, as discussed below.

enabling technology, an adoption that will spur state court adoption. It is at least desirable to enable courts to make digitally presented exhibits available to the jurors during deliberation in the same way in which they were presented at trial. Further, some computerized exhibits have never had a physical form, and jury review of them in an altered nature seems questionable.

Providing jurors with a meaningful opportunity to review electronically presented evidence is not a simple matter. Not only must the deliberation room be equipped with the technology to review computer-based exhibits, but from a practical perspective, the jurors must be supplied with a way to operate that equipment that does not require computer literacy or expertise. After much thought, we formulated a possible solution and moved to test it.

§ 5-31.00 Methodology

In Trial Phase II, we tried six repetitions of our basic case, *Matthews v. Morton*. Unlike Trial Phase I (in which we had three conditions: no technology, document camera and plasma screen, and document camera and front-projection unit) Trial Phase II had two conditions: no technology and full technology. Full technology consisted of a WolfVision Visualizer document camera, a desktop computer with keyboard, a remote control for the 40-inch Pioneer plasma screen that switched between the document camera and the computer, a large 3000i rear projection SMART Board that was used for electronic writing, and a traditional chalkboard. During trial, counsel used the McGlothlin Courtroom's evidence display technology to present all evidence. Whereas in Trial Phase I jurors received physical copies of the evidence, in Trial Phase II they saw the evidence on both their individual LCD computer monitors⁶⁴ as well as the 50-inch diagonal Pioneer plasma screen mounted on the wall behind the witness stand. In addition, the Pioneer plasma screen was equipped with a SMART Technology Matisse overlay that converted the screen into a large touchpad. Both counsel and witnesses were able to highlight key portions of the documentary evidence.⁶⁵

The deliberation room computer was loaded with copies of all of the evidence admitted at trial and copies of the jury instructions. Critically, we used a high-end litigation software package (TrialPro by IDEA, Inc.) to enable access to the exhibits. We supplied the jurors with a list of the exhibits and simple codes with which to recall them, *e.g.*, X1 for the riding instruction contract.⁶⁶ We then modified the usual TrialPro menu to eliminate nearly all of the user options except the ability to enlarge text (to make call-outs).

⁶⁴Most jurors had an individual monitor built into the jury box in front of the juror; two jurors shared with a neighbor.

⁶⁵These "callouts" are customary in technology augmented trials. Their use in these experiments led to an important discovery, addressed later in this report, that jurors became frustrated and angry by what they perceived as the intentional obfuscation by counsel of the underlying full document.

⁶⁶The software also permits the use of a barcode reader which would be even more effective.

§ 5-31.10 Participants

The jurors in Trial Phase II were 58 undergraduate students (29 female, 29 male) enrolled in Introductory Psychology courses. As in Trial Phase I, to ensure that each experimental jury had eight people, extra participants were recruited for the study. As before, these “alternate” jurors heard all of the testimony, completed the predeliberation questionnaire, and were then dismissed. The remaining participants were run in mixed-sex juries of eight people per jury; all participants received experimental credit of two hours for taking part in the research. Six sessions were run, with the result that a total of 48 participants (24 female, 24 male) took part in the deliberations. As a precaution against selection bias, we compared the predeliberation questionnaire answers of the dismissed participants ($n = 10$) to those of the participants who stayed to deliberate. This multivariate analysis of variance did not produce an overall difference between dismissed and remaining participants, so there is no indication of biased selection of participants to deliberate.

Counsel, witnesses, and judges remained the same as in Trial Phase I.

§ 5-31.20 Equipment

As already noted, Trial Phase II differed from Trial Phase I in that counsel used the the McGlothlin Courtroom’s basic evidence display technology. In this second study, the jury deliberation room was set up with comparable levels of technology – permitting jurors to display evidence by using a document camera and a computer, both displayed on a 40-inch diagonal plasma screen. Jurors were also given a traditional chalk board and a 67-inch diagonal rear-projection SMART Board. The SMART Board was set up to permit the jurors to write on it electronically.⁶⁷

All technology-condition juries deliberated in the jury room; the control groups, however, deliberated in another room without technology.

It had been our hope to try an independent repetition of *Matthews v. Morton* to test the efficacy of providing a computer retrievable verbatim transcript to the jurors. We reluctantly abandoned this after consulting further with our Court Record Manager, a highly skilled realtime court reporter. For such a transcript to be usable, it would not only have to be certified as



“Front” of jury room with document camera, computer keyboard, and plasma screen.

⁶⁷ We did not use the SMART Board as a display device. There is every reason to believe that it would have been ideal, surpassing even the plasma screen. However, the probability of a court placing such a unit in a deliberation room in the near future seemed too small to justify such use. Given such a unit, a court would be more likely to use it in a courtroom. Although the 3000i is portable, it is not easily portable, especially when compared to a 40-inch plasma screen, and we wished to make our experiment as realistic as possible. Although our survey of state court technology made it clear that the state courts do not yet utilize plasma screens in any numbers, their declining price will make them more prevalent in the near future.



"Rear" of jury room with chalk board and 3000i SMARTBoard

accurate but it would also have to be purged of all inappropriate material. With the Court Record Manager's assistance we could have done this for *Matthews v. Morton*, but it is highly unlikely that this would be possible in nearly any real case. Providing a timely accurate transcript would most likely require a scopist, an editor who corrects the court reporter's rough draft transcript immediately after output. Further, both counsel and judge would need to cooperate in preparing an edited transcript that was devoid of all inadmissible material, a timely and potentially controversial matter. We concluded that this simply would not be done in a real case and abandoned the effort.

§ 5-31.30 Procedure

As noted earlier, the first study in this series had indicated essentially no differences between the "moderate-" and "high-" technology conditions, though both of these were clearly different from the condition in which there was no deliberation-room technology available. In this study, technology-condition jurors were told as part of the concluding jury instructions:

The evidence will be available to you on the jury room computer, which you may use to display the evidence for all of you to review. The bailiff will show you how to operate the equipment.

To avoid expectancy effects, the technology condition manipulation was the last instruction delivered by the judge, immediately prior to deliberation. A set of index cards, placed face down in front of the judge, contained the technology manipulation (in a random order within the counterbalancing for sex of litigants). Thus the judge could not know which technology condition would be delivered until s/he turned the top card over immediately before the jurors left to conduct their deliberations.

Upon arrival in the jury room, the bailiff showed the jurors how to operate the computer evidence retrieval system, the document camera, and the SMART Board, and how to switch between the document camera and the computer. Written instructions were supplied as well.

The resulting experimental design was a 2x2x2 factorial design (Technology Condition x Participant Sex x Before/After Deliberations), with repeated measures on the last factor. Each replication of the trial required eight jurors (four males and four females); as before, the sex of the judge and litigants was counterbalanced across the set of six replications. So that group size would not be a factor in the deliberations, each trial was "overbooked," as noted in the first experiment. A research assistant called male participants the night before their scheduled session in an attempt to increase the response rate among males. These precautions were successful, and each trial had the requisite eight jurors. Only ten individuals served as "alternates."

As in Trial Phase I, participants in the research were met in an anteroom by one of the Law School's graduate research fellows or Courtroom 21 staff members, who provided a brief description of the research, noted that the results were confidential, and obtained participants' permission to videotape the jury deliberations. Participants who agreed to continue (all did) were ushered into the Courtroom and seated at the eight flat-screen monitors that serve as the "jury box" (alternate jurors were seated in the auditorium-style seating located behind the jury positions). The graduate research fellow then provided an introduction to the case, described what the participants would be asked to do, and then turned the proceedings over to the Law School faculty member who was serving as judge for that particular replication of the trial.

The judge then initiated the proceedings, using the same civil case (*Matthews v. Morton*) used in Trial Phase I. When the case had concluded (in slightly less than one hour), the jurors were given jury interrogatories (specific questions to be answered) as well as a general verdict form. These were supplied in paper form as they likely would be in a real case. They also provided a potential reason for the jurors to use the document camera in addition to the computer. The graduate research fellow explained the instructions for the predeliberation questionnaire (the same questions asked in the first trial), and all participants completed this questionnaire. Then the eight participants who constituted the deliberating jury were ushered into the jury room, where their deliberation task was described. At this point in the proceeding, the alternate jurors were interviewed by another assistant, thanked for their participation and excused.

The deliberating jurors discussed the case, often for up to about an hour, reached a verdict, and then completed the post-deliberation questionnaire. Upon completing this questionnaire the jurors were interviewed, thanked for their participation and excused.

§ 5-31.40 Dependent Variables

As in the first experiment, the dependent variables included the pre- and post-deliberation questions. We also videotaped the deliberations with the permission of the jurors.

§ 5-32.00 Results

§ 5-32.10 Verdicts

As previously noted, the case had been designed to produce a mixed set of verdicts. Of the six trials, there were two verdicts for defendant and four verdicts for plaintiff (1 \$1,650.00 for plaintiff (psychological damages for defendant laughing); \$485 plus 3 weeks pay for plaintiff, \$500, and \$185). Although this is a slightly larger ratio of plaintiff's verdicts (2:4 compared with 4:5) than in Trial Phase I, we suggest that this is likely the result of improved performance by counsel. Approximately two months separated Trial Phase II from Trial Phase I and although the cases were markedly similar there were small variations in some of the cases. The largest verdict of \$1,650.00 was obtained when counsel, seizing on a gloss added by plaintiff during testimony, argued that the defendant had violated her duty as a teacher when she laughed at the plaintiff after his fall from the horse.

§ 5-32.20 Timing

It was not our intention to time the trials. However, as the Trial Phase II experiment progressed, we realized that conducting fifteen repetitions of the same trial, nine without courtroom technology, and six with, would have been a highly useful experiment in its own right. We lack the data to confirm our impression, but we believe that on average the use of courtroom display technology saved about 10% of trial time. Should this be the case, it would be of consequence, as some judges and lawyers have expressed doubt that courtroom technology results in time savings in cases that do not involve massive document use.

§ 5-32.30 Analysis

The predictions were tested using the same 12 questions asked of the mock jurors both prior to deliberation and following deliberation. With only 58 participants in the second study, it is difficult to justify factor-analyzing the questionnaire items. For this reason, and for consistency in measures across the two studies, we simply used the results of the factor analysis conducted in the first study. Specifically, we retained the five-item “benefit” measure and conducted separate analyses of variance on the remaining seven items. We did examine the Cronbach reliability of the 5-item scale: The overall reliability was .68, very close to the recommended .70. Omitting the final item, expected personal comfort in using technology, raised the α level to .71, but this change was small enough that it did not justify changing the elements of the scale from the first experiment to the present experiment. Mean scores for all variables testing the effects of the deliberation-room technology are shown in the Table below.

Mean Scores For Overall Benefit, Characterization Of Technology, And Impressions Of Process

	Judged Before Deliberation No Technology	Judged Before Deliberation With Technology	Judged After Deliberation No Technology	Judged After Deliberation With Technology
<i>n</i> :	24	24	24	24
Variables Showing Interaction Of Technology Condition And Before/After				
Combined factor score for overall benefit (5 items)				
<i>M</i>	3.76 ^a	3.58 ^b	2.57 ^a	3.70 ^b
<i>SD</i>	0.64	0.58	0.83	0.51
Technology's helpfulness in deliberations				
<i>M</i>	3.13	3.33	2.63	3.71
<i>SD</i>	0.74	0.82	1.06	0.75
Variables Showing Difference From Before To After Deliberations				
One's own opinion taken into account during deliberations				
<i>M</i>	3.38	3.29	3.88	3.67
<i>SD</i>	0.49	0.81	0.99	0.87
Ease of reviewing evidence				
<i>M</i>	3.65 ^b	3.58	3.96 ^b	4.21
<i>SD</i>	0.71	0.65	0.93	0.93
Extra time added by operating the technology				
<i>M</i>	2.00 ^b	2.25	1.30 ^b	2.21
<i>SD</i>	0.74	0.74	0.63	1.14

^a Number of participants in this cell reduced to 19 because of failures to answer.

^b Number of participants in this cell reduced to 23 because of failure to answer.

§ 5-32.40 Tests of Technology Conditions

All analyses were 2x2x2 (Technology Condition x Participant Sex x Before/After Deliberation) with repeated measures on the last factor. Because of the number of separate analyses, we elected to set the alpha level at .025, as we did in the first experiment. Two items, having to do with expectations about the degree to which issues would be addressed and ratings of the helpfulness of jury instructions, did not produce differences that reached our predetermined alpha level of .025. There were significant differences on the five-item scale and on five other questions.

The first analysis was conducted on the combined overall assessment of the benefit of technology (created from the five items that constituted the first experiment's first factor). This analysis showed an interaction between Technology Condition and Before/After. Specifically, before the deliberations, participants in all conditions estimated that the technology would prove to be valuable (average scores greater than 3.5). After the deliberations, participants in the technology condition found their expectations upheld, whereas participants in the no-technology condition now thought that they had previously overestimated the value of technology (mean score for this condition was 2.57), $F(1, 38) = 31.98, p < .001$. This is exactly the pattern that was obtained in Trial Phase I. Also as in Trial Phase I, this analysis also revealed a main effect for Before/After, $F(1, 38) = 21.44, p < .001$; and a main effect for Technology Condition, $F(1, 38) = 9.84, p < .003$. As before, both of these main effects are properly regarded as consequences of the significant interaction.

One other dependent variable showed comparable Technology Condition x Before/After interaction. On the variable assessing technology's value in deliberations, participants in the No Technology condition lowered their estimates of technology's value from before to after the deliberations, whereas participants in both of the technology conditions *raised* their assessments of its value, $F(1, 44) = 8.38, p < .006$. Again, this is exactly the pattern found on this variable in the first experiment. Using the technology improved jurors' perceptions of the process, not being able to use it reduced their satisfaction.

§ 5-32.50 Other Effects of Deliberations

Three of the dependent variables showed a main effect for Before/After deliberations. These were the extent to which people believed their opinions would matter, the ease of reviewing the evidence, and the time that technology added to the process. Regardless of technology condition, jurors believed after the deliberations that their opinions had mattered more than they had expected them to matter, $F(1, 44) = 10.30, p < .002$. This is the same pattern as we found in the first experiment. Second, again regardless of technology condition, jurors found it easier to review the evidence than they had expected prior to deliberations, $F(1, 43) = 8.34, p < .006$. Third, not surprisingly, the time taken by technology in deliberations was less than expected, $F(1, 43) = 5.80, p < .020$; this time estimate was lower in the no technology condition than in the technology condition, $F(1, 43) = 8.59, p < .005$. Both of these results for time were heavily influenced by the very small time estimate in the No Technology Postdeliberation cell.

§ 5-32.60 Sex Differences

Unlike the results from Trial Phase I, results of this second study showed one difference based on the sex of the participants. Regardless of technology condition or the time the rating was made (predeliberation or postdeliberation), females considered the exhibits more helpful ($M = 3.67$, $SD = .87$) than did males ($M = 3.37$, $SD = .77$), $F(1, 44) = 5.92$, $p < .025$. We did not predict sex differences, but there are a few possibilities that might be examined in future research. Males might have decided in advance of the deliberations that their minds were made up, so the exhibits would be expected to add no value, whereas females might have remained more open-minded throughout the proceedings. As an alternative, the two sexes might simply have differed in their beliefs about the importance of the exhibits in deciding the issues at hand. Or there might simply have been sex-based differences in a perceived need for visual, as opposed to largely verbal, information. Obviously, our present data do not permit us to choose among these alternatives – or other possibilities not mentioned. What the data do suggest, however, is that future research on the use of technology in court proceedings should certainly involve both men and women, just in case important and meaningful differences between the sexes emerge in the evaluation of technologically intensive trials and deliberations.

§ 5-32.70 Analysis of the Videotapes

We reviewed the deliberation videotapes. A summary of the tape reviews follows:

Trial 1 (technology; defense verdict)

Discussion about technology: No

Use of Technology: Yes

Items Used & By Whom:

The person sitting nearest to the technology used the document camera and flat screen TV to display the jury questions although she still read them out to the entire group and the computer to display the contract. She also used the zoom function to highlight a paragraph of the contract.

Evidence of influence:

The document camera was used to help guide the jury's discussion but the display of the contract through the computer was done after the jury had completed its decision-making process.

Trial 2 (no technology; \$1,650 for plaintiff)

Evidence of influence:

One person in the group read aloud the psychologist's report and the medical bill when determining liability and damages respectively.

Trial 3 (no technology; defense verdict)

Evidence of influence:

One person in the group read aloud the contract and witness testimony in discussing liability.

Trial 4 (technology; \$485 plus 3 weeks pay for plaintiff)

Use of Technology: Yes

Items Used & By Whom:

The person sitting nearest to the technology used the computer and flat screen TV to display the contract and the psychologist's report. The foreperson used the smart board to write down the different items of damages.

Evidence of influence:

The computer was used to facilitate the jury's discussion of important evidence in that all did not have to read these documents individually or try to listen to one person read the evidence aloud. The SMART board helped to lay out each individual item of damage so that the jury could approach each one in a more orderly fashion.

Trial 5 (technology; \$500 for plaintiff)

Discussion about technology: Yes, in a minor way

Substance of discussion:

One person was trying out all the features of the computer rather than participating in the deliberations. He stated that if the technology is present, then the people running this program must know that some jurors will play with the technology rather than participate in the deliberations.

Use of Technology: Yes

Items Used & By Whom:

As no one was sitting immediately next to the technology, the person suggesting use of the document camera for the jury questions was the person who used the technology. Two different people who were sitting across the table from the keyboard used the computer to display evidence of the picture of the horse, the contract, the psychologist's report, the accident report, the medical bill, the medical record, and the

witness testimony. The zoom and highlight functions were used often. Although highlighting was done merely for fun, the zoom function made the evidence available for all to read at one time. Most of the group had difficulty using the remote to change from the document camera to the computer as they passed the remote around to several people. The person nearest to the smart board used it to determine liability by writing down each juror's assessment of damages. That person had some difficulty in writing in a fluid line on the board.

Evidence of influence:

The document camera was used to help guide the jury's discussion with the jury questions. The computer was helpful in that the entire group could consider the evidence at one time, especially since this group relied on multiple pieces of evidence in their deliberations. The SMART Board helped to lay out each individual estimate and item of damage so that the jury could approach this decision in a more orderly fashion.

Trial Six (no technology, \$185 for plaintiff)

Evidence of influence:

The group passed around the plaintiff's statement and the contract during its deliberations.

§ 5-32.80 Post Deliberation Interviews

The jurors were interviewed by Professor Lederer after reaching verdict. These interviews proved to be essential to understand the interaction, or lack thereof, between the jurors and the technology.

Somewhat unexpectedly, the post-deliberation interviews also resulted in a large amount of important information about the use of courtroom display technology. We have separated that data from deliberation information.

§ 5-32.81 Jury Deliberation Material

The jurors consistently opined that the deliberation technology was highly useful and desirable. Overall, they used only what they believed necessary.⁶⁸ In one trial the jurors commented that they wanted to use the SMART Board but found no reason to do so given the speed with which they reached their verdict.

Surprisingly, no one had problems with operating the equipment. In some respects, this was extraordinary. In light of the results of Trial Phase I, in which the jurors had ignored written instructions and consequently were unable to use the zoom feature of the document camera, no juror reported problems with the document camera or, critically, the computer and its software-based “call-out” enlargement feature. Jurors used the computer easily.⁶⁹

One jury felt that our listing of exhibits by title was too vague and wanted a list of the available exhibits labeled with greater sufficient specificity, with copies of the list for each juror.

One jury thought in the beginning of the interview that the chalk board would have been as useful as the SMART Board. After further discussion, the jurors decided that they preferred the SMART Board but that a printing capability with the SMART Board would have been very useful. They also emphasized the ease of use of the computer display and enlargement. A different jury explained that it loved the SMART Board. Although one suggested that an “erase board” might have been just as useful for writing, others disagreed, with one complaining about smell. One person voiced some concern that the line width was so large.⁷⁰ No one thought a printing capability was necessary in *this* case, but thought it might be helpful in other cases.

Reminiscent of the inattention by jurors in Trial Phase I to the document camera instructions, one jury did not use the chalkboard because, as one juror explained, since the bailiff hadn’t mentioned its potential use, she hadn’t realized its use was permitted. Another juror said that he hadn’t even noticed it was in the room.⁷¹

In one interview, a juror voiced concern that although the jury room technology is useful it seemed a questionable allocation of resources in a world in which money was needed for so many other things. Professor Lederer asked what her reaction would be if the court already had the equipment and did not need to purchase it specially for deliberations. Given that assumption, she believed that it would be useful and appropriate.

⁶⁸ As noted above, one juror in one trial spent a great deal of time trying out the computer with its call-out software. During the post-deliberation interview, Professor Lederer was told that the *men* had experimented with the Trial-Pro software, at least partly as a form of playing with the technology. Some of the women suggested that they would not have done so had they been closer to the computer keyboard, sticking to what was necessary to the case determination.

⁶⁹ This could be due in part to the fact that our jurors were computer-literate, whereas in Trial Phase I, few, if any, jurors had document-camera experience. We do not believe that to be the case, however, in that the computer’s use depended on specialized software unfamiliar to the general public. We conclude, instead, that success was based upon the process that we used to familiarize the jurors with the technology.

⁷⁰ This is adjustable, although we had not told the jurors that.

⁷¹ It was hard to avoid, standing as it did right next to the large SMART Board.

§ 5-32.82 Courtroom Technology Material

Jurors strongly supported the use of courtroom display technology. They were, however, vocal with respect to a number of concerns. Chief among these was the use of “call-outs” by counsel. In a call-out, the attorney initially projects a document page and then either personally or through the actions of the witness, chooses text to enlarge and emphasize. Customarily, the text chosen is then enlarged and appears against the backdrop of the original, smaller, page image, which usually is then impossible to see. Jurors complained that they could not read the original document, either because of call-outs, or, sometimes, because of the speed with which counsel presented the case, removing the document too quickly. One woman described counsel’s documentary evidence as “propaganda,” as the short time of display, call-outs, and other visual emphasis prohibited her from reading the entire document and what might have been adverse information. Other juries repeated the complaint, and we later discovered that this problem was customary in real high-technology trials. Unfortunately, judges appeared to be unaware of it, as their courtroom deputies or bailiff had failed to advise the court of the problem. After discussing the issue with a number of our juries, we determined that a possible solution would be for the judge in opening instructions to advise the jurors that display technology would be used; that the lawyers would emphasize the parts they believed of greatest importance, and that the jurors would have the ability to read the entire document in the jury room during deliberations. We have recommended this approach to our Courtroom 21 Court Affiliates and must await their reports on its success. Of course, our survey of deliberation room exhibit practice points to a possible conflict with customary court procedure for many courts; the judge cannot give such an instruction if the exhibits will not in fact be supplied to the jurors. This may suggest the need for a new approach in technology-augmented trials.

The jurors also noted that the visual quality of the jury LCD monitors varied, with some being a bit fuzzy so that they had problems reading small text. Clearly, resolution quality should be a key concern for courts.⁷²

§ 5-33.00 Conclusions from Trial Phase II

We concluded the following from Trial Phase II:

1. Most jurors appreciate and find useful deliberation room display technology.
2. Deliberation room technology will be used, and used properly if, and perhaps only if, it is first demonstrated by a court officer.
3. Jurors can easily use a computer to retrieve and display photograph and document images, so long as the system is designed for that purpose.

⁷²Although most jurors had a personal LCD monitor, one or two needed to “look on” with a neighbor. The jurors reported that this was satisfactory, except for one juror who had a monitor that had an inadequate picture.

4. When using computer-displayed exhibits in deliberation, each juror should be given a master index to the exhibits with the index supplying sufficient information about each exhibit to reasonably identify it for most jurors.
5. The mere fact that a deliberation room has technology does not mean that it will be used by jurors, even if they fully understand its use.
6. Novel electronic deliberation technology will tempt some jurors into “playing” with the equipment. However, this appears not to present a significant problem, either in terms of time or otherwise.
7. Electronic annotation technology, particularly SMART Board-type technology is desirable in deliberation rooms; permitting jurors to print out their writings and calculations is perceived as desirable by some jurors.
8. If juror frustration with electronic call-outs and too rapid exhibit display in the courtroom is to be cured, courts may have to guarantee juror review of the exhibits during deliberations.

§ 5-40.00 Real-life Trials - Trial Phase III

Having determined that jury room technology is used and perceived as useful by jurors, we wished to test it and our basic procedure for its use in real cases. The United States District Court and Florida’s 9th Judicial Circuit, both trial courts of general jurisdiction, agreed to try technology-enhanced deliberation in real cases. The courts agreed to equip a deliberation room with a document camera and a display device, whether plasma-screen or front-projection. With the assistance of the presiding judge, jurors in real cases would have a court officer explain the potential use of the equipment just prior to deliberations. After deliberation and after verdict, the jurors would fill out a questionnaire.

§ 5-41.00 United States District Court for the District of Oregon

The United States District Court tries relatively few jury trials. Following the recommended protocol, the Court installed a document camera and a front-projection unit (which displayed its image on a white-board) in the jury room for two cases. The Courtroom Deputy Clerk escorted the jurors to the deliberation room and demonstrated the equipment’s use. In light of the press of judicial business, the Court was unable to ensure that the post-verdict questionnaires were distributed. The Court then mailed the questionnaires to the jurors in one of the two cases. The case involved was a criminal trial involving seven defendants and approximately 900 pieces of documentary evidence. The Courtroom Deputy Clerk reported that the jurors expressed excitement as she explained the operation of the equipment, expressing concern that they had thought that they would have to view the exhibits individually. As of the close of this report, questionnaires were returned from eight jurors.

Five of the eight jurors had never served on a jury before; one had served twice previously. One of the jurors not only completed the form but also volunteered significant additional information. The jurors reported that:

1. They knew that they could use the display technology to look at exhibits while discussing the case.
2. The jury, as a whole, used the display equipment to look at exhibits as a group; two jurors indicated that individuals or subgroups had also used the technology.
3. Of five categories⁷³ from “very troublesome” to “very useful,” *all* of the jurors reported that the display equipment was very useful. One juror volunteered that “It cut *way* back on paper & I believe it made the time more effectively used.” (emphasis in original).
4. When asked whether the display technology helped them to better understand the evidence in the case or whether it got in the way of their understanding, six of the jurors reported that the display equipment was extremely helpful in understanding the evidence, and two reported that it was “somewhat helpful.” One juror volunteered that the jury “viewed several items multiple times & it aided in our discussion.”
5. When asked whether the “Technology made deliberations move faster or did it slow them down?” seven jurors said that it made deliberations move “much faster,” and one said that it made deliberations move “somewhat faster.”
6. When asked how useful it was to have the ability for jurors to see the exhibits while they were discussing them, *all* of the jurors reported it was “very useful.” One juror volunteered that without the technology, the jurors “wouldn’t have been able to track specifics together otherwise.”
7. When asked whether the juror would want all the jurors to be able to see the exhibits while the jury talked about them should the juror serve in another case, *all* of the jurors replied “yes.”

In addition to the above, one juror wrote on the questionnaire that it would have been helpful to have had available an index to the exhibits.

Because we received so few questionnaires back, and those only from one case, our data has only limited utility. However, the consensus response, which is in accord with the results from Trial Phases I and II, certainly supports the proposition that jury room deliberation display technology is used and perceived by jurors as highly valuable.

⁷³ A sixth category was “cannot say.”

§ 5-42.00 The Ninth Judicial Circuit of Florida

As of July 18, 2002, the 9th Judicial Circuit had conducted four trials using deliberation room technology. All of the trials are described as being short, of two-to-three hour duration, with small amounts of non-testimonial evidence. In all cases the trial judge advised the jurors of their opportunity to use the jury deliberation room technology, if they thought it was desirable to do so. However, contrary to our protocol, the court officer who escorted the jurors to the jury room did not illustrate how to use the technology. Subsequently, the technology was not used in any of the trials, a result in complete conformity with our Conclusion Number 2 from Trial Phase II in § 5-33.00: “Deliberation room technology will be used, and used properly, if, and perhaps only if, it is first demonstrated by a court officer.

We have asked the 9th Judicial Circuit to utilize our requested protocol in additional cases and will update this report on the web should we obtain further data.

§ 5-50.00 The Courtroom 21 Laboratory Trials

Every year the William & Mary Law School’s Legal Technology Seminar conducts an experimental one day Laboratory Trial. A case is created, often based on a real case, and tried using as much of the Courtroom 21 technology as may be possible. A United States district judge presides, and a community jury hears the case. The trial is used as a vehicle for numerous different experiments, most of which attempt to measure the consequences of given technology uses on participants in the trial process, especially the jury.

The 2000 Laboratory Trial was a civil tort case involving an aircraft crash. We installed a document camera in the jury room with a plasma screen and were surprised to learn that the jurors had used it not only to review at least one important exhibit but also to scrutinize, and argue over, the jury interrogatories. After their verdict, the jurors strongly endorsed the future use of jury deliberation room display technology.

The 2001 Laboratory Trial was a capital criminal terrorism case. We again installed a document camera in the jury room with a plasma screen, and again the jury endorsed the concept.

The 2002 Laboratory Trial was a criminal corporate manslaughter case. This time we equipped the jury room in conformity with Trial Phase II: a document camera, computer with TrialPro software, plasma screen and rear projection Smart Board. Jurors used the equipment successfully and again endorsed its use.

§ 6-10.00 Assistive Technologies

§ 6-11.00 In General

In modern times we have tried to ensure that all members of our nation are available for jury service.⁷⁴ Accordingly, we are increasingly faced with jurors who are in need of special assistance to assure their ability to function properly as jurors. In most circumstances, this means assisting the hard-of-hearing, although it may refer to the visually challenged as well.

In addition to sign language interpretation, there are two general approaches for helping the hard of hearing. Those who can hear to some degree can be assisted through infrared headphones. One or more microphones conveys sound to the infrared emitter which transmits it to individual headphones worn by jurors via infrared. Each headphone-wearing juror then hears a personally amplified version of what is occurring.⁷⁵ This approach has the added advantage that it can be used to convey foreign language interpretation. Indeed, systems capable of multiple frequencies permit transmission of multiple languages.

Those who cannot benefit from these devices but who can read can use the services of a realtime court reporter. Communication Access Realtime Translation (CART) is a service provided by a court reporter to assist persons who are deaf, late-deafened or hard-of-hearing (HOH) in any proceeding. During a trial or deliberations, CART requires a separate reporter other than the reporter taking down the trial to provide CART services to the hard of hearing witness, juror or trial participant. The CART reporter ordinarily will use the CART reporter's own equipment, including, but not limited to, a steno machine with a laptop computer with appropriate software or a voicewriting enabled computer. The CART reporter ordinarily sets up next to the person needing assistance during the trial and/or deliberations. The CART court reporter's output would be displayed on a computer monitor screen in realtime. The screen would face the person so that he or she could read along during the trial or deliberations. The difference between court record realtime and CART reporting is that CART isn't necessarily verbatim. It enables the HOH person to understand the proceedings. Therefore, paraphrasing by the reporter is commonplace in order to get the meaning across to the juror.

Assistance to the visually challenged can also be of importance. Those who can see with assistance may benefit from using computer software that displays substantially enlarged images on the monitor. In the event a blind juror who can read braille is part of a jury panel, documents can be scanned to a computer and then sent to handheld braille devices that will permit the juror to read the document in braille. This was done successfully for a blind witness in the 2001 Courtroom 21 Laboratory Trial, *United States v. Linsor*.

§ 6-12.00 Survey Data

⁷⁴ See, e.g., *Standard 1: Opportunity for Service*, ABA STANDARDS RELATING TO JUROR USE AND MANAGEMENT (1993). "Among the suggested steps for implementation" is:

9. Examine the need for communications technology and services so that persons with hearing and sensory disabilities can serve on juries.

⁷⁵ This same technology can work with hearing aids as well.

§ 6-12.10 State Data

Our survey of state courts obtained the following data with respect to assistive technology:

Question 4 asked: *Please check all types of assistive devices in use in any of your courtrooms.*

Assistive Device	Number Having Device Indicated	Percent of Total
Language interpretation	52	31.9
Special handicap access jury spaces (in jury room and/or jury box)	52	31.9
Infrared hearing assistance devices	50	30.7
Real-time transcription	50	30.7
Radio frequency hearing assistance devices	30	18.4
Other	14	8.6
TDD device	10	6.1
Braille readers	0	0.0

*Note that this figure of real-time transcription does not match the question 1 response rate (39.9% on question 1 versus 30.7% here).

Question 4 Detail of “Other” Category from the above table

Assistive Device	Number Having Device Indicated	Percent of Total
Hearing assistance devices	6	3.7
Human interpreters	5	3.1
Handicap access to court/courtroom	2	1.2
Equipment is borrowed	1	0.6

Roughly one quarter (25.8%) of respondents reported no assistive technology in their courtrooms. A little more than a quarter of respondents (27.6%) reported two assistive devices. About one fifth of respondents (22.7%) reported having only one device, 16.6% of respondents reported having 3 devices, and 7.3% reported having 4 to 5 devices. “Other” category responses were included in this tally as “yes” responses.

Question 5 asked: *If your court provides assistive devices to jurors, who generally owns them?*

Owner of Devices	Number of Responses	Percent of Total
Court	107	65.6
Other	30	18.4
State/local govt	19	11.7
Local agency or group	7	4.3
ADA provider	0	0.0

Question 5 Detail of “Other” Responses in the above chart

Owner of Devices	Number of Responses	Percent of Total
Description field left blank	25	15.3
Other parties	2	1.2
Court; local agency or group	1	0.6
Court; state/local govt	1	0.6
Court; local agency or group; state/local govt	1	0.6

The majority of assistance devices are provided by the court (66.9%). State and local governments provide 11.7% and local agencies or groups provide 4.3%. 17.2% of respondents indicated that the devices were provided by a source not listed on the survey, but 82% of them failed to list the sources.

§ 6-12.20 Federal Data

The preliminary Wiggins & Dunn report from the Federal Judicial Center Survey provides the following federal data:

Table 6
Number of Districts That Use Devices To Assist People With Hearing, Language or Other Impairments

Courtroom Device(s)	Number of Districts
Infrared hearing assistance devices	27 ^a
Radio frequency hearing assistance devices	9 ^a
Telephone interpreting system	12 ^b
Infrared interpreting system	23 ^a
TDD device	1 ^g
Braille readers	1 ^b
Real-time transcription for providing assistance to the hearing impaired	9 ^b
Special handicap access jury spaces (in jury room and/or jury box)	19 ^c
Other	1

a = 1 missing or can't say response

b = 2 missing or can't say responses

e = 5 missing or can't say responses

g = 7 missing or can't say responses

§ 6-13.00 Future Work To Be Done

It is clear that a substantial number of state and federal courts have access to infrared hearing assistance devices. 30.7 % of reporting state courts indicate the availability of realtime transcription. More of the 31 reporting federal districts indicate the general availability of realtime (20 districts) than do those showing its use for assistive purposes (9 districts).

In our original experimental design it was our intention to conduct an assisted technology experiment. This proved to be impossible. It became clear that we lack at this time sufficient knowledge to be able to formulate a useful experiment. It would have been easy to use infrared hearing assistance devices or to use realtime transcription or CART for a deaf juror or to send text to braille documents to a blind juror, all of which we have done previously in one form or another.⁷⁶

However, our research was insufficient to permit us to properly formulate the issues we wished to investigate. We do not know, for example, if we should be comparing CART to realtime, or dealing with jury deliberation specific human factors of which we are unaware. Determining a research agenda will require substantial assistance from both the courts and members of the affected communities. We have embarked on that course. As currently planned, the 2004 Courtroom 21 Laboratory Trial will

⁷⁶ We used stenographic realtime transcription for a deaf law student in her first two practice trials.

emphasize the use of assistive technologies during trial and deliberations and we will be spending much of the 2002-2003 academic year formulating our experimental agenda.

§ 7-10.00 Conclusions and Recommendations

As we noted at the beginning of this report, our “study sought to determine two things: whether jury deliberations in traditional, non-technology cases, could be assisted through the use of modern technology, and whether jury deliberations in the new technology enhanced cases could be assisted through the use of technology during deliberations.”

The data that we have obtained strongly supports the conclusion that jurors who are given appropriate access to deliberation room display technology generally use the technology, do not use technology perceived as being without case-specific value, and perceive that the technology is highly useful. Interestingly, the highest praise for the technology comes from actual jurors in the United States District Court for the District of Oregon.

What we do not know from our study is how the use of jury room display technology affects the length of deliberations and whether it enhances the quality of the verdict. The unanimous view of the real jurors who responded to the Oregon questionnaires was that the technology shortened their deliberations. However, that is, of course, only a perception. Unfortunately we did not compare deliberation times within the case repetitions using the same technology conditions. Our perception, however, was that the technology at least did not prolong deliberations. In many respects the quality of the verdict is the ultimate issue. Our experiments were not designed to deal with that question.

The verdicts rendered in the two controlled studies seem to demonstrate, however, that the technology did not skew results. In a case in which the liability verdict could easily go either way and in which the plaintiff’s damage award, if any, was likely to be small, the verdicts appear to be unrelated to the technology. Further experimental work dealing with these two areas would be helpful.

Our research leads us to offer the following specific recommendations and conclusions for judges and court managers interested in using jury room deliberation technology:

1. It would be helpful to lawyers, court administrators, and technologists if, to the degree compatible with judicial independence and law, the judges of each court or courthouse could determine a consistent policy as to when and what types of exhibits should go to the jury.
2. Deliberations in traditional cases with documentary evidence can be assisted by placing a document camera and a proper display device in the jury room.
3. Given copies of jury instructions or interrogatories some jurors will use display technology in an effort to comply exactly with the court’s instructions.
4. Permanent technology installations are not necessary; portable equipment can be used, permitting its relocation from one room to another.
5. A variety of adequate display devices including plasma screens, rear- and front- projection, and, in appropriate cases, televisions, is available, permitting many courts to use or recycle equipment installed in courtrooms.

6. Display systems that permit visible annotation are desirable.
7. The quality of jury room displays is heavily dependent on the input and display equipment used, and may also be greatly affected by room conditions, including lighting and exposure to natural light.
8. Whether a document camera or computer is used, useful display of exhibits requires the ability to enlarge (zoom in) on portions of the page.
9. Absent individual LCD juror monitors, equipment that will display a large readable image (such as a very large rear-projection unit or a front- projector with enough useful distance for a large picture) is recommended.
10. Since many jurors will ignore written instructions left in the jury room, the use of deliberation technology requires its demonstration by a court officer, preferably following judicial instructions noting the availability of the technology.
11. Jurors should be supplied with an exhibit list, especially when computer input is used.
12. To prevent frustration or distrust of the trial process, jurors in technology-augmented trials should be given the ability to review the exhibits during deliberations.
13. It is feasible and desirable to give jurors in technology-augmented trials the ability in the jury room to review exhibits that were displayed at trial in digital form. The key to doing this successfully appears to be the adoption and minor modification of standard off-the-shelf litigation presentation software. However, giving the jury this capability requires a member of the court staff to load the evidence into the computer before deliberations. Unlike traditional trials with document cameras in the deliberation room for paper exhibits, this would place a burden on the court.
14. Depending upon the number and type, switching among multiple electronic devices in the jury room can be simple or complex. However, to the degree that all evidence is digital and can be loaded into a computer, switching concerns are obviated; the computer would handle that easily.
15. Display capability in the jury deliberation room need have no effect on whether the court will allow jury review of any given type of evidence.

There is much more work to be done in this area, and there are other technologies to be evaluated. Given the data that we have obtained, however, we conclude that jury room deliberation technology will be used by jurors intelligently and be perceived as highly useful by the jurors. In the absence of any apparent negative risk factors, we thus recommend that, with all due respect for financial constraints, courts strongly consider the adoption of and use of jury room deliberation technology.

Appendix A

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SJI Grant Advisory Panel

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Appendix B
Legal Research Results

Use of Exhibits and Evidence in the Jury Room

A Survey of Legal Authorities and Commentary

State Law

ALABAMA

CODE

Ala. Code § 12-16-14 (2001).

§ 12-16-14. Evidence taken with jury to deliberation

All instruments of evidence and depositions read to the jury may be taken out by them on their retirement.

Ala. R. Crim. P. 22.1.

Rule 22.1. Materials used during deliberation

(a) Required materials. The jurors, upon retiring to the jury room for deliberation, shall take with them the applicable forms of the verdict.

(b) Permitted materials. Within the exercise of its discretion, the court may permit the jurors, upon retiring for deliberation, to take with them exhibits, writings, and documents that have been received in evidence.

CASES

Meadows v. Coca-Cola Bottling, Inc., 392 So. 2d 825, 828 (Ala. 1981).

“[I]t is within the trial court's discretion whether to allow instruments of evidence to go to the jury room where they could be given undue emphasis and inordinate weight.”

National States Ins. Co. v. Jones, 393 So. 2d 1361, 1367 (Ala. 1980).

A tape recording of a pertinent event, after properly being admitted into evidence, “was eligible to be taken to the jury room if the Judge found it was proper.”

Williams v. State, 654 So. 2d 74, 76 (Ala. Crim. App. 1994).

The Court found no error where an exhibit that was properly admitted into evidence was permitted to be taken to the jury room.

ALASKA

CODE

Alaska R. Civ. P. 43.1.

(f) SUBMISSION TO THE JURY

Unless otherwise ordered by the court, all exhibits admitted into evidence shall be given to the jury for deliberation, except the following exhibits will not be given to the jury without a specific court order:

1. live ammunition;
2. firearms;
3. drugs and alcoholic beverages;

4. perishable, flammable or hazardous materials; and
5. money, jewelry or other valuable items.

The court may allow a photograph of an exhibit to be submitted to the jury in place of the physical exhibit.

Alaska R. Civ. P. 48.

Rule 48. Order Of Trial Proceedings -- Management Of Juries

c) View of Premises by Jury.

When the court deems proper, it may order a proper officer to conduct the jury in a body to view the property which is the subject of the litigation or the place where a material fact occurred and to show such property or place to it. While the jury is making its inspection no one shall speak to it on any subject connected with the trial. The court may order the person applying for a jury view to pay the expenses connected therewith.

(g) Items Which May Be Taken Into the Jury Room.

Upon retiring for deliberation the jury shall take with it any exhibits, except depositions, that have been introduced into evidence which the court deems proper.

Alaska R. Crim. P. 27.

Rule 27. Proceedings Upon Trial--Management of Juries

(b) View of Premises by Jury.

(1) The court may, on application of a party or on its own motion, order the jury in a body to view the property which is the subject of the litigation or the place where a material fact occurred. The court may order the applying party to pay the expenses connected with fulfilling the order.

(2) An officer of the court shall accompany the jury at such times and shall ensure that no one speaks to the jury on any subject connected with the trial while the jury makes its inspection.

Alaska Admin. Bull. 9

II.(D) Marking Photographs Substituted for Exhibits.

1. If an exhibit is ordered returned to a party and a photograph of the exhibit substituted in its place, an exhibit sticker will be placed on the photograph showing the same exhibit number assigned to the substituted exhibit. A notation will be made on the exhibit list that the exhibit was returned and a photograph substituted in its place.

2. [W]hen a photograph is sent to the jury in place of a physical exhibit ... the physical exhibit remains in court custody.

CASES

No Cases.

ARIZONA

CODE

Ariz. R. Crim. P. 22.2.

Rule 22.2. Materials used during deliberation.

Upon retiring for deliberation the jurors shall take with them:

- a. Forms of verdict approved by the court, which shall not indicate in any manner whether the offense described therein is a felony or misdemeanor unless the statute upon which the charge is based directs that the jury make this determination.
- b. All jurors' copies of written or recorded instructions,
- c. Their notes, and
- d. Such tangible evidence as the court in its discretion shall direct.

CASES

State v. Lichon, 786 P.2d 1037, 1044 (Ariz. Ct. App. 1989).

In an obscenity case the defendant's contention that video equipment placed in the jury room without the request of the jury violated this rule was without merit. "Rule 22.2 only provides what the jury shall take with them to the jury room, not what they shall only take."

State v. Lopez, 754 P.2d 352, 354 (Ariz. Ct. App. 1988).

"In most instances, demonstrative evidence, such as the defendant's tattoos, is in tangible form and is admitted as an exhibit, which the jurors have with them in the jury room during their deliberations." Here, the defendant chose to display the tattoos personally rather than submitted photographs, and the court found no error in having the jury view the tattoos in open court during deliberations.

State v. Snowden, 675 P.2d 289, 291 (Ariz. Ct. App. 1983).

The court found no error where a tape recording of a victim's phone call to the police emergency line during an armed robbery was given to the jury for deliberations. "Whether tangible evidence should be given to the jury for use during deliberations is a matter left to the discretion of the trial court." Absent an abuse of discretion, the appellate court will not find such a ruling erroneous.

ARKANSAS

CODE

Ark. Code Ann. § 16-89-125 (1987).

§ 16-89-125. Deliberation of jury.

- (d) (3) Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause.
- (e) After the jury retires for deliberation, if there is a disagreement between them as to any part of the evidence, or if they desire to be informed on a point of law, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to, the counsel of the parties.

Ark. R. Crim. P. 33.5.

Rule 33.5. Note-taking by jurors.

Jurors may take notes regarding the evidence presented to them during the course of a trial and keep the notes when the jury retires for its deliberations. Any notes so taken shall be treated as confidential, disclosure of the notes or their nature being permissible only between the juror making them and his fellow jurors.

CASES

Goff v. State, 19 S.W.3d 579, 585 (Ark. 2000).

The court did not impermissibly comment on the evidence when it sent all of the evidence to the jury for review following a request by the jury to see a single piece of evidence.

CALIFORNIA

CODE

Cal. Civ. Proc. Code § 612 (1939).

§ 612. Items which may be taken into jury room.

Upon retiring for deliberation the jury may take with them all papers which have been received as evidence in the cause, except depositions, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them any exhibits which the court may deem proper, notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

Cal. Penal Code § 1137 (1969).

§ 1137. Papers that jury may take with them

Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them the written instructions given, and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person. The court shall provide for the custody and safekeeping of such items.

CASES

People v Descant, 124 P.2d 864, 867 (Cal Ct. App. 1942).

The court found no error when checks in forgery case were submitted to the jury for use during deliberations. “Ordinarily it is not erroneous to permit jurors to take to the jury room exhibits which have been received in evidence.”

COLORADO

CODE

Colo. R. Civ. P. 47.

Rule 47. Jurors.

k) Examination of Premises by Jury.

If in the opinion of the court it is proper for the jury to see or examine any property or place, it may order the jury to be conducted thereto in a body by a court officer. A guide may be appointed. The court shall, in the presence of the parties, instruct the officer and guide as to their duties. While the jury is thus absent, no person shall speak to it on any subject connected with the trial excepting only the guide and officer in compliance with such instructions. The parties and their attorneys may be present.

m) Items Taken to Deliberation.

Upon retiring, the jurors shall take the jury instructions, their juror notebooks and notes they personally made, if any, and to the extent feasible, those exhibits that have been admitted as evidence.

(t) Juror Notebooks.

Juror notebooks shall be available during trial and deliberation to aid jurors in the performance of their duties.

CASES

Milano v. People, 412 P.2d 225, 226 (Colo. 1966).

Court found no error where a chalk board diagram that was not admitted into evidence was placed in the jury room at the request of the jurors because the chalk board was admissible evidence that simply was not used. The chalk board showed only the layout of a store that was robbed and so was not prejudicial to the defendant. "It is only when the writing or exhibit has been introduced in evidence that it is allowed to be taken [to the jury room]. It seems, however, that this requirement should be applied according to the substance rather than the form, and accordingly if the writing or article has been read or exhibited to the jury in connection with the testimony even though not formally offered it should be treated for this purpose as in evidence."

People v. Coca, P.2d 1258, 1260 (Colo. Ct. App. 1978).

"All exhibits which have been admitted may be used by the jury in its deliberation."

CONNECTICUT

CODE

No Code

CASES

State v. Wood, 545 A.2d 1026, 1029 (Conn. 1988).

The court found no error where individual photocopies of one piece of documentary evidence were given to the jury for use in deliberations because the court's limiting instructions were adequate. The jury was instructed to attach no "greater significance to them than ... to any other exhibits which will be before you in the jury room. Because of their length, they have been copied for your convenience, and in order to expedite your consideration of these exhibits, and you are not to attach any particular significance to the fact that these appear to be the only documents which have been copied in this manner."

DELAWARE

CODE

No Code.

CASES

Porter v. Murphy, 792 A.2d 1009, 1017 (Del. Super. Ct. 2001).

Court found no error where, at the jury's request, a bailiff brought a dictionary to the jury room during deliberations without the knowledge of the court or counsel because the case was "otherwise amply sustained by the evidence."

DISTRICT OF COLUMBIA

CODE

No Code.

CASES

Robinson v. United States, 210 F.2d 29, 32 (D.C. Cir. 1954).

The court found no error where evidence of a co-defendant's past criminal record was submitted to the jury for use in deliberations because proper limiting instructions were issued. "This is a matter for the trial court's discretion."

Buckner v. United States, 154 F.2d 317 (D.C. Cir. 1946).

The court found no error where signature exhibits were submitted to the jury for use in deliberations to corroborate police officer testimony. "It was a proper exercise of the trial court's discretion to permit the jury to take the exhibits into the jury room."

FLORIDA

CODE

Fla. R. Crim. P. 3.400.

Rule 3.400. Materials to the Jury Room

(a) Discretionary Materials. The court may permit the jury, upon retiring for deliberation, to take to the jury room:

- (1) a copy of the charges against the defendant;
- (2) forms of verdict approved by the court, after being first submitted to counsel;
- (3) in non-capital cases, any instructions given; but if any instruction is taken all the instructions shall be taken;
- (4) all things received in evidence other than depositions. If the thing received in evidence is a public record or a private document which, in the opinion of the court, ought not to be taken from the person having it in custody, a copy shall be taken or sent instead of the original.

(b) Mandatory Materials. In capital cases, the court must provide the jury, upon retiring for deliberation, with a written copy of all instructions given to take to the jury room.

CASES

Young v. State, 645 So. 2d 965, 967 (Fla. 1994).

Court found reversible error where videotaped interviews with child victims of sex abuse was submitted to the jury for use during deliberations. The court likened the videotaped interviews to depositions which are not permitted in the jury room. The distinguished videotaped testimony from a videotaped confession, however, saying that a videotaped confession would be like an audio-taped confession and so would be permitted in the jury room.

Janson v. State, 730 So. 2d 734, 734-735 (Fla. Dist. Ct. App. 1999).

The court found error when trial transcripts were sent to the jury room for deliberations because the transcripts were like depositions, which are not permitted under Rule 3.400. The court said, however, that the error was harmless because there was “overwhelming and un rebutted evidence of Defendant's guilt.”

GEORGIA

CODE

No Code

CASES

Carson v. State, 247 S.E.2d 68, 71-72 (Ga. 1978).

The court found no error where a gun was submitted to the jury to determine if it met the statutory definition of a sawed off shotgun because the jury could judge the size of the gun based on every day experience or could have requested a ruler if they were in doubt.

Edwards v. State, 100 S.E.2d 172, 174 (Ga. 1957).

The court found no error in a murder trial where photographs of the body of the deceased were left in the jury room during deliberations because the evidence was admitted properly. “[T]he jury is entitled to exclusive custody of all evidence.”

HAWAII

CODE

No Code

CASES

State v. Robinson, 903 P.2d 1289, 1294 (Haw. 1995).

The court adopted the rule that “audiotaped and videotaped evidence of a defendant's voluntary confession, which has passed all tests of admissibility and has been duly received into evidence, may be allowed into the jury room for use by the jury during deliberations.”

IDAHO

CODE

Idaho R. Civ. P. 47(p).

Rule 47(p). Taking documents and exhibits to jury room.

Upon retiring for deliberation the jury shall, if practical, take with them all written jury instructions and exhibits which have been admitted as evidence in the trial, except depositions.

Idaho Code § 19-2203 (2000).

§ 19-2203. Papers which may be taken by jury

Upon retiring for deliberation, the jury may take with them all exhibits and all papers (except depositions) which have been received in evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them the written instructions given and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

CASES

State v. Fairchild, 121 Idaho 960, 969, 829 P.2d 550, 559 (Ct. App. 1992).

The court found no error when a trial court granted the jury permission to open and examine a seal bag containing three small bindles of illegal drugs because the judge instructed the jury: "you may open and examine the exhibits, but do nothing more." The district judge acted within his discretion in granting the jury's request.

State v. Foell, 217 P. 608, 609 (Idaho 1923).

Any exhibit admitted into evidence may be taken into jury room.

ILLINOIS

§ 735 Ill. Comp. Stat. 5/2-1107 (2001).

Instructing the jury – Taking Instructions and Papers to the Jury Room

(a) The court shall give instructions to the jury only in writing, unless the parties agree otherwise, and only as to the law of the case. An original and one copy of each instruction asked by any party shall be tendered to the court. The copies shall be numbered and shall indicate who tendered them. Copies of instructions given on the court's own motion or modified by the court shall be so identified. When instructions are asked which the court refuses to give, the court shall on the margin of the original and copy write the word "refused" and shall write the word "given" on the margin of the original and copy of those given. The court shall in no case, after instructions are given, clarify, modify or in any manner explain them to the jury, otherwise than in writing, unless the parties agree otherwise.

(b) The original written instructions given by the court to the jury shall be taken by the jury to the jury room, and shall be returned by the jury with its verdict into court. The originals and copies of all instructions, whether given, modified or refused, shall be filed as a part of the proceedings in the cause.

(c) At the close of the evidence or at any earlier time during the trial that the court reasonably directs, any party may tender instructions and shall at the same time deliver copies thereof to counsel for other parties. If the number or length of the instructions tendered is unreasonable, the court after examining the instructions may require counsel

to reduce the number or length thereof. The court shall hold a conference with counsel to settle the instructions and shall inform counsel of the court's proposed action thereon prior to the arguments to the jury. If as a result of the arguments to the jury the court determines that additional instructions are desirable, the court may after a further conference with counsel approve additional instructions. The court shall instruct the jury after the arguments are completed. Conferences on instructions must be out of the presence of the jury.

(d) Papers read or received in evidence, other than depositions, may be taken by the jury to the jury room for use during the jury's deliberation.

CASES

People v. Blue, 724 N.E.2d 920, 931-934 (Ill. 2000).

Court found reversible error where a blood- and brain-splattered uniform of a deceased police officer was given to the jury for deliberations because the evidence was admitted in error. The prejudicial effect of the evidence outweighed its probative value and so should not have been admitted.

INDIANA

CODE

Ind. Code § 34-36-1-6 (1999).

§ 34-36-1-6 Retirement for deliberation; request for information

If, after the jury retires for deliberation:

(1) there is a disagreement among the jurors as to any part of the testimony; or

(2) the jury desires to be informed as to any point of law arising in the case;

the jury may request the officer to conduct them into court, where the information required shall be given in the presence of, or after notice to, the parties or the attorneys representing the parties.

CASES

Ball v. Carley, 3 Ind. 577, 577 (1852).

Evidence was taken into the jury room by accident, but the court found no error because “no improper use was made of them, and ...they exerted no influence upon the verdict.”

Riggs v. State, 689 N.E.2d 460, 462 (Ind. Ct. App. 1997).

The court found no error when jury’s request to review exhibits was denied because “IC § 34-1-21-6 does not apply either to jury requests to review exhibits or when the jury simply inquires about certain items of physical evidence.”

Powell v. State, 644 N.E.2d 855, 858 (Ind.1994).

The court finds that § 34-1-21-6 applies to audio tapes that are technically exhibits, as well as to requests dealing with witnesses' trial testimony.

Thomas v. State, 289 N.E.2d 508, 509 (Ind. 1972).

The court adopted § 5.1 of the Standards Relating to Trial by Jury (American Bar Association Project on Standards for Criminal Justice) to evaluate jury requests not triggered by the statute. It provided:

Materials to jury room.

(a) The court in its discretion may permit the jury, upon retiring for deliberation, to take to the jury room a copy of the charges against the defendant and exhibits and writings which have been received in evidence, except depositions.

(b) Among the considerations which are appropriate in the exercise of this discretion are:

- (i) whether the material will aid the jury in a proper consideration of the case;
- (ii) whether any party will be unduly prejudiced by submission of the material; and
- (iii) whether the material may be subjected to improper use by the jury.

Robinson v. State, 699 N.E.2d 1146, 1150 (Ind. 1998).

The court finds that the standard set forth in *Thomas v. State*, was not limited to exhibits sent to the jury room at the commencement of deliberations. “[I]f the statute is not implicated, the same considerations apply to a request made after deliberations have begun.”

IOWA

CODE

Iowa Code Ann. § 2.19 (2001).

§ 2.19(5). The jury upon trial.

e. Notes taken by jurors during trial; exhibits used during deliberations. Notes may be taken by jurors during the testimony of witnesses. All jurors shall have an equal opportunity to take notes. The court shall instruct the jury to mutilate and destroy any notes taken during the trial at the completion of the jury's deliberations. Upon retiring for deliberations the jury may take with it all papers and exhibits which have been received in evidence, and the court's instructions; provided, however, the jury shall not take with it depositions, nor shall it take original public records and private documents as ought not, in the opinion of the court, to be taken from the person possessing them.

Iowa Code Ann. § 1.926 (2001).

§ 1.926. Materials available to jurors.

- (1) Notes. Jurors shall be permitted to take notes during the trial using materials to be provided by the court on the request of any juror. The court shall instruct the jury that the notes are not evidence and must be destroyed at the completion of the jury's deliberations.
- (2) What jury may take to jury room. When retiring to deliberate, jurors may take their notes with them and shall take with them all exhibits in evidence except as otherwise ordered. Depositions shall not be taken unless all of the evidence is in writing and none of it has been stricken.

CASES

State v. Shea, 218 N.W.2d 610, 615 (Iowa 1974).

The court adopts the standards for the appropriate exercise of judicial discretion in permitting evidence to go to the jury room in the ABA standards relating to trial by jury, §5.1:

a. The court in its discretion may permit the jury, upon retiring for deliberation, to take to the jury room . . . exhibits . . . which have been received in evidence, . . . (b) Among the considerations which are appropriate in the exercise of this discretion are:

- (i) whether the material will aid the jury in a proper consideration of the case;
- (ii) whether any party will be unduly prejudiced by submission of the material; and
- (iii) whether the material may be subjected to improper use by the jury.

KANSAS

CODE

Kan. Stat. Ann. § 22-3420 (2000).

§ 22-3420. Conduct of jury after submission.

(3) After the jury has retired for deliberation, if they desire to be informed as to any part of the law or evidence arising in the case, they may request the officer to conduct them to the court, where the information on the point of the law shall be given, or the evidence shall be read or exhibited to them in the presence of the defendant, unless he voluntarily absents himself, and his counsel and after notice to the prosecuting attorney.

CASES

Morgan v. Abay, 850 P.2d 840, 843 (Kan. 1993).

Exclusion from jury room of evidence admitted at trial held harmless error because defendant failed to show how he was prejudiced or how jury was misled or confused.

Wilson v. Williams, 933 P.2d 757, 760 (Kan. 1997).

The court found no error where a jury requested during deliberations and was denied by the court to see a chart that was used during counsel's argument because it was not admitted into evidence.

KENTUCKY

CODE

Ky. R. Crim. P. 9.72.

Rule 9.72. Jury to take exhibits.

Upon retiring for deliberation the jury may take all papers and other things received as evidence in the case. The jurors shall be permitted to take into the jury room during their deliberations any notes they may have made during the course of the trial, but upon request of either party the jury shall be admonished that the notes made by jurors shall not be given any more weight in deliberation than the memory of other jurors.

CASES

Richardson v. Commonwealth, 483 S.W.2d 105, 106 (Ky. 1972).

“Except in unusual cases the indictment has no place in the hands of the jury and should not be permitted in the jury room.”

Gorman v. Hunt, 19 S.W.3d 662, 668 (Ky. 2000).

Court finds no error where photographs that were used for demonstrative purposes only were not permitted to go to the jury.

LOUISIANA

CODE

La. Code Crim. Proc. Ann. art. 1794 (2001).

Art. 1794. Taking evidence to jury room

A. Jurors shall be permitted to take notes. The court shall provide the needed writing implements. Jurors may, but need not, take notes and such notes as are taken may be used during the jury's deliberations but shall not be preserved for review on appeal. The trial judge shall ensure the confidentiality of the notes during the course of the trial and the jury's deliberations. At each recess prior to jury deliberation, the court shall collect and maintain any and all notes made by each juror and upon reconvening, the court shall return to each juror his individual notes and shall cause the notes to be destroyed immediately upon return of the verdict.

B. The court may allow the jury to take with them any object or writing received in evidence, except depositions and except as otherwise provided in the Louisiana Code of Evidence.

La. Code Crim. Proc. Ann. art. 793 (2001).

Art. 793. Use of evidence in jury room; reading of recorded testimony

A. Except as provided in Paragraph B of this Article, a juror must rely upon his memory in reaching a verdict. He shall not be permitted to refer to notes or to have access to any written evidence. Testimony shall not be repeated to the jury. Upon the request of a juror and in the discretion of the court, the jury may take with it or have sent to it any object or document received in evidence when a physical examination thereof is required to enable the jury to arrive at a verdict.

B. A juror shall be permitted to take notes when agreement to granting such permission has been made between the defendant and the state in open court but not within the presence of the jury. The court shall provide the needed writing implements. Jurors may, but need not, take notes and such notes may be used during the jury's deliberations but shall not be preserved for review on appeal. The trial judge shall ensure the confidentiality of the notes during the course of trial and the jury's deliberation and shall cause the notes to be destroyed immediately upon return of the verdict.

C. The lack of consent by either the defendant or the state to allow a juror to take notes during a trial shall not be communicated to the jury.

La. Rev. Stat. Ann. § 48:451.18 (1975) and La. Rev. Stat. § 38:379 (1985).

Taking evidence to jury room

In reaching a verdict, the jurors should rely upon their memories, and when they retire to the jury room to deliberate, they shall not be allowed access to any written evidence or to any notes of the testimony of any witness, with the following exceptions:

- (1) The judge may permit the jury to take into the jury room a concise summary of the property affected containing only the following: the size of the owner's affected property immediately before the expropriation; the size of the area expropriated; the size of the owner's remaining affected property immediately after the expropriation; a list of any improvements taken, and a list of any improvements not expropriated but which may have been affected by the expropriation, provided said summary has been admitted into evidence.
- (2) The judge may permit the jury to take into the jury room a statement of the relevant value conclusions reached by each expert witness, if applicable, provided said statement has been admitted into evidence. Such statements shall not contain any corroborative or persuasive material and should consist solely of the name of the witness, the effective date of the value estimate, and a recitation of the pertinent value conclusions and unit value conclusions, if applicable, testified to by the witness.
- (3) The jury may take with them into the jury room any object or document received in evidence which requires a physical examination to enable them to arrive at a just conclusion.
- (4) The parties may stipulate that appraisal reports or summaries of appraisal reports testified to by expert witnesses may be taken into the jury room.
- (5) The jury shall be permitted to take into the jury room an itemized statement of the loss the owner alleges he has suffered if testimony has been presented as to each item of loss and if the statement has been admitted into evidence.

CASES

State v. Brooks, 777 So. 2d 643, 646 (La. Ct. App. 2001).

The Court found error where the jury was allowed to view video tapes of drug transactions because the audible statements of the defendant and undercover officers was the same as having testimony repeated to the jury.

State v. Perkins, 423 So. 2d 1103, 1110 (La. 1982).

The court upheld the rule in C.Cr.P. 793 that the jury cannot inspect written evidence "except for the sole purpose of a physical examination of the document itself to determine an issue which does not require the examination of the verbal contents of the document."

MAINE

CODE

Me. R. Civ. P. 47 and Me. R. Civ. P. 24.

(e)/(f) Note-Taking By Jurors

The court in its discretion may allow jurors to take handwritten notes during the course of the trial. If note-taking is allowed, the court shall instruct the jury on the note-taking procedure and on the appropriate use of the notes. Unless the court determines that special circumstances exist that should preclude it, jurors should be allowed to take their notes into the jury room and use them during deliberations. Counsel may not request or suggest to a jury that jurors take notes or comment upon their note-taking. Upon the completion of jury deliberations, the notes shall be immediately collected and, without inspection, physically destroyed under the court's direction.

CASES

State v. Corbin, 759 A.2d 727, 729 (Me. 2000).

“Whether an admitted piece of evidence accompanies the jury into the jury room during its deliberations is a matter within the trial court's discretion.”

Dartnell v. Bidwell, 98 A. 743, 746 (Me. 1916).

Court found reversible error where photographs that have been excluded from evidence went into jury room for deliberations because they were of such a character as to influence the jury.

MARYLAND

CODE

Md. R. Civ. P. 2-521 and Md. R. Civ. P. 4-326.

Jury -- Review of evidence -- Communications

(a) Items taken to jury room. Jurors may take notes regarding the evidence and may keep the notes with them when they retire for their deliberation. Unless the court for good cause orders otherwise, the jury may also take exhibits that have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and consent of the court. Written or electronically recorded instructions may be taken into the jury room only with the permission of the court.

(b) Jury request to review evidence. The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.

(c) Communications with jury. The court shall notify the parties of the receipt of any communication from the jury pertaining to the action before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action.

CASES

State Deposit Ins. Fund Corp. v. Billman, 580 A.2d 1044, 1051-1065 (Md. 1990).

The court found no error where 87 unadmitted docs were taken into jury room along w/ 1,138 docs that were admitted into evidence because the probability of prejudice from the face of the evidence in relation to the circumstances of the case was small.

MASSACHUSETTS

CODE

No Code.

CASES

Campbell v. Asher, 70 N.E.2d 302, 306 (Mass. 1946).

The court found no error where toy automobiles that had been used for demonstration purposes during trial were given to the jury for deliberations.

Krauss v. Cope, 22 61 N.E. 220, 220 (Mass. 1901).

The court found no error where auditors books, made evidence by statute, were not permitted to go to the jury room because “[t]he general rule is that all papers which are duly admitted in evidence should go to the jury; but it is in the discretion of the judge to give or withhold them, and his decision on the question is not a subject of exception.”

Commonwealth v. Pixley, 677 N.E.2d 273, 275 (Mass. App. Ct. 1997).

The court found no error where binoculars were allowed in the jury room for deliberations because the binoculars had been admitted into evidence properly and “[a]dmitting an item in evidence to be sent to the jury room is within a judge's discretion.”

MICHIGAN

CODE

Mich. Ct. R. Crim. P. 6.414.

(G) Materials in Jury Room. The court may permit the jury, on retiring to deliberate, to take into the jury room a writing, other than the charging document, setting forth the elements of the charges against the defendant and any exhibits and writings admitted into evidence. On the request of a party or on its own initiative, the court may provide the jury with a full set of written instructions, a full set of electronically recorded instructions, or a partial set of written or recorded instructions if the jury asks for clarification or restatement of a particular instruction or instructions or if the parties agree that a partial set may be provided and agree on the portions to be provided. If it does so, the court must ensure that such instructions are made a part of the record. .

(H) Review of Evidence. If, after beginning deliberation, the jury requests a review of certain testimony or evidence, the court must exercise its discretion to ensure fairness and to refuse unreasonable requests, but it may not refuse a reasonable request. The court may order the jury to deliberate further without the requested review, so long as the possibility of having the testimony or evidence reviewed at a later time is not foreclosed.

Mich. Comp. Laws Ann. § 213.64 (1998).

Sec. 14. To assist the jury in arriving at its verdict the court may allow the jury when it retires to take with it notes and any map, plan, or other exhibit admitted in the case as an exhibit.

CASES

Socha v. Passino, 275 N.W.2d 243, 248 (Mich. 1979).

“[A]dmission of evidence and taking of exhibits to the jury room lies within the discretion of the trial judge, apparently without regard to the testimonial or nontestimonial nature of the items at issue.”

People v. Pashigian, 388 N.W.2d 259, 262 (Mich. Ct. App. 1986).

The court found no error where one of the defense exhibits was not given to the jury to use during deliberations because there is no rule that every exhibit presented at trial must be sent to the jury room.

MINNESOTA

CODE

Minn. R. Crim. P. 26.03

Sub 12. Note Taking. Jurors may take notes of the evidence presented at the trial and may keep these notes with them when they retire for deliberation.

Subd. 19. Jury Deliberations and Verdict.

(1) Materials to Jury Room. The court shall permit the jury, upon retiring for deliberation, to take to the jury room exhibits which have been received in evidence, or copies thereof, except depositions and may permit a copy of the instructions to be taken to the jury room.

(2) Jury Requests to Review Evidence.

1. If the jury, after retiring for deliberation, requests a review of certain testimony or other evidence, the jurors shall be conducted to the courtroom. The court, after notice to the prosecutor and defense counsel, may have the requested parts of the testimony read to the jury and permit the jury to reexamine the requested materials admitted into evidence.

2. The court need not submit evidence to the jury for review beyond that specifically requested by the jury, but in its discretion the court may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(3) Additional Instructions After Jury Retires.

1. If the jury, after retiring for deliberation, desires to be informed on any point of law, the jurors, after notice to the prosecutor and defense counsel, shall be conducted to the courtroom. The court shall give appropriate additional instructions in response to the jury's request unless:

- (a) the jury may be adequately informed by directing their attention to some portion of the original instructions;
- (b) the request concerns matters not in evidence or questions which do not pertain to the law of the case; or
- (c) the request would call upon the judge to express an opinion upon factual matters that the jury should determine.

CASES

State v. Robinson, 539 N.W.2d 231, 240 (Minn. 1995).

“The photographs were exhibits, duly admitted into evidence and thus available to the jury in the jury room.”

State v. Kraushaar, 470 N.W.2d 509, 515 (Minn. 1991).

The court applied ABA Standard 15-4.1 to determine the appropriate use of judicial discretion in permitting videotape evidence to go to the jury room:

- (i) whether the material will aid the jury in proper consideration of the case;
- (ii) whether any party will be unduly prejudiced by submission of the material; and
- (iii) whether the material may be subjected to improper use by the jury.

MISSISSIPPI

CODE

Miss. Code Ann. § 11-7-151 (2001).

§ 11-7-151. Trial--papers carried out by jury

All papers read in evidence on the trial of any cause may be carried from the bar by the jury.

Miss. R. Unif. Cir & Cty. Ct. 3.10.

Rule 3.10. Jury deliberations and verdict.

The court shall permit the jury, upon retiring for deliberation, to take to the jury room the instructions and exhibits and writings which have been received in evidence, except depositions.

CASES

Holloway v. State, 809 So. 2d 598, 608-610 (Miss. 2000).

The Court finds no error where a videotaped statement and a transcript of the tape were taken to the jury room because these items are distinguishable from depositions, which are excluded from the jury room under Rule 3.10 of the Uniform Circuit and County Court Rules.

White v. State, 732 So. 2d 961, 965 (Miss. 1999).

The Court found error where the trial judge refused to permit an audiotape to go to the jury room to be used to determine if the defendant's voice was on the tape because identity was central to the defense.

Huey v. Port Gibson Bank, 390 So. 2d 1005, 1007-1008 (Miss. 1980).

The court found no error where exhibits were carried into the jury room following the plaintiff's case in chief and prior to submitting it for a verdict because defense exhibits were also carried into the jury room before evidence was submitted to the jury for a verdict so there was no prejudice. However, the court stated that the better practice is to withhold the evidence from the jury room until the jury retires for a verdict.

MISSOURI

CODE

Mo. R. Crim. P. 27.08.

Rule 27.08. Juror Note-Taking

If the court allows juror note-taking, the court shall supply each juror with notebooks and pencils. Jurors shall not have their notes during recesses but may use their notes during deliberations. The court shall collect all juror notes immediately before discharge of the jury. After the jury is discharged, the court shall destroy the notes promptly without permitting their review by the court or any other person. Juror notes shall not be used to impeach a verdict.

CASES

State v. Barnett, 980 S.W.2d 297, 308 (Mo. 1998).

"The decision to send an exhibit to the jury room during deliberations lies within the sound discretion of the trial. An abuse of discretion occurs only when the trial court's decision to exclude an exhibit from the jury room was clearly against reason and resulted in an injustice to the defendant."

Lester v. Sayles, 850 S.W.2d 858, 863-864 (Mo. 1993).

The court found reversible error where a trial judge, at the request of the jury, sent a chart to the jury room that was used during plaintiff's closing arguments that was never properly admitted into evidence.

MONTANA

CODE

Mont. Code Ann. § 25-7-404 (2000).

§ 25-7-404. Papers which may be taken into jury room

Upon retiring for deliberation, the jurors may take with them all papers which have been received as evidence in the cause except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them notes of the testimony or other proceedings on the trial taken by themselves or any of them but none taken by any other person.

Mont. Code Ann. § 46-16-504 (2000).

§ 46-16-504. Items that may be taken into jury room

Upon retiring for deliberation, the jurors may take with them the written jury instructions read by the court, notes of the proceedings taken by themselves, and all exhibits that have been received as evidence in the cause that in the opinion of the court will be necessary.

Mont. Code Ann. § 25-7-404 (2000).

§ 25-7-404. Papers which may be taken into jury room

Upon retiring for deliberation, the jurors may take with them all papers which have been received as evidence in the cause except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them notes of the testimony or other proceedings on the trial taken by themselves or any of them but none taken by any other person.

CASES

Kyriss v. State, 707 P.2d 5, 12 (Mont. 1985).

The court found no error in a medical malpractice action in which appellant claimed that negligent medical treatment of his ingrown toenail caused the necessity for amputation of his leg for the trial judge to permit the jury during its deliberations to have highlighted copies of appellant's medical records and photographs of his leg.

St. v. Medicine Bull, 445 P.2d 916, 922 (Mont. 1968).

Trial court did not err in permitting State's exhibits, consisting of photographs of scene of accident, to be taken to jury room when asked for by jury about 1 hour after it began deliberation.

State v. Bales, 994 P.2d 17, 19-22 (Mont. 1999).

The court found harmless error where a judge allowed a taped interview with defendant to go to the jury room because although the tape had testimonial character, it “did not unduly emphasize that testimony to the exclusion of other witnesses, nor were statements on the tape inconsistent with statements given by the witnesses at trial.”

State v. Harris, 808 P.2d 453, 459-460 (Mont. 1991).

Court finds reversible error where entire testimony of sexual abuse victim was given to the jury for unsupervised and unrestricted review during deliberations, stating that the proper procedure would be for the jury to submit specific questions about the testimony to the judge.

State v. Morse, 746 P.2d 108, 114 (Mont. 1987).

The Court found no error where tape recordings were permitted to go into the jury room during deliberations. “The tapes had been admitted into evidence, and the jury was properly instructed as to the weight to be given the tapes.” This case has been overturned by State v. Harris, *supra*, to the extent that tapes containing testimonial evidence cannot be submitted to the jury for use during deliberations.

NEBRASKA

CODE

No Code.

CASES

Iden v. State, 199 N.W. 734, 736 (Neb. 1924).

It is within the discretion of the court to allow the jury to take exhibits received in evidence into the jury room.

Hartley v. Guthmann, 532 N.W.2d 331, 335 (Neb. 1995).

The court found reversible error where a brochure that was never admitted into evidence was sent into the jury room and where several jurors were aware of the presence of the brochure.

“Extraneous material or information considered by a jury may be deemed prejudicial without proof of actual prejudice if the material or information relates to an issue submitted to the jury and there is a reasonable possibility that the extraneous material or information affected the verdict to the litigant's detriment.”

Loving v. Baker's Supermarkets, Inc., 472 N.W.2d 695, 702 (Neb. 1991).

The court found no error where three documents that were never admitted into evidence were sent into the jury room for use during deliberations because the documents were simply a “reiteration of evidence already presented to the jury.”

NEVADA

CODE

Nev. Rev. Stat. Ann. § 175.441 (1967).

§ 175.441. Jury may take written instructions, materials received in evidence, certain papers and own notes of trial on retiring for deliberation

Upon retiring for deliberation, the jury may take with them:

1. All papers and all other items and materials which have been received as evidence in the case, except depositions or copies of such public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession.

2. The written instructions given, and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

CASES

Page v. Sutton, 204 P. 881, 884 (Nev. 1922).

The court found no error where a letter that had not been admitted into evidence was inadvertently sent to the jury room because the evidence did not influence the verdict.

NEW HAMPSHIRE

CODE

N.H. R. Super. Ct. 64-A.

It is within the Court's discretion to permit jurors to take notes on evidence. If note taking is allowed, after the opening statements the Court will supply each juror with a pen and notebook to be kept in the juror's possession in the court and jury rooms, and to be

collected and held by the bailiff during any recess in which the jurors may leave the courthouse and during arguments and charge. After verdict, the Court will immediately destroy or order the destruction of all notes.

CASES

State v. Monroe, 766 A.2d 734, 735 (N.H. 2001).

The court found no error where the defendant's taped confession was sent to the jury room because the confession was a non-testimonial, tangible exhibit.

Brigham v. Hudson Motors, 392 A.2d 130, 135 (N.H. 1978).

The court found no error where tools that were used to experiment on the exhibits during trial were brought to the jury without the knowledge of the court or counsel because there was no evidence that the jury "came into possession of new evidence or that the jury's use of tools in any manner influenced its decision or prejudiced the plaintiffs...."

NEW JERSEY

CODE

N.J. Ct. R. 1:8-8.

Rule 1:8-8. Materials to be Submitted to the Jury; Note-taking

(a) Materials. The jury may take into the jury room the exhibits received in evidence, and if the court so directs in a civil action, a list of the claims made by the parties and of the defenses to such claims, a list of the various items of damage upon which proof was submitted at the trial and a list of the verdicts that may be properly found by the jury. Any such list may be prepared by an attorney or the court, but before delivery to the jury, it shall be submitted to all parties. The court, in its discretion, may submit a copy of all or part of its instructions to the jury for its consideration in the jury room. The court may also, in its discretion and at such time and in such format as it shall determine, permit the submission to the jury of individual copies of any exhibit provided an appropriate request to employ that technique was made prior to trial on notice to all parties and provided further that the court finds that no party will be unduly prejudiced by the procedure.

(b) Juror Note-taking. Prior to opening statements, the attorneys or any party may request that the jury be permitted to take notes during the trial or portion thereof, including opening and closing statements. If the court determines to permit note-taking after all parties have had an opportunity to be heard, it shall provide the jurors with note-taking materials and shall take such steps as will ensure the security and confidentiality of each juror's notes.

CASES

Robinson v. Payne, 122 A. 882, 886 (N.J. 1923).

The Court found no error where X-ray films and plates were sent to the jury room after having been properly admitted into evidence.

Fiorino v. Sears Roebuck & Co., 707 A.2d 1053, 1058-1059 (N.J. Super. Ct. App. Div. 1998). The court found reversible error where tools used to experiment on evidence during trial were sent to the jury room without limiting instructions as the type of experiments that could be performed on the evidence.

NEW MEXICO

CODE

N.M. R. Crim. P. 5-609.

Rule 5-609. Submission to Jury

C. Exhibits. Upon its request to review any exhibit during its deliberations, the jury shall be furnished all exhibits received in evidence.

CASES

State v. Lord, 84 P.2d 80, 95 (N.M. 1938).

The court found error where a jury was permitted to take to the jury room the confessions and admissions introduced into evidence because they were similar to depositions and therefore should have been excluded.

NEW YORK

CODE

N.Y. Ct. R. § 220.10.

§ 220.10. Note-Taking by Juries

(a) Application. This section shall apply to all cases, both civil and criminal, heard by a jury in any court.

(b) After the jury has been sworn and before any opening statements or addresses, the court shall determine if the jurors may take notes at any stage of the proceedings. In making this determination, the court shall consider the probable length of the trial and the nature and complexity of the evidence likely to be admitted.

(c) If the court authorizes note-taking, it shall direct the jurors that they may make written notes if they so desire and that the court will provide materials for that purpose if they so request. The court also shall instruct the jurors in the proper use of any notes taken, and its instructions shall include but not be limited to the following:

- (1) Jurors should not permit their note-taking to distract them from the proceedings;
- (2) Any notes taken are only an aid to memory and should not take precedence over a juror's independent recollection;
- (3) Those jurors who choose not to take notes should rely on their own independent recollection of the evidence and should not be influenced by any notes that another juror may take;
- (4) Any notes taken are only for the note-taker's own personal use in refreshing his or her recollection of the evidence;

- (5) If there is a discrepancy between a juror's recollection of the evidence and the juror's notes, the jury should request a readback of the record and the court's transcript prevails over a juror's notes; and
- (6) Notes are not a substitute for the official record or for the governing principles of law as enunciated by the trial court.

These instructions shall be repeated at the conclusion of the case as part of the court's charge prior to the commencement of jury deliberations.

(d) The court shall require the jurors to print their names or other identifier on the cover of the binder that contains the notes and shall collect each juror's notes at the end of each trial day until the jury retires to deliberate. The jurors may refer to their notes during the proceedings and deliberations.

(e) Any notes taken are confidential and shall not be available for examination or review by any party or other person. After the jury has rendered its verdict, the court shall ensure that the notes are promptly collected and destroyed.

N.Y. Ct. R. § 220.12.

§ 220.12. Juror Notebooks

(a) Contents. At the discretion of the trial court, in cases of appropriate complexity, the court may authorize the distribution to each juror of identical notebooks, which may include copies of:

- (1) selected exhibits that have been ruled admissible (or excerpts thereof);
- (2) stipulations of the parties;
- (3) other material not subject to genuine dispute, which may include:
 - (i) curricula vitae of experts;
 - (ii) lists or seating charts identifying attorneys and their respective clients;
 - (iii) lists or indices of admitted exhibits;
 - (iv) glossaries;
 - (v) chronologies or timelines; and
 - (vi) other material approved by the court for inclusion.

(b) Procedure to determine contents.

(1) The court shall require counsel to confer on the contents of the notebooks before trial begins and at any appropriate time thereafter.

(2) If counsel cannot agree on the contents of the notebooks, each party shall be afforded the opportunity to submit its proposal and to comment upon any proposal submitted by another party. The court shall be the final arbiter of the contents of the notebooks.

(c) Use of notebooks at trial.

(1) At the time of distribution, the court shall instruct the jurors concerning the purpose and use of the notebooks.

(2) During the course of trial, the court may permit the parties to supplement the materials contained in the notebook with additional documents as these become relevant and after they have been ruled admissible or otherwise approved by the court for inclusion.

(3) The court shall collect the notebooks at the end of each trial day until the jury retires to deliberate. The notebooks shall be available to the jurors during deliberations.

(4) Whenever note-taking is permitted by jurors, the court shall require the jurors to print their names or other identifier on the cover of their notebooks.

N.Y. Crim. P. § 310.20 and N.Y. C.P.L.R. §310.20.

§ 310.20. Jury Deliberation; use of exhibits and other material

Upon retiring to deliberate, the jurors may take with them:

1. Any exhibits received in evidence at the trial which the court, after according the parties an opportunity to be heard upon the matter, in its discretion permits them to take;

2. A written list prepared by the court containing the offenses submitted to the jury by the court in its charge and the possible verdicts thereon. Whenever the court submits two or more counts charging a violation of the same section of a law defining an offense, the court may set forth the dates, names of complainants or specific statutory language, without defining the terms, by which the counts may be distinguished; provided, however, that the court shall instruct the jury in its charge that the sole purpose of the notations is to distinguish between the counts charging a violation of the same section of the law; and

3. A written list prepared by the court containing the names of every witness whose testimony has been presented during the trial, if the jury requests such a list and the court, in its discretion, determines that such a list will assist the jury.

CASES

People v. Monroe, 688 N.E.2d 491, 90 N.Y.2d 982, 984 (N.Y. 1997).

The Court found no error when, during the course of the trial, the court permitted the jury to examine various exhibits outside of the presence of, but with the knowledge of, the court or counsel because the exhibits had already been admitted into evidence.

NORTH CAROLINA

CODE

N.C. Gen. Stat. § 15A-1228 (1993).

§ 15A-1228. Notes by the Jury

Except where the judge, on the judge's own motion or the motion of any party, directs otherwise, jurors may make notes and take them into the jury room during their deliberations.

N.C. Gen. Stat. § 15A-1233 (1977).

§ 15A-1233. Review of testimony; use of evidence by the jury

(a) If the jury after retiring for deliberation requests a review of certain testimony or other evidence, the jurors must be conducted to the courtroom. The judge in his discretion, after notice to the prosecutor and defendant, may direct that requested parts of the testimony be read to the jury and may permit the jury to reexamine in open court the requested materials admitted into evidence. In his discretion the judge may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(b) Upon request by the jury and with consent of all parties, the judge may in his discretion permit the jury to take to the jury room exhibits and writings which have been received in evidence. If the judge permits the jury to take to the jury room requested exhibits and writings, he may have the jury take additional material or first review other evidence relating to the same issue so as not to give undue prominence to the exhibits or writings taken to the jury room. If the judge permits an exhibit to be taken to the jury room, he must, upon request, instruct the jury not to conduct any experiments with the exhibit.

CASES

State v. Locklear, 505 S.E.2d 277, 296 (N.C. 1998).

The Court restated the rule set forth in § 15A-1233(b) that the trial court may use its discretion to decide if evidence can be taken back to the jury room.

State v. Cunningham, 474 S.E.2d 772, 783 (N.C. 1996).

The court finds no reversible error where evidence was sent to the jury room without objection from the defendant but also without the consent required by statute because having the items in the jury room “could not have affected the outcome of the trial” given the strong evidence against the defendant.

NORTH DAKOTA

CODE

N.D. Cent. Code § 28-14-17 (2001).

§ 28-14-17. What papers jurors may take

Upon retiring for deliberation, the jurors may take with them all papers which have been received as evidence in the cause, except depositions or copies of such papers as ought not in the opinion of the court to be taken from the person having them in possession, and they also may take with them notes of the testimony or other proceedings on the trial taken by any juror, but none taken by any other person.

N.D. Cent. Code § 29-22-04 (2001).

§ 29-22-04. What papers jurors may take

Upon retiring for deliberation, the jurors may take with them:

1. All papers or things other than depositions which have been received as evidence in the cause, but if, in the opinion of the court, a public record or private document received in evidence should not be taken from the person having it in his possession, a copy must be taken instead of the original;
2. All or such parts of the written instructions as the court may direct;
3. Notes of the testimony, or other proceedings on the trial, taken by jurors themselves or any of them, but none taken by any other person; and
4. Forms of verdict approved by the court.

CASES

State v. Weatherspoon, 583 N.W.2d 391, 398 (N.D. 1998).

The court found no error where audiotapes of the defendant's statements were sent to the jury room because the tapes were properly admitted into evidence.

State v. Boehler, 542 N.W.2d 745, 748 (N.D. 1996).

The Court found no abuse of judicial discretion where videotapes were admitted into evidence and sent to the jury room but where no equipment to view the tapes was provided because the jury could have requested to review the evidence in open court.

OHIO

CODE

Ohio Rev. Code Ann. § 2945.35 (Anderson 2001).

§ 2945.35 Papers the jury may take.

Upon retiring for deliberation, the jury, at the discretion of the court, may take with it all papers except depositions, and all articles, photographs, and maps which have been offered in evidence. No article or paper identified but not admitted in evidence shall be taken by the jury upon its retirement.

CASES

State v. Graven, 52 Ohio St. 2d 112, 112, 369 N.E.2d 1205, 1205 (1977).

"The obvious purpose of the statute is the exclusion from the jury room of that evidence which has been ruled inadmissible."

Indianapolis & S.E. Trailways, Inc. v. The Cincinnati St. Ry. Co., 166 Ohio St. 310, 317, 142 N.E.2d 515, 521 (1957).

"...it is the common practice to send to the jury room the pleadings and the exhibits admitted in evidence."

Herold v. Cosco, Inc., 2000 Ohio App. LEXIS 1892, 2 (2000).

"The admission of evidence and the decision of whether to permit demonstrative exhibits into the jury room rests in the sound discretion of the court and will not be reversed absent an abuse of that discretion. An abuse of discretion is more than an error of law or judgment, the term connotes that the court's attitude is arbitrary, unreasonable or unconscionable."

OKLAHOMA

CODE

Okla. Stat. tit. 22, § 893 (2000).

§ 893. Jury may have written instructions, forms of verdict and documents in jury room--Copies of public or private documents

On retiring for deliberation the jury may take with them the written instructions given by the court; the forms of verdict approved by the court, and all papers which have been received as evidence in the cause, except that they shall take copies of such parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession.

CASES

Clark v. Continental Tank Co., 1987 OK 93, 744 P.2d 949, 955 (1987).

The Court found harmless error where a written statement that had not been admitted into evidence was inadvertently sent to the jury room because it had been read aloud to the jury during the trial.

OREGON

CODE

Or. R. Civ. P. 59.

Rule 59. Instructions to Jury and Deliberation

C. Deliberation

(1) Exhibits. Upon retiring for deliberation the jury may take with them all exhibits received in evidence, except depositions.

(2) Written statement of issues. Pleadings shall not go to the jury room. The court may, in its discretion, submit to the jury an impartial written statement summarizing the issues to be decided by the jury.

(3) Copies of documents. Copies may be substituted for any parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession.

(4) Notes. Jurors may take notes of the testimony or other proceeding on the trial and may take such notes into the jury room.

CASES

McCaffrey v. Glendale Acres, Inc., 250 Ore. 140, 140 n1, 440 P.2d 219, 219 n1 (Ore. 1968).

“Exhibits are part of the evidence and should go to the jury room.”

PENNSYLVANIA

CODE

Pa. R. Crim. P. 646.

Rule 646. Material Permitted in Possession of the Jury

(A) Upon retiring, the jury may take with it such exhibits as the trial judge deems proper, except as provided in paragraph (B).

(B) During deliberations, the jury shall not be permitted to have:

- (1) a transcript of any trial testimony;
- (2) a copy of any written or otherwise recorded confession by the defendant;
- (3) a copy of the information;
- (4) written jury instructions.

CASES

Commonwealth v. Hobson, 484 Pa. 250, 254-255 (Pa. 1979).

The Court found no error where a gun which was admitted into evidence to go into the jury room because the rule says the jury may take with it “such exhibits as the trial judge deems proper.” There was no abuse of discretion simply because the defendant alleged that the shooting was accidental.

Commonwealth v. Hoke, 381 Pa. Super. 70, 74-77, 522 A.2d 1099, 1103-1107 (1989).

The Court found no reversible error where unadmitted evidence was mistakenly sent to the jury room and remained there for five to eight minutes because there was no showing that the evidence was “so prejudicial that the defendant was denied a fair trial.” The evidence was in the jury room for an inconsequential amount of time, and the jury was given cautionary instructions that their deliberations could not include any reference to the evidence.

RHODE ISLAND

CODE

No Code.

CASES

State v. Blood, 70 R.I. 85, 111 (1944).

The Court found no error where there were markings on the wrappings and on the envelopes containing evidence that was sent to the jury room.

SOUTH CAROLINA

CODE

S.C. R. Civ. P. App. Form 3

Form 3 – Uniform Juror Information Pamphlet: “You as a Juror”

Evidence may be in the form of a written document, an object, a photograph, or an x-ray. Such pieces of evidence are called exhibits. This physical evidence will be taken with you to the jury room, and may be considered in your deliberation.

After you retire to the jury room, you are entitled to have all exhibits brought to you. Should you feel that it is necessary to be reinstructed, or receive additional instruction on the law or to have certain testimony read to you, you may so inform the judge through the bailiff. You should not, however, make such requests lightly, for they can be answered only by returning the jury to the courtroom where the Court will resume in full session. The procedure may require considerable time, but is justifiable if you seriously believe it to be necessary or helpful to you in discharging your duty.”

CASES

State v. Gullledge, 277 S.C. 368, 371-372 (1982).

The Court found abuse of judicial discretion where the transcript of a tape recording that was properly admitted into evidence was sent to the jury room because the transcript “unduly emphasized that evidence.”

SOUTH DAKOTA

CODE

S.D. Codified Laws § 15-14-20 (2001).

§ 15-14-20. Papers, exhibits and notes taken into jury room

Upon retiring for deliberation the jury may take with them all papers which have been received as evidence in the cause, except depositions and such papers and exhibits as ought not, in the opinion of the court, to be taken from the person having them in his possession; and they may also take with them notes of the testimony or other proceedings on the trial taken by themselves, or any of them, but none taken by any other person.

S.D. Codified Laws § 23A-25-7 (2001).

§ 23A-25-7. Evidence and instructions kept by jury during deliberation

Upon retiring for deliberation, a jury may take all exhibits and all papers which have been received as evidence in the case. Copies may be substituted for original documents when, in the opinion of a court, such documents should not be taken from the person possessing them. A jury must also take the instructions of the court.

S.D. Codified Laws § 15-14-20 (2001).

§ 15-14-20. Papers, exhibits and notes taken into jury room

Upon retiring for deliberation the jury may take with them all papers which have been received as evidence in the cause, except depositions and such papers and exhibits as ought not, in the opinion of the court, to be taken from the person having them in his possession; and they may also take with them notes of the testimony or other proceedings on the trial taken by themselves, or any of them, but none taken by any other person.

CASES

State v. Smith, 1998 S.D. 6, 16-23 (S.D. 1998).

The Court found no error where a videotaped confession that was properly admitted into evidence and reviewed by the jury during deliberations because § 23A-25-7 permits a jury to take “all exhibits and all papers which have been received as evidence in the case.”

TENNESSEE

CODE

Tenn. Code Ann. § 20-9-510 (2001).

§ 20-9-510. Submission of exhibits to jury

The trial judge in civil cases may, in the judge's discretion, on motion of either party, upon the judge's own motion, or on request by the jury, submit all exhibits admitted in evidence to the jury for the jury's consideration during deliberations on the jury's verdict.

Tenn. R. Crim. P. 30.1.

Rule 30.1. Taking of Exhibits to Jury Room

Upon retiring to consider its verdict the jury shall take to the jury room all exhibits and writings which have been received in evidence, except depositions, for their examination during deliberations, unless the court, for good cause, determines that an exhibit should not be taken to the jury room.

CASES

Duvall v. Jones, 671 S.W.2d 851 (Tenn. 1984).

Where the total expert evidence on a subject was in the form of depositions which were read to the jury, there was no error in letting the jury take that total evidence into the jury room where the depositions were material to the issue of damages.

State v. Smith, 993 S.W.2d 6, 32 (Tenn. 1999).

The Court found no error where exhibits containing redacted material were sent to the jury room because the exhibits were properly admitted into evidence and the jury had been given instructions to draw no inferences concerning the redacted materials.

State v. Jefferson, 2001 Tenn. Crim. App. LEXIS 827, 30 (Tenn. Crim. App. 2001).

The Court found no error where exhibits were sent to the jury room over the objection of defense counsel because they had been admitted into evidence properly.

TEXAS

CODE

Tex. R. Civ. P. 281.

Rule 281. Papers Taken to Jury Room

The jury may, and on request shall, take with them in their retirement the charges and instructions, general or special, which were given and read to them, and any written evidence, except the depositions of witnesses, but shall not take with them any special charges which have been refused. Where part only of a paper has been read in evidence, the jury shall not take the same with them, unless the part so read to them is detached from that which was excluded.

CASES

First Employees Ins. Co. v. Skinner, 646 S.W.2d 170, 171-172 (Tex. 1983).

The Court found harmless error where a trial court refused to send all admitted exhibits to the jury room. The Court interprets Rule 281 to mean that the judge must send all admitted exhibits to the jury room without request from jurors or counsel. Here the error was harmless because the jurors never requested to see the exhibits that were not sent.

UTAH

CODE

Utah R. Civ. P. 47.

Rule 47. Jurors.

(k) View by jury. When in the opinion of the court it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent no person other than the person so appointed shall speak to them on any subject connected with the trial.

(m) Papers taken by jury. Upon retiring for deliberation the jury may take with them the instructions of the court and all exhibits and all papers which have been received as evidence in the cause, except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them notes of the testimony or other proceedings on the trial taken by themselves or any of them, but none taken by any other person.

Utah R. Crim Law. P. 17.

Rule 17. The trial.

k) Upon retiring for deliberation, the jury may take with them the instructions of the court and all exhibits and papers which have been received as evidence, except depositions; and each juror may also take with him any notes of the testimony or other proceedings taken by himself, but none taken by any other person.

CASES

Butler v. Naylor, 1999 UT 85, 987 P.2d 41, 45 (Utah 1999).

The Court found harmless error where a page from a learned treatise was improperly admitted into evidence and sent to the jury room because its impact was minimal in comparison to other admitted evidence.

VERMONT

CODE

No Code.

CASES

State v. Buckley, 149 Vt. 663, 546 A.2d 798, 799 (Vt. 1988).

The Court found no error where an admitted exhibit was not sent to the jury room because the jury heard “ample testimony relative to its significance,” and it never requested to review it during deliberations.

Barber v. Stratton, 111 Vt. 43, 48 (Vt. 1940).

The Court found no error where a properly admitted exhibit was sent to the jury room without proper jury instruction because counsel neglected to raise the issue of jury instruction at trial, and the decision to send evidence to the jury room is at the trial court’s discretion.

VIRGINIA

CODE

Va. Code Ann. § 8.01-381 (2001).

§ 8.01-381. What Jury May Carry Out

No pleadings may be carried from the bar by the jury. Exhibits may, by leave of court, be so carried by the jury. Upon request of any party, the court shall instruct the jury that they may request exhibits for use during deliberations. Exhibits requested by the jury shall be sent to the jury room or may otherwise be made available to the jury.

CASES

Norfolk & W. Ry. v. Puryear, 250 Va. 559, 563 (Va. 1995).

The Court found error where written summaries of oral testimony were admitted into evidence and sent to the jury room. “[W]hen admitted into evidence and taken into the jury room, the summaries of this testimony could have been reviewed during the jury deliberations and thus would have impermissibly emphasized [the defendant’s] version of the facts to the prejudice of [the plaintiff].”

Fisher v. Commonwealth, 236 Va. 403, 414 (Va. 1988).

The Court found no error where transcripts that were properly admitted into evidence were sent to the jury room because it had been done with the consent of counsel.

Cull v. Commonwealth, 2000 Va. App. Lexis 237, 9 (Va. Ct. App. 2000).

The court found no error where an out-of-court statement was sent to the jury room because it had been admitted into evidence properly and was therefore allowed in the jury room.

WASHINGTON

CODE

Wash. Civ. R. 51.

Rule 51. Instructions to Jury and Deliberation

(h) Deliberation. After argument, the jury shall retire to consider its verdict. In addition to the written instructions given, the jury shall take with it all exhibits received in evidence, except depositions. Copies may be substituted for any parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession. Pleadings shall not go to the jury room.

Wash. Crim. R. 6.8.

Rule 6.8 Notetaking by jurors.

With permission of the trial judge, jurors may take notes regarding the evidence presented to them and keep these notes with them when they retire for their deliberation. Such notes should be treated as confidential between the jurors making them and their fellow jurors, and be destroyed immediately after the verdict is rendered.

Wash. Crim. R. 6.15.

(e) Deliberation. After argument, the jury shall retire to consider the verdict. The jury shall take with it the instructions given, all exhibits received in evidence and a verdict form or forms.

Wash. Ct. R.L.J. 51(h).

(h) Deliberation

After argument, the jury shall retire to consider its verdict. In addition to the written instructions given, the jury shall take with it all exhibits received in evidence, except depositions. Copies may be substituted for any parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession. Pleadings shall not go to the jury room.

Wash. Ct. R.L.J. 6.15(d).

(d) Deliberation

After argument, the jury shall retire to consider the verdict. The jury shall take with it the instructions given, all exhibits received in evidence, and a verdict form or forms.

CASES

State v. Elmore, 985 P.2d 289, 317, 139 Wash. 2d 250 (Wash. 2000).

The Court states that “a jury shall take with it all exhibits received in evidence when it retires for deliberation” and that “exhibits taken to a jury room generally may be used by a jury as it sees fit.”

State v. Castellanos, 132 Wash. 2d 94, 100 (Wash 1997).

The Court found no error where audiotapes that had been admitted into evidence and playback equipment were sent to the jury room. The rule is that “tape recorded exhibits may go to the jury and the jury may take such exhibits into the jury room ‘if, in the sound discretion of the trial court, the exhibits are found to bear directly on the charge and are not unduly prejudicial.’”

State v. Lord 822 P.2d 177, 194 117 Wash. 2d 829, 857 (Wash. 1991).

The Court found error where a chart used for summary purposes was sent to the jury room.

“[R]eversal is required only if, upon a review of the entire record, the court determines that the defendant was prejudiced.”

WEST VIRGINIA

CODE

W. Va. Code § 56-6-23 (2001).

§ 56-6-23. Papers Taken by Jury

Depositions or other papers read in evidence may, by leave of the court, be carried from the bar by the jury.

CASES

Runner v. Cadle Co., 511 S.E.2d 132, 134, 204 W.Va. 21, 23 (West Va. 1998).

The Court holds that exhibits that have not been admitted into evidence cannot be sent to the jury room and that this constitutes reversible error if the exhibits result in prejudice.

State v. Dietz, 390 S.E.2d 15, 29, 182 W.Va. 544, 558 (West Va. 1990).

The Court holds that there is no reversible error where a confession or incriminating statement in the form of a document, transcript or tape recording that has been admitted into evidence properly is sent to the jury room.

WISCONSIN

CODE

No Code.

CASES

State v. Jensen, 147 Wis. 2d 240, 259-260 (Wis. 1988).

The Court found no error where a written confession was admitted into evidence and sent to the jury room. It is within the court's discretion to decide which exhibits may be sent into the jury room, and a written confession is like any other exhibit. "A circuit court's decision to send a written confession into the jury room should be guided by the same criteria as its decision to send other exhibits into the jury room, including consideration of whether the exhibit will aid the jury in proper consideration of the case, whether a party will be unduly prejudiced by submission of the exhibit, and whether the exhibit could be subjected to improper use by the jury."

Milwaukee & Suburban Transport Corp. v. Milwaukee County, 82 Wis. 2d 420, 448 (Wis. 1978).

"Whether particular exhibits are to be admitted to the jury room is a matter within the sound discretion of the trial court ..., and the trial court has broad discretion in making this determination."

Robinson v. State, 52 Wis. 2d 478, 483-485, 190 N.W.2d 193 (Wis. 1975).

The Court found no error where the jury conducted experiments on exhibits sent to the jury room because no conceivable experimentation could be conducted that would constitute prejudicial error.

WYOMING

CODE

Wyo. R. Civ. P. 39.1 and Wyo. R. Crim. P. 24.1.

Jury trial; jury note taking; juror notebooks.

(a) Juror note taking. At the beginning of civil trials, the court shall instruct the jurors that they will be permitted to take notes during the trial if they wish to do so. The court shall provide each juror with appropriate materials for this purpose and shall give jurors appropriate instructions about procedures for note taking and restrictions on jurors' use of their notes. The jurors may take their notes with them for use during court recesses and deliberations, but jurors shall not be permitted to take their notes out of the courthouse. The bailiff or clerk shall collect all jurors' notes at the end of each day of trial and shall return jurors' notes when trial resumes. After the trial has concluded and the jurors have completed their deliberations, the bailiff or clerk shall collect all jurors' notes before the jurors are excused. The bailiff or clerk shall promptly destroy these notes.

(b) Juror notebooks. The court may provide all jurors with identical "Juror Notebooks" to assist the jurors in organizing materials the jurors receive at trial. Typical contents of a juror notebook include blank paper for note taking, stipulations of the parties, lists or seating charts identifying counsel and their respective clients, general instructions for jurors, and pertinent case specific instructions. Notebooks may also include copies of important exhibits (which may be highlighted), glossaries of key technical terms, pictures of witnesses, and a copy of the court's juror handbook, if one is available. During the trial, the materials in the juror notebooks may be supplemented with additional materials as they become relevant and are approved by the court for inclusion. Copies of any additional jury instructions given to jurors during trial or before closing arguments should also be included in juror notebooks before the jurors retire to deliberate. The trial court should generally resolve with counsel at a pretrial conference whether juror notebooks will be used and, if so, what contents will be included. The trial court may require that counsel meet in advance of the pretrial conference to confer and attempt to agree on the contents of the notebooks. The jurors may take their notebooks with them for use during court recesses and deliberations, but jurors shall not be permitted to take their notebooks out of the courthouse. The bailiff or clerk shall collect all jurors' notebooks at the end of each day of trial and shall return jurors' notebooks when trial resumes. After the trial has concluded and the jurors have completed their deliberations, the bailiff or clerk shall collect all jurors' notebooks before the jurors are excused. The bailiff or clerk shall promptly destroy the contents of the notebooks, except that one copy of the contents of the juror notebooks, excluding jurors' personal notes and annotations, shall be preserved and retained as part of the official trial record.

CASES

Worcester v. State, 30 P.3d 47, 51 (Wyo. 2001).

The Court found reversible error where exhibits that were not admitted into evidence were sent to the jury room due to the prejudicial nature of the exhibits.

Warner v. State, 897 P.2d 472, 475 (Wyo. 1995).

The Court held that the general rule of exclusion pertaining to testimonial video or audio tape recordings in the jury room is inapplicable to tape recordings of criminal acts such as drug transactions because these types of recordings are not testimonial in nature.

Pino v. State, 849 P.2d 716, 718-719 (Wyo. 1993).

The Court found no error where an audio recording of criminal act was admitted into evidence and sent to the jury room with playback equipment. Recorded evidence of a criminal act is non-testimonial in nature and is therefore permitted to go to the jury room.

Federal Law

CODE

No code.

CASES

United States v. Taylor, 210 F.3d 311, 315 (5th Cir. 2000).

“The admission of organizational charts and summary evidence is governed by Federal Rules of Evidence 611(a) and 1006. We previously have stated that allowing the use of charts as “pedagogical” devices intended to present the government's version of the case’ is within the bounds of the trial court's discretion to control the presentation of evidence under Rule 611(a). Such demonstrative aids typically are permissible to assist the jury in evaluating the evidence, provided the jury is forewarned that the charts are not independent evidence. Additionally, such charts are not admitted into evidence and should not go to the jury room absent consent of the parties. In contrast, Rule 1006 applies to summary charts based on evidence previously admitted but which is so voluminous that in-court review by the jury would be inconvenient. Although the plain language of Rule 1006 does not apply to summaries of testimonial evidence, we have permitted such use in conspiracy cases to aid the jury ‘[in] put[ting] the myriad of complex and intricate pieces of testimonial and documentary evidence comprising the puzzle together....’” (footnotes omitted).

United States v. Abonce-Barrera, 257 F.3d 959, 963 (9th Cir. 2001).

“Where there is no dispute as to accuracy, we review for abuse of discretion the district court's decision to admit the transcriptions and their English translation and to allow the jury to take such exhibits into the jury room. United States v. Rrapi, 175 F.3d 742, 746 (9th Cir. 1999); United States v. Fuentes-Montijo, 68 F.3d 352, 354 (9th Cir. 1995).”

“Because we are left ‘with largely conclusory allegations of possible inaccuracy,’ abuse of discretion is the proper standard. United States v. Pena-Espinoza, 47 F.3d 356, 359 (9th Cir. 1995).”

United States v. Ray, 250 F.3d 596, 602 (8th Cir. 2001).

Because “[t]he jury had the opportunity to examine the [marijuana] exhibit in the courtroom and make its own determination about it,” judge’s instructions to the jury as to why the exhibit was not sent to the jury room did not prejudice the defendant.

United States v. Meshack, 225 F.3d 556, 582 (5th Cir. 2000).

“Although the government presented the [demonstrative] chart through a witness,” the court held that there was no plain error in counsel using the chart to aid the witness’ testimony when the chart did not go the jury room, the chart was not admitted into evidence, opposing counsel could cross-examine the witness about the chart, and opposing counsel did not challenge the chart as misleading or inaccurate.

United States v. Hollie, No. 98-1103, 1999 U.S. App. LEXIS 29270, at *25-26 (6th Cir. Nov. 3, 1999) (not recommended for full-text publication).

“Lastly, Holly [sic] objects to the district court's decision to allow the use of demonstrative summary evidence into the jury room, which we review for an abuse of discretion. United States v. Moreno, 933 F.2d 362, 375 (6th Cir.), *cert. denied*, 502 U.S. 895 (1991).

The evidence in question is a time line summary chart the government prepared as part of its interpretation of the ATM video; it contained a list of events corresponding to the action occurring at a particular time on the video. Rather than using the word ‘perpetrator,’ the chart used the word ‘defendant’ next to each action. Hollie argues the videotape spoke for itself and that the chart improperly authenticated the government's theory. He also argues that the use of the word ‘defendant’ was prejudicial.

The jurors asked to see the chart during their deliberations. Apparently, they kept on playing the tape over and over again, and the time line allowed them to follow the tape with greater understanding. After advising the jury that only the video was evidence, the district court allowed them to look at the chart.

We find nothing wrong with the district court's decision to allow the jury to look at the chart. We note that Hollie's trial counsel did not object to the use of the word ‘defendant,’ and in fact he admitted that the figure in the videotape was definitely Hollie. Nor did his counsel dispute the accuracy of the chart. Although Hollie argues that the video spoke for itself, the jury apparently disagreed and felt that the chart would aid them in their deliberations.”

United States v. Scott, No. 97-2048, 1998 U.S. App. LEXIS 2235, at *15-16 (7th Cir. Nov. 3, 1998) (unpublished decision).

“The trial court may, at its discretion, send exhibits into the jury room. United States v. Samples, 713 F.2d 298, 303 (7th Cir. 1983). The role of appellate review is to insure that the district court's decision did not clearly prejudice the defendant. *See* United States v. De Hernandez, 745 F.2d 1305, 1308 (10th Cir. 1984). At most, Scott's arguments address the *risk* of prejudice, and fall far short of establishing clear prejudice” (emphasis in original).

United States v. Salerno, 108 F.3d 730, 745 (7th Cir. 1997).

“Although in some cases it may be better practice to exclude demonstrative evidence from the jury room in order to reduce the potential for unfair prejudice, see [United

States v.] Towns, 913 F.2d [434,] at 446 [7th Cir. 1990], in this case, the district court certainly did not abuse its discretion. *See United States v. Cox*, 633 F.2d 871, 874-75 (9th Cir. 1980) (admitting ‘mock-up bombs’ into evidence for illustrative purposes and permitting them to go to the jury room).”

United States v. Smith, Nos. 87-3996, 87-3997, 1988 U.S. App. LEXIS 14573, at *2-3 (6th Cir. filed Oct. 28, 1988) (not recommended for full-text publication).

“Absent clear prejudice to the defendants, it is within the discretion of the District Court to decide what exhibits are permitted in the jury room. *United States v. Hines*, 696 F.2d 722, 734 (10th Cir. 1982). Ordinarily all exhibits are sent to the jury room during deliberations. ‘An audio exhibit should not be relegated to muteness because it can be perused only through the use of a tape player.’ *United States v. Bizanowicz*, 745 F.2d 120, 123 (1st Cir. 1984). Absent some special circumstance the trial judge should allow the jury to have access during its deliberations to tape recordings that have been admitted as exhibits during trial. *United States v. Scaife*, 749 F.2d 338, 347 (6th Cir. 1984). *See also United States v. Samples*, 713 F.2d 298, 303 (7th Cir. 1983).

The District Court did not abuse its discretion by providing the jury with a tape player. We reject defendants' argument that the audio nature of tape recordings or the opportunity for their repeated playback renders them inherently prejudicial. Tape recordings *prima facie* are no more prejudicial than other tangible objects also subject to the trial court's discretionary decision whether to allow them into the jury room” (emphasis in original).

United States v. Schaffner, No. 84-1820, 1985 U.S. App. LEXIS 13837, at *12-13 (6th Cir. Nov. 22, 1985) (not recommended for full-text publication).

“Schaffner's final two claims of error are also not well-taken. Schaffner contends that the refusal by the district court to send the letters written by Schaffner and Terishinski to the jury room was an abuse of discretion. ‘The general rule is that exhibits properly admitted into evidence may be sent to the jury room.’ *United States v. Parker*, 491 F.2d 517, 521 (8th Cir. 1973). While courts of appeal have held that a district court did not abuse its discretion in sending documents to a jury when both government and defense counsel agree to the procedure, *United States v. Jackson*, 477 F.2d 879 (11th Cir. 1973); that it was within a trial court's discretion to send properly admitted exhibits to the jury room, *Parker*, 491 F.2d at 522; and that there was no error where a jury requested one evidentiary exhibit and the district court sent all exhibits to the jury room instead to avoid undue emphasis on the lone requested exhibit, *United States v. Thomas*, 521 F.2d 76, 81-82 (8th Cir. 1975); no cases stand for the proposition that a district court is required to send exhibits to the jury room where as in this case the jury has not requested to view any exhibits and only one party has made the request. In this situation the decision not to send exhibits to the jury room is within the district court's discretion. Accordingly, the district court did not err in refusing Schaffner's request.”

Battery Techs. v. Exide Corp., 876 F. Supp. 582, 604 (D. Del. 1995).

“A trial court has the discretion to allow the parties to show to the jury charts and other visual aids that summarize or organize testimony or documents that have already been admitted in evidence. *Pierce v. Ramsey Winch Co.*, 753 F.2d 416, 431 (5th Cir. 1985). Such aids are not themselves evidence and, absent the consent of all parties, should not be sent to the jury room. *Id.* They are more ‘akin to argument than evidence.’ *Gomez v. Great Lakes Steel Div. Nat’l Steel Corp.*, 803 F.2d 250, 257 (6th Cir. 1986). Consequently, it was not error to refuse to admit the models and videotapes into evidence, and the court will deny defendants motion for a new trial on this alleged error.”

Levy v. Abate, No. 93-CIV-0258, 1993 U.S. Dist. LEXIS 9231, at *9-11 (S.D.N.Y. June 29, 1993).

“During petitioner’s testimony, counsel for petitioner sought to introduce into evidence numerous exhibits, including lengthy newspaper articles and other documents. Although the court admitted into evidence most of the exhibits, it directed that in the interests of expediency they would not be read or presented to the jury at that time; the court stated that counsel could argue from the exhibits in her summation and that the jury would ‘have [them] in there,’ presumably referring to the jury room during deliberations.”

“Petitioner claims that before the jury began its deliberations, counsel for petitioner requested that the exhibits be sent into the jury room. The judge denied this request, noting that her charge clearly informed the jurors that they could request any exhibit they wished to examine.”

“The crux of petitioner’s argument is that a defendant has the right to have the jury examine any evidence admitted on his behalf. Because the jury never closely examined the exhibits at issue, petitioner argues, he was not afforded a full opportunity to present a defense.”

“However, petitioner is unable to point to any case establishing a constitutional right to compel a jury to examine exhibits, and we are aware of none.”

“Thus, contrary to petitioner’s contentions, the jury did have the opportunity to review all the evidence, and consequently no Sixth Amendment violation can be found. *United States v. McCarthy*, 961 F.2d 972, 978 (1st Cir. 1992).”

Law Review Articles

1. Fredric I. Lederer, *The Randolph W. Thrower Symposium: Changing Litigation with Science and Technology: Technology Comes to the Courtroom*, 43 EMORY L.J. 1095, 1115 (1994).

“If factfinders are to routinely use television- and computer-based evidence, then the installation of playback equipment in the jury room or, in a bench trial, in the judge’s chambers will be

unavoidable. Special efforts may be necessary to ensure that the jury does not use electronic information and equipment improperly.”

2. Emilia A. Quesada, Comment, *Summarizing Prior Witness Testimony: Admissible Evidence, Pedagogical Device, or Violation of the Federal Rules of Evidence?*, 24 FLA. ST. U. L. REV. 161, 169-171 (1996).

“The circuits are split as to whether a summary chart should be admitted and allowed into the jury room or whether it is just a pedagogical device that should be admitted to aid the jury in weighing the evidence that has already been presented. The jury hears the testimony in both instances, with the difference being whether the document is admitted into the jury room as evidence in the case. Johnson reconciled this difference by holding that ‘the concern should not be so much with the formal admission of the summaries as it is with the manner in which the district court instructs the jury to consider the chart.’ The court reasoned that whether the chart was technically admitted into evidence was not as important as whether the jury ‘is taking a close look at the evidence upon which that chart is based’ and not relying upon the chart as independent evidence.

The Johnson court held that the trial judge's instructions focusing the jury on the evidence rather than on the summary testimony were sufficient, thereby allowing testimony that simply summarized that of prior witnesses and put the credibility of those witnesses at issue for a second time. The Scales court warned of this problem when it recognized that Rule 611(a) could be used instead of Rule 1006 to admit testimony summarizing objective evidence.

One of main issues the Johnson defendant argued on appeal was that the district court had abused its discretion and committed reversible error when it admitted part of FBI Agent Richard Hudson's summary testimony. Agent Hudson testified about an organizational chart that reflected his compilation of the prior incourt testimony of thirty co-conspirators, and presented foundational testimony in support of the chart. In addition, Agent Hudson verbally summarized the prior in-court testimony of the thirty co-conspirators in the light most favorable to the prosecution. The Fourth Circuit held that under Rule 611(a), the district court had not erred in admitting the summary chart, the foundational testimony for the chart, or the testimony summarizing that of the prior in-court witnesses. The court based its conclusion upon the large number of witnesses and extensive evidence that the government had presented, as well as the district court's curative instructions to the jury.

The court split its discussion of summary evidence, addressing first the admissibility of the summary chart and then discussing the admissibility of the summary testimony. The court looked to the Second Circuit's decision in *United States v. Pinto* as a good example of how a court should apply Rule 611(a) in admitting summary charts.” (footnotes omitted)

Footnote 60 outlines the circuit split on whether a summary chart should be allowed in the jury room:

“n60. *Compare* United States v. Wood, 943 F.2d 1048, 1053 (9th Cir. 1991) (pedagogical devices summarizing previously admitted testimony or documents "should not be admitted into evidence or otherwise be used by the jury during deliberations") *and* United States v. Seelig, 622 F.2d 207, 214 (6th Cir.), *cert. denied*, 449 U.S. 869 (1980) (holding that such summaries should be accompanied by limiting instruction that summary does not itself constitute evidence) *with* United States v. Poschwatta, 829 F.2d 1477, 1481 (9th Cir. 1987) (court did not abuse its discretion by admitting charts into evidence, although better practice is to admit charts only as testimonial aid for jury). *See also* RICE, *supra* note 21, at 856. Rice states that courts disagree over the evidentiary status of summaries, with some courts improperly holding that summaries are not evidence and restricting their use to assisting the jury in understanding and using the underlying facts and data already in the record. *Id.* (citing United States v. Atchley, 699 F.2d 1055 (11th Cir. 1983); United States v. Nathan, 536 F.2d 988 (2d Cir. 1976)). Rice goes on to say that the correctly interpreted evidentiary status of summaries was spelled out in United States v. Smyth, 556 F.2d 1179 (5th Cir. 1977), which held that the lower court properly admitted certain FBI computer printouts into evidence. RICE, *supra* note 21, at 857 (citing Smyth, 556 F.2d at 1184). Rice reconciles these differences by claiming that the courts have erroneously interpreted summary evidence by failing to distinguish between its use as a substitute for primary evidence under Rule 1006 and its use as pedagogical device to aid the jury in evidence organization. *Id.* at 858.”

3. Pamela H. Bucy, *The Poor Fit of Traditional Evidentiary Doctrine and Sophisticated Crime: An Empirical Analysis of Health Care Fraud Prosecutions*, 63 FORDHAM L. REV. 383, 416 (1994).

“According to commentators and courts, unlike a ‘FRE 1006’ summary, a ‘pedagogical’ summary is not evidence, ‘but only the proponent’s organization of the evidence presented.’ A ‘pedagogical’ summary is based on testimony or documents already admitted into evidence, and ‘should not be allowed into the jury room without the consent of all parties.’” (citing 5 Jack B. Weinstein & Margaret A. Berger, Weinstein’s Evidence P1006[07] (1994)).

4. Fred Galves, *Where the Not-So-Wild Things Are: Computers in the Courtroom, the Federal Rules of Evidence, and the Need for Institutional Reform and More Judicial Acceptance*, 13 HARV. J. L. & TECH. 161 (2000)

The article advocates a change in rules to allow computer generated exhibit use.

Footnote 45 states:

“Demonstrative evidence is addressed directly to the senses and is concerned with real objects that illustrate some verbal testimony, but has no independent probative value in itself. *See Black’s Law Dictionary* 577 (7th ed. 1999). A key distinction must be made here with respect to evidence that is “admitted” and therefore goes to the jury room at the end of the trial for deliberations as admitted evidence in that case -- denominated as an “admitted trial exhibit” -- and “demonstrative evidence” (really, demonstrative exhibit) which typically does not go to the jury room because it is not itself admitted as evidence. Demonstrative evidence is merely for the

in-court speaker -- either the attorney during opening or closing statements or the witness during their testimony -- to further enhance or clarify what they are saying or testifying. *See generally* Christopher B. Mueller & Laird C. Kirkpatrick, *Evidence* § 9.32 (1995). For example, if a document such as a letter or contract is admitted as an exhibit, it becomes an official part of the record and, as such, attorneys can refer to the exhibit during trial and the jury can examine the admitted evidence during its deliberations. Note that the letter or contract existed before the case came to trial and is relevant to the dispute. Demonstrative evidence, on the other hand, is something usually created for trial; it is not factual evidence in and of itself. It merely helps explain what is being said or testified to in court. *See id.* For example, a simple list of elements that one's opponent must prove to find liability in a civil case or guilt in a criminal case is not "proof" or "evidence" of anything. Likewise an organizational outline which highlights what an attorney might be arguing in closing arguments is not "proof." *See id.* § 9.34. There is sometimes confusion because an admitted exhibit -- say a map or a diagram of a crime scene -- can also be used "demonstratively" to help explain a witness's testimony. For example, a witness can trace the path she walked on the diagram showing where she was at the time of the incident. So a witness's testimony may be admitted evidence but not necessarily a demonstrative exhibit which merely assists the witness to explain visually their testimony. Of course, a CGE can be used to show either a demonstrative exhibit (e.g., a list of elements) or substantive evidence (the actual contract at issue). In contrast, "real evidence" consists of admitted tangible evidence such as a murder weapon, a tire valve, a safety switch, etc. It is commonly understood that the thing itself has substantive significance in the case because it is the object that played a pivotal role in the crucial events giving rise to the case. *See id.* § 9.32."

Footnote 248 states:

"*See supra* notes 45, 137; *see also infra* note 249 (defining demonstrative evidence and pointing out that it has no independent proof and often does not even go back to the jury room with other admitted substantive evidence to be considered during jury deliberations).

Footnote 147 states:

"*See supra* note 137. The general standard for reviewing the admission of demonstrative evidence, or determining what is actually a "demonstrative exhibit" such as a CGE, is abuse of judicial discretion. *See Strock v. Southern Farm Bureau Cas. Ins. Co.*, 998 F.2d 1010 (4th Cir. 1993) (affirming that the judicial discretion standard is applied to the allowance of demonstrative CGEs). This standard entrusts the trial judge with the decision to apply the rules in the context of the trial, and therefore tends to result in that decision being reversed less often than not. *See Wright & Graham, supra* note 8, § 5223 (arguing that the abuse of discretion standard amounts to an unhealthy grant of unfettered discretion to the trial judge). Conceivably, two different trial judges could rule exactly opposite to one another with respect to the same evidentiary issue, and the same appellate court could uphold both of them, provided that neither were so wrong that they abused their discretion. As a result of this deferential standard, the decisions of trial judges are often upheld on appeal, even if the appellate court thinks the judge may have been wrong on the application of the law to the facts in the case, because the appellate court can only reverse when it believes the trial judge was so far off the mark, or entirely out-of-bounds, that the discretion given to the judge was abused. *See id.* § 5223, n.2 (Supp. 1998).

After reading hundreds of cases on Rule 403, one becomes uneasy with the sense that more often than they should courts are using Rule 403 in an unfair fashion, excluding evidence that is routinely admitted at the behest of others. But this is difficult to document because appellate courts seem not to take the question of fairness very seriously so their opinions do not provide enough facts to confirm or dispel this suspicion.

Id.”

5. Joel M. Schumm, *Survey: Criminal Law and Procedure: Recent Developments in Indiana Criminal Law and Procedure*, 32 IND. L. REV. 789, 802-805 (1999).

Discusses the application of the Indiana Statute dealing with the viewing of exhibits in the jury room.

“In December of 1997, a panel of the court of appeals issued an opinion in *Riggs v. State*. The opinion noted the divergence of opinions of that court regarding what triggers the application of Indiana Code section 34-1-21-6. That statute provides:

After the jury have retired for deliberations, if there is a disagreement between them as to any part of the testimony, or if they desire to be informed as to any point of law arising in the case, they may request the officer to conduct them into court, where the information required shall be given in the presence of, or after notice to, the parties or their attorneys.

Relying on the plain language of the statute, the *Riggs* court held that ‘where the jury does not explicitly manifest any disagreement about the testimony or does not ask for clarification of a legal issue, [Indiana Code section] 34-1-21-6 simply does not apply.’ The court acknowledged that its decision conflicted with opinions from other panels of the court of appeals in two respects. Specifically, the *Riggs* panel noted that ‘requests by the jury to review exhibits, which are items of physical evidence, are never within the scope of the statute.’ This conflicts with the view expressed by a different panel of the court of appeals in *Anglin v. State* that requests to review exhibits may sometimes fall within the scope of the statute. Moreover, *Riggs* also held that the statute is not triggered whenever the jury requests to rehear testimony or see exhibits for a second time, but rather only when the jury explicitly manifests disagreement about testimony.

Several months later, the supreme court resolved the split in the court of appeals on the latter issue. In *Bouye v. State*, the jury sent a note that read ‘Deborah's testimony’ to the trial judge during deliberations. The court responded, without first informing the defendant or his counsel, with a note that said no transcripts were available. On appeal, the defendant contended that this ex parte communication violated Indiana Code section 34-1-21-6. The supreme court characterized the split in the court of appeals as follows: ‘One line holds that, where the jury does not explicitly manifest any disagreement about the testimony or does not ask for clarification of a legal issue, the statute does not apply.’ However, ‘the other line holds that, whenever a jury requests that it be given the opportunity to rehear testimony for a second time, the jury is inherently expressing disagreement or confusion about that evidence, thus triggering the statute any time a jury makes a request for testimony.’ Relying on the plain language of the

statute, the supreme court found the first line cases more persuasive and divined that the legislature's intent was to limit the statute's application to those cases 'in which the jury explicitly indicated a disagreement.' Because the jury note in Bouye did not indicate disagreement regarding testimony, the statute was not implicated.

A couple of months later, the supreme court applied the rule announced in Bouye to a case involving a request to review exhibits after deliberations had begun. In Robinson v. State, the court held that the statute was not triggered because the jury's note merely requested the exhibits and did not explicitly indicate[] a disagreement. The court also noted the division on the court of appeals regarding whether the statute can ever be triggered by a request for exhibits, or instead is triggered only by a disagreement about testimony. Robinson did not resolve that issue, but instead rested on the rule announced in Bouye. The court also held that the same standards that apply to the trial court's decision to send exhibits to the jury room before deliberations begin also apply to the decision to send exhibits to the jury room after deliberations have begun. The test, which was first adopted in Thomas v. State, is: (i) whether the material will aid the jury in a proper consideration of the case; (ii) whether any party will be unduly prejudiced by submission of the material; and (iii) whether the material may be subjected to improper use by the jury. The trial court in Robinson properly considered these three factors, and therefore did not err by sending the requested photographs to the jury room after deliberations had begun. As a final point, the supreme court held that the defendant's right to be present under both the state and federal constitutions was not violated by sending exhibits to the jury room in the absence of the defendant." (footnotes omitted)

6. Michael Sudman, Note, *The Jury Trial: History, Jury Selection, and the Use of Demonstrative Evidence*, 1 J. LEGAL ADVOC. & PRAC. 172, 178 (1999).

"Demonstrative evidence is not allowed in the jury room as part of the deliberation process because it has no independent probative value."

7. Marc T. Treadwell, *Survey Article, Evidence*, 50 MERCER L. REV. 229, 260-61 (1998).

"In Pickren v. State, the supreme court sent a strong message about the use of videotaped re-enactments of crimes. In Pickren the trial court ruled that the State could use a videotaped re-enactment of the crime as demonstrative evidence that could be shown to the jury but it would not be admitted into evidence as an exhibit that the jury could take to the jury room. On interlocutory appeal, the supreme court first noted that the trial court's characterization of the evidence as demonstrative evidence was incorrect. Demonstrative evidence is admissible and goes with the jury to the jury room. Other evidence may be used only to illustrate testimony and is not actually admitted into evidence. However, the videotape was not admissible for any purpose. Before re-enactments of crime are admissible, it must be shown that the re-enactment fairly and accurately depicts the events. Moreover, the court held that a trial court should not admit such re-enactments unless they are necessary to explain oral testimony. The supreme court was clearly concerned about opening the door to such re-enactments. The court stated, 'if use of such a videotape by the State were authorized, defendants with sufficient funds would stage their

own re-enactments of what they claim occurred at the time of the crimes in question ... this would lead to trial by taped re-enactments.” (footnotes omitted).

8. Gregory P. Joseph, *Symposium Law/Media/Culture: Legal Meaning in the Age of Images: A Simplified Approach to Computer-Generated Evidence and Animations*, 43 N. Y. L. SCH. L. REV. 875, 877-78 (2000).

“Since illustrative exhibits often do not go to the jury room, courts commonly employ a less rigorous standard in reviewing them. Even complex animations may, in the judge's discretion, fall within this category. However, because of the prejudicial potential of computer-generated reconstructions and re-creations, a more stringent standard of review is applied (assuming that admission is contested), regardless of whether they are nominally offered for illustrative or substantive purposes. *See, e.g.,* *Browning v. Paccar, Inc.*, 448 S.E.2d 260, 265, (Ga. Ct. App. 1994) (upholding trial court's decision to exclude from jury room the computer-generated reconstruction that was admitted solely to illustrate the testimony of plaintiffs' expert); ABA, *Civil Trade Practice Standard 7(c)* (1998).” (footnotes omitted).

Appendix C
State Court Survey Instrument

[Home](#)

SURVEY ON THE USE OF TECHNOLOGY IN THE JURY ROOM TO ENHANCE DELIBERAT

This survey is a component of a grant awarded to Courtroom 21 by the State Justice Institute. The grant seeks to test and evaluate the use of various technologies in the jury room to determine whether they can enhance deliberations. The project will test various technologies in the context of both traditional, non-technological trials, and new technology trials. Ultimately the project will combine survey data, empirical data, and technology experimental results (including real-life tests in working courts), and a summary of legal and policy considerations into a Manual on Jury Room Technology for use by courts.

For further information on the survey, call 757-221-2228 or email [Christie Warr cswarr@wm.edu](mailto:cswarr@wm.edu).

For further information about the Courtroom 21 Project, please visit our home <http://204.203.32.31:81/>, or email ctrm21@wm.edu

** denotes required fields*

Contact Information:

**Name:*

Title:

Work phone:

Fax:

** E-Mail:*

Court Information:

** Name of court:*

Address line 1:

Address line 2:

** State:*

** Zip code:*

**Type of court:* ☐ State ☐ Federal

**Level of court* ☐ Trial ☐ Appellate

**Jurisdiction of court:* ☐ General ☐ Limited

If limited jurisdiction, what type of cases are heard in your court?

COURTROOM TECHNOLOGY

QUESTION 1. Please indicate which pieces of technology are currently installed in your courtrooms:

Audio devices:

Speaker phones	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one
Audio cassette player	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one

Video devices:

Video cassette player	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one
Overhead projector	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one
Document camera	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one
Video camera	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one

Computer devices:

Computer whiteboard	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one
Scanner	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one
Desktop computer for viewing evidence	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one
Laptop computer and laptop connection	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one
Touchscreen control system	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one
Computer annotation devices	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one

Monitors and screens:

Television	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one
CRT monitor	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one
Projection screen	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one
Individual monitors for juror viewing	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one
Plasma screen	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one
LCD monitor	<input checked="" type="radio"/> none	<input type="radio"/> one	<input type="radio"/> more than one

Court record devices:

Real-time transcription (voice or steno)

- ☒
- none
- ☐
- one
- ☐
- more than one

Question 2. If your court has used any technology listed in Question 1 during trials, who usually provides the equipment?

- ☐ The equipment belongs to the court.
- ☐ Lawyers/parties use equipment they bring to court.
- ☐ The court obtains equipment from outside sources and makes it available for use by lawyers/parties.
- ☐ The court maintains an agreement with a local agency or group who loans equipment to the court as needed.
- ☐ Other (Please describe)

Question 3. Does your court employ any full time personnel whose primary purpose is to assist with technology?

- ☐
- Yes
- ☐
- No

ASSISTIVE TECHNOLOGY

Question 4. Please check all types of assistive devices in use in any of your courtrooms:

- ☐ Infrared hearing assistance devices
- ☐ Radio frequency hearing assistance devices
- ☐ Language interpretation
- ☐ TDD device
- ☐ Braille readers
- ☐ Real-time transcription
- ☐ Special handicap access jury spaces (in jury room and/or jury box)
- ☐ Other (Please describe)

Question 5. If your court provides assistive devices to jurors, who generally owns them?

- ☐ The equipment belongs to the court.
- ☐ State/local government owns them and loans them to the court.

- ☐ An ADA provider owns them and makes them available to the court.
- ☐ The court maintains an agreement with a local agency or group who loans the equipment to court as needed.
- ☐ Other (Please describe)

JUROR TECHNOLOGY

Question 6. Please indicate which, if any, of the following items jurors take with them to the jury room when they retire to deliberate, and which, if any, are made available to them upon request during deliberations:

	Take with them to deliberations	Available upon request of jurors
Evidence and exhibits	<input type="radio"/>	<input type="radio"/>
One set of written jury instructions	<input type="radio"/>	<input type="radio"/>
Individual sets of written jury instructions for each juror	<input type="radio"/>	<input type="radio"/>
Equipment to view evidence and exhibits	<input type="radio"/>	<input type="radio"/>
Calculators/spreadsheets	<input type="radio"/>	<input type="radio"/>
Notes taken by jurors during trial	<input type="radio"/>	<input type="radio"/>
Worksheets/index for reference to evidence/exhibits	<input type="radio"/>	<input type="radio"/>

Question 7. In trials in which technology is used to present evidence and exhibits, how do jurors usually view the evidence and exhibits during deliberations?

- ☐ Equipment is permanently installed in jury deliberation rooms.
- ☐ Equipment is transported into jury rooms with jurors.
- ☐ Jurors are brought back to the courtroom when they ask to view evidence or exhibits.
- ☐ Other (Please describe)

Question 8. Please check all types of technology available for juror use during deliberations:

- ☐ Pen and paper
- ☐ Spreadsheets
- ☐ Calculators
- ☐ Traditional chalk boards
- ☐ Traditional paper flip charts

- ☐ *Computer for calculating damages*
- ☐ *Computer for viewing computer-based exhibits*
- ☐ *Overhead projectors*
- ☐ *Audio cassette player*
- ☐ *Copy machine*
- ☐ *CRT monitor*
- ☐ *Individual monitors for juror viewing*
- ☐ *Printer*
- ☐ *Television*
- ☐ *Video cassette player*
- ☐ *Document camera*
- ☐ *Projection screen*
- ☐ *LCD monitors*
- ☐ *Computer annotation devices*
- ☐ *Touchscreen control*
- ☐ *Plasma screen*
- ☐ *Video camera*
- ☐ *Transcripts from real-time transcription, voice or steno*
- ☐ *Laptop computers and connections*
- ☐ *Speaker phones*
- ☐ *Scanner*
- ☐ *Computer whiteboard*
- ☐ *Other (Please describe)*

Question 9. When equipment is required to view evidence and exhibits during jury deliberations, who generally operates the equipment?

- ☐ *Court personnel assist jurors in operating the equipment.*
- ☐ *Jurors are instructed on equipment operation and are required to operate it themselves.*
- ☐ *Other (Please describe)*

Question 10. In your opinion, what type of technology is most urgently needed in your court either in the courtroom or in the jury deliberation room?

*Thank you for taking the time to fill out this survey. To send your answers to Courtroom
press the "submit" button below.*

Submit	Reset
--------	-------



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Appendix D
State Data Analysis

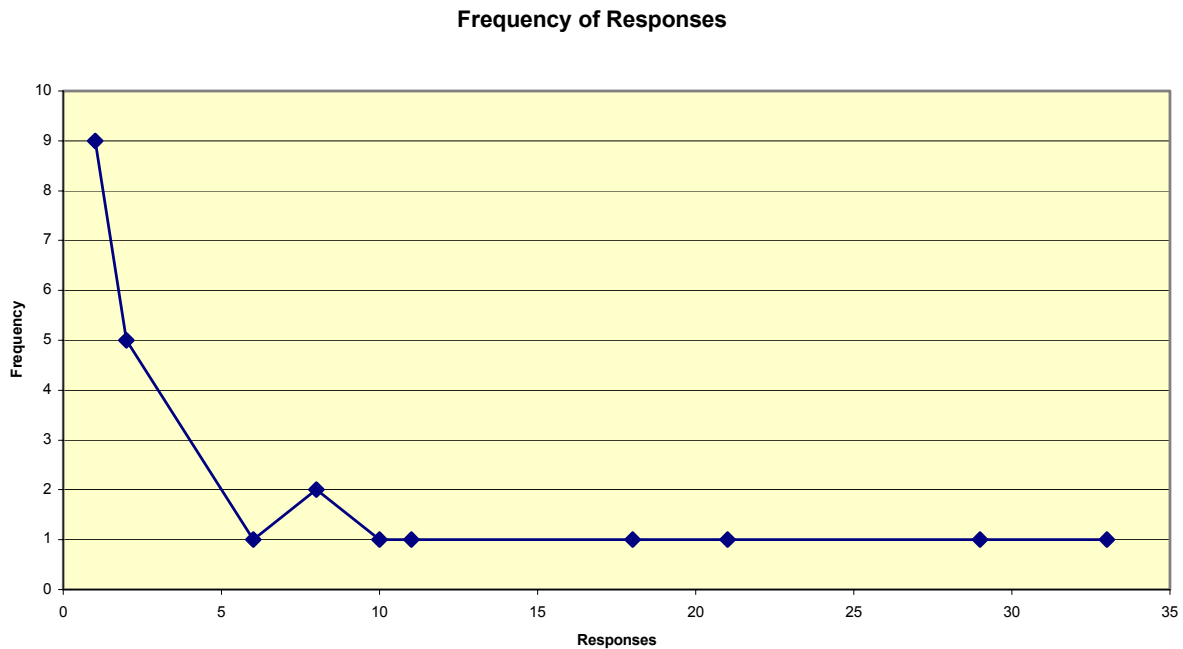
State Data Analysis

DEMOGRAPHIC DATA

Responses by State

State	Number Responses	Percent of Total
AL	1	0.6
CT	2	1.2
DE	2	1.2
GA	2	1.2
GU	1	0.6
IN	1	0.6
KS	1	0.6
LA	8	4.9
MI	11	6.7
MN	1	0.6
MO	18	11.0
MT	6	6.1
NC	1	0.6
ND	2	1.2
NH	8	4.9
OH	1	0.6
PA	33	20.2
SC	10	6.1
TN	2	1.2
TX	1	0.6
UT	1	0.6
WA	21	12.9
WI	29	17.8
Total	163	100.0

A total of 23 states responded to the survey with an average number of responses per state of 7.08, $\delta = \pm 9.424$. However, four states alone, MO, PA, WA, and WI comprise 61.9 % of the response group with an average response per state of 25.25, $\delta \pm = 6.95$.



Type of Court Responding

Type of Court	Number of Responses	Percent of Total
State	163	100.0
Federal	0	0.0

All respondents self-identified as representatives of State courts.

Level of Court Responding

Level	Number of Responses	Percent of Total
Appellate	2	1.2
Trial	161	98.8

The majority of courts responding, 98.8 %, were trial courts while Appellate courts comprised only 1.2% of the total responses. The two Appellate court responses were from GA and GU.

Jurisdiction of Courts Responding

Jurisdiction	Number of Responses	Percent of Total
General	152	93.3
Limited	11	6.7

Courts with general jurisdiction comprised 93.3% of the total responses with courts having limited jurisdiction comprising the remaining 6.7%.

QUESTION 1 : **Please indicate which pieces of technology are currently installed in your courtrooms.**

Category	Technology	Number Having One or More	Percent of Total
Audio Devices	Speaker Phones	86	52.8
	Audio Cassette Player	74	45.4
Video Devices	Video Cassette Player	97	59.5
	Overhead Projector	44	27.0
	Document Camera	15	9.2
	Video Camera	29	17.8
Computer Devices	Computer Whiteboard	13	8.0
	Scanner	4	2.4
	Desktop Computer for Viewing Evidence	12	7.4
	Laptop Computer and Laptop Connection	58	35.6
	Touch Screen Control System	3	1.8
	Computer Annotation Devices	7	4.3
Monitors and Screens	Television	110	67.5
	CRT Monitor	22	13.5
	Projection Screen	47	28.8
	Individual Monitors for Juror Viewing	6	3.7
	Plasma Screen	0	0.0
	LCD Monitor	3	1.8
Court Record Devices	Real-Time Transcription	65	39.9

Technologies Ranked from Most Reported to Least Reported

Technology	Number Having One or More	Percent of Total
Television	110	67.5
Video Cassette Player	97	59.5
Speaker Phones	86	52.8
Audio Cassette Player	74	45.4
Real-Time Transcription	65	39.9
Laptop Computer and Laptop Connection	58	35.6
Projection Screen	47	28.8
Overhead Projector	44	27.0
Video Camera	29	17.8
CRT Monitor	22	13.5
Document Camera	15	9.2
Computer Whiteboard	13	8.0
Desktop Computer for Viewing Evidence	12	7.4
Computer Annotation Devices	7	4.3
Individual Monitors for Juror Viewing	6	3.7
Scanner	4	2.4
Touch Screen Control System	3	1.8
LCD Monitor	3	1.8
Plasma Screen	0	0.0

Televisions were the most reported technology with 67.5% having at least one and 21.5% having more than one. The next most popular technologies were VCR's, speaker phones, audio cassette players, and real-time transcription. The percentage of respondents reporting having at least one of these were 59.5 %, 52.8%, 45.4%, and 39.9%, respectively. Roughly one third of respondents reported having at least one laptop computer (35.6%), projection screen (28.8%), or overhead projector (27.0%).

The high-end technologies were the least reported. No respondents reported having plasma screens, 1.8% reported having at least one LCD monitor or a touch screen control system, and 4.3% reported having at least one computer annotation device. Interestingly, more respondents reported having at least one document camera (9.2%) or at least one computer white board (8.0%) than reported having a scanner (2.4%).

Question 1 Summary

Total Number of Question 1 Items Selected	Number (frequency)	Percent of Total
0	13	8.0
1	17	10.4
2	16	9.8
3	23	14.1
4	23	14.1
5	23	14.1
6	18	11.0
7	11	6.7
8	8	4.9
9	2	1.2
10	4	2.5
11	1	0.6
12	2	1.2
13	1	0.6
15	1	0.6

The majority of the sample, 73.6%, fell within a range of having 1 to 6 of the listed technologies. Only 8.0% reported having none, and 6.7% reported having greater than 9 of the listed technologies.

Category Summary

Category	Number Having at Least One	Percent of Total
Audio Devices	120	73.6
Video Devices	110	67.5
Computer Devices	67	41.1
Monitors and Screens	121	74.2
Court Record Devices	65	39.9

Technology in Courtroom by Category

Category	Technology	More	Percent	One	Percent	None	Percent
Audio Devices	Speaker Phones	41	25.2	45	27.6	77	47.2
	Audio Cassette Player	26	16.0	48	29.4	89	54.6
Video Devices	Video Cassette Player	28	17.2	69	42.3	66	40.5
	Overhead Projector	10	6.1	34	20.9	119	73.0
	Document Camera	5	3.1	10	6.1	148	90.8
	Video Camera	17	10.4	12	7.4	134	82.2
Computer Devices	Computer Whiteboard	1	0.6	12	7.4	150	92.0
	Scanner	1	0.6	3	1.8	159	97.5
	Desktop Computer for Viewing Evidence	6	3.7	6	3.7	151	92.6
	Laptop Computer and Laptop Connection	28	17.2	30	18.4	105	64.4
	Touch Screen Control System	1	0.6	2	1.2	160	98.2
	Computer Annotation Devices	3	1.8	4	2.5	156	95.7
Monitors and Screens	Television	35	21.5	75	46.0	53	32.5
	CRT Monitor	13	8.0	9	5.5	141	86.5
	Projection Screen	14	8.6	33	20.2	116	71.2
	Individual Monitors for Juror Viewing	5	3.1	1	0.6	157	96.3
	Plasma Screen	0	0	0	0	163	100.0
	LCD Monitor	0	0	3	1.8	160	98.2
Court Record Devices	Real-Time Transcription	31	19.0	34	20.9	98	60.1

QUESTION 2: If your court has used any technology listed in Question 1 during trials, who usually provides the equipment?

Technology Source	Number of Responses	Percent of Total
Court provides	96	58.9
Lawyers/parties bring what they use	35	21.5
Court and lawyers/parties provide	13	8.0
Court obtains from outside source and makes it available	4	2.5
Lawyers/parties bring what they use and local agency or group loans equipment to court as needed	3	1.8
Court, lawyers/parties, and outside sources provide	2	1.2
Court, lawyers/parties, outside sources, and local agencies/groups provide	2	1.2
Local agency or group loans equipment to court as needed	1	0.6
Court and outside sources provide	1	0.6
Lawyers/parties and outside sources provide	1	0.6

The majority of equipment is provided by the court (65%) or by the lawyers/parties as needed (22.7%). 2.5% of respondents indicated that the court will get the equipment from an outside source while 0.6% get equipment through a loan from a local agency or group on an as needed basis.

QUESTION 3: Does your court employ full time personnel whose primary purpose is to assist with technology?

Employs full time IT staff	Number of Responses	Percent of Total
No	163	100.0
Yes	0	0.0

All respondents reported that they have no full time personnel devoted entirely to assisting with technology.

QUESTION 4: Please check all types of assistive devices in use in any of your courtrooms.

Assistive Device	Number Having Device Indicated	Percent of Total
Language interpretation	52	31.9
Special handicap access jury spaces (in jury room and/or jury box)	52	31.9
Infrared hearing assistance devices	50	30.7
Real-time transcription	50	30.7
Radio frequency hearing assistance devices	30	18.4
Other	14	8.6
TDD device	10	6.1
Braille readers	0	0.0

*Note that this figure of real-time transcription does not match question 1 response rate (39.9% on question 1 versus 30.7% here).

Question 4 Detail of Other Category

Assistive Device	Number Having Device Indicated	Percent of Total
Hearing assistance devices	6	3.7
Human interpreters	5	3.1
Handicap access to court/courtroom	2	1.2
Equipment is borrowed	1	0.6

Question 4 Frequency of Yes Responses

Total Number of Question 4 Items Selected	Number (frequency)	Percent of Total
0	42	25.8
1	37	22.7
2	45	27.6
3	27	16.6
4	10	6.1
5	2	1.2

Roughly one quarter (25.8%) of respondents reported no assistive technology in their courtrooms. A little more than a quarter of respondents (27.6%) reported two assistive devices. About one fifth of respondents (22.7%) reported having only one device. 16.6% of respondents

reported having 3 devices, and 7.3% reported having 4 to 5 devices. “Other” category responses were included in this tally as “yes” responses.

QUESTION 5: If your court provides assistive devices to jurors, who generally owns them?

Owner of Devices	Number of Responses	Percent of Total
Court	107	65.6
Other	30	18.4
State/local govt	19	11.7
Local agency or group	7	4.3
ADA provider	0	0.0

Question 5 Detail of Other Responses

Owner of Devices	Number of Responses	Percent of Total
Description field left blank	25	15.3
Other parties	2	1.2
Court; local agency or group	1	0.6
Court; state/local govt	1	0.6
Court; local agency or group; state/local govt	1	0.6

The majority of assistance devices are provided by the court (66.9%). State and local governments provide 11.7% and local agencies or groups provide 4.3%. 17.2% of respondents indicated that the devices were provided by a source not listed on the survey but 82% of them failed to list the sources.

QUESTION 6: Please indicate which, if any, of the following items jurors take with them to the jury room when they retire to deliberate and which, if any, are made available to them upon request during deliberations.

Juror Technology	Take technology to jury room		Available upon request during deliberations		None	
	Number	Percent	Number	Percent	Number	Percent
Evidence and exhibits	92	56.4	58	35.6	13	8.0
One set of written jury instruction	88	54.0	19	11.7	56	34.4
Individual sets of jury instruction	23	14.1	22	13.5	118	72.4
Equipment to view evidence and exhibits	22	13.4	49	30.1	92	56.4
Calculators/spreadsheets	5	3.1	45	27.6	113	69.3
Notes taken by jurors during trial	85	52.1	10	6.1	68	41.7
Worksheets/index for reference to evidence and exhibits	9	5.5	23	14.1	131	80.4

Question 6 Implicit Availability of Juror Technologies During Deliberations

Juror Technology	Percent Available	Percent Not Available
Evidence and exhibits	92.0	8.0
One set of written jury instruction	65.5	34.4
Individual sets of jury instruction	27.6	72.4
Equipment to view evidence and exhibits	43.6	56.4
Calculators/spreadsheets	30.7	69.3
Notes taken by jurors during trial	58.3	41.7
Worksheets/index for reference to evidence and exhibits	19.6	80.4

The “Percent Available” figures is the cumulative of the “taken to jury room” and “available upon request” responses. The “Percent Not Available” figures are the percentage of non-responses for the particular category of juror technology.

8.0% of courts responding do not allow evidence and exhibits into the jury rooms, and 41.7% do not allow the jurors access to notes they took during trial. Almost half provide equipment to view evidence and exhibits, and roughly one fifth (19.6%) of respondents provide an index for evidence and exhibits. Almost one third provide calculators and/or spreadsheets.

The majority of respondents indicated that they provide one set of jury instruction (65.5%) versus individual sets (27.6%). About one fifth of respondents (22.1%) reported that they provide one set and individual sets of jury instruction, but it is not known if this is determined by the judge, the type of case, or other factors. 28.8% reported that they do not provide any written copy of jury instructions to the jurors in the deliberation rooms.

Type of Jury Instructions	Number of Responses	Percent of Total
Provide only one set or individual sets of instructions	80	49.1
Provide both one set and individual sets of instructions	36	22.1
Provide no written copy of instructions	47	28.8

QUESTION 7: **In trials in which technology is used to present evidence and exhibits, how do jurors usually view the evidence and exhibits during deliberations?**

Viewing Method	Number of Responses	Percent of Total
Jurors brought back to courtroom to view	77	47.2
Equipment transported into jury room	61	37.4
Not applicable	15	9.2
Sometimes equipment transported into jury room; sometimes jurors brought back to courtroom	4	2.5
Hard copies of evidence/exhibits provided	3	1.8
Equipment permanently installed in jury room	1	0.6
Not sure	1	0.6
None of the above	1	0.6

Respondents indicated that most of the time, jurors are brought back into the courtroom to view evidence and exhibits (47.2%) or the viewing equipment is transported into the jury rooms (37.4%). Only 0.6% of respondents indicated that viewing equipment is permanently installed in the jury rooms.

QUESTION 8: Please check all types of technology available for juror use during deliberations.

Technology	Number of “Yes” Responses	Percent of Total
Pen and paper	155	95.1
Chalk boards	77	47.2
Paper flip charts	68	41.7
Video cassette player	50	30.7
Calculators	44	27.0
Television	44	27.0
Audio cassette player	30	18.4
Copy machine	14	8.6
Projection screen	12	7.4
Spreadsheets	10	6.1
Overhead projectors	9	5.5
Transcripts from real-time transcription, voice, or steno	9	5.5
Speaker phones	7	4.3
Computer to view computer-based exhibits	4	2.5
CRT monitor	4	2.5
Printer	4	2.5
Video camera	4	2.5
Computer to calculate damages	3	1.8
Document camera	3	1.8
Computer whiteboard	3	1.8
Other	3	1.8
Scanner	1	0.6
Individual monitors for jurors	0	0.0
LCD monitors	0	0.0
Computer annotation device	0	0.0
Touch screen control	0	0.0
Plasma screen	0	0.0
Laptop computers	0	0.0

Courts reported wider availability of “low technology” tools for jurors during deliberations than the higher technology alternatives. Almost all respondents (95.1%) provide pen and paper, just under half provide chalk boards and traditional paper flip charts (47.2% and 41.7%, respectively). Between 18% and 30% provide video cassette players, televisions, calculators, and audio cassette players. Interestingly, more respondents reported providing video cassette players (30.7%) than televisions (27%). Between 5% and 10% reported that they provide copy machines, projection screens, spreadsheets, overhead projectors and court transcripts. A very small number (less than 5%) reported that they provide speaker phones, computers to view computer-based exhibits, CRT monitors, printers, video cameras, computers

to calculate damages, document cameras, computer whiteboards, or scanners. No courts reported that they provide LCD monitors, computer annotation devices, touch screen controls, plasma screens, or laptop computers to jurors during deliberations.

Question 8 Frequency of Yes Responses

Total Number of Question 8 Items Selected	Number (frequency) of Respondents	Percent of Total
0	3	1.8
1	58	35.6
2	21	12.9
3	21	12.9
4	12	7.4
5	15	9.2
6	12	7.4
7	10	6.4
9	1	0.6
10	3	1.8
11	3	1.8
12	2	1.2
13	1	0.6
18	1	0.6

More than one-third of respondents (35.6%) reported providing only one of the technologies listed. Given that over 95% reported providing pen and paper, it is likely that most of these are providing only pen and paper. Almost 13% selected 2 or 3 technologies, between 5% and 10% selected 4-7 technologies, and less than 2% selected more than 7 technologies. Only 1.8% selected none.

QUESTION 9: When equipment is required to view evidence and exhibits during jury deliberations, who generally operates the equipment?

Equipment Operator	Number of Responses	Percent of Total
Court personnel assist jurors	96	58.9
Jurors are instructed and operate it themselves	34	20.9
Not applicable	28	17.2
Lawyers	5	3.1
Equipment owner	1	0.6

The majority of respondents (58.9%) reported that court personnel assist jurors with technology in the jury room. About one fifth report that the jurors receive instruction and then operate the equipment themselves.

QUESTION 10: **In your opinion, what type of technology is most urgently needed in your court, either in the courtroom or in the jury deliberation room?**

	Number of Responses	Percent of Total
Need nothing	43	26.4
Need at least one thing	107	65.6
Need “everything”	13	8.0

Most respondents, 65.6%, reported that they need at least one type of technology in either the courtroom or in the jury deliberation room. A little more than one quarter (26.4%) reported that they do not need anything. Only 8.0% specifically said they need “everything”.

Appendix E
Preliminary Federal Court Report

**Federal Judicial Center Survey on Courtroom Technology
A Draft Report on Selected Survey Questions**

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July 2002

This Federal Judicial Center project was undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. The views expressed in this report are those of the authors and not necessarily those of the Federal Judicial Center.

This draft report summarizes the responses to selected survey questions of the thirty-one districts that responded to the survey by the initial due date. The results and related commentary are preliminary and should be interpreted and used with caution. A final report will be available from the Federal Judicial Center in Fall, 2002.

About the Survey

In late May, we sent an e-mail message to all district court clerks requesting that they or their designee complete an on-line questionnaire about the extent to which courtroom technology is used in their district court and for what purpose it is used. The questionnaire also included some questions about how the technology is managed at the local level and the resources required to do so.

The survey is part of the Federal Judicial Center's on-going project to develop information to help judges handle electronic evidence as they preside over cases and to help evaluate any need for procedural or evidentiary rule changes. We anticipate that the clerks' responses will help us determine the important areas for additional study.

We collaborated with the Administrative Office on the content of the survey, and several offices have included questions that would be useful to them in managing the Courtroom Technology Program. We also included some questions of interest to Courtroom 21 of the William and Mary Law School and the National Center for State Courts. Courtroom 21, supported by a grant from the State Justice Institute, is evaluating the effect of jury room technologies and deliberations in traditional non-technological trials and high technology trials in both state and federal courts.

This draft report summarizes the responses of thirty-one districts to selected survey questions. The thirty-one districts are those that responded to the survey by the initial due date; there are ninety-four federal judicial districts in all. For each of the selected survey questions, we set out the question itself, a table of results, and in some instances, related commentary. In this report, we summarize the results using counts of districts or courtrooms; in our final report, we will also present the information in terms of percentages of all districts and courtrooms. The results and commentary in this report are preliminary and should be interpreted and used with caution.

About the Survey Respondents

The following table lists the 31 districts that responded to the survey by the due date, the number of courtrooms used by magistrate and district judges in these districts, and the number of those courtrooms about which they were reporting.

District	Number of Courtrooms Used by Magistrate and District Judges	Number of Courtrooms Reported on in this Survey
Alabama Northern	21	2
Arizona	36	36
California Northern	26	26
California Southern	25	25
Colorado	15	2
Connecticut	17	17
Florida Southern	43	2
Georgia Middle	11	11
Guam	1	1
Illinois Northern	47	47
Iowa Northern	6	4
Iowa Southern	7	7
Kentucky Eastern	13	13
Louisiana Middle	6	6
Massachusetts	30	30
Mississippi Northern	8	8
Mississippi Southern	13	1
Missouri Western	17	17
Nebraska	12	12
New York Western	12	12
North Carolina Eastern	11	4
North Carolina Middle	8	8
Oregon	19	19
Pennsylvania Eastern	46	46
Tennessee Eastern	13	13
Tennessee Middle	9	9
Tennessee Western	9	9
Texas Northern	26	26
Virginia Western	15	15
Washington Eastern	10	10
Wisconsin Eastern	8	8
Total	540	446

The Southern District of Florida submitted a response describing all of its courtrooms after the data for this report were compiled.

Question 1.

Listed below are a number of technologies that can be permanently installed in courtrooms, shared between courtrooms, or brought into the courtroom by attorneys. For each technology, please indicate (1) in how many of your district's courtrooms, if any, the following technology is permanently installed; (2) whether the technology is shared between courtrooms and if so, the number of courtrooms with access to the shared equipment; and (3) finally, whether attorneys have brought any of the equipment into a courtroom within the past twelve months. We understand that your district most likely does not keep a record of when attorneys bring equipment into the courtroom; your best estimate in response to the third question is sufficient.

The first number in the cells of the second column of Table 1 (labeled “Number with permanent installations”) indicates how many of the 31 districts that responded to the survey have at least one courtroom with the indicated technology. The second number in the cells indicates how many of the 446 courtrooms reported on by the 31 districts have the technology.

Similarly, the first number in the cells of the third column (labeled “Number with shared access”) indicates how many of the 31 districts that responded to the survey have at least one courtroom with shared access to the indicated technology.

The number in the cells of the fourth column (labeled “Brought in by attorneys”) indicates the number of districts that reported an attorney brought the indicated technology into a courtroom in the past twelve months.

In our final report, we will present this information as percentages of total districts or courtrooms, as appropriate.

Table 1
Permanently-Installed, Shared-Access, and Attorney Provided Technology

Technology	Number with permanent installations ¹	Number with shared access ²	Brought in by attorneys ³
Evidence Camera	27/103	15 c	17 a
Wiring to Connect Laptops	26/97	22 c	18
Laptop computers	2/15	5 b	27 a
Desktop Computers	7/26	5 b	13 b
Monitors built into jury box	14/54	-	-
CRT Monitors outside the jury box	13/41	10 b	14 b
Plasma Monitors outside the jury box	8a /25	6 ^b	9 ^d
Other types of Digital Monitors outside the jury box	4a /7	3 c	6 e
LCD/Digital monitor at the Bench	26/163	9 b	9 c
LCD/Digital Monitor at Witness Stand	25/105	8 b	9 c
LCD/Digital Monitor at Counsel Table or Lectern	25/116	9 b	12 b
Digital Projector and Projection Screen	12/26	13 a	16 b
Monitors or screens targeted at audience	19/44	9 b	8 d
Color Video Printer	21/76	6 b	2 f
Annotation Equipment	26/90	10 b	8 b
Sound (Audio) Reinforcement System	27 a /418	7 d	5 a
Noise Masking	27/166	7 d	0 c
Signaling System	25/161	5 d	1 d
Time Over Lights	9 a /53	0 d	1 b
Telephone Interpreting System	13/70	7 c	0 d
Infrared Interpreting System	29/188	12 d	3 d

Table 1 continues on next page.

Table 1
Permanently-Installed, Shared-Access, and Attorney Provided Technology (cont'd)

Technology	Number with permanent installations ¹	Number with shared access ²	Brought in by attorneys ³
Kill Switch and Control System	26 ^a /120	8 ^e	4 ^b
Scanner	0/0	2 ^c	1 ^g
Electronic Whiteboard	7/11	4 ^d	3 ^h
Integrated Lectern	23/70	12 ^d	4 ^b
Audioconferencing Equipment	28/248	12	0 ^b
Videoconferencing Equipment	17/43	12 ^c	1 ^a
Control Room (Hub-based) Support for Videoconferencing	2 ^a /10	-	-
Echo Cancellation System	12/23	3 ^d	0 ^c
ISDN lines for Videoconferencing	20/174	8 ^c	1 ^b
Real-time software for use by a real-time court reporter	20/136	11 ^c	5 ^e
Real-time transcript viewer annotation system	18/130	7 ^d	5 ^c
Digital Audio Recording	18/60	7 ^d	0 ^d
Internet Connections for Lawyers	4/25	2 ^d	1 ^d
Wireless Technology other than Wireless Microphones	4 ^b /25	0 ^f	1 ^g
Analog Audiotape player	17/122	14 ^d	16 ^e
Analog Videotape player	27/124	18 ^c	13 ^d
Laser Disk Player	2 /2	0	1 ⁱ
Traditional Slide Projector	0/0	2 ^c	10 ⁱ
Overhead Projector	4/9	16 ^b	17 ^d
Television Set	9/34	21 ^c	14 ^d

a = 1 missing or can't say response
b = 2 missing or can't say responses
c = 3 missing or can't say responses
d = 4 missing or can't say responses
e = 5 missing or can't say responses

f = 6 missing or can't say responses
g = 7 missing or can't say responses
h = 8 missing or can't say responses
i = 9 missing or can't say responses
j = 10 missing or can't say responses

k = 11 missing or can't say responses
l = 12 missing or can't say responses
m = 13 missing or can't say responses
n = 14 missing or can't say responses
o = 15 missing or can't say responses

Table Notes:

1. The first number in the cells indicates how many of the 31 districts that responded to the survey have at least one courtroom with the indicated technology. For some technologies, The second number in the cells indicates how many of the 429 courtrooms reported on by the 31 districts have the technology.
2. The first number in the cells indicates how many of the 31 districts that responded to the survey have at least one courtroom with shared access to the indicated technology.
3. The number of districts that reported an attorney brought the indicated technology into a courtroom in the past twelve months.

Question 2.

In approximately how many trials and evidentiary hearings has each of the following technologies been used during the past 12 months? In approximately how many other hearings and non-ceremonial court proceedings has each of the following technologies been used during the past 12 months? We understand that your district most likely does not keep a record of how often equipment is used. Your best estimate is sufficient.

The entries in the second column of Table 2 (labeled “Trials and evidentiary hearings in the past year”) are: (1) the number of trials and evidentiary hearings in which technology has been used in the last 12 months across all reporting districts, and (2) the lowest number of such matters reported by any given district through the highest number reported (i.e., the range).

The entries in the third column of Table 2 (labeled “Other hearings and non-ceremonial hearings in the past year”) are: (1) the number of other hearings and court proceedings in which technology has been used in the last 12 months across all reporting districts, and (2) the lowest number such matters reported by any given district through the highest number reported (i.e., the range).

The numbers provided in Table 2 are lower than the actual number of trials and evidentiary hearings and of other hearings and court proceedings in which the indicated technologies have been used in the past 12 months, and should be interpreted only as lower bounds. They represent the lower bound because (1) some districts responding to the survey did not provide a count of the number of times the technology had been used or provided a count that could not be quantified (see Table 2b and lettered notes in Table 2), and (2) some districts indicated their estimate was a lower bound (e.g., they responded 100+). In addition, the counts for some technologies are largely due to just one district. For example, of the 1325 other hearings and proceedings in which an infrared interpreting system was used, 1113 were from one district.

In our final report, in addition to the information in Table 2, we will also report the mean and median number of trials/evidentiary hearings and other hearings and court proceedings in which the technologies have been used across the districts. In addition, we hope to present the number of trials and evidentiary hearings in which technology was used as a percentage of all such trials and hearings.

Table 2
Use of Technology in Court Proceedings

Technology	Trials and evidentiary hearings in past year	Other hearings and non-ceremonial court proceedings in past year
Evidence Camera*	809 ^f , 0-160	596 ^k , 0-300
Computer and Monitor or Screen for Evidence Retrieval and Presentation	785 ^g , 0-180	542 ^k , 0-300
Color Video Printer	76 ^g , 0-10	37 ^l , 0-20
Annotation Equipment (e.g., touch screen, light pen, or telestrator)	662 ^e , 0-150	455 ^k , 0-300
Telephone Interpreting System	753 ^g , 0-706	226 ^h , 0-185
Infrared Interpreting System*	207 ^h , 0-89	1325 ^m , 0-1113
Audio-conferencing Equipment*	202 ⁱ , 0-50	1442 ^l , 0-755
Videoconferencing Equipment*	105 ^g , 0-25	259 ^h , 0-75
Real-time software for use by a Real-time Court Reporter*	500 ^l , 0-120	1937 ^o , 0-1497
Real-time Transcript Viewer Annotation System for Judges and/or Attorneys*	340 ^k , 0-120	340 ⁿ , 0-150
Digital Audio Recording*	92 ^e , 0-50	1422 ^h , 0-500

a = 1 district gave missing, can't say, or nonquantifiable response
b = 2 districts gave missing, can't say, or nonquantifiable responses
c = 3 districts gave missing, can't say, or nonquantifiable responses
d = 4 districts gave missing, can't say, or nonquantifiable responses
e = 5 districts gave missing, can't say, or nonquantifiable responses
f = 6 districts gave missing, can't say, or nonquantifiable responses
g = 7 districts gave missing, can't say, or nonquantifiable responses
h = 8 districts gave missing, can't say, or nonquantifiable responses
i = 9 districts gave missing, can't say, or nonquantifiable responses
j = 10 districts gave missing, can't say, or nonquantifiable responses
k = 11 districts gave missing, can't say, or nonquantifiable responses
l = 12 districts gave missing, can't say, or nonquantifiable responses
m = 13 districts gave missing, can't say, or nonquantifiable responses
n = 14 districts gave missing, can't say, or nonquantifiable responses

Table Notes:

1. Table entries in this column are (1) the number of trials and evidentiary hearings in which technology has been used in the last 12 months across all reporting districts, and (2) the lowest number of such matters reported by any given district through the highest number reported, i.e., the range.
2. Table entries in this column are (1) the number of other hearings and court proceedings in which technology has been used in the last 12 months across all reporting districts, and (2) the lowest number such matters reported by any given district through the highest number reported, i.e., the range.

Table 2b summarizes the number of districts that reported that a particular technology was used in all trials and evidentiary hearings and in all other hearings and court proceedings, or reported that the technology was used daily in such matters.

Table 2 b
Number of Districts Using the Technology in All Proceedings or on a Daily Basis

Technology	Used in All . . .		Used Daily . . .	
	Trials and Evidentiary Hearings	Other Hearings and Court Proceedings	In Trials and Evidentiary Hearings	In Other Hearings and Court Proceedings
Evidence Camera	1	1	-	-
Computer and Monitor or Screen for Evidence Presentation	1	1	-	-
Infrared Interpreting System	-	-	1	1
Audio Conferencing Equipment	-	-	1	1
Real-time Software for Use by a Real-Time Court Reporter	2	2	2	1
Real-time Transcript Viewer Annotation System for Judges and/or Attorneys	1	1	2	1
Digital Audio Recording	2	1	-	-

Question 3.

We are also interested in the technology in the ancillary spaces in your courthouse. Please indicate whether an audio system, audio feed, video-conferencing equipment and video-presentation equipment are available in the spaces listed below. If video- conferencing and presentation equipment are available in any of the spaces, please indicate whether it is permanently installed or shared with other spaces.

Table 3
Number of Districts With Technology in Ancillary Courthouse Spaces

Technology	Location	Number of Districts
Audio System	Grand Jury Room	18 b
	Jury Assembly	15 b
	Other	4 a
Audio Feeds	Attorney/Client Rooms	0
	Prisoner Holding Area	21
	Law Clerk Office	27
Audio Feeds (cont'd)	Remote Witness Room	3 a
	One or More Chambers	27 a
	Others (clerk's office and overflow courtroom)	2
Video Presentation Equipment ¹	Jury Assembly Room	12 / 7 c
	Jury Deliberation Room	1 / 13 b
	Training Room	13 / 14
	Video Control Room	4 / 1 b
	Other	5 / 9 a
Videoconferencing Equipment ¹	Judge's Conference Room	9 / 18 a
	Other Conference Room	9 / 8 a
	Training Room	3 / 8 a
	Overflow Area for Courtroom	7 / 4 c
	Other (circuit conference room, grand jury room)	2

a = 1 missing or can't say response

b = 2 missing or can't say responses

c = 3 missing or can't say responses

Table Notes:

1. The first number in the cells referring to video presentation and videoconferencing equipment is the number of districts with the technology permanently installed in the indicated area. The second number is the number of districts that have shared-access equipment in the indicated areas.

Question 4.

Does your court have any full time employees whose primary responsibility is to assist with courtroom technology? If so, how many such employees does your court have?

Table 4
Number of Districts That Have Full-time Employees With
Courtroom Technology As Primary Responsibility

Number Of Districts	No Full-time Employees	One Employee	Two Employees	More Than Two Employees
	18	11	0	2

Question 5. (Results not summarized for this report)**Question 6.**

Please indicate whether the following devices are used in any of your courtrooms to assist people with hearing, language, or other impairments.

Table 6
Number of Districts That Use Devices To Assist People With Hearing, Language or Other Impairments

Courtroom Device(s)	Number of Districts
Infrared hearing assistance devices	27 a
Radio frequency hearing assistance devices	9 a
Telephone interpreting system	12 b
Infrared interpreting system	23 a
TDD device	1 g
Braille readers	1 b
Real-time transcription for providing assistance to the hearing impaired	9 b
Special handicap access jury spaces (in jury room and/or jury box)	19 e
Other	1

a = 1 missing or can't say response
b = 2 missing or can't say responses

e = 5 missing or can't say responses
g = 7 missing or can't say responses

Question 7.

For each item below, please indicate whether jurors take the item into the jury deliberations room as a matter of course, whether it is available to jurors upon request, or whether it is never available to jurors. If the practice varies by judge, please select the option that describes the most common practice and use the comment section to explain how the practice differs among judges. Also, indicate whether party consent is required before each item is made available to jurors.

Table 7
Availability of Evidence, Illustrative Aids, Written Instructions,
Equipment, and Other Items During Jury Deliberations

Item(s)	Jurors take it with them into deliberations as a matter of course	Available on Request	Never Available	Can't Say
Documentary evidence (e.g., papers, photographs) and non-sensitive physical evidence (e.g., clothing, paint chips)	16	9	0	6
Sensitive physical evidence such as weapons and guns.	3	16	2	10
Illustrative aids, not admitted as evidence	0	3	16	12
One set of written jury instructions	11	4	3	13
Individual sets of written jury instructions for each juror	3	7	6	15
Equipment to view evidence and exhibits	1	18	3	9
Calculators	1	17	3	10
Notes taken by jurors during trial	18	2	2	9
Worksheets/index for reference to evidence/exhibits	9	4	4	14

Question 8.

In trials in which technology is used to present evidence, how do jurors usually view the evidence during deliberations?

Table 8
How Jurors View Evidence During Deliberations in Trials in Which Technology is Used

Viewing Method	Number of Districts
They view most evidence in physical form in the jury room (e.g., actual paper documents, photographs, physical objects), but are brought back into the courtroom to view/hear evidence such as videotapes and audiotapes and perhaps also to view certain types of physical evidence such as drugs and guns.	15
They view most evidence in physical form in the jury room (e.g., actual paper documents, photographs, physical objects), but view and hear evidence such as videotapes and audiotapes using equipment in the jury deliberation room.	3
They view most evidence using equipment in the jury deliberation room.	3
Jurors are brought back to the courtroom when they ask to view evidence.	4
Can't Say or Missing	6

Question 9.

Please indicate whether the following types of equipment and technology are available as needed for juror use during deliberations.

Table 9
Districts Having Equipment and Technology Available as Needed for Juror Use During Deliberations

Equipment	Available as Needed	Not Available	Can't Say or Missing
Pen/pencil and paper	27	0	4
Calculators	22	3	6
Chalk boards	20	7	4
Paper flip charts	25	2	4
Analog audiotape player	18	7	6
Analog videotape player	17	6	8
Laser disk player	2	23	6
Traditional slide projector	3	22	6
Overhead projector	12	13	6
Television	17	8	6
Copy machine	6	20	5
Scanner	3	22	6
Laptop or desktop computer for making calculations of, for example, damages	2	22	7
Evidence camera	7	18	6
Laptop or desktop computer for evidence retrieval and viewing	5	20	6
Digital monitors for use by group of jurors (CRT, LCD, or plasma monitors)	7	19	5
Individual monitors for juror viewing of evidence	3	22	6
Digital projector and projection screen	5	20	6
Color video printer	2	24	5
Other printer attached to computer	3	23	5
Annotation equipment (e.g., touch screen, light pen, or telestrator)	3	23	5
Electronic whiteboard	1	24	6
Transcripts from real-time court reporting	9	15	7
Digital audio recording	5	19	7

Question 10.

When equipment is required to view evidence during jury deliberations, who generally operates the equipment?

Table 10
How Equipment is Operated During Jury Deliberations

Equipment Operator	Number of Districts
Court personnel assist jurors	10
Jurors are instructed and operate it themselves	11
Equipment is never used	2
Can't Say	2
Other	2

Question 11.

What type of technology is most needed in your court?

Twenty-three (23) of the 31 districts that have responded to the survey so far indicated the need for at least one piece of additional technology. Given that the level of available technology varies considerably across districts, the reported technological needs were wide-ranging. The reported needs varied in the level of technological components. The Center will forward these comments to the appropriate parties in the Administrative Office of the U.S. Courts.

Appendix F

Selected Controlled Study Deliberation Transcripts From Trial Phase I (Fall, 2001)

The transcripts that follow were prepared by Courtney Kelley, RPR, the Courtroom 21 Project's Court Record Manager, from the videotapes of the deliberation sessions and/or post trial interviews of the Trial Phase I juries. An analysis of the videotapes, including any use of jury room technology is available starting at page 53. References to the "shepherd" refer to the student staff member responsible for conducting the jurors to the deliberation room and ensuring that the jury questionnaires were distributed and completed.

0001

1 NOVEMBER 18, 2001, TRIAL NUMBER 2 [document camera and plasma screen] - - -

2

3 SHEPHERD: -- using the judge's instructions to
4 you as your guide. Within the limits described by the judge,
5 you may conduct your deliberative process in any way which
6 makes the most sense to you.

7 When you have reached a final decision, please have
8 one person come out and let me know that you're done. I'll
9 be right outside the door.

10 JUROR: Who wants to be the foreperson?

11 FOREPERSON: All right. If you want to go around
12 and say where we stand right now? Right now I think it's
13 just kind of -- the case is just kind of retarded. I don't
14 think that the plaintiff really -- I don't know -- had much
15 merit, and I don't think any money should be awarded right
16 now. Maybe some medical expenses, but that would be the
17 most.

18 JUROR NO. 3: I agree. I think a lot of -- like,
19 the defendant or the plaintiff, like, understands that when
20 you get on a horse, like, you're going to possibly fall off,
21 and I think that it's a reasonable risk you're taking when
22 you ride a horse. I don't really think that the defendant is
23 really responsible for the injuries.

24 JUROR NO. 4: Yeah, I agree. I don't think there's
25 much of a case.

0002

1 JUROR: Same here. I don't think they proved
2 really that Killer was -- like, I don't think they proved --
3 the fact that Killer had thrown someone off previously either
4 makes much difference. I assume that horses throw people off
5 pretty consistently. But I'd rule for the defendant.

6 JUROR: I agree that the plaintiff was more at
7 fault definitely because I think they tried to cloud the
8 issue with a lot of things like mentioning the alcohol, which
9 might have had some effect had she not chosen the easiest
10 horse, but she still chose the easiest horse. I think
11 definitely they didn't have much of a case.

12 JUROR: I agree.

13 JUROR: That was relatively easy.

14 JUROR NO. 1: I also believe the defendant's case
15 was not very strong. I still have a lot of questions like
16 (inaudible) and also the alcohol. It seemed like the
17 plaintiff would have mentioned that in his statement, like,
18 that he noticed that she was drunk because I would be a
19 little worried if I noticed that my instructor was drunk, but
20 he didn't. So I don't think it affected it at all.

21 JUROR: As far as the question about horseback
22 riding, it's not that common to get thrown from a beginner
23 horse from -- apparently as one of the statements that they

24 use children on this horse. So it would be rare to kind of
25 get thrown from that, and I think it was proven that it was
0003

1 very rare for him to throw people because I think he said it
2 happened once when someone used spurs. And a horse who was
3 used to beginners would not expect to be spurred. So I think
4 that's a counterargument against their case (inaudible).

5 JUROR NO. 1: Uh-huh.

6 JUROR: I've been on horses a lot, and I've been on
7 one that reared up. And another time I fell off two horses
8 within a 24-hour period.

9 JUROR NO. 3: Is that a normal reaction of the
10 horse? Like, if you've gone on a horse, is that what it's
11 going to do?

12 JUROR: The second time I was getting on a horse
13 and I was mounting it, I hit it on the flank with my legs. I
14 was swinging it over, and it just took off.

15 JUROR: I had a horse that got startled --

16 JUROR: Yeah, if you startle it, it takes off.

17 JUROR: Just like if somebody grabs your shoulder,
18 you're going to jump.

19 JUROR NO. 1: And also in the contract it said that
20 people get drugged from horses and killed.

21 JUROR: It's not like they're baking a cake.
22 They're riding a horse.

23 JUROR: She did try to give him instructions, and
24 it's not her fault that he didn't listen to what she had to
25 say.

0004

1 JUROR NO. 1: Yeah, and she seemed to remember
2 (inaudible).

3 JUROR: She probably shouldn't have laughed at him.

4 FOREPERSON: I laugh at stupid people all the time.

5 JUROR: That doesn't make her anymore responsible
6 for what happened.

7 JUROR NO. 3: What about monetary things? Are
8 there any expenses that should be --

9 FOREPERSON: Right now if I had to choose, I'd
10 give zero.

11 JUROR: (Inaudible) something a million. I don't
12 really see any reason to give him any money.

13 JUROR: No, no at most his medical expenses.

14 JUROR NO. 3: Yeah, I was thinking that too.

15 JUROR: He was in the country from New York to be a
16 horseshoe guy, and he was scared of horses to begin with --

17 JUROR: Right.

18 JUROR: There's no evidence of psychological
19 problems because he was getting thrown.

20 JUROR: Yeah. That's why he was --

21 JUROR: He said he showed up and was scared. So I

22 don't think --

23 JUROR NO. 3: I think that's kind of unreasonable
24 that you get thrown from a horse and then you have, like,
25 psychological damages for three months.

0005

1 JUROR NO. 1: Right. You obviously had problems
2 beforehand.

3 JUROR NO. 3: So do we think anything about the
4 medical bills?

5 JUROR NO. 1: The only thing in his favor is he's
6 unemployed basically, and he owes, what, three thousand
7 dollars?

8 JUROR: Well, is there any evidence that he
9 couldn't get another job?

10 FOREPERSON: Yeah, I think it's kind of stupid
11 that he -- yeah, it seemed like he was picking this job on a
12 whim.

13 JUROR NO. 5: He just moved to the country and
14 decided to put shoes on horses. I don't think he deserves
15 any money.

16 JUROR: (Inaudible).

17 JUROR: He may have an irrational fear of
18 (inaudible). I don't know.

19 JUROR NO. 1: (Inaudible) with horses, so.

20 JUROR NO. 5: So no money and --

21 JUROR NO. 1: I say no money.

22 JUROR NO. 3: Does anybody think he should get
23 anything for his medical bills? I think we have pretty much
24 ruled out his psychological bills.

25 JUROR: I'm not sure. It's kind of like I think

0006

1 that she may have -- like, I don't know. I don't think she
2 really has responsibility. Like, is that a reasonable risk
3 to take -- like, do you understand --

4 JUROR: There's more that she could have done, but
5 I don't think it was her duty to do it. I don't think it
6 constitutes a breach that she didn't do it.

7 JUROR: Reasonable (inaudible).

8 JUROR: Right. If she could have said, yeah, let's
9 go away from your girlfriend so I can talk to you, she could
10 have done that, but I don't think it was her job to do that.

11 FOREPERSON: As far as medical bills go, I
12 mean....

13 JUROR: It's a negligible amount anyway.

14 FOREPERSON: Yeah. It's a really small amount
15 anyway, and if it turned out to be just a sprain, (inaudible)
16 I mean, he really didn't have to go to a doctor. He could
17 wrap it up.

18 JUROR NO. 3: Physical, like, problems now at this
19 point. It's not the physical that's keeping him from doing

20 things, and (inaudible) that he could go to a lot of jobs
21 that don't involve horses.

22 JUROR: There is an inherent risk when you do
23 something, and he wasn't hurt I think out of the bounds of
24 normal (inaudible). If anyone should agree.

25 FOREPERSON: So pretty much no money is the
0007

1 agreement.

2 JUROR: Yeah.

3 JUROR: Yeah.

4 FOREPERSON: I think we're supposed to fill out
5 some forms I guess. It probably has multiple -- okay.

6 JUROR NO. 5: Go tell her.

7 JUROR NO. 3: So much for using technology.

8 JUROR: Switch to a sexism thing, switch the
9 defendant and the plaintiff. Did you think about that?

10 JUROR: Yeah.

11 JUROR NO. 5: Yeah.

12 SHEPHERD: Are you ready?

13 FOREPERSON: Yep.

14 SHEPHERD: Now I'd like to have you answer again
15 some of the questions that I had you answer just before the
16 deliberation. Remember, there are no right or wrong answers.
17 We are really interested in your honest impressions at this
18 point, whether they are the same as before or different.

19 So would you please answer these questions? Again,
20 be sure to put your name and gender on the form.

21 FOREPERSON: Could I ask you a question? When
22 you're talking the questions in reference to the technology,
23 what exactly technology are you referring to? It didn't seem
24 like there was much use at all.

25 JUROR: Yeah.

0008

1 SHEPHERD: That's part of the experiment. Some of
2 the trials use them, and some of them don't.

3 FOREPERSON: Oh, okay.

4 SHEPHERD: Again, please be sure to put your name
5 and gender on the top of the questionnaire

6 (Brief Pause)

7 SHEPHERD: As I indicated at the beginning of the
8 study, we're interested in jury deliberation. Specifically
9 we're examining how the use of technology in the courtroom
10 itself might carry over into jury deliberations.

11 Currently there are courtrooms that are fully
12 outfitted with many of the technological features we used
13 here or did not use here this afternoon, but in the real
14 world outside of here, there are essentially no jury
15 deliberation rooms that have the level of technological
16 support available in the courtrooms.

17 We believe that if the use of technology in legal

18 proceedings is going to reach its fullest potential, the jury
19 rooms themselves will likely require technological
20 modification. Understandably, however, courtrooms are
21 reluctant to equip jury rooms with advanced technological
22 features unless they know whether, A, juries will find it
23 useful and, B, the trial outcomes are essentially the same
24 with or without the added technology.

25 Basically, these are the questions that our
0009

1 research has been designed to answer. Does anyone have any
2 questions without giving away what you decided? Okay. Well,
3 if there are no more questions, then our study is concluded.
4 By the way, if you'd like to see the results of this study,
5 you can find them at the end of this semester on the Web at
6 www.wm.edu/psyc/results.html. Thanks again for taking part.
7 I believe you are done. Have a wonderful weekend. Do you
8 have the decision?

9 FOREPERSON: We never got a sheet or anything
10 to -- we figured you would give that to us when you came to
11 get us.

12 SHEPHERD: Hmm, let me check on that.

13 FOREPERSON: It's on tape.

14 JUROR: Probably screws up their whole experiment.
15 We must have been the control or something.

16 JUROR NO. 3: Yeah, there was no technology. We
17 didn't use this one at all.

18 JUROR: They used some of their technology, some of
19 it in the courtroom and not in the jury room and some of
20 it --

21 FOREPERSON: Uh-huh.

22 JUROR NO. 4: Even just like the type of case that
23 it was. I'm sure if this was actually disputed stuff, we
24 would have used --

25 JUROR NO. 3: Yeah.

0010

1 JUROR: View a tape of the actual fall.

2 FOREPERSON: Slow motion, ha ha ha.

3 JUROR NO. 4: The history and sequence shows the
4 (inaudible).

5 SHEPHERD: Okay. I'm going to leave this with you
6 and leave the room, and I'll come back.

7 FOREPERSON: Okay. Okay. The jury is to answer
8 the following. Okay. "By preponderance of the evidence, was
9 Steven Matthews injured as a result of falling from Killer?"

10 JURORS: Yes.

11 FOREPERSON: Okay. Was the injury the fault of
12 Patty Morton ?

13 JURORS: No.

14 FOREPERSON: Okay. Okay. Yeah, it's just -- the
15 next couple of questions are, like, if you answered yes in

16 the previous one. Since we answered no, I'm just going to
17 end it all.

18 JUROR: Okay. Cool.

19 FOREPERSON: And this one. "We the jury return
20 the following verdict and each of us concur that this jury is
21 the appropriate verdict." We find for the defendant. Okay.
22 Do I have to call her back in?

23 JUROR: I think you can just give it to her on the
24 way out.

25 FOREPERSON: Okay.

0011

1 SHEPHERD: We need to go in there so you can
2 announce that to the judge very quickly. Shouldn't take more
3 than a couple of minutes. Have you reached a verdict?

4 JUROR: Yes, we did.

5 SHEPHERD: So I will take the forms. Thank you.
6 And let me just make sure that you -- okay.

7 THE COURT: Okay. Okay. I think you have done
8 everything. Good. Do you have any questions? One thing --
9 I guess somebody already told you. We forgot to tell the
10 first group. Don't go back to school and discuss this
11 because we have two more full days in December where we're
12 going to have additional jurors, and if you guys go back and
13 tell them how you voted, it will ruin the experiment. This
14 is great though. Do you have to give them another
15 questionnaire?

16 SHEPHERD: I actually already told them because we
17 didn't have the form.

18 THE COURT: Okay. Okay.

19 SHEPHERD: So we're done.

20 THE COURT: Great. So they filled out their
21 second -- okay. Thank you very much. Do you have any
22 questions? No --

23 FOREPERSON: Can we ask --

24 THE COURT: Are you ready to go to law school now?
25 What this is for?

0012

1 FOREPERSON: Obviously we knew we were kind of a
2 control group because we didn't have much technology. Can we
3 know what the other stuff was? Is there --

4 THE COURT: What the other technology was?

5 FOREPERSON: Or what the other groups will be
6 getting.

7 THE COURT: Actually this whole round of
8 experiments really is going to have no technology in the
9 courtroom at all, and then we're going to run a whole second
10 set of experiments after the first of the year where we're
11 going to do a high-tech trial. It's going to be the same
12 trial, but we're going to be using document cameras and, you
13 know, all this kind of stuff, plasma screens and all the

14 fancy stuff.

15 And what we're doing is trying to measure for the
16 use of courts, you know, across the country how jurors use
17 technology in the jury room and whether it helps
18 deliberations or whether it's too complicated, and then we're
19 going to write a manual so that for courts where technology
20 is in use in the jury room, we can provide guidance for it.

21 So, first of all, this is a sort of a long grant
22 that we're working on in surveying what's going on in courts
23 around the country, and then we're conducting a series of
24 experiments. So this information is very valuable.

25 SHEPHERD: Professor Lederer just asked me to

0013

1 remind you not to talk about this.

2 THE COURT: I just did, and let me get the evidence
3 back from you.

4 JUROR: It's out all over campus.

5 THE COURT: Good.

6 JUROR: Do you want all this back?

7 THE COURT: Yes, thank you.

8 SHEPHERD: If anybody wants to ask me questions, I
9 work in the courtroom sometimes. So I'd be happy to answer
10 any questions about the technology not related to this. If
11 you have any questions about law school, believe me, I can
12 tell you all about it now. But you guys are free to go.
13 Thanks for coming.

14 JUROR: Thank you

1 - - - NOVEMBER 18, 2001, TRIAL NUMBER 3 [no technology]

2 (**Reporter's Note: The video is only showing one
3 or two people, and the volume is very low.)

4 JUROR: Do you want to start?

5 FOREPERSON: All right. I do not think this woman
6 is responsible at all for anything.

7 JUROR: I think, if anything, if any money is
8 awarded anything, it's, like, medical expense (inaudible).

9 JUROR: Yeah, I agree. I mean, he's just
10 (inaudible).

11 JUROR: Yeah.

12 JUROR: I think it was awfully (inaudible).

13 JUROR: If he said it was his fault anyway, why
14 would you give him medical expenses if it was all his fault?

15 JUROR: Yeah, I thought it was all his fault. I
16 thought she was pretty straightforward about it.

17 JUROR: I think that due to the liability
18 associated with (inaudible) that she should pay the medical
19 bills. I mean, there is some evidence that she is partially
20 responsible but (inaudible). And although it's minimal, I
21 mean, it's 150 bucks, and the other stuff is (inaudible), the
22 medical expenses should be paid for.

23 JUROR: All right. So what next?

24 JUROR: Do we have to have a majority or do we have
25 to have --

0015

1 JURORS: It's unanimous.

2 JUROR: All right.

3 JUROR: So basically the issue is whether we
4 (inaudible).

5 JUROR: Right.

6 JUROR: Do we want to pay anything at all?

7 JUROR: (Inaudible).

8 (Laughter).

9 JUROR: What is it -- yeah, what does it say?

10 JUROR: I thought the evidence they said was part
11 of the contract was -- I understand the horse is
12 unpredictable, potentially dangerous animals, (inaudible)
13 injuries that occur to some people riding horses.

14 So to me by saying that, he's accepting the
15 dangers. But I'm like you. I guess running a horse farm you
16 have to accept some sort of liability, but I didn't feel she
17 was -- she told him everything.

18 JUROR: She was informing him of the instructions.

19 JUROR NO. 1: And he didn't listen to the
20 instructions.

21 JUROR: Being scared isn't an excuse.

22 JUROR NO. 1: Yeah, it seems like to me --

23 JUROR: -- listen to everything she said.

24 JUROR NO. 1: It should enhance you to listen

25 because you're obviously aware of what you should be doing.
0016

1 I don't know. You had a lot of weird things
2 about -- like, he went to a psychologist, like, 20 times in
3 March.

4 (Laughter).

5 JUROR NO. 1: For falling off a horse. I don't
6 know. I think (inaudible) --

7 JUROR NO. 2: There were 12 --

8 JUROR NO. 1: He spent almost \$2,000 in psychology
9 stuff for falling off -- for a sprained wrist.

10 JUROR: Well, they said they thought the horse was
11 putting on horseshoes on his foot or something.

12 JUROR: Yeah, I think that kind of --

13 JUROR: (Inaudible).

14 JUROR NO. 1: Yeah, why does he have a job that
15 requires him to, like -- I mean, if --

16 JUROR NO. 2: It's not like he was inexperienced
17 beforehand, you know. It's not like he has -- it's not like
18 he's dependent upon this job for his livelihood. He could
19 just go out and get a job at a gas station.

20 JUROR NO. 1: I just don't understand what she
21 could have done that would have prevented it. She gave him,
22 like, a little kid's horse.

23 JUROR: One thing about it being a little kid's
24 horse, that kind of didn't (inaudible) about what I was
25 thinking because for little kids, I mean, the horse is

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1 obviously used to having much smaller, less violent people on
2 it so. The fact that this has, you know, two or three times
3 the size of a little kid and he's kicking him and everything,
4 I mean, I don't know if she should be giving him that horse
5 just because that horse is used to little kids and not a big
6 guy. But I think that's pretty minor compared to
7 (inaudible).

8 JUROR NO. 1: I think the points for the defense
9 were really, like, reaching. Like the fact that he knocked
10 somebody off the horse but they used spurs, like.

11 JUROR: Right. And I didn't like the fact that she
12 used the word "tendency" personally. It's like (inaudible).
13 Obviously this happens all the time.

14 JUROR: It happened one time with spurs. That guy
15 must have done something pretty serious. I mean, it seemed
16 like if he was nervous about horses already, I just -- I
17 don't see what she could have done.

18 JUROR NO. 2: If he's nervous of the size of it,
19 why would he jump on top of it?

20 JUROR NO. 1: Exactly.

21 JUROR NO. 2: But at the same time I still think
22 that it is part of the responsibility to be there beside him,

23 to make sure he gets on the horse.

24 JUROR: Yeah.

25 JUROR: I don't think the horse would have been any
0018

1 more -- I don't know if I'd be more scared if it was a little
2 kid's horse because she also said she used it for beginners
3 just in general, but maybe it might have been a good idea for
4 her to say something about, you know, not kicking its sides.
5 But I still think that's kind of common sense in a way.

6 JUROR NO. 1: I do know why they didn't put -- she
7 said she gave him riding instructions. So it seems like that
8 would be a pretty important part of the riding instructions.

9 JUROR: Maybe she didn't. She said he didn't
10 listen to what she said.

11 JUROR NO. 2: I'm sorry.

12 JUROR: We don't know what instructions she
13 actually gave him. She might have mentioned it, but he
14 didn't listen anyway.

15 JUROR: Yeah.

16 JUROR: The reason that I would say that she should
17 get the (inaudible), even though I think it's a 95/5, it's so
18 minimal, but what I'm afraid of is if we do that, isn't that
19 setting a precedent?

20 JUROR: That's what I was thinking.

21 JUROR NO. 2: Maybe if it's overly excessive next
22 time, it will be \$3,000 and such, and then you look back and,
23 well, like in this instance, you know, this and this and this
24 but if it happened again and he hurt his back and watch
25 (inaudible).

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1 JUROR: So you're saying it was 95 percent his
2 fault?

3 JUROR NO. 2: I would say it's predominantly his
4 fault.

5 JUROR: So that means (inaudible).

6 JUROR: So that's 150 bucks.

7 JUROR: He wants 15,000.

8 JUROR NO. 1: He wants 15?

9 JUROR: We're just deciding whether or not to give
10 medical bills, right? It comes to that? We decide on a
11 certain ratio of responsibility, so he would get five percent
12 of the medical bills (inaudible)?

13 JUROR: If she did -- I thought this was another --

14 JUROR: I think it's five percent of altogether.

15 The 15,000 is including the medical bills plus the
16 psychiatric treatment plus pain and suffering.

17 JUROR NO. 1: I didn't understand -- yeah, like she
18 said that things if someone (inaudible) that would be
19 entirely (inaudible). To me that somewhat admits she should
20 have done something differently apparently.

21 JUROR NO. 2: (Inaudible). If she said that, how
22 else would she have (inaudible).

23 JUROR NO. 1: I don't know. I don't see how she
24 could have done that other than picking him up and putting
25 him on the horse. Yeah, like I was -- I don't know. I don't
0020

1 know what she could have done differently.

2 Like, she explained everything. She was very
3 clear. She got the easiest horse, and they had a little
4 clause in the -- they're unpredictable.

5 So, I mean, maybe 95/5. Like she does have
6 somewhat just by owning the place in the first place.

7 JUROR: Accepting some responsibility.

8 JUROR: That's what the whole thing is.

9 JUROR NO. 1: Yeah, that's what I was --

10 JUROR: So up to --

11 JUROR: But then again she showed up to work a
12 little intoxicated. That's not the best way to be prepared
13 for (inaudible). So if she -- everything was not in the same
14 situation she would have been if she wasn't drinking.

15 JUROR: It said clear (inaudible), maybe she could
16 have reached him.

17 JUROR: That's a possibility.

18 JUROR NO. 1: And she did laugh. I mean, I know
19 that's --

20 JUROR: (Inaudible) the kind of person that will
21 laugh.

22 JUROR NO. 1: Yeah, I don't know what kind of
23 person wouldn't laugh at that. So to me --

24 JUROR NO. 2: He laughed too though.

25 JUROR NO. 1: Did he?

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1 JUROR: That's true. The other guy --

2 JUROR: The assistant did.

3 JUROR NO. 2: Being the (inaudible) it's much more
4 (inaudible) because now she's in a situation and I think she
5 should have been.

6 JUROR NO. 1: Yeah.

7 JUROR NO. 2: Like you were saying, I think she was
8 more liable because she's the one that takes care of the
9 horses. I know he (inaudible). So I think we wouldn't
10 discuss any of that.

11 JUROR NO. 1: Yeah.

12 JUROR: After the fact anyway. I mean, if
13 (inaudible) actually laughed, what's that an indication of
14 how she was -- whether or not she laughed has no bearing on
15 what actually happened before, like what caused the incident.

16 JUROR NO. 1: Yeah, I was just thinking because
17 the -- I don't know.

18 JUROR: Except if it shows how sober she was

19 versus, like, intoxicated, how her state of mind was when she
20 was giving him instructions and things like that. You know,
21 if the first thing she does is to laugh when he falls off,
22 maybe she wasn't totally sober when she gave him the
23 instructions.

24 JUROR: How much did she drink? She had, like, a
25 little of wine.

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1 JUROR: Several.

2 JUROR: But how much earlier was it? Was it, like,
3 during the day?

4 JUROR: Lunchtime.

5 JUROR: But when did this happen?

6 JUROR: Was there a time on the incident report?

7 JUROR: The accident report.

8 JUROR: The accident report in the emergency room.

9 JUROR: There's no date. There's no time.

10 JUROR: March 5th.

11 JUROR NO. 1: Oh, this is time, 1930.

12 JUROR NO. 2: 1930, that's 7:30. So they said it
13 was, like, three hours later, right? So it was, like, 4:30.
14 You think she was --

15 JUROR: Yeah, she should be fine.

16 JUROR NO. 1: He had a sprain. He didn't even need
17 to go to the hospital.

18 JUROR NO. 2: He was a big (inaudible) though.

19 JUROR NO. 1: He looked 20 (inaudible) and said
20 (laughter).

21 JUROR NO. 1: I couldn't believe that and 12 in
22 April. He went to, like, 32 counseling sessions.

23 JUROR: That's a little excessive. I think he was
24 assuming --

25 JUROR NO. 1: That's extremely excessive. And he
0023

1 didn't have insurance. Why would he go to that many?

2 JUROR: I think he was assuming.

3 JUROR NO. 1: That's what I was thinking. He must
4 have been going in there, and I was thinking that maybe the
5 excessive amount of counseling sessions was to show that he
6 has such psychological trauma so he could get money because
7 that's obscene.

8 JUROR NO. 2: That's like every other day.

9 JUROR NO. 1: That's like every other day going to
10 a counselor, and I just thought that was ridiculous. I don't
11 know. I'm like you. I think she's partially responsible,
12 like in a very, very, small way but in no way \$15,000
13 responsible. Do you want to go 185 bucks?

14 JUROR NO. 1: I think that's a pretty -- that's not
15 much, and she does have some responsibility but not even
16 close to all that. So what are the forms?

17 JUROR NO. 1: Let's look at the forms.
18 JUROR: (Inaudible) interrogatories (reading) sign
19 the verdict. By a preponderance of the evidence, what state
20 of (inaudible) injured as a result of falling from Killer? So
21 I just check it?
22 JUROR NO. 1: Yeah.
23 JUROR: All right. Number two, if answer to number
24 one was yes, was the injury the fault of Patty Morton?
25 JUROR NO. 1: I'd say no because it was
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1 predominantly not. There's no partial.
2 JUROR: It's either yes or no.
3 JUROR NO. 1: I'd say no.
4 JUROR: If the answer to interrogatory number two
5 was yes -- if the answer was yes.
6 JUROR NO. 1: Oh, I guess we're done with those
7 questions. So does that make -- is there no partial? He
8 said there was partial though. We the jury --
9 JUROR NO. 1: Oh, we should have said yes to that
10 because it has a percentage responsibility down there.
11 JUROR: -- and then, like, go into partially?
12 JUROR NO. 1: Yeah, that's like --
13 JUROR: So she was responsible. If the answer to
14 interrogatory two was yes, was the jury -- was the injury
15 caused directly by Patty Morton's negligence?
16 JUROR: No.
17 JUROR NO. 1: We got to get down to that fifth one,
18 the percentage.
19 JUROR: What's number four?
20 JUROR: If the answer to interrogatory three was
21 yes, was Steven Matthews' injuries caused in part by his own
22 negligence, actions or inactions?
23 JUROR NO. 1: Yeah.
24 JUROR: Yes.
25 JUROR NO. 1: We've got to say it though.
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1 JUROR: So we're going to say yes to three, that it
2 was caused -- it was caused directly by Patty Morton's
3 negligence.
4 JUROR NO. 1: I guess. I don't like to say that.
5 JUROR: Say yes and we can say later that it was
6 only five percent.
7 JUROR NO. 1: Just I guess say yes and make the
8 percentage really small for her I guess because we -- if we
9 agree to give him some money, we have to admit some sort of
10 responsibility for her. I think it's pretty small, but she
11 owns the place, so.
12 JUROR: Maybe she does (inaudible).
13 JUROR NO. 2: If you go skiing, like if you ski off
14 the trail or something into a tree, that's pretty stupid

15 skiing. Like, try not to -- wherever you're skiing doesn't
16 usually because they put an obstacle --

17 JUROR NO. 1: Yeah, you ride a horse, there's a
18 chance you're going to get thrown off the horse.

19 JUROR NO. 2: If you're skiing and you're going to
20 get hurt and if you're stupid about riding a horse and an
21 injury occurred, (inaudible).

22 JUROR NO. 1: And he got a sprained wrist from it.
23 It's not even like he --

24 JUROR: Are we back to not giving him anything. I
25 really don't like answering the question was the injury

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1 caused directly by Patty Morton's negligence. I don't like
2 that.

3 JUROR NO. 1: Yeah, neither do I. I don't like
4 saying that either.

5 JUROR: Especially, like you said, precedence if
6 you say yes to that.

7 JUROR NO. 1: That's saying if somebody acts stupid
8 on the horse, they get money for physical injuries. Yeah, I
9 don't know.

10 JUROR: It seems like a weird --

11 JUROR NO. 2: I mean, if you act stupid in a car,
12 it's not the car maker's fault. It's your fault.

13 JUROR NO. 1: I think -- yeah.

14 JUROR: It's nothing.

15 JUROR NO. 1: All right. I think so. I'm with
16 that. I'm with that.

17 JUROR: Is everybody --

18 JUROR: Does anybody disagree?

19 JUROR: He gets nothing.

20 JUROR NO. 1: All right. That's fine with me.

21 JUROR: Let me change this back is.

22 JUROR NO. 1: We don't look very confident here.
23 Okay. A shop by one too.

24 JUROR: Then I don't answer any of these other
25 questions.

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1 JUROR NO. 1: Yeah. We the jury return the
2 following verdict and each of us concurs that this verdict,
3 we the jury find (inaudible) -- we the jury find for the
4 plaintiff -- we the jury find for the plaintiff in the amount
5 of blank.

6 JUROR NO. 1: We the jury find for the defendant,
7 not guilty, and then we the jury find for the plaintiff. He
8 doesn't deserve it I don't think personally but -- so is that
9 good for everyone?

10 JUROR: (Inaudible). Do you want to run it again
11 and see?

12 JUROR NO. 1: Yeah, we can do that.

13 JUROR: Does anybody think he should get money?
14 JUROR: No.
15 JUROR: All right. Good. All right. Who wants to
16 be the foreperson?
17 JUROR NO. 2: Sure. Do you want me to?
18 JUROR NO. 1: I don't know. Sign this and you fill
19 out the papers.
20 JUROR NO. 2: We the jury return the following
21 verdict, and each of us concurs on this verdict. We the jury
22 find for the defendant --
23 JUROR NO. 1: I don't think so either. I was
24 thinking --
25 JUROR NO. 2: We the jury find zero dollars. I
0028
1 think it would be cool to have technology.
2 JUROR NO. 1: Yeah, I know.
3 JUROR NO. 2: Those TVs seemed excessive. How many
4 pictures can you show?
5 JUROR NO. 1: I was hoping something would pop up.
6 JUROR NO. 2: (Indicating). They're not stupid.
7 They're in law school.
8 JUROR NO. 1: All right.
9 JUROR: It's like the death star or something
10 coming up.
11 (Jury left room.)
12 (Jury back in the room.)
13 SHEPHERD: Actually, we're going to bring you guys
14 back into the courtroom. Sorry about that.
15 JUROR: Leave this?
1 DECEMBER 1, 2001, TRIAL NUMBER 1 [document camera and plasma screen]- -
2
3 JUROR: Volunteers for the foreman?
4 JUROR: I don't want to do it.
5 JUROR: You (inaudible).
6 JUROR NO. 3: I second that.
7 FOREPERSON: All right. All right. The two
8 general forms here are the verdict and the general verdict.
9 General verdict is the jury interrogations are specific
10 questions. Do you want to go through those first and then
11 kind of like guide it through there?
12 Interrogatory number one, was Steve Matthews
13 injured as a result of falling from Killer?
14 JUROR: Yes.
15 JUROR: Yes.
16 JUROR: Yes.
17 FOREPERSON: Number two, if the answer to
18 interrogatory number one was yes, was the injury the fault of
19 Patty Morton?
20 JUROR: No.
21 JUROR: Is that unanimous?
22 FOREPERSON: I heard an um.
23 JUROR NO. 3: See, what I'd like to see eventually
24 is for her to pay for the wrist injury but nothing else.

25 JUROR NO. 2: That's what I'm thinking.

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1 JUROR NO. 1: That's where I'm at.

2 JUROR NO. 4: How was she at all negligent though?

3 FOREPERSON: Well, because she was supposed to
4 supply him with a horse that, as a beginner, no matter what
5 he did (inaudible).

6 JUROR NO. 3: If he's beginner, she should have
7 said (inaudible).

8 JUROR NO. 4: And there is no horse that exists
9 like that. You realize inherently that there are risks.

10 JUROR: Yeah.

11 JUROR NO. 2: I know something about (inaudible).
12 That's a high-risk thing to do.

13 JUROR NO. 4: It is a high-risk thing to do, and
14 there's always that one percent chance that something will
15 happen. And she gave him the most gentle horse that was
16 there, and he wasn't listening to the instructions.

17 FOREPERSON: Do you have the accident form there
18 because it said in the accident form that he had convinced
19 her or not tried to convince but convinced her that he had
20 (inaudible).

21 FOREPERSON: This is all really good, and we need
22 to talk about this. But to this specific question, was she
23 at fault because I heard a unanimous -- seemed like a
24 unanimous no and then a no but I still want her to pay. So
25 I'm just looking for a yes or no. Is she at fault? It's

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1 not --

2 JUROR NO. 4: Do you want me to (inaudible) up
3 there?

4 JUROR: She shouldn't pay if she's not at fault,
5 and the question is how much is she at fault. I think that's
6 what --

7 FOREPERSON: Okay. So you guys think that she is
8 partially at fault?

9 JUROR NO. 6: Right.

10 FOREPERSON: Okay. I'm just curious because I
11 heard, no, she's not at fault, but I want her to pay for the
12 wrist injury. So I just want to clarify that for my own
13 personal --

14 JUROR NO. 4: Is that clearer?

15 FOREPERSON: Can you make it a little larger,
16 please?

17 JUROR NO. 4: I can zoom in or out.

18 FOREPERSON: That's good. To me there seemed to
19 be conflicting evidence in his testimony of, like, how much
20 he recognized the inherent dangers of the horse and then in
21 this like --

22 JUROR NO. 4: It says --

23 FOREPERSON: He convinced me that he had past
24 riding experience. Despite this, I really didn't think he
25 knew much. So I felt I was getting conflicting from both
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1 sides.

2 JUROR: Yeah.

3 FOREPERSON: She -- initially it sounds like she's
4 saying I was convinced I -- like all of the things that he
5 was telling me were that convinced her that he had
6 experience, but then she says at the same time I felt that he
7 didn't have experience. And therefore I gave her -- gave him
8 a beginner horse. So, like --

9 JUROR NO. 1: She could sort of tell that he didn't
10 really have as much experience as he was saying, and so maybe
11 she wasn't as careful in explaining all the details and how
12 she was -- sort of was like --

13 JUROR NO. 5: Yeah, like it says -- it says
14 convinced that he had past riding experience, but he didn't
15 really know much. So it could be that she thought that he
16 had ridden before but only like -- you know, like, those
17 little trail rides you do like if you're off camping or
18 whatever, you know, like, probably not on his own controlling
19 horse probably. So she probably thought he had experience
20 mounting or something.

21 FOREPERSON: Just out of curiosity, can we go
22 through either, like, verbally or I'll read the entire
23 document with me? I don't know if anybody else has....

24 JUROR: Because I have a lot of problems with that
25 statement and what she said.

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1 JUROR NO. 2: I think she's minimally at fault
2 because at first she said she knew he was a beginner, like,
3 she could tell, and it says there that he had minimal riding
4 experience so. Maybe she thought he knew how to get on a
5 horse. He didn't know how to get on a horse. So that's why
6 he got hurt. So I think maybe she's at fault because she
7 didn't (inaudible) and she seemed to.

8 JUROR NO. 6: She told him about the quick start.
9 She did not tell him whatever you do, do not --

10 JUROR NO. 5: If she had looked at the contract, I
11 have no riding experience.

12 FOREPERSON: I thought she said that -- I thought
13 she said she had standard procedure to explain -- oh, to
14 explain the quick start, not necessarily how somebody was
15 thrown. Okay.

16 JUROR: Yeah, she didn't --

17 JUROR NO. 4: But also because this incident
18 happened, she had no probable cause to believe it would ever
19 happen again.

20 JUROR NO. 2: I think that's definitely relevant

21 that she should have -- I rode horses when I was younger, and
22 you need to be told how to get on, not to, like, grab the
23 reins.

24 JUROR NO. 3: I think a lot of that though is we
25 don't know exactly what she told him. She said she told him
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1 standard procedure and (inaudible) stables mountain bike in
2 classes. And you go through the standard procedure. You
3 tell people how to get on the horse, not, like, do anything
4 stupid like that, and also I've never seen a horse who's
5 never thrown a rider, whether the rider has come falling off
6 or not.

7 JUROR NO. 4: (Inaudible).

8 JUROR NO. 3: Well, if you go through -- you're
9 teaching riding lessons. You go through every horse telling
10 every incident about how every person fell off, you can't
11 really do that. It's not logical.

12 JUROR NO. 4: I read as well (inaudible), and a
13 person just doesn't take on a horse if you don't know how.
14 It's not something you can do before she had time to explain
15 anything.

16 FOREPERSON: Well, it sounded like she explained
17 things to him. He didn't hear. So to me that makes me
18 question in terms of, like, her responsibility to instruct.
19 Is that specifically -- the words have to come out of her
20 mouth or a potential rider has to, like, internalize those
21 because if her responsibilities are strictly she has to tell
22 him, then it sounds -- though we don't know exactly what she
23 said, it sounds like she did that, but he didn't internalize
24 anything.

25 JUROR NO. 2: You're right because she said he was
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1 nodding.

2 JUROR NO. 5: But is it her responsibility to make
3 sure he gets --

4 JUROR NO. 6: Is there a legal precedent for that?
5 I mean, (inaudible).

6 FOREPERSON: Would it be a question worth asking
7 us? I don't know.

8 JUROR NO. 1: She explained everything before
9 (inaudible) maybe because he was a (inaudible), and he was
10 sort of being cocky about the whole thing. Maybe she wasn't
11 quite as careful as she would be with a child.

12 JUROR NO. 5: Right, because with a child she would
13 have until the horse was confident.

14 FOREPERSON: Okay. Like, I've done the trail
15 rides exactly like (inaudible) before, and my experience was
16 always, like, you show up and they start talking to you. And
17 as they're talking to you, it's almost like a
18 time-conservation thing. I mean, as they're talking to you,

19 the horse is coming out. You're introducing them to the
20 horse, and you're beginning basic instructions as to put your
21 left foot in first and then swing your right leg over and all
22 of that stuff.

23 So, like, as far as, like, business practice, I
24 don't think that's -- that's necessarily common, child or
25 adult. I don't necessarily think you can make that judgment
0036

1 as to what she should have done. I don't think we can really
2 talk about what she should have done. It's just a matter of
3 what did she actually do and where do her responsibilities
4 lie.

5 JUROR NO. 4: Also he's a farrier and his job is to
6 shoe horses, and he can't stand the thought of it?

7 FOREPERSON: The question that I wanted to ask was
8 like pre-existing condition. Like if he already has a fear
9 of horses, why the heck is he a farrier? Exactly. Does his
10 psychological issues begin before that?

11 JUROR: Right.

12 FOREPERSON: And, again, we can't --

13 JUROR NO. 3: That's why I'm opposed to giving him
14 any sort of compensation for his psychological --

15 JUROR: Right.

16 JUROR NO. 6: And even if the horse had thrown him
17 due to her negligence, I don't think the fear after that
18 could really be her fault.

19 JUROR: It would be too complicated.

20 JUROR NO. 6: Normally, I mean, not everyone who
21 gets thrown from a horse has (inaudible) afterwards.

22 FOREPERSON: But the judge defined it as special
23 compensation for ensuing issues like the pain. Like the
24 pain, the emotional -- like mental, all that that coincides
25 afterwards, not strictly like what physical ailments. So I
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1 can see that as reasonably being tied in to, like, what he is
2 awarded, but even to do that (inaudible).

3 JUROR NO. 4: Can you read the question?

4 FOREPERSON: Okay. Actually do you want me to
5 just read through all of the questions and we can go through
6 them?

7 JUROR NO. 4: Yeah.

8 FOREPERSON: The one we were just discussing was if
9 the answer to yes, he was injured, if we decide, yes, he was
10 injured, was the injury the fault of Patty Morton? Number
11 three, if the answer to interrogatory number two was yes, was
12 the injury caused directly by Patty Morton's negligence? And
13 then number four, if the answer to number three was yes, was
14 Steven Matthews' injury caused in part by his own negligent
15 actions or inactions? Number five, if the answer to number
16 four was yes, what percentage of total responsibility for

17 this incident should be assigned to the defendant? So we're
18 back to was it Patty Morton's fault.

19 JUROR NO. 3: I'd be willing to say yes in some
20 small part.

21 JUROR NO. 2: I'd say (inaudible) for me.

22 FOREPERSON: How specifically? Give me concrete.

23 JUROR NO. 3: Just it sounded like she was a little
24 bit hands-off the whole thing. She kind of went through the
25 instructions, gave him the instructions and then just kind of
0038

1 pointed to the horse, and it sounded like he ran up and he
2 got on the horse himself.

3 Whereas, what she should have done is she should
4 have held on to the reins of the horse, you know, gone
5 through it step by step and made sure he got on the horse
6 slowly at first and got on it right.

7 JUROR NO. 4: Should we assume these things though?
8 (Inaudible) consideration about we know factually.

9 FOREPERSON: My impression was while she was giving
10 instructions, before she completed, he jumped on the horse.

11 JUROR: Yeah.

12 JUROR NO. 6: See, I didn't get that.

13 JUROR NO. 3: Once again, this is all like --

14 FOREPERSON: How much do you remember?

15 JUROR NO. 3: Yeah. I mean, also isn't it
16 (inaudible).

17 JUROR: Yeah.

18 JUROR NO. 4: All we know is she was explaining to
19 him, and he admitted that he wasn't listening to what she was
20 saying because he was so nervous about the horse. Regardless
21 of the reason, he wasn't listening.

22 FOREPERSON: Uh-huh. Which then comes back to the
23 question of where do her responsibilities lie.

24 JUROR NO. 5: Yeah. Was it her responsibility to
25 make sure he was listening?

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1 JUROR NO. 6: Was it her responsibility to instruct
2 him or her responsibility to (inaudible)?

3 JUROR NO. 2: Like it's their fault. Like if you
4 sign something without reading it, it's your fault. If he
5 does something without listening to the instructions, that's
6 his fault.

7 FOREPERSON: That's the contract that he signed,
8 which comes back to the, "I understand that horses are
9 unpredictable and potentially dangerous." I know, and, like,
10 "Morton will supply a trained instructor" -- she was trained;
11 it's her place -- "a suitable horse and all appropriate
12 utilities and appropriate instructional conditions" like --

13 JUROR: I think we all probably agree on the first
14 three.

15 FOREPERSON: Yeah, yeah.

16 JUROR: What are appropriate (inaudible)
17 conditions?

18 JUROR NO. 4: As a competent adult, there's no way
19 that she should be responsible for having to elicit his
20 understanding. If she's explaining to him and he's nodding,
21 then that would imply that he is taking in what she's saying,
22 and it's his responsibility to listen to her. She was
23 providing instruction.

24 FOREPERSON: Then there's the question of
25 competency, not what she trained but what she relayed that
0040

1 information to him, which comes into the question of she had
2 already had a few drinks. She thought he had -- rather, the
3 other trainer, the other stable hand thought he was a jerk,
4 thought he was trying to show off. She displayed that she
5 rubbed the person wrong with him or kind of like that.

6 So, like, was she in the mindset to be giving the
7 instruction because she didn't say -- she doesn't remember
8 explicitly what she told him? So, like, that's a question.

9 JUROR NO. 4: In her testimony though she said that
10 when asked if his behavior was (inaudible), he said, no,
11 (inaudible) behaving. It didn't seem he was trying to
12 impress his girlfriend.

13 JUROR NO. 1: But then she seemed to think it was
14 so ridiculous, like the whole situation.

15 JUROR NO. 5: (Inaudible).

16 JUROR NO. 2: I think I would have to.

17 JUROR NO. 4: It was ridiculous. He was trying to
18 pretend he was an experienced rider, jumps on the horse and
19 gets thrown first thing. If you're somebody who knows about
20 the field and you're someone who's acting as an imposter
21 (inaudible).

22 FOREPERSON: I thought it was interesting how he
23 said, yes, I brought my girlfriend along to provide me
24 emotional and moral support or whatever, but then I was
25 trying to show off. I was like, no, no.

0041

1 JUROR NO. 4: And why would you bring somebody --
2 trying to impress someone where you have no idea what you're
3 doing and you're deathly afraid?

4 I don't think we can really argue about -- it's
5 hard to say whether or not she was giving competent
6 instruction because we were never told what she said. All we
7 know is that she was giving the instruction, and he wasn't
8 listening. And beyond that, there's really nothing --

9 JUROR: Yeah, even if she was giving competent
10 instruction, even if you assume she was giving competent
11 instruction and she was perfectly sober, he wouldn't be
12 listening anyway, so....

13 JUROR NO. 2: (Inaudible).
14 JUROR NO. 4: I agree.
15 JUROR NO. 3: I'm open to suggestions.
16 FOREPERSON: What are you guys thinking?
17 JUROR NO. 6: I'm questioning (inaudible).
18 FOREPERSON: In terms of the horse being present?
19 JUROR NO. 6: In terms of, yeah, basically. Like,
20 if this is a horse you use with a child and you know you
21 (inaudible), I don't know. Like, I guess it comes back to
22 the questions of -- you guys thought he jumped on before she
23 finished talking?
24 JUROR NO. 2: It seemed to me like he was just
25 nodding, you know, whatever she was saying just like so she
0042

1 would be done talking and he could get on. He was just
2 (inaudible).
3 JUROR NO. 6: Yeah. Was she done yet or was she
4 not done yet talking?
5 JUROR NO. 4: I jumped on, you know, and I dug my
6 heels in the side because I didn't want to fall off. And I
7 was so nervous that I wasn't really hearing anything that was
8 being said. So that sort of made me think that she was still
9 in the middle of explaining things.
10 FOREPERSON: Regardless of whether she actually
11 finished saying it, does that matter if he didn't hear it
12 anyway?
13 JUROR NO. 6: The question is if she instructed it
14 on the ground and then, okay, get on the horse, shouldn't she
15 have been holding the reins or something while he was getting
16 on the horse.
17 JUROR NO. 3: She says here that he jumped on
18 Killer without warning.
19 JUROR NO. 6: Oh, she does say that?
20 JUROR NO. 3: Yeah. So that implies a lot of
21 (inaudible).
22 JUROR: Yeah, really --
23 JUROR NO. 5: You don't really know.
24 (Laughter).
25 JUROR NO. 6: You're the only one who still --
0043

1 FOREPERSON: I would say I don't -- I still -- I
2 mean, I do think it's 99 percent his fault, but I don't think
3 it's really (inaudible) her instructions. I mean, like, no
4 matter how macho he is, like, I still think that, like, like
5 you said, that the horse shouldn't have even been out there.
6 Like, he should have (inaudible) and helped him on without
7 letting him be able to jump on the horse.
8 JUROR NO. 2: Did you ever --
9 JUROR NO. 4: Yeah. Why should she have not had
10 the horse present at first?

11 JUROR: Well, then she could carefully go through
12 the instructions with him.

13 JUROR NO. 4: If she has no knowledge of his
14 existence of psychological fear of horses, then why would she
15 not have the horse there? Why would that be a distractor?
16 Why would the horse (inaudible)?

17 JUROR NO. 2: Interfere.

18 JUROR: Because she knows that Killer
19 specifically -- like, his visual appeal has a specifically
20 disturbing, like, history. Like little kids, adults,
21 whoever, like, on first sight he is intimidating. So, like,
22 you could argue (inaudible).

23 JUROR NO. 5: But you could also say, like -- like
24 wouldn't it be better for her to be talking to him and
25 engaging him while the horse is coming instead of just then
0044

1 having him silent while they walk up to the horse and having
2 everything concentrate on the horse?

3 Like the instruction, like, like, be a way of
4 engaging him in mentally preparing himself while the horse is
5 coming up that way. He's not fully absorbed when the horse
6 is walking up where obviously he would be paying some
7 attention, but you would still have something to keep your
8 mind off, you know, like what she's trying to instruct you.

9 JUROR NO. 4: I don't think it's a horse
10 (inaudible) fear. Most people are riding horses because they
11 want to.

12 JUROR NO. 6: What I'm thinking is maybe not fear,
13 but this is a horse you use with little kids. If you're
14 trying to teach a little kid something and you bring anything
15 else up to them, they're going to pay attention --

16 JUROR NO. 2: Still --

17 FOREPERSON: They're going to pay attention to you
18 or to the horse?

19 JUROR NO. 6: To the horse.

20 JUROR NO. 2: They said (inaudible) and, like,
21 she's doing it for him what she would be doing with a kid,
22 and riding horses is pretty hands-on. You have to show how
23 to -- she's saying you can't just pick up the reins. He's
24 never ridden a horse. So he has no idea how to do anything
25 on a horse. Like you have to like --
0045

1 JUROR NO. 4: You stand there and you say, you
2 know, this is the horse. This is the saddle. These are the
3 reins. It's not anything you can come up with visually or
4 mentally. I'm sorry.

5 JUROR: I don't think she devoted enough time to
6 figure out what his experience was. Like, I mean, I know he
7 was a beginner, but like just like the fact that she didn't
8 even look at the contract just kind of bugs me because, like,

9 I know -- and she gave him a beginner horse and, like, the
10 deathless horse.

11 But like she knew he was, like, B.S. I think, and
12 she didn't really ask him if he had actually been riding or,
13 like, anything, and if she had done that, maybe she would
14 have given him a little more time to explain what was going
15 on. She wouldn't have taken him into the stable.

16 JUROR NO. 5: Wouldn't it have been his
17 responsibility to say I have a fear of horses?

18 JUROR: I don't think so. Well, he didn't have a
19 fear of horses yet.

20 JUROR NO. 5: Yeah, he said --

21 JUROR: He had a fear beforehand?

22 JUROR: That's why he said --

23 JUROR: I thought he was just trying to get more
24 comfortable.

25 JUROR NO. 4: He didn't have the psychological
0046

1 problems, but he was still nervous around horses, which is
2 why he began to take the lessons, to get more comfortable.

3 JUROR: Okay. Well, like, as an instructor, maybe
4 she should have asked him about that.

5 FOREPERSON: It sounded like from your initial
6 argument that you believe that he is 99.9 percent responsible
7 for --

8 JUROR: Yeah.

9 FOREPERSON: But she should create the situation in
10 which there's no possible way that he could get hurt or get
11 thrown; is that right?

12 JUROR: I just think there are -- there are ways
13 she could have made him more comfortable around the horse and
14 she couldn't have --

15 JUROR: (Inaudible) yeah.

16 JUROR: She should have asked him about that. He
17 didn't -- maybe.

18 JUROR NO. 4: I agree.

19 JUROR NO. 2: They said, like, she always brings
20 people into her office and talks to them for a while to get a
21 feel for them, something like that. She said that she knew
22 he was a beginner, and that's why she picked a beginner's
23 horse. That's the question, she knew. He never said I am
24 afraid of horses. He said I'm a farrier. I spent a lot of
25 time around horses.

0047

1 JUROR NO. 4: I agree she should have looked at the
2 consent form, but I don't think there's any harm or any
3 negligence because she assumed beginner. So even though she
4 never looked, she was assuming the lowest level.

5 JUROR: It just struck me as a general hazardous
6 way she took care of the whole thing. Like, even if it

7 specifically was pretty much his fault, then this isn't the
8 way she should be doing it.

9 It's like what if, like, the next guy that comes
10 along is -- I don't know. It just....

11 JUROR NO. 4: (Inaudible).

12 JUROR: And just the fact that even he did, she
13 should have told him also, like, the horse had kicked people
14 off before. I don't know why (inaudible). Kind of a --

15 JUROR NO. 2: The horse (inaudible).

16 JUROR NO. 6: If you're not a rider, you wouldn't
17 know that.

18 JUROR: But do you -- okay. If you're taking
19 lessons (inaudible).

20 JUROR NO. 4: Right here (indicating).

21 JUROR: If you're a six-year-old who has never
22 ridden a horse before, do you want somebody to say, oh, and
23 by the way this horse has kicked somebody off before?

24 JUROR NO. 2: There shouldn't be a disclaimer for
25 each horse to get on.

0048

1 JUROR NO. 4: But there is this disclaimer right
2 here which he read and signed (indicating).

3 JUROR: I think the disclaimer should be more
4 explicit.

5 JUROR: It's very --

6 JUROR: But, I mean, that's personal.

7 JUROR NO. 4: Yeah, it should say more things,
8 maybe specifically what the hazards are, but it does say
9 potentially dangerous and serious (inaudible) and it's very
10 true.

11 JUROR NO. 6: State whether it's the responsibility
12 for any injuries.

13 JUROR: Exactly.

14 JUROR NO. 6: The....

15 JUROR NO. 4: My concern with this is normally
16 there's a clause that says I assume all responsibility, and
17 she doesn't have that here.

18 JUROR: Yeah.

19 JUROR NO. 4: But she does imply that there are
20 dangerous situations involving riding horses.

21 JUROR NO. 6: Okay. Another question. Several
22 glasses of wine at lunch, when was she instructing him?

23 JUROR NO. 4: After lunch.

24 JUROR: Right after lunch.

25 JUROR NO. 2: Does it say what time of day this

0049

1 happened?

2 JUROR: It's in the report. Does it say what time
3 in the afternoon?

4 JUROR: No, it doesn't.

5 JUROR NO. 6: Do we have a time he went to the
6 hospital because that will (inaudible)?

7 FOREPERSON: I love this picture. This is
8 definitely a picture of a mad horse rearing in the Midwest of
9 Virginia.

10 JUROR: Okay. Time 1930.

11 JUROR: That's 7:30.

12 JUROR: That's pretty late in the evening.

13 FOREPERSON: Well, he could have sat in the
14 emergency room for a few hours?

15 JUROR: That's true.

16 JUROR NO. 4: Is that the time of admittal?

17 FOREPERSON: I mean, the (inaudible) doesn't matter
18 in this case in terms of the (inaudible) because we know she
19 was drinking during lunch.

20 JUROR: It matters in terms of her competency.

21 JUROR NO. 4: He wasn't listening.

22 FOREPERSON: Yeah.

23 JUROR NO. 2: Like I'm saying, if you say the
24 same -- she gave him, like, the normal routine. If you're an
25 instructor and you give the normal routine, like, every day
0050

1 and you have, like, two or three glasses of wine, she's not
2 going to get to the next lesson and say, all right, get on.

3 JUROR NO. 4: Could we see the statement right
4 there?

5 FOREPERSON: Right there, the deposition.

6 FOREPERSON: If you've been doing this for 12, 15
7 years, then, like, you know your routine.

8 JUROR: I don't feel like -- by the summer, by the
9 end of the summer I could have basically written it down, the
10 script.

11 JUROR NO. 6: The judge told us that if we found

12 that it was part of each of their faults, we should figure
13 out how much he ought to get and then reduce it by a
14 percentage that was his fault.

15 So if we're saying all he gets is the medical bills
16 and it's 99 percent his fault, we have her pay, like, five
17 bucks.

18 JUROR: Yeah, yeah, and it happens all the time.
19 It's like, okay, it was their fault, but we're giving them a
20 dollar. It really does.

21 FOREPERSON: To me it -- like if we're arguing that
22 it's 99 percent her fault or his fault -- excuse me, 99
23 percent his fault, then where is the one percent coming from?
24 Like, I don't understand where that one percent -- because if
25 you're arguing that the one percent comes from her as an
0051

1 instructor has to, like, eliminate any possibility of him

2 getting hurt.

3 JUROR NO. 2: If we find that it is somewhat her
4 fault, then that will be like -- consider more cases. It
5 will be like -- it will set a legal precedent.

6 FOREPERSON: Legal precedent?

7 JUROR NO. 2: Yeah.

8 JUROR: It's just -- I just --

9 JUROR NO. 2: Like anyone who goes to a barn and
10 falls off a horse can sue.

11 JUROR: I think that generally she should have
12 taken a little more care in instructing him before he got on
13 the horse, kept him off the horse until then. I find it a
14 little ridiculous --

15 JUROR: If he jumped without warning though.

16 JUROR NO. 1: Why should she give him specific
17 instructions beyond what she normally gives everyone?

18 JUROR: He was a beginner. Maybe she should give
19 more instructions to all these people coming in.

20 JUROR NO. 1: It's never happened before as far as
21 I know.

22 JUROR: Well, I know. I just -- maybe --

23 JUROR NO. 6: Actually it has happened before that
24 we know of.

25 JUROR: This spur thing.

0052

1 JUROR NO. 6: He -- Jerry or whatever it is, the
2 deposition guy, said people get thrown all the time.

3 JUROR: What kind of -- how did the guy with the
4 spurs get on there in the first place? How did he just,
5 like, walk in? I mean, because obviously if she knew spurs
6 were bad. For him, they wouldn't have (inaudible).

7 JUROR NO. 2: It's not just in general like the
8 flesh of the horse.

9 JUROR NO. 4: It's a pretty ridiculous scenario.
10 You can't really hurt a horse that much by spurring him.

11 JUROR: She said he gored the horse.

12 JUROR NO. 4: In real life it doesn't really happen
13 that way, and there's -- like she kicked him in the flanks.
14 There's no way. There are lots of things that they said that
15 just didn't make sense.

16 JUROR NO. 3: That's one hell of a kick. Reach
17 around behind the horse.

18 JUROR NO. 4: I don't think they knew much about --
19 like to land on the stable floor, I know there was no
20 (inaudible). Just a lot of little things like that that
21 don't really make sense.

22 JUROR NO. 6: Is the fact that there's no clause in
23 there about who's financially responsible -- the fact that
24 we're not exactly sure how far in her spiel she was when he
25 jumped on, the fact she wasn't holding the reins when she was

0053

1 talking to this guy.

2 JUROR NO. 5: She didn't cause the accident, but I
3 think she should have been more careful in writing this up
4 and she should have been working (inaudible) with the
5 contract and stuff. And, like, these don't necessarily fall
6 into a safety kind of -- I don't know.

7 FOREPERSON: By that argument you're saying she
8 should have done more, but she couldn't have done anything in
9 this situation. In which case then she's not at fault, and
10 we have to find --

11 JUROR: Her example is if you change the contract,
12 maybe it will be a little more careful. I mean, it's all
13 speculation, and I know he was trying to impress his
14 girlfriend and everything.

15 JUROR: If he had a fear of them, he knew the
16 dangers already or he believed them to be.

17 JUROR: You say it's a bad precedent to give him
18 the one percent, but I think it's a bad precedent to not let
19 her (inaudible) at all for this.

20 FOREPERSON: I don't think we look at this in terms
21 of precedent. I think you have to look at it in terms of is
22 she at fault, is she not at fault and what percentage is she
23 at fault.

24 JUROR NO. 3: I think she's at fault and maybe for
25 the doctor's bills.

0054

1 FOREPERSON: On what grounds, specifically concrete
2 what is she at fault for?

3 JUROR NO. 3: If you take it from what she's
4 written here, he was -- he fell on the stable floor. Thus,
5 he got on the horse on the stable floor. I know that doesn't
6 make any sense and, like, every instinct tells me that he
7 would have been in the arena and he would have fallen on
8 dirt, but she said --

9 JUROR NO. 2: That's because he got on it
10 (inaudible).

11 FOREPERSON: And the horse wasn't being brought to
12 him. He was going to the horse.

13 JUROR: Right.

14 FOREPERSON: Wouldn't that horse be brought from
15 the stable to the arena? Like the assistant brought the --
16 according to (inaudible), she or the assistant brought the
17 horse to them.

18 JUROR NO. 3: Yeah.

19 JUROR NO. 4: It could have been too that the horse
20 was tied up because that's normally the way it worked. It's
21 so hard because you can't assume these things.

22 JUROR: Yeah.

23 JUROR NO. 4: The way it is is the horses are tied.

24 You start talking or she'll hold the reins and the rider will
25 get on and mount, and she'll hold the reins until there's
0055

1 consent that he's ready to go on his own. Was she just going
2 to have his lesson and let his girlfriend sit there?

3 FOREPERSON: It doesn't matter where the girlfriend
4 was as long as he was trying to impress him.

5 JUROR NO. 6: Okay. Yeah, if in his statement or
6 whatever when they were interrogating them he said when the
7 dust settled, I think we need to --

8 JUROR: I don't know.

9 FOREPERSON: The dust is on the stable floor
10 obviously. He hit the ground with such force. Well, I mean,
11 you have a horse that's rearing. It's going to kick up
12 something, right? I mean, our horse experts like --

13 JUROR NO. 3: Maybe it's a really dirty stable.
14 There's a one percent --

15 JUROR NO. 5: (Inaudible) the job of cleaning it.

16 FOREPERSON: The dust was their fault, and the dust
17 caused the horse to rear. So there you go.

18 JUROR NO. 2: The fact that he has a thousand
19 dollars, like, psychology bills, like, bad horse nightmares,
20 I think that kind of discredits anything he says.

21 JUROR NO. 6: I think if you look at it from that
22 point of view, almost the entire thing is just a little
23 bit -- I mean, neither one of them have their facts straight,
24 neither one of them.

25 JUROR: I know. Two sentences in a row, I mean.
0056

1 JUROR NO. 2: He's trying to sue for mental
2 damages. You know, he's just looking for money or something.

3 JUROR NO. 5: Yeah. If you read this, like -- read
4 this. It's really funny.

5 FOREPERSON: Could you put that up, please?

6 JUROR NO. 4: Sure.

7 JUROR: It's ridiculous. Like the last sentence
8 it's like --

9 JUROR NO. 5: It is ridiculous. The last sentence,
10 he's embarrassed for falling, and I'm, like, that has nothing
11 to do with the horse.

12 JUROR: Uninsured.

13 JUROR: Oh, Oh. That sucks for him.

14 JUROR NO. 5: Okay. Patient is a 25-year-old who
15 is an apprentice horseshoemaker and fitter.

16 JUROR: Locally.

17 JUROR NO. 5: He presented himself with visible
18 anxiety and inability to sleep and recurring nightmare.
19 According to his stream of consciousness statement (reading)
20 at Morton's Stables and was placed under an enormous skittish
21 horse named Killer. And before he did anything to annoy it,

22 it bolted and threw him to the ground.

23 Treating physician disagreed, diagnosed a serious
24 wrist sprain. Patient complained of recurring nightmares in
25 which dominant horses are subjecting him to various

0057

1 disagreeable things. Primary nightmare is Killer attempting
2 to shoe patient with one of his own horseshoes.

3 JUROR: That's beautiful.

4 JUROR NO. 5: Embarrassment over incident occurring
5 in front of his female date has impacted patient's....

6 JUROR: Libido.

7 JUROR: Are you kidding me?

8 JUROR NO. 5: Short term -- yeah.

9 JUROR: Psychotherapy.

10 JUROR: Right.

11 JUROR: Okay.

12 JUROR NO. 3: Point out a popular term, get back in
13 the saddle.

14 JUROR NO. 6: All right. We have to take into
15 account the fact that this is a shrink. He is licensed. I
16 mean, we have to sort of at least give him that -- give him
17 the benefit of the doubt on that one because we didn't talk
18 to him.

19 JUROR: I think if you're looking in terms of
20 competition, like, clearly he doesn't have a job because of
21 this. Like, so, if you're going to take into account
22 compensation, like, you have to include not only medical but
23 you have to include, like, compensation for the lack of
24 (inaudible).

25 JUROR NO. 6: Well, the question becomes is her
0058

1 fault merely his falling or is it her fault that he fell and
2 got scared.

3 JUROR NO. 2: I'm willing to say I'm (inaudible),
4 but you know on that contract where it didn't say -- it
5 didn't say I'm going to accept all injuries. It just said
6 that I'm aware that they're there, and maybe she does need to
7 change the contract.

8 JUROR NO. 4: I agree with that, but also normally
9 stables have bylaws where it's written. But it doesn't need
10 to be known to the public. The fact about please take into
11 consideration losses for not being able to work, he wasn't
12 able to work in the first place, which is why (inaudible).

13 FOREPERSON: No, he was working with (inaudible).

14 JUROR: He just decided to -- yeah. This isn't --
15 he could always get another job. It's just -- how long ago
16 was this? I mean --

17 JUROR: December 1st and this is May 3rd.

18 JUROR: March 3rd.

19 FOREPERSON: Or March 3rd.

20 JUROR: Like the first session itself or the
21 first --

22 JUROR: Twenty --

23 JUROR: Was three or four months. So March 25 --
24 well, counseling services for April '96. This is 2000.

25 JUROR NO. 2: Yeah, this is 2001.

0059

1 FOREPERSON: But this is -- but they put counseling
2 services for 1999. They must have meant March.

3 JUROR: When did the incident take place?

4 JUROR: March 2001.

5 JUROR: Right. We have serious issues with this
6 experiment.

7 FOREPERSON: First passing (inaudible).

8 JUROR NO. 6: Well, there's a big old discrepancy.

9 JUROR NO. 5: Problem.

10 JUROR: Clearly if this happened four years ago.

11 JUROR: Six actually.

12 JUROR NO. 4: He said she felt it, and it wasn't
13 broken but that she could feel a sprain. Well, number one,
14 you can't feel a sprain. Well, you can feel a sprain if
15 you're trained well enough. You can tell if certain things
16 are torn, but some doctors can't even tell.

17 JUROR: Exactly.

18 JUROR: Either way this discrepancy she said when
19 he fell seemed like she put it in that same day.

20 JUROR: And the report is where he seemed to have
21 suffered from possibly a broken left wrist.

22 JUROR: It's her fault that he got scared.

23 JUROR NO. 2: Do we all think that she's somewhat
24 responsible?

25 JUROR: We can actualize.

0060

1 JUROR NO. 5: I don't know. I mean....

2 JUROR: I think it's very, very, very minimal, but

3 I do think that there's -- like he didn't -- I think that --

4 I think it's stupid. I really think it's stupid, but I think

5 she should have had something else in there.

6 JUROR NO. 4: That's my only problem. I don't
7 think we can hold her accountable on her actions but because
8 of this --

9 JUROR NO. 2: He didn't know he would have to pay
10 for it.

11 FOREPERSON: But that's the argument. The argument
12 is she was responsible because she was negligent in something
13 she did or did not do. Like did her actions that day make
14 her negligent, not like --

15 JUROR NO. 2: She informed him --

16 JUROR NO. 4: I don't think her action is negligent
17 action. I think her contract was negligent in that he wasn't

18 informed up front but....

19 JUROR NO. 5: But did that cause all of this?

20 That's what I'm wondering.

21 JUROR NO. 4: This isn't the cause, but I think

22 that's the only technical legality. It's like a loophole

23 where he could get the money.

24 JUROR NO. 2: Everything still could have happened

25 the same way, but like he -- he wouldn't be -- he wouldn't

0061

1 have to pay for the money if the contract was either way.

2 Like everything else would have happened.

3 JUROR NO. 4: But there would be no room for

4 dispute. That's the whole thing. If he was like, "I am

5 responsible for everything that happened," then he is

6 responsible, and that's not in the contract.

7 JUROR: The fact that it doesn't say anything about

8 that makes that whole sentence just moot. It says nothing.

9 It's not -- everyone knows that you can get hurt on a horse,

10 but like if you put in the contract just saying I know I can

11 be hurt by a horse and it has to say something about that.

12 JUROR NO. 4: It has to say something about the

13 money.

14 JUROR: Right. What would happen with him being

15 hurt on a horse, and I think that technically could have had

16 something to do with --

17 JUROR: (Inaudible) the horse.

18 JUROR: Well, I know when I'm reading a contract

19 when I'm going to go, like, rock climbing or something, I

20 look at it and kind of -- maybe I'm just weird like that, but

21 I kind of look like, like, if it says that it's going to be

22 completely my fault, then I probably would be a little bit

23 more careful.

24 FOREPERSON: So this sounds like an analogy if you

25 go rock climbing with another and you know you're going to go

0062

1 jump off, like (inaudible).

2 JUROR NO. 4: No. Beyond what you -- even if

3 you're being really careful, accidents happened. You can't

4 control a horse.

5 JUROR NO. 2: You would have done it either way?

6 JUROR: Well, you never know.

7 FOREPERSON: And you didn't have a contract that

8 says whatever happens today, I'm responsible.

9 JUROR NO. 4: You can assume responsibility, and

10 because of that, I think maybe just the medical, not the

11 psychological but the medical expenses should be covered just

12 because of the whole technicality but (inaudible).

13 JUROR NO. 2: We all think she's responsible.

14 JUROR NO. 4: I don't think she's at all negligent

15 in action, but I think because he was not informed.

16 JUROR NO. 6: It is negligence in action not to
17 make up a contract that --
18 JUROR NO. 4: It wasn't action that day. I don't
19 think she did anything wrong with him before his instruction.
20 JUROR: If she was not negligent, why would we make
21 her pay? That makes no sense to me.
22 JUROR NO. 2: The question is was the injury the
23 fault of anyone.
24 JUROR: Yeah.
25 JUROR NO. 5: It was the horse's fault.

0063

1 JUROR NO. 2: It was his fault because he wasn't
2 listening to her, and he -- he was acting just as much --
3 even if there was a clause in there. I think there should be
4 a clause that said I assume all responsibility, but that
5 doesn't just change someone's complete attitude. Like if he
6 wouldn't have --
7 JUROR: I'm not saying that. I'm still bothered by
8 just the general like --
9 JUROR NO. 6: Her attitude during the day or --
10 JUROR: Yeah, yeah, it -- I don't know. Just all
11 the little things that made it like -- like the drinking and
12 the clause and, like, just I'm still bugged by the fact that
13 he could have even gotten on the horse in the first place,
14 and I know it's really, really small but I mean --
15 JUROR NO. 2: (Inaudible) the horse.
16 JUROR: Well, why can't she like -- because it's
17 free hands on. If you want to get to like the horse --
18 JUROR: What she described is like the method for,
19 like, instructions sounded really good to me, but this kind
20 of struck me as bring out the horse, give him the
21 instructions, and let him leap on.
22 JUROR NO. 3: Have you ever been on a trail ride
23 because there's some trail rides where people get on a horse,
24 and they follow each other around.
25 JUROR: Yeah.

0064

1 JUROR NO. 2: It's pretty (inaudible) that you're
2 going to instruct somebody on a horse (inaudible) about 4:30
3 in the afternoon.
4 JUROR: According to the medical report?
5 JUROR: Actually I think that is 7:30.
6 JUROR NO. 3: He fell off the horse three hours
7 prior.
8 JUROR NO. 6: It says it on here.
9 JUROR NO. 5: We were asking about (inaudible).

10 JUROR NO. 6: And she had the wine at lunch.
11 FOREPERSON: But maybe she had lunch at four
12 o'clock.

13 JUROR: It's not defined --
14 JUROR: He said in her testimony that it was right
15 after lunch, and so you can't really say anything.

16 JUROR NO. 5: How long did she talk to him in the
17 office?

18 JUROR: Not, like, four hours for her to process
19 the alcohol.

20 JUROR NO. 5: Was it half an hour? Was it five
21 minutes? Was it twenty minutes?

22 JUROR: Does it matter?

23 JUROR NO. 5: I don't know.

24 JUROR: If she had three drinks, it was four or six
25 hours after lunch, then she was under the influence.

0065

1 JUROR NO. 2: (Inaudible) why but if you have a
2 routine, say you're a salesman and you're used (inaudible)
3 you're not going to forget your whole sales spiel and not be
4 able to sell it to him.

5 She tells, like, new beginners, like, all the time
6 her, like, regular routine, which is what she said in her
7 statement or whatever, and she's not going to tell the guy to
8 get on the horse and forget everything.

9 JUROR NO. 1: It mentioned that she had been
10 (inaudible) the thing she did to the guy on the stand, he
11 wasn't like, yeah, she was drunk. He never even mentioned
12 it. It was his lawyer.

13 FOREPERSON: Okay. So in terms of this question,
14 was she -- was the injury -- was the injury the fault of --
15 that encompasses, like, her explicit actions or her
16 inexplicit actions? Are we saying, like, that she did not
17 explicitly do anything that caused the fault? Have we
18 decided that she did not do anything that caused the fall?

19 JUROR: I'm still not convinced of that.

20 JUROR: How come -- what do you do? Like, they say
21 like it's -- I don't think it's -- I mean, I want to say -- I
22 really still want to say that it's, like, 99 percent his
23 fault and one percent her fault. Like, what do you do here,
24 like, if it says -- what if one of the answers is no? Does
25 that mean, like, he gets nothing and the rest is moot?

0066

1 JUROR NO. 5: I think -- I think it's not her
2 fault, but regardless of that, she doesn't have anything in
3 her contract. So she could --

4 JUROR: According to the plaintiff, they had to
5 cause -- they had to prove that there was injury and that it
6 was her fault. If they don't prove that it's her fault,
7 then, like, all four points fail, and you can't award the
8 plaintiff.

9 JUROR NO. 4: Yeah, I think our job specifically --
10 and from there they can try to pursue she didn't (inaudible)

11 her contract in a separate case. So I think maybe we need to
12 decide whether or not she was at fault.

13 JUROR NO. 2: How was she at fault? Let's put it
14 that way.

15 JUROR: We've already explained this, like, 50
16 times that, like --

17 JUROR NO. 6: Okay. Let me try because I think I'm
18 on the same track you're on, and maybe different words will
19 help. I don't know. There are a bunch of little things in
20 here that add up to not giving him all of the attention that
21 he would get that she would give to an ordinary beginner.

22 Number one, she sees that he's bravado, and is
23 somewhat amused by it, at least in the fact that she laughs
24 when he falls off the horse. If a six-year-old had fallen
25 off a horse, she probably wouldn't have laughed.

0067

1 Two, there was alcohol in her body that probably
2 was affecting her some way because she had several drinks.
3 Several drinks affects your body. It's a medical fact.

4 Number three, she put him in a situation where he
5 wasn't being (inaudible) paying attention to her. It was
6 easy for him to get up on the horse. He obviously had had
7 access to the reins.

8 JUROR: I don't think (inaudible). I think you
9 have to instruct somebody --

10 JUROR NO. 5: That's normal procedure.

11 JUROR NO. 2: Normal procedure.

12 JUROR NO. 6: Not to instruct them with --

13 PROFESSOR LEDERER: Ladies and gentlemen, forgive
14 me, I need to ask, are we close to a verdict?

15 JUROR NO. 5: We're taking this way too seriously.

16 PROFESSOR LEDERER: We greatly appreciate that.
17 Are we close?

18 JUROR: We need to be.

19 PROFESSOR LEDERER: In the interest of everyone's
20 afternoon, may I ask you to do it this way? You have five
21 minutes. At which time we'll take your verdict by whatever
22 vote you may have.

23 JUROR: And if the verdict is not unanimous?

24 PROFESSOR LEDERER: We'll take the verdict as a
25 nonunanimous verdict solely to give you rest of the day off

0068

1 with our deepest thanks.

2 JUROR NO. 6: All right. Okay.

3 JUROR NO. 3: How about this vote?

4 JUROR NO. 6: Just give me the first three.

5 JUROR NO. 3: How about this? We've got five
6 minutes. Let's make her pay five dollars, and let's go home.

7 JUROR NO. 4: I say we just have her change the
8 contract.

9 FOREPERSON: Changing the contract is not --
10 JUROR NO. 5: It's not our responsibility to do
11 that.
12 FOREPERSON: No, it's not. The only --
13 JUROR NO. 4: Can we advise that she change the
14 contract?
15 FOREPERSON: Yeah. Like, that is not our job. Our
16 job is to prove whether --
17 JUROR: I think we should do it anyway.
18 FOREPERSON: The foreman is (inaudible).
19 JUROR NO. 4: Give your three points again.
20 JUROR NO. 2: She's guilty and the only thing
21 (inaudible).
22 JUROR NO. 6: She is not paying enough attention to
23 him because she (inaudible).
24 JUROR NO. 1: I say we go through all these
25 questions and write yes and then the number of people who say
0069
1 yes and the number who say no.
2 FOREPERSON: Yeah, democratic. Just for polling
3 purposes, was she at fault or was Matthews injured as a
4 result of falling from Killer? All who say yes.
5 (Several hands raised and several jurors say yes.)
6 FOREPERSON: Was the injury the fault of Patty
7 Morton? Obviously yes. Does that mean partially at fault?
8 JUROR: Does that mean (inaudible)?
9 FOREPERSON: Just was she at fault. All who say
10 yes? Was this caused directly by her negligence?
11 JUROR: I guess yes.
12 FOREPERSON: It's only if you answered yes. So
13 like -- was Steven Matthews' injuries caused in part of by
14 his own negligent actions or inactions?
15 JURORS: Yes.
16 FOREPERSON: This is still yes for anyone who said
17 yes. What percentage of total responsibility for this
18 incident should be assigned to the defendant? Her
19 negligence --
20 JUROR NO. 6: Oh, her negligence.
21 FOREPERSON: Her negligence should be assigned to
22 the defendant.
23 JUROR NO. 6: Oh, one percent.
24 FOREPERSON: Okay. So that's one percent, so.
25 Ultimately, if we're like doing this democratically, then,
0070
1 like, six out of eight people think she's not at fault, which
2 to me says that, like, if she's not at fault, then she
3 shouldn't have to pay anything.
4 JUROR NO. 3: So three-fourths of one percent.

5 JUROR NO. 6: No, one-fourth of one percent.
6 FOREPERSON: One-fourth of one percent if we're
7 doing it like --
8 JUROR NO. 3: They're asking for a lot of money,
9 you know. I'd be happy with -- one-fourth of one percent,
10 that would -- that would buy me a lot. I could have dinner
11 tonight.
12 FOREPERSON: That is just from the medical bills.
13 JUROR NO. 6: No, no, no, not the medical bills --
14 JUROR: No, not 15,000. I mean, say a quarter
15 percent from 185, it's 185.
16 JUROR NO. 6: Yeah, 185 bucks. A quarter percent
17 of six --
18 JUROR NO. 5: That's, like, 50 cents. She's not
19 guilty.
20 FOREPERSON: So basically we're arguing that we --
21 basically we just want to find in his favor so we can make
22 her change the contract. Is that all we're deciding?
23 JUROR NO. 4: Pretty much.
24 FOREPERSON: So why don't we just give him a dollar
25 and say you won, and you should change the contract.
0071
1 JUROR: Yeah.
2 FOREPERSON: Good lord.
3 JUROR: Let's just do that.
4 FOREPERSON: Am I -- did she say do not write on
5 these?
6 JUROR NO. 6: She said write on those, do not write
7 on these.
8 FOREPERSON: Okay.
9 JUROR NO. 3: Don't write on the picture of Killer.
10 FOREPERSON: Yes. One-fourth.
11 JUROR: I'm going to get our little bailiff. Oh,
12 wait a minute.
13 JUROR: Say one-fourth of 100 percent.
14 JUROR: From the medical bills.
15 PROFESSOR LEDERER: Everyone have a seat, folks.
16 It's not quite so simple.
17 FOREPERSON: Did we decide on one dollar?
18 JUROR: One dollar.
19 JUROR NO. 4: After all that.
20 FOREPERSON: This doesn't leave room for comments.
21 PROFESSOR LEDERER: No, but I'll take them orally
22 in a minute if you'd like.
23 So, ladies and gentlemen, I take it that we have
24 now reached a verdict.
25 FOREPERSON: We have, yes.
0072
1 PROFESSOR LEDERER: And it is? You're on.
2 SHEPHERD: I'm taking over for your old bailiff

3 here. I would like to have you answer again some of the
4 questions you answered before you came in here for your
5 deliberations. Remember, there's no right or wrong answers.
6 We're actually really interested in your honest impressions
7 at this point, whether they're the same or different as the
8 ones you had before you came in here.

9 So I have a form to hand out to you if you could
10 fill these out. Questions that our research is going to
11 answer. Does anyone here have questions you would like to
12 ask for Fred?

13 PROFESSOR LEDERER: Ladies and gentlemen, we won't
14 hold you very long, and I'm responsible for all that's going
15 on right now.

16 First, thank you very much for your kindness. I
17 know you're getting credit for it, but thank you anyway and
18 especially for coming in.

19 I gather that you found for the plaintiff in the
20 amount of, what, one dollar?

21 FOREPERSON: One dollar.

22 Professor LEDERER: Okay. I'm curious. Why? Just
23 really fast, what were your thoughts? Was this unanimous as
24 it turned out under pressure?

25 JUROR: No.

0073

1 PROFESSOR LEDERER: What was the vote?

2 FOREPERSON: It basically came down to a matter of
3 that she -- while she was not very much at fault or not
4 explicitly at fault, the terms of her contract with him,
5 like, left her open to be sued.

6 PROFESSOR LEDERER: What was the vote by the way on
7 verdict?

8 JUROR NO. 3: It was two out of eight had her at
9 some fault.

10 PROFESSOR LEDERER: Okay. So six had plaintiff?
11 Is that how it worked out?

12 JUROR: No, when you explained it that way, we all
13 agreed that the contract was her fault. The part that only
14 two of us said was anything else was --

15 PROFESSOR LEDERER: So --

16 JUROR: All eight of us said the contract was her
17 problem. Two of us said the contract was more than her
18 problem.

19 PROFESSOR LEDERER: It's a unanimous defense
20 basically. So -- but you decided to give -- you're limiting
21 it to a one-dollar verdict as a compromise.

22 Okay. What, if anything, convinced you or didn't
23 convince you in terms of the counsel's presentation?
24 Anything that struck you as especially important?

25 JUROR NO. 2: I think the lack of information about

0074

1 some things, like what she explicitly said while she gave
2 instructions, such things like that, like where exactly they
3 were.

4 There's a question of whether they were in the
5 arena with the dirt floor or whether they were in the stable
6 with the concrete floor.

7 PROFESSOR LEDERER: Okay. And other thoughts from
8 other people? Was there anything else that counsel could
9 have done on either side that might have been particularly
10 useful to you?

11 JUROR NO. 4: Researched horses and riding a little
12 more.

13 PROFESSOR LEDERER: Okay.

14 JUROR: And told us more about the degree that the
15 alcohol came into play.

16 PROFESSOR LEDERER: Okay.

17 JUROR NO. 1: And also determine how much -- like,
18 how fearful he was before.

19 FOREPERSON: Any psychological condition.

20 PROFESSOR LEDERER: Got it. Okay. Did you use the
21 equipment is obviously a question.

22 JURORS: Yes.

23 PROFESSOR LEDERER: What was your recollection to
24 that?

25 JURORS: It was good.

0075

1 JUROR: Much easier.

2 PROFESSOR LEDERER: Excuse me. Could you repeat
3 that?

4 JUROR NO. 5: We could all see it and we could
5 point to all the things and not have to pass it around.

6 JUROR NO. 4: Read it.

7 PROFESSOR LEDERER: So that helped.

8 JUROR: Yeah.

9 PROFESSOR LEDERER: Now, we didn't plan on this,
10 but between the time we set things up and now, we've got
11 afternoon sun. Was that a problem?

12 JUROR NO. 4: Well, not while we were looking at
13 it, but now there are shadows, and it would be more
14 difficult.

15 JUROR: We could always lower the shades.

16 PROFESSOR LEDERER: Actually, we're going to do
17 that next. Is there anything you wanted to tell us?

18 JUROR NO. 4: This is by far the most interesting
19 experiment we've participated in.

20 PROFESSOR LEDERER: Do us a favor and not talk to
21 anybody else in the school while this is going on. It will
22 go into second semester because we don't want to. I will
23 tell you that the results of this will have real world

24 impact. This is not just to be written up and published.

25 This will actually be used in real cases in two

0076

1 different locations in the United States in late spring all

2 dependent on what we have learned. So this is one of those

3 rare moments you helped contribute to is actually going to be

4 tried in real cases.

5 JUROR: I understand the focus is more technology

6 in the jury room.

7 PROFESSOR LEDERER: Correct.

8 JUROR: Did you specifically make a decision not to

9 use the technology in the -- in the courtroom?

10 PROFESSOR LEDERER: This is phase one of a much
11 larger study.

12 JUROR: Okay.

13 PROFESSOR LEDERER: Okay? Phase two, without
14 getting into details will involve the entire (inaudible), and

15 by the way, as long as you're not -- you're welcome to come

16 by and see when we do show the courtroom off, which we do

17 frequently, if anyone has because we do have undue

18 (inaudible) at our facility.

19

20

0105

1 - - - - DECEMBER 1, 2001, TRIAL 2 [no technology]

2

3 JUROR: Does anybody else feel like it's a terrible
4 thing that jurors can't take notes? I don't know. We can't
5 preask questions.

6 JUROR NO. 3: I felt there were things they didn't
7 ask the witnesses.

8 JUROR: (Inaudible).

9 JUROR: Yeah.

10 JUROR: I know. I was like, technology? Not at
11 all.

12 JUROR NO. 5: Do you guys just want to go around
13 the room and see where everybody stands as far as a verdict?
14 I will start.

15 All right. I personally would like to find Mrs.
16 Morton not negligent. I don't think that she should be
17 responsible for the psychological condition of her riders.
18 Physical condition, yes, psychological condition, no.

19 Like, if I would -- I would award him damages
20 proportional to his physical medical situation but it's --
21 she's not a trained psychologist. It's not her job to
22 evaluate his level of fear or, you know, level of experience,
23 yes, level of fear, no.

24 And so the psychologist bills and future psychology
25 bills I don't feel comfortable awarding him at all. I don't

0106

1 think we should give him a lot at all, so.

2 JUROR NO. 4: I feel sort of the same way in that
3 he sort of probably had psychological problems before he met
4 Killer because, you know, just from how he was acting. You
5 could tell he was already (inaudible), and he sort of just
6 falsely, you know, portrayed himself to begin with. So if it
7 was up to me, I wouldn't award him any damages at all.

8 JUROR NO. 3: Yeah, I think it's a little odd that
9 he didn't like horses, but that was his job.

10 JUROR NO. 5: I know. I was like, you work with
11 horses, but you've never ridden one? I don't understand.

12 JUROR NO. 3: So, yeah, I don't really think she's
13 that much at fault. If anything, just for the doctor's bill.
14 Like, he was already afraid of horses way before. At least
15 that's what I got. So, you know, I don't think she really
16 didn't have any (inaudible).

17 JUROR NO. 2: Yeah, I go along with everybody else.
18 I don't think I'd award him anything. This is his
19 negligence, not hers, that got him in trouble, and it's the
20 same thing with horses. I mean, how -- wouldn't that pick
21 you up to do something with a horse's foot?

22 JUROR: I think that would be scarier than riding a
23 horse.

24 JUROR NO. 2: Yeah, so....
25 JUROR NO. 1: I would also rule for the defendant.

0107

1 I don't think -- it was his own damage -- I wouldn't award
2 him anything at all. I think his own negligence contributed
3 significantly to his own injuries.

4 JUROR: I think the wine thing was a reach.

5 (Laughter).

6 JUROR: I don't know -- they didn't say how much
7 time between lunch there was but, if anything, maybe for the
8 wrist because he did injure his wrist falling off the horse.
9 I can see that.

10 JUROR: Yeah, I agree.

11 JUROR: But psychologically, no, I don't think so.

12 JUROR NO. 5: The wrist I could see but the rest --

13 JUROR: 15,000.

14 JUROR NO. 5: Yeah, that's --

15 JUROR NO. 6: I don't know. The fact he didn't
16 even pay any attention to what she was saying. He wasn't
17 paying attention. So I wouldn't give him any money.

18 JUROR NO. 5: Yeah. Like the one person I was
19 wishing I could ask is did she at any point instruct him how
20 to mount a horse? Like, it's a specific thing.

21 JUROR: Whether she --

22 JUROR NO. 5: Yeah. Because they said she
23 complained to him it was a skittish horse, but she didn't say
24 this is how you get on a horse. I would want to award him
25 physical medical damages because that is (inaudible).

0108

1 JUROR NO. 3: Was the basic part of the
2 instruction.

3 JUROR NO. 6: I'm sure she didn't tell him how to
4 properly get on the horse.

5 JUROR: You don't just jump on.

6 JUROR NO. 6: Yeah.

7 JUROR NO. 3: She didn't have much time. Like,
8 from what they were describing, it was like he sort of hopped
9 on.

10 JUROR: Yeah.

11 JUROR NO. 5: I don't know. I might --

12 JUROR: That's hard to do.

13 JUROR NO. 5: The admission he wasn't paying
14 attention. So I don't know if it makes that much difference.

15 JUROR NO. 3: For all he knows, she could have said
16 anything. Like, he doesn't know.

17 JUROR NO. 5: And that's, I mean -- that's his
18 problem. You know, he got himself in the dangerous
19 situation.

20 JUROR NO. 1: Should we award something based on
21 the principle that she should have looked at the contract

22 before?

23 JUROR: (Inaudible).

24 JUROR: She knows what the contract says.

25 JUROR: Yeah, but she didn't know what he put down.

0109

1 JUROR NO. 1: You could say she couldn't go wrong
2 by putting him on the most gentle horse but still the
3 principle of not looking at the contract.

4 JUROR NO. 5: That's an interesting point because,
5 like, I don't know. Like, I would be more inclined to trust
6 the intuition of an instructor in any sporting activity more
7 than -- like, if I was instructing a sporting activity, I
8 wouldn't -- I would almost not look at the contract on
9 purpose because I don't want to know what they think they can
10 do. I want to know what I think they can do.

11 JUROR NO. 3: You can imply from the contract --

12 JUROR NO. 5: Yeah, and that would have thrown her
13 off. She made a decision that he was basic.

14 JUROR: The contract. She does have an obligation
15 to look at it.

16 JUROR NO. 5: To look at or else.

17 JUROR NO. 5: And, I mean, she is a riding
18 instructor. It's her -- I mean, yeah, she could not have
19 foreseen that he was going to John Wayne it on the horse but,
20 like, it is her job to take people who are afraid of horses
21 and make -- you know, to a certain extent, she didn't
22 accomplish (inaudible). So I can see her awarded the medical
23 bills.

24 JUROR: So maybe they should make the contract more
25 psychological, like ask how do you feel about horses and how
0110

1 do you feel --

2 JUROR NO. 5: (Inaudible) I don't know. I don't
3 want to give this up for the rest of the (inaudible).

4 JUROR NO. 3: (Inaudible) then. They were talking
5 about.

6 JUROR NO. 5: Can we lay down a percentage
7 proportional to the wrist?

8 JUROR NO. 3: It would be like he's --

9 JUROR: Was he --

10 JUROR NO. 3: Like eight percent or something.

11 JUROR: I mean zero.

12 JUROR NO. 1: Well, it was only like, what, \$135,
13 185.

14 JUROR NO. 6: Out of 15,000.

15 JUROR NO. 5: Do you want to look at the or --

16 JUROR: If we just want to award for the wrist, how
17 responsible is he for the wrist? I would just give him all
18 like -- because she's not like....

19 JUROR NO. 5: Oh, yeah.

20 JUROR NO. 3: This is the contract.
21 JUROR NO. 1: But isn't giving even the medical
22 damages implying that she's negligent, that it's her
23 responsibility to pay his physical?
24 JUROR NO. 4: Yes.
25 JUROR NO. 5: Oh, that's true.

0111

1 JUROR: It was on her property. It was her horse.
2 JUROR NO. 1: I think that's a different verdict.
3 I think that's finding in favor of the plaintiff.
4 JUROR NO. 3: So if she's responsible for the
5 physical, she's also responsible (inaudible).
6 JUROR NO. 1: Right.
7 JUROR NO. 5: You can't hold one human being
8 responsible for the mental state --
9 JUROR: There's no way of knowing the psychological
10 aspect of it.
11 JUROR NO. 1: But there are punitive damages from
12 not being able to work and having the --
13 JUROR NO. 5: I thought that was kind of an
14 exaggeration. I thought that he kind of went out of his way
15 to stutter exceedingly, and he was, like, shaking the paper.
16 I don't know. She showed him the picture of the horse, and
17 he said yes, (inaudible), I mean, the digital frame of the
18 horse, very traumatic. I was like that's a little bit
19 (inaudible).
20 JUROR NO. 2: The horse rearing.
21 JUROR NO. 5: Yeah, I liked that too.
22 JUROR: How much does he make a day? So give him
23 the wrist and the five days of work.
24 JUROR NO. 3: But he hasn't been back to work.
25 JUROR: That was psychological. He said it was

0112

1 five days. I think I would just stick to that.
2 JUROR NO. 5: I think what you said was a really
3 important point, that if you give him an award, then we say
4 she's negligent.
5 JUROR NO. 1: I think before we decide on damages,
6 we have to decide --
7 JUROR: It's a percentage. How negligent was she?
8 She was only negligent based on maybe the physical, not --
9 she didn't have any effect on the psychological.
10 JUROR NO. 4: Are we basing her entire negligence
11 on the fact she didn't read the contract? I mean, how else
12 was she negligent? If it's just because of the contract, I
13 don't think that makes her negligent.
14 JUROR: She should have like jumped in front of him
15 when he was diving for the horse or something. Yeah, I don't
16 know.
17 JUROR NO. 5: Then he could have sued for all the

18 (inaudible). That would have been better.

19 JUROR NO. 1: But I think if you rule for the
20 defendant, you can't award anything.

21 JUROR NO. 5: But --

22 JUROR: But isn't that implied though?

23 JUROR NO. 5: I think in principle it's like a
24 modern principle what you rule, you know, whether that person
25 was guilty or only guilty a little bit but, like, they did
0113

1 say that they have comparative negligence in awarding a sum
2 of money according to the -- what was that about?

3 JUROR: But that's still --

4 JUROR NO. 1: Maybe the fact he didn't say anything
5 when he started running to the horse. Did she try and stop
6 him maybe? That's a little negligent. Maybe that had
7 something to do with it.

8 JUROR NO. 5: See, this is what I was frustrated by
9 the process by because I felt like there were certain aspects
10 of the experience that --

11 JUROR: She could have said run, don't jump on the
12 horse.

13 JUROR NO. 5: But that question wasn't asked, you
14 know, and where was the girlfriend? The girlfriend is a
15 witness. Why wasn't she there, which makes me want to rule
16 in favor of the defendant because you would think that if it
17 was so clearly her, sure, go ride on the horse; I'm going to
18 go drink, that they would have called the girlfriend in to be
19 like, I could tell he was really nervous, and that horse was
20 really scary, and she just left, you know, whatever. But she
21 didn't have the girlfriend there to testify. So why didn't
22 they have the girlfriend to testify? You know, is that
23 reading too much?

24 JUROR NO. 3: I think if we think she's negligible
25 for not reading the contract, then that's a small percentage.
0114

1 JUROR NO. 4: This contract is so vague though.
2 Even if she did read it, some experience, I mean, he does
3 have some experience.

4 JUROR: With horses.

5 JUROR NO. 4: With horses.

6 JUROR NO. 3: It's basically like the first little
7 paragraph is like, I agree to five lessons and I'll pay for
8 it. Like, that's -- and then it's so that they understand
9 that horses are unpredictable. So he signed a contract
10 saying that he knew horses were unpredictable and potentially
11 dangerous.

12 JUROR NO. 6: Did he ever tell her that he had
13 never ridden it or was it just on the contract?

14 JUROR NO. 3: It's just on the contract.

15 JUROR: He knows; so she knows part of it. The

16 only thing she didn't know about the contract was how he put
17 his --

18 JUROR NO. 5: What I think is interesting about the
19 contract is I almost feel like the contract was a little
20 negligible --

21 JUROR: Like, I knew in other sports there's, like,
22 a separate something because there wouldn't be more problems
23 working out. Like, you have a whole separate form that asks,
24 like, every little -- every little thing that might possibly
25 happen to you. So you sign it knowing all the possibilities,
0115

1 but that's kind of vague.

2 JUROR: You can't make any judgments about how bad
3 the contract is because he chose to sign it.

4 JUROR NO. 5: That's true, but it says I understand
5 horses are unpredictable and potentially dangerous (reading)
6 have occurred to some people incident to riding horses.

7 Nowhere in the contract does it say I understand
8 that my safety in riding the horse is dependent upon my
9 ability to follow the instructions of the instructor, and
10 that's an important point in the contract if you are
11 responsible for listening to my instructions.

12 JUROR: Did he sign it before or after she started
13 giving instructions? So....

14 JUROR NO. 5: Before she gave instructions, so.
15 Like, if I was signing the contract and I was in the
16 situation, maybe I would want to know that that was my
17 responsibility.

18 JUROR: To pay attention.

19 JUROR NO. 5: You know, you need to be told to pay
20 attention?

21 JUROR NO. 1: Where do you draw that line though?

22 JUROR NO. 1: Yeah. Do you have to write in if you
23 trip on a tree root, you know?

24 JUROR NO. 5: Yeah, but it's common sense you could
25 get hurt riding a horse, you know. I mean, all of the
0116

1 things --

2 JUROR: It's common sense you don't stand on your
3 head on the diving board.

4 JUROR NO. 1: I think it's good for what it was
5 written for, which is assumption, which he is assuming the
6 risk of the horse, and I think that's pretty clear.

7 JUROR NO. 5: I'm just saying he knew like -- I
8 feel like the contract is not explicit enough. I feel like
9 the contract itself is more an example of negligence on her
10 part than any action she's (inaudible).

11 JUROR: So what percentage is that?

12 JUROR NO. 5: I don't know.

13 JUROR NO. 1: Once he signs it, it's moot. It

14 doesn't matter how bad the contract is. So you can't say you
15 know it was a bad contract.

16 JUROR NO. 5: But can he say, yeah, but you never
17 told me that I had to do exactly what you told me to do?

18 JUROR: I think a person should listen when an
19 instructor is talking. I mean, that's just -- he's scared of
20 the horse but --

21 JUROR NO. 3: She did, and he chose not to listen,
22 so.

23 JUROR: They're saying he was just scared of the
24 horse. You would think if he was scared of the horse he
25 would want to pay attention more.

0117

1 JUROR NO. 3: Or he would at least say, I'm sorry,
2 I didn't catch that.

3 JUROR NO. 5: Or I don't want to ride a horse named
4 Killer.

5 JUROR: Yeah, why did -- I mean....

6 JUROR: You can't put all this on the instructor.

7 JUROR NO. 4: And the nature of the instructor is
8 one who instructs, you know.

9 JUROR NO. 5: So she was doing some instruction.

10 JUROR NO. 4: Yeah, if she says she was
11 instructing.

12 JUROR: So maybe she shouldn't get any.

13 JUROR NO. 5: Maybe not because, I mean, also
14 what's -- the psychological disposition, this is getting a
15 little bit away from technicals, but psychological
16 disposition of someone who is so frightened of, like, the
17 rearing horse before them that they can't pay attention to

18 any instruction is to me very different from the person who's
19 ready to take a flying leap at the horse. Like, if he was so
20 scared, why was he so ready to be like yee-ha?

21 JUROR: He wanted to impress his girlfriend.

22 JUROR NO. 4: He's psychologically unstable, you
23 know, coming for the horse school, whatever. He just, you
24 know, already had psychological problems, and that's the sole
25 reason for --

0118

1 JUROR: She didn't go in a --

2 JUROR NO. 5: She can't be responsible.

3 JUROR: Maybe she shouldn't be responsible.

4 JUROR NO. 4: That's what I say.

5 JUROR NO. 5: So what's up with not being able to
6 find any other line of work for, like, five months? He was
7 so traumatized he can't find a job? Like, I don't
8 understand. Anyway....

9 JUROR NO. 6: I think his fear is, like,
10 exaggerated. He's working on horses every day or whatever.

11 You can't be --

12 JUROR NO. 3: And find a new job.

13 JUROR NO. 4: Shoeing a horse too, don't you have
14 to straddle the horse's leg and you're, like, really close
15 quarters with the horse. You know, you're, like, in ways
16 that are probably scarier than just riding them.

17 JUROR: All right. So what, we all agree what,
18 nothing?

19 JUROR NO. 5: Nothing.

20 JUROR: Nothing? All right. There's a series of
21 questions here. Was Steven Matthews injured as a result of
22 falling from Killer?

23 JUROR NO. 5: Yes.

24 JUROR: Yes.

25 JUROR NO. 1: If the answer to interrogatory number
0119

1 one was yes, was the injury the fault of Patty Morton?

2 JURORS: No.

3 JUROR NO. 1: If the answer to interrogatory number
4 two was yes, was the injury caused -- oh, I thought it was
5 the same question -- by Patty Morton's negligence? Was the
6 injury caused by Patty Morton's negligence?

7 JURORS: No.

8 JUROR NO. 1: Was Steven Matthews' injury caused in
9 part by his own negligent actions or inactions?

10 JURORS: Yes.

11 JUROR NO. 1: What percentage of total
12 responsibility for this incident should be assigned to the
13 defendant?

14 JUROR: Zero.

15 JUROR NO. 5: None. Everybody is okay with that?
16 (Nodding of heads.)

17 JUROR NO. 1: Is this responsibility financial
18 obligation? Do you see what I'm saying? I'm sure it's
19 partially some of -- she was partially negligent too, wasn't
20 she?

21 JUROR NO. 5: I thought we agreed --

22 JUROR NO. 1: No, no, no, there was -- in order
23 just to make a ruling, you were supposed to weigh the
24 percentages, and then once you ruled in favor of the
25 plaintiff, then you were supposed to look at the percentages
0120

1 to determine how much financially you were going to give.

2 JUROR NO. 4: I say she's zero percent negligent.

3 JUROR: Yeah, if you give her any percent, you
4 award him some money.

5 JUROR NO. 1: No, but isn't this just to make the
6 ruling? Like, she said they're both going to be negligent,
7 but the person who is more negligent is more responsible.
8 And that's why --

9 JUROR NO. 4: Either way, I still say she's zero
10 percent negligent.

11 JUROR NO. 5: I'm very confused by that.

12 JUROR: Me too.

13 JUROR NO. 4: In the rebuttal she mentioned they
14 could both be negligent. It's just a matter of who was more
15 negligent because even if she was negligent, it might not
16 result in an injury. You know, her drinking before that --

17 JUROR: I think he's right. You can give some
18 percentage.

19 JUROR NO. 1: You can give some percentage.

20 JUROR NO. 4: But as long as he's not awarded
21 anything.

22 JUROR NO. 1: Yeah, that's not what this is. How
23 negligent is she for his injury? Forget about the entire
24 money thing.

25 JUROR NO. 5: Yeah. Okay. No money. I -- I don't
0121

1 feel that she is negligent. If I was going to give her
2 negligence, it would be on the writing of the contract, and
3 that would be like --

4 JUROR NO. 1: But not reading the contract, that
5 doesn't make her negligent at all?

6 JUROR NO. 5: Maybe ten percent negligent.

7 JUROR NO. 4: But she doesn't really need to read
8 the contract. Where on the contract does it say my
9 instructor will read the contract?

10 JUROR NO. 5: That's the nature of a contract.

11 JUROR: I know. This --

12 JUROR NO. 5: I understand that the instructor will
13 read this contract.

14 JUROR: It's an assumption.

15 JUROR NO. 4: And it doesn't say that solely based
16 on his answer to this little survey, this three-box survey --

17 JUROR: Actually, when you go skiing and you fill
18 out those things, don't you, like, put them in the --

19 JUROR NO. 5: They take a copy for themselves and
20 you keep a copy for yourself because that's the nature of the
21 contract.

22 JUROR: But the instructors. The instructors
23 actually see it.

24 JUROR NO. 5: Well, when you go skiing, you also
25 sign at the bottom of the form. It's like, I understand that
0122

1 I have correctly represented my level of skiing, and the ski
2 lodge is not responsible. I've told them in advance I've
3 never been on skis before. That's my own damn fault.

4 JUROR: Yeah. (Inaudible).

5 JUROR NO. 4: I still don't think that contracts

6 are all read by instructors. If you look at a basketball
7 team, every coach doesn't read every single contract.

8 JUROR: But isn't that implied because there's
9 self-reporting inserting?

10 JUROR NO. 5: I think she knew from talking to him
11 that he was a beginner. So she felt she didn't -- like, it's
12 not like she was talking to him and she felt that he was
13 experienced and then she didn't look at it. She -- it's like
14 I always feel like -- I feel like the contract is negligible
15 because it doesn't specify, like, the entire aspects that are
16 important to his responsibilities in the learning process. I
17 feel like it's kind of negligible --

18 JUROR: Maybe that's what she was talking about.
19 You can't put everything --

20 JUROR: In the contract.

21 JUROR NO. 5: Typically if you're doing a dangerous
22 sport, like, there's a part of the contract that says I
23 understand that there's this -- whatever aspects of this
24 learning process is my responsibility and that injuries
25 resulting from certain kinds of actions are not the
0123

1 responsibility of the instructor.

2 JUROR: But it depends on the horse. That's what
3 they're saying. Like, once you say beginner or whatever, you
4 think they should have something for each of the horses
5 possibly to ride on. Like, for this horse, if you grind into
6 the, you know, side of the horse, it's going to throw off
7 this horse. You have to be so specific. I don't think they
8 could do that.

9 JUROR NO. 4: Plus the contract, it doesn't -- this
10 isn't based -- I mean, it's not -- choosing the horse isn't
11 based solely upon that. It says in order to pick a proper
12 horse for the less -- you know, even if you put experienced,
13 she could she could choose Killer. Even if you (inaudible).

14 JUROR NO. 1: That's the thing. You couldn't go
15 wrong by choosing the most gentlest horse. In the principle,
16 I think she has to look at it.

17 JUROR NO. 4: So if she looked at the contract and
18 just blocked this part out, would we be in the same
19 situation?

20 JUROR NO. 1: No, because that's not what she's
21 looking at the contract for. That's what we're saying.

22 JUROR NO. 3: Well, okay, so -- but that's not a
23 percentage of negligence. That's like five percent maybe
24 because it's not like she assumed he was experienced and
25 didn't look at it. She assumed that he was a beginner. So
0124

1 it's not like there's any --

2 JUROR NO. 6: If there's any in between, she
3 probably would have looked at it because, I mean, I don't

4 know. It's obvious that the beginner really --
5 JUROR: This time her ignoring it worked in her
6 favor because she -- obviously --
7 JUROR NO. 3: What if he had marked something out?
8 Would she be obligated to go by what she thought or what the
9 contract said?
10 JUROR: You go by the safest.
11 JUROR NO. 3: It wouldn't have mattered.
12 JUROR: If he had been experienced, it probably
13 wouldn't have had happened.
14 JUROR NO. 1: What would have happened if he had
15 put beginner and she -- and he had talked about horses and
16 she said, oh, you know, he knows a lot about horses and put
17 him on the toughest?
18 JUROR NO. 5: But that's negligence.
19 JUROR NO. 1: No, in principle it's the same thing.
20 JUROR NO. 3: In principle --
21 JUROR NO. 1: But --
22 JUROR: It's not coincidence because she's the
23 instructor.
24 JUROR NO. 5: I think though you have to be careful
25 when you deliver any legal decision about how you're going to
0125
1 use the law and when you're going to stick, like, maybe a
2 clause in like the aspects of contracts and negligence that
3 says if they don't read the contract, that's negligence and
4 whatever. And that's the law, and we shouldn't penalize her
5 for that. But we have a feeling that it's like a -- like,
6 our sense of justice in this matter is to find her in favor
7 of the defendant.
8 So why -- like, I don't know that we necessarily,
9 you know -- like, how we interpret the law in the situation
10 has to be, like, you know, synonymous with how we want this
11 to occur. Do you know what I'm saying? No, probably not.
12 Sorry.
13 JUROR NO. 4: Even if there is negligence not
14 reading the contract, that didn't result in damages because
15 she chose the horse.
16 JUROR: And maybe if she chose that horse, maybe
17 there's more chance that she's going to ask or look at the
18 contract. I don't know. We don't know about that, but you
19 figure if she's going to put him on a crazy horse --
20 JUROR NO. 3: That wasn't what caused what
21 happened.
22 JUROR NO. 4: Yeah. Plus --
23 JUROR: He jumped --
24 JUROR NO. 4: No matter what the person puts on
25 here, she can choose any horse she wants because it doesn't
0126
1 say this will specify a certain horse. So either way, even

2 if it was negligence, it's so vague, and it's not important
3 enough to say there was negligence.

4 JUROR: And if he's experienced, then maybe he
5 would have known by the figure of the horse. You know, I'm
6 experienced; I want a smaller horse or something. I mean,
7 she obviously didn't know.

8 JUROR NO. 1: So looking at all her actions, what
9 percentage is she --

10 JUROR NO. 3: If she's negligent for anything, I
11 would say it's not telling him that the horse had reared.

12 JUROR: Before.

13 JUROR NO. 3: Before.

14 JUROR: But that was one time.

15 JUROR NO. 3: That was one time, and you don't want
16 to say that to somebody who is already afraid of horses.

17 JUROR NO. 5: I don't think you want to say that to
18 anybody because if you say last time he threw --

19 JUROR NO. 6: I don't think that's even -- like,
20 that's like you could use that for anything. If somebody is
21 going to say this kind of car crashed 400 times --

22 JUROR NO. 5: Of course, there was nobody driving
23 it, you know.

24 JUROR NO. 3: I've ridden horses, and I'm sure the
25 horses I've ridden have had accidents before. But I don't
0127

1 want to know about them, and they don't tell me. Like,
2 unless it's --

3 JUROR NO. 5: I think it's probably judgmental on
4 the instructor to tell.

5 JUROR: Yeah.

6 JUROR NO. 5: And it says so in the contract.

7 JUROR NO. 3: Yes.

8 JUROR: So it's zero percent. All right. He wants
9 zero percent. Are we saying she's completely -- does
10 everybody agree on that? You might not.

11 JUROR NO. 5: I don't like the contract, but I
12 don't think she's negligible in any way.

13 JUROR NO. 1: All right. So zero percent. You
14 agree with it.

15 JUROR NO. 1: Yeah, I can live with that.

16 JUROR: It's not if you can live with it.

17 JUROR NO. 1: No, it's just that it's tough to
18 because everything was so vague because you don't know.
19 Like, if she just kind of sat around with her hands on her
20 hips and watched him run a mile to jump on the horse, I would
21 say that's pretty negligent. In light of what we know, I
22 suppose you can't really say she's responsible for anything.

23 JUROR: All right.

24 JUROR NO. 5: I think the only reason I was
25 quibbling over the contract is because on the one thing you

0128

1 feel like -- I feel like, no, she's not at fault, but it
2 would be nice that there was some legal opportunity to say
3 you should probably fix your contract, and it would be nice
4 to have that opportunity.

5 JUROR: The fact that she's in court, maybe that
6 will make her look at these things now.

7 JUROR NO. 5: Yeah.

8 JUROR NO. 1: So we agree on that. Does anyone
9 want to take the role of foreperson and sign it?

10 JUROR: Why don't you do it since you've been doing
11 it?

12 JUROR NO. 5: Yeah, you've got it.

13 JUROR NO. 1: All right.

14 JUROR: So someone needs to tell them.

15 JUROR NO. 5: I totally felt like if this is how
16 legal decisions are made in the country, this is our problem.
17 Like, I was going to -- there were questions I would have
18 liked to have asked of the witnesses, that I could ask those
19 things that I would like to be able to remember that I can't
20 write down.

21 JUROR NO. 6: Was that with the technology they
22 brought in?

23 JUROR NO. 5: I don't know.

24 JUROR NO. 6: Like a computer.

25 JUROR: Input.

0129

1 SHEPHERD: Okay. You've got the verdict sheet.
2 Another questionnaire. Now I would like to have you answer
3 again some of the questions I had you answer earlier just
4 before your deliberation. Remember, there are no right or
5 wrong answers. We're really interested in your honest
6 answers at this point.

7 So please answer the questions and be sure to put
8 your name and gender on the questionnaire. Also I understand
9 you all have sheets that need to be signed.

10 JUROR: Yeah.

11 JUROR: Yeah.

12 JUROR NO. 5: I have a lot of pens if anybody --
13 can we use pen?

14 SHEPHERD: Yes.

15 JUROR: Anybody else have their --

16 JUROR: I don't have mine.

17 SHEPHERD: Don't worry about it. We'll submit your
18 name. You just want to have your sheet signed.

19 JUROR NO. 3: Mine is in the.... (Something about a
20 friend's desk.)

21 MS. WARREN: Is it under where you were sitting?
22 You know, it's there right now. Let me run and get it.

23 JUROR: Mine is there too.

24 THE COURT: Really? Okay. Anybody else?

25 JUROR NO. 1: I was in the back row.

0130

1 SHEPHERD: If you have your yellow sheet, I'll sign
2 it for you.

3 (They're talking about signing papers.)

4 SHEPHERD: Anybody else have sheets? Okay. Let me
5 go ahead and do the last little. Have you finished filling
6 out your (inaudible)? Okay.

7 SHEPHERD: Thank you, Your Honor.

8 THE COURT: Can I ask a few questions before you go
9 about the trial in general? Go ahead.

10 SHEPHERD: At the beginning of the study, we're
11 interested in jury deliberations. Specifically we're
12 examining how the use of (reading) jury deliberations. As it
13 was explained that the reason you didn't have technology is
14 you were a control group. Currently there are courtrooms
15 that are outfitted with many of the (reading) and ones you
16 saw around the courtroom, but in the real world outside of
17 here, there is simply none available in the courtrooms. We
18 believe that if the use of technology in legal proceedings is
19 going to reach its fullest potential, the jury rooms
20 themselves will likely. Understandably, however, courts are
21 reluctant to put in jury room deliberations rooms whether, A,
22 juries will find it useful and, B, the trial outcomes are
23 essentially the same with or without the added technology.
24 Basically these are the questions that our research is
25 designed to answer. Does anybody have any questions?

0131

1 JUROR NO. 5: I have one question about just --
2 this isn't really a technology question, but I was wondering,
3 because jurors aren't allowed to take notes, if it was a
4 murder trial or something, would we be supplied or would a
5 copy be available to us of the transcript of what takes place
6 in the courtroom? The court reporter is taking it down. Do
7 you get to have access to that transcript during your
8 deliberations?

9 THE COURT: In a lot of courts, you are allowed to
10 take notes. You just weren't allowed to here. You know, it
11 sort of depends. Most judges I -- I practiced for 17 years
12 in California, and jurors always took notes there. So it
13 just depends on how the judge runs the courtroom.

14 As far as the transcript goes, the jury normally
15 does not get a copy of the transcript. In most cases, the
16 transcript is not even prepared completely until several
17 weeks after the trial is completed. In death penalty cases,
18 a lot of times there are simultaneous transcripts that are
19 prepared. And so at the end of the day, lawyers will get
20 copies of that day's transcripts, and the jurors do not get
21 copies normally of the transcripts going back into

22 deliberations.

23 If they have questions about something that
24 happened during the trial, they can ask the judge to have
25 part of the testimony to be reread to them. The court

0132

1 reporter will come into the deliberation room or jury will go
2 back into the courtroom and that portion of the transcript
3 will be read to them.

4 JUROR: I guess (inaudible) is one where they
5 actually ask questions from the jury box.

6 THE COURT: Yes. How the jurors are run. In the
7 state court it's up to the local -- it's up to the state. In
8 the federal court but, yeah, in some states the jury can ask
9 questions.

10 SHEPHERD: Any other questions? Okay. If there
11 are no more questions, then our study is concluded. By the
12 way, if you want to see the results of this study, you can
13 find them when the semester is over on the Web at the William
14 and Mary site, PSYC.

15 THE COURT: Professor Shaver will have that Web
16 site for you because he's going to be posting the results.
17 We're doing 12 of these trials and comparing the verdicts
18 based on that. So at the end of the thing, the results will
19 be published on the Web site.

20 SHEPHERD: And the judge has some questions for
21 you.

22 THE COURT: In the meantime it's very important not
23 to go back and talk to anybody about this at school because
24 we are -- well, you are the fifth trial, and we have 12 that
25 we have to do, and all of the jurors in all of our trials are

0133

1 going to be psychology students. So if you go back to school
2 or talk about the verdict or the damages, it will taint it.
3 So please don't talk about it.

4 But I just wondered, in general, we're trying to
5 find out from the jurors what you thought about the facts and
6 the evidence and the lawyers' performance and just how it
7 went. I notice that you came up with a complete defense
8 verdict, and so what was your thinking with that.

9 JUROR NO. 6: We just thought that she wasn't
10 responsible for any of the negligence because, like, we were
11 talking about how he didn't listen to any of her
12 instructions, and we were all kind of wondering. Like, it
13 didn't really say what she was talking about when he was
14 listening and, well, first of all, we separated into his
15 physical damage and psychological.

16 We didn't think -- some people thought that he
17 should get some money for his physical damage, but we didn't
18 think -- none of us thought that the psychological damage
19 should have been awarded at all because he works with horses

20 anyway, and we didn't really understand why he was so scared
21 of them in the first place.

22 THE COURT: So you thought that his initial fear of
23 horses was just not --

24 JUROR: It might have been real, but --

25 THE COURT: It was inappropriate.

0134

1 JUROR: She had no way of knowing.

2 JUROR: She wasn't responsible.

3 THE COURT: Okay. In the law we say it wasn't
4 foreseeable. She had no reason to know that he was going to
5 be afraid of horses. Okay. And what did you think of the
6 testimony of the various witnesses?

7 JUROR NO. 5: I thought it was sort of like
8 unsatisfying and incomplete in some places. I thought it was
9 interesting because I felt like both lawyers only asked the
10 question that would specifically support their points of
11 view, and there were aspects of the entire situation that
12 went unaddressed. Because of that, because the lawyer for
13 the plaintiff only asked the questions that were in the
14 plaintiff's favor, lawyer for the defense only asked the
15 questions that would portray what was in favor of the
16 defendant and (inaudible) situation that didn't come together
17 because they didn't address the situation as a whole.

18 It was just what would help them. It was just, you
19 know -- it made their point.

20 THE COURT: That's the way court works, but this
21 perception you have is a very commonly held perception for
22 that reason. And so sometimes the judge will ask questions
23 him or herself because the judge feels like both sides got
24 out what they need to support their argument and their
25 presentation of the evidence, but neither side necessarily is
0135

1 getting at the truth, you know. So, yeah, I think that a lot
2 of jurors think that's important.

3 What else? You didn't have any technology in here.
4 So I can't ask you about that but any other questions?

5 JUROR NO. 3: She had mentioned that the girlfriend
6 didn't testify.

7 JUROR NO. 5: She didn't testify.

8 THE COURT: Yeah.

9 JUROR NO. 3: And that would have been --

10 THE COURT: That would have been helpful?

11 JUROR: You think the girlfriend would have been at
12 his side.

13 JUROR NO. 5: I just thought the absence of the
14 girlfriend's testimony wore in my mind. Like, bearing on the
15 validity of his testimony, I felt there was a witness for the
16 event whose testimony was not present, and I thought that
17 that, like, lack of was significant as far as, like, the

18 entire situation, and I also thought it was interesting to
19 see -- I felt like the defense lawyer tried to or, I'm sorry,
20 the plaintiff lawyer tried to play off a little bit the
21 situation that she might have been in some aspects that I
22 thought maybe hurt her.

23 JUROR: The wine thing was a reach you said.

24 THE COURT: It was what?

25 JUROR: A reach.

0136

1 THE COURT: A reach.

2 JUROR NO. 5: And when she showed him the picture
3 of the horse and she said I'm sorry about that, that really
4 got me. It was like, oh, I don't know about that.

5 THE COURT: Okay. Okay. Anything else?

6 JUROR NO. 4: I was just wondering. I don't know
7 if you can tell me this, but what technology (inaudible).

8 THE COURT: In some of the deliberations, we have a
9 document camera, which is sort of like an overhead projector
10 except there's a big plasma screen. For example, here's a
11 piece of evidence. If you want to blow this up so you can
12 discuss it and there's a big form you want to point out that
13 he checked beginner, for example, you would put this beneath
14 the camera, the document camera, and then the image shows up
15 on a big plasma screen so that the idea --

16 JUROR: (Inaudible) in front of the juror.

17 THE COURT: Yeah. What we're trying to find out is
18 some of these pieces of technology that make things bigger
19 and you can point with them, you know, the laser pointers
20 help jurors if they're debating among themselves.

21 Like, for instance, does this mean anything, and
22 how much weight do you give this fact that he checked that?
23 You know, you have a little laser pointer, and you can use
24 that during deliberations. If that facilitates or
25 detracts --

0137

1 JUROR: I could see where stuff would be sketchy if
2 you didn't understand it. I mean, pretty simple. Basically,
3 you know, the contracts and all this stuff.

4 THE COURT: Right.

5 JUROR: Simple to understand.

6 THE COURT: Right.

7 JUROR NO. 5: I think the nature of the evidence
8 for this case --

9 JUROR: There just wasn't that much there.

10 JUROR NO. 5: Technology, the fact that it wasn't
11 the place for it. Maybe a trial more complicated or long.

12 THE COURT: Well, you can sort of see. I think as
13 Nancy told you, around the United States it's becoming more
14 and more common to have a high-tech trial. You know, the
15 Bill Gates trial but then the jury comes back and they sit in

16 a room just like this, and there's nothing in here except a
17 table and pencils and paper.

18 So the question is if all the evidence out of --
19 you know, that's presented in the trial is all blown up and
20 it's colored and it's, you know, there are animations and
21 stuff and the jury is sent back here with nothing, that --
22 you know, how does that work? Is that fair? What if they
23 wanted to see a lot of the technological evidence that was
24 presented in the courtroom?

25 Technology just has not drifted into the jury room
0138

1 yet in the United States, and so part of what we're doing is
2 we're funded by the State Justice Institute to find out if
3 this is going to be the next step. And if so, what should be
4 the element to that.

5 So you're very much on the cutting edge. You're
6 doing something -- you, your psychology department, are
7 participating in experiments that have not been run in the
8 United States, and we're going to be publishing a manual to
9 guide in the use of technology in the jury room.

10 So, you know, this is very cutting-edge stuff that
11 you're doing, and your verdicts and, you know, the
12 questionnaires that you filled out are going to be given to
13 all the courts in the United States for this. So what you're
14 doing is really important, and it's a terrible way to spend
15 your Saturday afternoon. But we're really grateful that you
16 did it. So it would probably be interesting to check the Web
17 site.

18 We're not going to finish probably till the end of
19 January, and then Professor Shaver in psychology will be
20 evaluating all the questionnaires that are filled out and
21 coming up with the results. So if you want to know what the
22 conclusions are, that's where to look.

23 All right? Thank you so much for coming in. We're
24 really grateful for your help. Just don't go back and
25 talk about it.

1 December 1, 2001, Trial 3 [document camera and plasma screen]
2
3 (The video starts at the end of their
4 deliberations.)
5 SHEPHERD: Make sure everybody gets their paper
6 signed.
7 PROFESSOR LEDERER: Absolutely. When you're all
8 done, can I have you for another five minutes, but just make
9 sure I sign your paperwork. It would help if you have it
10 filled in. Why don't you just fill that in?
11 JUROR: Thanks.
12 PROFESSOR LEDERER: Okay. Ladies and gentlemen,
13 are you all done with your questionnaires?
14 JURORS: Yes.
15 PROFESSOR LEDERER: May I have those here, please?
16 JUROR: What was the (inaudible) name? Heather
17 Arpin.
18 PROFESSOR LEDERER: Or you could use mine,
19 Professor Lederer, L-E-D-E-R-E-R. This is yours? Sorry.
20 (Brief Pause)
21 PROFESSOR LEDERER: Ladies and gentlemen, if you're
22 good enough, I understand you have a verdict. What's the
23 verdict?
24 JUROR: Not guilty.
25 PROFESSOR LEDERER: Okay. It's a civil case. So
0140
1 we're saying not liable, guilty being a criminal.
2 JUROR: Oh.
3 PROFESSOR LEDERER: Now, if I could ask, first of
4 all, where are the verdict forms? Let me have those. It
5 looks like that should be one. Thank you.
6 Now, might I ask you briefly why did you decide
7 that? Was there anything about the evidence or about the
8 counsel that in particular led you to that or if they had
9 done it differently, you would have come out differently?
10 JUROR NO. 4: I think we all sort of agree that,
11 like, the prosecution --
12 PROFESSOR LEDERER: Plaintiff's counsel.
13 JUROR NO. 4: Okay. Plaintiff's counsel, they
14 could have gone farther to prove certain things, such as if
15 they had been given more about time, like, when her lunch was
16 and then when the lesson was. We really don't know how long
17 lunch was with the whole wine situation. We don't know where
18 the two people were standing when she was giving the
19 instruction. We really weren't given that information.
20 PROFESSOR LEDERER: It just occurred to me. Let
21 me finish reading the obligatory material to you quickly.
22 As I noted at the beginning of study, we're

23 interested in jury deliberation. Specifically we're
24 examining how the use of technology in the courtroom itself
25 might (reading). Currently there are courtrooms that are
0141

1 fully outfitted with many of the technological features that
2 were in the courtroom this afternoon. In the real world
3 outside of here there are essentially no jury deliberation
4 rooms in the courtrooms.

5 We believe that if the use of technology in legal
6 proceedings is going to reach its fullest potential, the jury
7 rooms themselves will likely. Understandably, however,
8 courts are reluctant to put in the jury deliberations rooms
9 useful (reading), B, the trial comes to essentially the same
10 with or without the added technology. Basically these are
11 the questions that our research has been designed to answer.

12 Does anyone have any questions without -- about
13 anything that I just said? If there are no more questions,
14 this study is officially concluded, but I have a question or
15 two for you and if you would like to see the results for the
16 study you can find them on the Web at ww.ed -- William and
17 Mary.edu. Now, what else, if I might ask though, do you
18 think made a difference?

19 JUROR NO. 2: Well, we were having a real big
20 problem with the fact that she, when she was giving the
21 instructions, did not make sure or say the words do you
22 understand what I'm saying, and I think in the whole process
23 of discussing this, we came to the conclusion that he had
24 jumped on the horse as opposed to waiting and having her help
25 him.

0142

1 And so, therefore, that proves that he was not
2 listening, and she -- it was not necessary that she said the
3 statement because he was not listening to what she was
4 saying.

5 PROFESSOR LEDERER: Okay. I don't fully understand
6 that.

7 JUROR NO. 5: It all comes back to the sheet that
8 he signed saying that he did understand the risk and the
9 chance of fatality by signing that form and that we are not
10 aware of the circumstances that were taking place while he
11 got on the horse before or after or whatever. So he can't
12 say that she was guilty or liable or not because we don't
13 know. We weren't there.

14 PROFESSOR LEDERER: So it was his fault for getting
15 on the horse so that she couldn't give the instructions.

16 JUROR: Right.

17 JUROR: She gave the instructions. It's just he
18 got on the horse, and by doing that he implied that he
19 understood the instructions.

20 PROFESSOR LEDERER: That he understood the

21 instructions. Okay. Quite reasonable. I'm just trying to
22 understand.

23 How, may I ask, did you use the equipment?

24 JUROR: A little.

25 JUROR NO. 5: We tried to and we all got
0143

1 frustrated.

2 PROFESSOR LEDERER: Okay. Explain that for a
3 minute. What do you mean?

4 JUROR NO. 5: We went through the questions, and
5 nobody agreed on the second one. So we were like, oh, we've
6 got to talk. So we began talking.

7 PROFESSOR LEDERER: Did you look at the evidence
8 with it?

9 JUROR NO. 5: Yeah, this one.

10 PROFESSOR LEDERER: Was it useful for that juror?

11 JUROR NO. 5: Yeah.

12 JUROR NO. 4: The letter -- this was kind of tough.

13 JUROR: I think it was nice to be looking --

14 JUROR NO. 4: The evidence just wasn't -- there was
15 more stuff that we were kind of hoping we could have, such
16 as, like, the law, the actual law written down somewhere
17 because that would have been nice to throw up there so we
18 could all go through it. Basically we were pulling the law
19 from what the judge said.

20 PROFESSOR LEDERER: Which is done, by the way, is
21 often the majority rule. In some courts you're giving that
22 in written form, but it's not that commonplace.

23 JUROR NO. 4: Okay. That would have been really
24 helpful.

25 JUROR NO. 5: Yeah.

0144

1 JUROR NO. 4: Basically we had the gist of it. We
2 understand, like, basic, but, you know, everything comes down
3 to, like, how it's termed. So that probably could have
4 helped out a little bit.

5 PROFESSOR LEDERER: Got it.

6 JUROR NO. 4: But definitely having this thing
7 would help for things, like, stuff like that exactly.

8 PROFESSOR LEDERER: Do me a favor. Put the letter
9 you were concerned about underneath that for a moment. Okay.
10 That's an awful lot of text and hard to see. I can see it
11 from here. What about the rest of you?

12 JUROR NO. 4: It's more like the handwriting.

13 JUROR NO. 5: I can't really see it. This is the
14 letter too that we were trying to --

15 JUROR NO. 4: This one was a lot better I think.

16 PROFESSOR LEDERER: So you thought the -- now, did
17 you use the zoom buttons at all, the two gadgets on top
18 there?

19 JUROR NO. 4: I didn't know that.
20 JUROR NO. 5: We didn't know about that.
21 JUROR NO. 4: Oh.
22 PROFESSOR LEDERER: Now, let me ask you, when you
23 got in here, was this up like so?
24 JUROR NO. 4: Yes.
25 JUROR NO. 5: Oh.
0145
1 JUROR: Yeah, it was.
2 PROFESSOR LEDERER: Okay. So it was up, but nobody
3 really --
4 JUROR: Paid attention to it.
5 JUROR: Yeah.
6 PROFESSOR LEDERER: Got it. All right. Anybody
7 want to hazard an opinion, which I understand may be a silly
8 question in some ways, what would have happened if we had --
9 like the bailiff walked in and said, by the way, you might
10 want to use this gadget, and let me show you how it works
11 fast?
12 JUROR NO. 4: That would have been a lot -- very
13 helpful because we came in here, we were pretty focused on --
14 JUROR NO. 1: We were trying not to --
15 PROFESSOR LEDERER: Got it. Well, that's what
16 you're supposed to be. It's the trial that's important, not
17 the technology.
18 JUROR NO. 4: I read the first sentence that's up,
19 and I was like obviously it's a projector.
20 PROFESSOR LEDERER: Okay. And the zoom part went
21 by the boards. Got it.
22 JUROR NO. 5: I honestly think having the paper in
23 front of you, but I don't know about technology.
24 PROFESSOR LEDERER: Well, I mean, what do you mean
25 by having the paper, the physical paper? 0146
1 JUROR NO. 5: Yeah, having this stuff. You can
2 always pass it around because I don't know if it's worth the
3 money.
4 PROFESSOR LEDERER: Suppose you can have them both.
5 Suppose you can put them up like this, but if you wanted, you
6 can say give me the piece of paper.
7 JUROR: If you have a lot of documents, I think
8 it's important. I would say we only had one or two things we
9 really --
10 JUROR NO. 4: Sifting through papers can get
11 confusing, and someone is like, okay, refer back.
12 PROFESSOR LEDERER: That would be okay?
13 JUROR NO. 5: That would be great.
14 PROFESSOR LEDERER: Because you realize you didn't
15 want to. You'd never make dinner now. Folks, if you have
16 anything else you want to volunteer and so on, please, you've
17 been a wonderful jury.

18 We'd ask you the favor of not telling everyone else
19 about the details of the trial and what's happening here. I
20 will tell you this much if you're curious.
21 As you know, we're working on jury room technology
22 and that, as you undoubtedly know, people do experiments with
23 the hope they'll be of some particular real-world impact.
24 Perhaps more so than many, this one will because the results
25 of what we're learning from this will be tried out in real
0147

1 cases in both federal and state court in the spring.
2 So there will be a direct application to real
3 cases, and you will know that you played a substantial part
4 in that. So I say thank you very much, especially being in a
5 gorgeous weekend late in the afternoon. Thanks.
6 JURORS: Thank you.

0148
1 -- December 2, 2001, Trial 1 [document camera and plasma screen]
2

3 SHEPHERD: Now your task is to decide, using the
4 judge's instruction to you as the guide (reading) within the
5 limited deliberative process in any way (reading). When you
6 reach the final decision, please have one person come out to
7 let me know you're done.

8 JUROR: Are there instructions there?

9 JUROR NO. 6: It says, "Jurors answer the following
10 interrogatories. The foreperson is to answer the (inaudible)
11 and sign the verdict." We're supposed to say yes or no. Was
12 Steven Matthews injured? If the answer to question one is
13 yes, then was the injury the fault of Patty Morton? Number
14 three, if the answer to number two was yes, then was the
15 injury caused directly by Patty Morton's negligence? Number
16 four, if the answer to number three was yes, was Steven
17 Matthews' injury caused in part by his own negligent actions
18 or inactions, and then number five, if the answer to number
19 four was yes, what percentage of total responsibility for
20 this incident should be assigned to the defendant?

21 JUROR: Hmm.

22 JUROR NO. 1: First we need to choose somebody.
23 Anybody want to --

24 JUROR: What does a foreperson do?

25 JUROR NO. 1: You have to --

0149
1 JUROR NO. 2: You have to sort of read this in to
2 the judge.

3 JUROR NO. 3: We read the questions and answers?

4 JUROR NO. 2: Right, and sign them.

5 JUROR NO. 3: I'll do it. That's fine.

6 JUROR NO. 2: All right. Madam foreperson.

7 FOREPERSON: All right. (This was juror number
8 three).

9 JUROR NO. 2: Do we want to use their fancy
10 technology? It might be --
11 JUROR: Do we need it?
12 JUROR NO. 2: I don't know. There are a lot of
13 questions there. It might go by. I don't know.
14 JUROR NO. 1: The first answer being.
15 FOREPERSON: We all agree? Yes.
16 JUROR NO. 2: They said not to write on the
17 evidence.
18 FOREPERSON: Oh.
19 JUROR: Does everybody agree?
20 FOREPERSON: Okay. So who thinks the injury was
21 Patty Morton's fault?
22 JUROR: I don't think it was all her fault, but she
23 had something to do with it.
24 JUROR NO. 4: I think it's unclear as to whether he
25 jumped onto the horse like the Lone Ranger or that it was
0150
1 some sort of mounting block, and he calmly mounted it and
2 messed up from there. I think we need to review that stuff.
3 FOREPERSON: Okay.
4 JUROR: By the way, she said she didn't even look
5 at the contract before she chose a horse for him.
6 JUROR NO. 4: But she did say that she could tell
7 he was inexperienced.
8 JUROR: It wouldn't have been --
9 JUROR: But she said (inaudible).
10 JUROR NO. 2: And she was also intoxicated.
11 JUROR: Yeah. And then she said she knew he wasn't
12 listening to what (inaudible).
13 FOREPERSON: But I don't --
14 JUROR NO. 2: If he wasn't listening and he jumps
15 on the horse, she can't do anything about it.
16 JUROR NO. 1: She could have told him not to jump
17 on the horse. She could have said, no, I'm not going to let
18 you ride it. She was in control, at least I think she was in
19 control of the situation.
20 JUROR NO. 1: I don't think she was drunk.
21 JUROR: No, she probably wasn't drunk.
22 JUROR NO. 2: I think, you know, she said that she
23 had three or four drinks. That's enough to impair -- at
24 least I think that's enough to impair her judgment in any
25 degree.
0151
1 JUROR: Especially (inaudible), you know.
2 JUROR NO. 2: Yeah, she has the potential.
3 JUROR: Yeah. Go ahead.
4 FOREPERSON: Okay. What am I putting on here?
5 This is just, like, patient stuff. The accident report.
6 JUROR: This is what she --

7 FOREPERSON: This is what she wrote down after the
8 accident.

9 JUROR NO. 4: Well, the riding experience, I think
10 that's true.

11 FOREPERSON: I think it's true that it's ironic
12 that Killer is named -- like, I believe that.

13 JUROR: I thought that was really funny.

14 FOREPERSON: I don't really think he was, like, a
15 Killer horse.

16 JUROR NO. 2: But at the same time, I think it was
17 an inappropriate choice for a horse. I think she thinks it
18 was probably the right horse, but I think if you have a man
19 there who obviously is showing off and who is obviously
20 inexperienced -- and she called him idiot. You don't put an
21 idiot on a horse that might --

22 JUROR: That has a quirk.

23 JUROR NO. 2: Yeah, that has a quirk. Thank you.

24 JUROR: But she said it was the gentlest horse she
25 had.

0152

1 JUROR NO. 5: She put children on the horse.

2 JUROR NO. 6: And honestly I had ridden
3 (inaudible).

4 FOREPERSON: It's very rare to find a horse who
5 hasn't thrown someone or someone fallen off.

6 FOREPERSON: And she said only one person had fallen
7 off.

8 JUROR NO. 6: Yeah. I bet any horse in a stable
9 has.

10 JUROR NO. 1: So are we essentially saying that the
11 majority of the fault is not hers?

12 JUROR NO. 2: See, I have to say I disagree. I
13 have to say the majority of the fault is hers.

14 JUROR: Why?

15 JUROR NO. 2: Because, first, when she drank
16 before, she made herself negligent. She can't stand behind
17 any decision she makes as being her best decision when she's
18 intoxicated. I believe that she was impaired at least to
19 some degree by drinking beforehand.

20 I think also that she was really contemptuous of
21 him and that her contempt may have influenced her decision
22 about letting him ride the horse at all, which she didn't
23 have to do, and picking that particular horse and not taking
24 the time to make sure that he was fully aware of the dangers.

25 I mean, simply because he was really nervous, he

0153

1 didn't hear her, that doesn't mean that she can just put it
2 all in his lap. I think it was her fault for not, you know,
3 assessing the situation very well.

4 FOREPERSON: See, I don't -- I don't know how --

5 like, it wasn't evident that he was nervous because he was
6 showing off for his girlfriend. See what I'm saying? So how
7 does she know -- like she had no idea that he was nervous.
8 You know, she was like he wanted a challenge, you know, and
9 she -- I mean, she could tell that he wasn't experienced
10 but --

11 JUROR: But she said that he knew he wasn't
12 listening to her. So if he's not listening to her, then --

13 FOREPERSON: See, I feel like when she first saw
14 him, she knew he was inexperienced and had that in her head
15 and said I'm giving him this horse because he's, like, the
16 most gentle. So I didn't think, like, well, I mean, you
17 should listen to people but --

18 JUROR NO. 5: And then you take the deposition of
19 the other guy who was there (inaudible). You know, he
20 conceded that Killer is gentle and that it was on that horse.

21 JUROR NO. 6: I think people have to (inaudible)
22 for their own actions. She can't control what he does and
23 how he acts and how he responds to things. You can't -- I
24 don't think you can put it all on her because she doesn't
25 know what he's going to do.

0154

1 JUROR NO. 5: This is -- it says I understand that
2 horses are unpredictable, potentially dangerous animals and
3 (inaudible).

4 JUROR NO. 2: But it doesn't -- also it doesn't say
5 though that I sign away my rights, you know. It never
6 says -- it just makes that statement. It doesn't say I agree
7 that I will hold her and the riding company completely
8 irresponsible for any actions for any, you know, injuries
9 which caused -- which is what I expected. I thought it would
10 say, you know, I hereby state that I will not, you know, sue
11 them or, you know, but it doesn't say that.

12 JUROR NO. 4: It's completely possible that she
13 could have intended to guide him by the reins or something,
14 and if he had jumped onto it, then it became his fault. I
15 think that that -- I think it's that point that's important.

16 JUROR NO. 5: And I think that, you know, the
17 information was offered to him. Like she said, you know,
18 this is what happens, and it was his responsibility to
19 listen. So I think that the information -- and, granted,
20 it's kind of a sneaky thing for him to do, but he's a big
21 guy. And the information was present. I think when he chose
22 not to listen, he kind of violated the whole teaching
23 (inaudible).

24 JUROR: Is that being -- I forgot the phrase used,
25 but an appropriate instruction or whatever they say on the

0155

1 contract thing even though -- if you know, like --

2 FOREPERSON: Do you want me to read the last

3 sentence?

4 JUROR: Yes.

5 FOREPERSON: "All appropriate tack and appropriate
6 instructional conditions."

7 JUROR: Even though she knew, like, that he
8 wasn't -- because she knew that he wasn't listening to her, I
9 don't think she should have -- because she knew that what's
10 his name -- Killer? Yes. Had the (inaudible) or whatever.

11 So she should have known to, like, say, no, you're
12 not going to get on this horse and (inaudible) the horse away
13 and tell him to come down or something like that.

14 Because if you know that somebody is doing
15 something potentially dangerous to them and it's your
16 responsibility, as you put it in the contract, to provide
17 this appropriate environment, then she shouldn't have let him
18 get on the horse, but she knew that he wasn't listening to
19 her directions.

20 That could have been potentially dangerous for him
21 to get on the horse because Killer likes to take off when he
22 is excited. So I don't think that that was providing an
23 appropriate instructional --

24 JUROR NO. 1: Then again, you know, you get back to
25 the point that, you know, she tells him; he chooses not to
0156

1 listen and jumps on the horse. Then at that point he takes
2 responsibility for his actions, and then he goes out of the
3 boundary of proper instruction because she's giving it to
4 him, and he chooses not to listen.

5 JUROR NO. 2: I think that that doesn't hold her
6 completely irresponsible.

7 JUROR NO. 1: I'm not saying it holds her
8 completely irresponsible, but at the same point I think that
9 the majority of the responsibility at that point falls upon
10 him because he chooses not to listen.

11 JUROR NO. 5: I agree.

12 JUROR NO. 6: I agree.

13 JUROR NO. 2: The only thing I was thinking about
14 it, when they were talking about the situation, I was trying
15 to come up with something I could compare it to, and I
16 thought of someone like a driving instructor.

17 And if you had a kid there and you were getting
18 ready to put the person in the car or even an adult and you
19 could tell that they were nervous or showing off or, you
20 know, for whatever reason they weren't paying attention to
21 you and you told them if you step on the gas in this car,
22 it's going to lurch forward, you know, very, very quickly,
23 and you might injure someone, but you can tell that they
24 didn't hear you because they're showing off, do you tell -- do
25 you then just let them go ahead and do it even though they
0157

1 are endangering their own lives? I mean, that's what I would
2 say.

3 JUROR NO. 1: But, okay, at the point what if
4 you're telling them the instructions and they just jump in
5 the car anyway? You know, you handcuff them to the pole
6 outside the car?

7 JUROR: If they're getting in the car, you know
8 they're not listening to your instructions.

9 FOREPERSON: Also, he's a grown adult.

10 JUROR: Yeah. He knows.

11 JUROR: (Inaudible) instructions. Well, I mean,
12 whatever.

13 JUROR NO. 5: I think, you know, there is a degree
14 (inaudible).

15 FOREPERSON: So should we try to get through this
16 question?

17 JUROR: What does it say again?

18 FOREPERSON: Here. So do we think the injury was
19 Patty Morton's fault?

20 JUROR NO. 4: I was looking over these things, and
21 it says he jumped on Killer without a warning is what she
22 said. And she also said all of a sudden he took a flying
23 leap to get to the saddle is what she said, but in the
24 psychologist's report, it says as soon as he got on the horse
25 (inaudible) to avoid it. It doesn't really --

0158

1 JUROR NO. 1: But that's based on what he's saying.
2 The psychologist report is based on what he's saying. Plus
3 the assistant said he jumped on, and the assistant wasn't
4 drunk. So that removes that factor.

5 JUROR NO. 4: Okay. So if the assistant jumped on,
6 I don't think it's her fault.

7 JUROR NO. 1: I don't either.

8 JUROR NO. 7: I think she has some degree, but I
9 think it's more so the guy than it is for her.

10 JUROR NO. 2: Well, you guys that ride, say you
11 were Patty Morton. Say you were the instructor and
12 someone -- put yourself in her shoes. If someone comes up
13 and you can tell that they're not listening to you, do you
14 let them go ahead and get on the horse and learn their lesson
15 or do you simply -- you know, do you try -- do you say, hey,
16 wait a second; you're not getting this?

17 FOREPERSON: I don't think she expected him to jump
18 on the horse though.

19 JUROR NO. 2: Yeah, but you don't just jump on a
20 horse. I don't care how big you are, I mean.

21 JUROR NO. 7: But it's all about you can sit there
22 and explain, like, for all horses you need to keep the reins
23 very loose. You don't squeeze the horse because it will go
24 forward.

25 JUROR NO. 2: Right.

0159

1 JUROR NO. 7: You know, just get on and get
2 situated, and you can tell them that. But when this case of
3 this guy, his natural instinct to throw himself on the horse,
4 you land on the horse, you squeeze, you pull on the reins,
5 obviously the horse is going to take off, whether you are
6 taking a flying leap onto there or not and no matter what you
7 say, what he does. You know, what I'm saying? You can't
8 control how he gets on the horse. You can just tell him and
9 hope that he'll follow your instructions.

10 JUROR: I don't know.

11 FOREPERSON: So....

12 JUROR NO. 2: Do you guys want to put that to a
13 vote and see what people are thinking, you know, because I
14 think we're somewhat split here?

15 FOREPERSON: Right.

16 JUROR NO. 4: I think it's her fault.

17 JUROR NO. 1: You think it's her fault.

18 JUROR: Not entirely but number three is saying do
19 you think it's caused directly. Well, whatever but she --

20 JUROR NO. 4: No, no, no, I'm sorry. I'm sorry. I
21 think it's entirely -- it's entirely his fault. I'm sorry.

22 JUROR NO. 2: Okay. So if we're reading the
23 question, the answer to number one was yes, then the injury
24 was the fault of Patty Morton?

25 JUROR: I don't think it was her fault.

0160

1 JUROR: I don't either.

2 JUROR NO. 2: And I do.

3 FOREPERSON: How about you?

4 JUROR: (Inaudible). I still can't decide whether
5 he jumped on, like -- like, I mean, I guess -- I mean, all he
6 did was sprain his wrist.

7 FOREPERSON: That's the other thing.

8 JUROR NO. 1: He wants \$15,000 for a sprained
9 wrist? Damn, I'm going to go sprain my wrist.

10 JUROR: I think she could pay for the wrist. It's,
11 what, like 50 bucks probably.

12 JUROR: Three hundred.

13 FOREPERSON: Three hundred dollars actually.

14 JUROR NO. 1: 185 was the medical bills and 1,600
15 or something for the psychologist's --

16 JUROR: The head doctor.

17 JUROR NO. 1: Yeah.

18 JUROR: Yeah, I think I would be --

19 JUROR NO. 2: I would be much more willing to go
20 ahead and say it's not her fault as long as we give him some
21 sort of money because, you know --

22 FOREPERSON: I don't think we should give him money

23 for the psychiatrist.

24 JUROR NO. 4: I don't see why we should give him
25 any money. He made the stupid decision to jump on the horse
0161

1 from what I could tell.

2 JUROR: But she made the stupid decision not to
3 put -- to make herself liable in the contract.

4 JUROR NO. 2: I fully think that she was negligent.
5 I really do. I think that she was fully negligent because
6 she was drunk.

7 JUROR: She wasn't drunk.

8 JUROR: I'm not talking about the drunk thing. I'm
9 talking about the fact she thought -- I mean, even in the
10 courtroom, she was like, yeah, yeah, yeah, I don't really
11 care about this situation, and she thought that he was a --
12 was an idiot, and he was showing off for the girl.

13 So she was like, I'm going to let you -- even
14 though I'm trying to tell you, I know you're not listening to
15 me. So go ahead and embarrass yourself is how I think she
16 handled situation. From the way she was acting in the
17 courtroom and her answers and all that, that's what I
18 thought.

19 JUROR NO. 7: So you think it's completely her
20 fault?

21 JUROR: No, I don't think it's completely her
22 fault. He might have (inaudible). Then when two people say
23 he leapt on there, I don't know about the amount of damage,
24 but I think she has a little bit something to do with it, a
25 little bit. It's not all completely her fault but
0162

1 somewhat -- but he don't need \$15,000.

2 FOREPERSON: I don't think he needs any money. You
3 don't have to go to the hospital for a sprained wrist.

4 JUROR NO. 2: He might have thought he broke it.

5 FOREPERSON: That's true.

6 JUROR: That's agreed. That's agreed. It could
7 have been broken, but you don't need \$1,600 to see a shrink
8 for falling off the horse.

9 JUROR NO. 4: I don't think that's what's relevant.
10 I think the relevance is he made the stupid mistake of
11 jumping on the horse, and he took the responsibility alone.
12 And his act -- whatever followed was the result of that
13 action.

14 JUROR NO. 1: And the assistant was there too. So,
15 I mean, if you're going to look at it from a strictly
16 evidence point of view and they've got the two --

17 JUROR NO. 4: Based on her too.

18 JUROR NO. 1: Yeah. They've got two people saying
19 he jumped on the horse and squeezed it, and you've got his
20 own account saying I didn't.

21 She was negligent. So I don't think the -- I don't

22 think the plaintiff carried the burden of proof.

23 JUROR: I just say at the same time you have two
24 people there. You're in control of the situation, and you
25 don't let someone jump on a horse that's got this, you know,
0163

1 quirk that makes it take off. If you know that the horse is
2 going to do this and you think there's a good possibility
3 that this guy is going to do that, you know, she said that he
4 was an idiot. She said he didn't know anything about horses
5 and that he wasn't listening.

6 JUROR: She knew it.

7 JUROR NO. 2: And she knew it. Do you let him jump
8 on the horse or do you and your assistant, you know, take him
9 aside and say, look, I have a good intuition that you're
10 going to get on this horse, and when you do, it's going to
11 take off and it's going to throw you. I don't think you
12 should do that. Listen to me. When you get on the horse, do
13 not --

14 JUROR NO. 7: But you don't know -- she could have
15 very well said that. He wasn't listening to everything she
16 said.

17 JUROR: She didn't know he was going to jump on the
18 horse.

19 JUROR NO. 1: If he's not listening, that's one
20 thing, but then how can -- okay. If she knows he's not
21 listening, that's one thing, but then how does she know that
22 he's going to jump on the horse? She has no idea he's about
23 to jump on the horse. What's she supposed to do, stake him
24 to the ground until he listens?

25 JUROR NO. 2: I just remember when I learned to
0164

1 ride that --

2 JUROR NO. 4: This is -- it's only the
3 preponderance of the evidence that matters. It can't be
4 anything else out of the courtroom that affects your
5 decision.

6 JUROR NO. 2: Sure it can. Everyone brings lots of
7 things.

8 JUROR NO. 4: I know but, I mean, you can't
9 remember what you remember when you tried to ride.

10 JUROR NO. 5: You know, it would have been nice if
11 she had done that, you know, but as far as her duties go as
12 the instructor, she gave him ample warning. She set him up
13 with a nice horse and, you know, I mean --

14 JUROR NO. 1: She instructed him. She had the
15 mounting block there, and he jumped on the horse at the same
16 time.

17 JUROR NO. 5: Yeah, because she fulfilled her

18 duties.

19 JUROR NO. 1: In accordance with the riding
20 contract, she fulfilled her duties, and he goes with his
21 knees and legs and pulls the reins then after that, it's on
22 him. That's the way I see it.

23 FOREPERSON: I think this is important, this
24 sentence because if you sign this....

25 JUROR: That's essentially a disclaimer saying when
0165

1 I get on the horse I understand -- simply stating, that
2 doesn't mean he signed it.

3 JUROR: I know he signed it. He understands that,
4 but that doesn't mean that if something -- if that happens
5 that she's not responsible. It just means that he
6 understands that it can happen.

7 JUROR NO. 1: I mean, and then you go --
8 (inaudible) the law. Do you think getting thrown is a normal
9 and ordinary --

10 JUROR NO. 2: Yeah, I do think that that's a normal
11 sort of possibility, but I think that she, as an instructor,
12 was responsible for his instruction. I don't think she did a
13 good job of instructing him. So, anyway, so.... Can we skip
14 that question maybe?

15 JUROR NO. 4: That question leads to --

16 JUROR NO. 1: The rest of the questions hinge on
17 that question.

18 JUROR NO. 7: We just decide to decide. I think
19 everybody thinks that both of them are -- well, not everybody
20 but I think that we need to figure out what the, you know,
21 the degree of each person -- like once we figure out how much
22 we think each person is responsible, I think that that will
23 help us answer all of these questions.

24 JUROR NO. 5: Maybe we could just get a consensus
25 on who is more at fault, like, which is over what percent.
0166

1 JUROR NO. 1: All right. Who thinks Patty Morton
2 is more at fault than Steven Matthews?

3 (One hand raised.)

4 JUROR NO. 4: Who thinks Patty Morton is not at all
5 at fault?

6 (Several hands raised.)

7 JUROR: I think she's at fault for the sprain
8 maybe.

9 JUROR NO. 4: Maybe.

10 JUROR NO. 5: And I would consider (inaudible)
11 fault but....

12 JUROR NO. 4: She did say that she administered
13 first aid. I don't know if that counts though. Probably
14 not.

15 JUROR: He wanted to leave, so.

16 JUROR: Actually I really don't think it's her
17 fault at all.

18 JUROR NO. 1: Two, three, four -- there's six for
19 his fault and two for --

20 JUROR: (Inaudible) like giving him the money to
21 count for the emergency room, like the \$185. I could see
22 giving him that.

23 JUROR NO. 1: 15,000 is a little steep. We'll see
24 how much we get out of my sprained wrist. I'm going to hit
25 my hand on the desk here and see what I can get out of it.

0167

1 JUROR NO. 4: That wasn't in the psychology waiver?

2 FOREPERSON: Okay. So if we say it is her fault,
3 then we can do -- we can go --

4 JUROR NO. 1: Who do we find for in this case? Do
5 we find for the plaintiff?

6 JUROR NO. 2: Whatever the medical costs.

7 JUROR NO. 1: Are you including the psychologist's
8 costs?

9 JUROR NO. 5: No.

10 JUROR: Yeah. I honestly don't think that there's
11 any need for, you know, sort of pain and suffering, damages.
12 I think that he --

13 JUROR: Would you be okay with --

14 JUROR NO. 2: Associated medical, not
15 psychological, medical.

16 JUROR NO. 5: Yeah, just the medical costs.

17 FOREPERSON: Right here.

18 JUROR NO. 2: Yeah, because I think that covers the
19 amount of negligence that she had. That makes me happy
20 because that at least says that there was some
21 responsibility, and maybe if she had taken him down and said,
22 listen, that wouldn't have happened. But you're right in
23 that you can't really control what he's going to do in the
24 end. So I think as long as he gets -- I think that's
25 (inaudible).

0168

1 JUROR NO. 1: Okay.

2 JUROR NO. 5: All right. Yes.

3 FOREPERSON: Okay. So yes to this?

4 JUROR NO. 5: We agree.

5 FOREPERSON: Yes, the injury caused directly
6 from --

7 JUROR NO. 2: Partially.

8 FOREPERSON: We have the --

9 JUROR NO. 2: Just go with yes.

10 FOREPERSON: Yes.

11 JUROR NO. 2: Yes.

12 JUROR: Yeah.

13 JUROR NO. 2: There you go. That's right.

14 FOREPERSON: What percentage of the total?
15 JUROR NO. 2: Can you scroll it up just a bit?
16 FOREPERSON: Oh, sorry.
17 JUROR: We have to do math.
18 JUROR NO. 5: What?
19 FOREPERSON: Great.
20 JUROR NO. 1: One percent.
21 JUROR: From what he's asking or --
22 JUROR NO. 2: 1.1 percent.
23 JUROR NO. 1: Seriously it's like one percent.
24 JUROR NO. 4: It's two in terms of what they're
25 asking for. Is that what they're going to do, what they're
0169

1 asking for? Who's got a calculator?
2 JUROR NO. 4: It's 1.1 because you add 150 plus 15.
3 No, that's not 101.
4 JUROR: It's like 1.2, two something.
5 FOREPERSON: I think I just (inaudible) with this.
6 JUROR: How much, 185?
7 FOREPERSON: Am I supposed to see the list?
8 JUROR: 15,000. Yeah, 1.2 percent.
9 FOREPERSON: Okay. I have to read this.
10 JUROR NO. 5: Did you figure the percentage?
11 FOREPERSON: So I'm going to say we the jury find
12 for the plaintiff in the amount of \$185. Okay.
13 JUROR: Did anyone else kind of find his nightmares
14 kind of funny?
15 JUROR NO. 2: Yeah.
16 JUROR NO. 1: I just see (inaudible).
17 JUROR: Psychological issues.
18 FOREPERSON: I think it's something deeper.
19 JUROR: Yeah, he has a problem.
20 FOREPERSON: Okay. Someone want to --
21 JUROR: Get the bailiff?
22 (Brief Pause)

23 PROFESSOR LEDERER: Ladies and gentlemen, I am
24 going to be subbing for your bailiff for the moment. So I
25 now have to go through some of the formats.
0170

1 Now, I'd like to have you answer again some of the
2 questions that we had you answer just before deliberations.
3 So in short we have some more forms for you. Remember, there
4 are no right or wrong answers. We're only interested in your
5 (reading) whether the same as before or different.
6 So I'm going to hand out the final questionnaire.
7 We ask you to put your name and gender on the
8 postdeliberation questionnaire, and I've got about a minute's
9 worth of reading to do. And then what we're going to do is
10 ask you a couple questions if we might.
11 Once you're done, be sure you have your name and

12 your gender on there, and do we have verdict forms and
13 decisions?

14 FOREPERSON: Yes.

15 THE COURT: Are you the foreperson?

16 FOREPERSON: Yes.

17 PROFESSOR LEDERER: May I? Thank you. One second
18 here. As we noted at the beginning of the study, we're
19 interested in jury deliberations. Specifically, we're
20 examining how the use of technology in the courtroom itself
21 might carry over into jury deliberations.

22 Currently there are courtrooms that are fully
23 outfitted with many of the technological features that we
24 have in our courtroom, but in the real world outside of here
25 there are essentially no jury deliberation rooms that have
0171

1 the level of technology support available in the courtrooms.

2 We believe that if the use of technology in legal
3 proceedings and in the jury rooms themselves will likely
4 require technological modification. Understandably, however,
5 with advance technological features (reading) unless they
6 know that, A, juries will find it useful and B the trial will
7 come, basically the use of the questions our research is
8 designed to answer. (He's reading fast here.)

9 Does anyone have any particular questions that I
10 can answer that we've been doing and such? In that case, our
11 study will be concluded in a few moments. If you'd like to
12 see the results of the study, you'll be able to find plenary
13 results when the semester is over on the Web at the psych
14 department Web site under html. Thanks for taking part.

15 Now, if I can hold you for five extra minutes and
16 ask you a couple of questions. Now, what led to your
17 decision? Was there anything in terms of evidence or what
18 the lawyers did or didn't do that helped you make your
19 decision?

20 Ma'am, you're looking thoughtful or found elements
21 of the trial -- forgive me. I can't see all of you. So let
22 me walk to the other end. What was it that was particularly
23 important to you? Did you have something?

24 JUROR: Well, what was important to me, I guess
25 just, I think, the defendant's attitude towards the whole
0172

1 proceeding.

2 PROFESSOR LEDERER: That counted? Others agree?

3 JUROR NO. 2: I think I did more so. I think we
4 were sort of thinking more along the same line I think.

5 PROFESSOR LEDERER: Was there anything the lawyers
6 did or didn't do that was especially important to you? You
7 were about to say something.

8 JUROR NO. 4: I don't know. I thought they kept on
9 going over the same thing. That kind of helped, made their

10 points really clear.

11 PROFESSOR LEDERER: Was there any information you
12 didn't get?

13 JUROR NO. 4: It was very obscure as to what
14 happened with him mounting the horse. I don't know if that's
15 a reasonable thing to ask.

16 JUROR NO. 1: Whether he jumped on the horse or
17 whether he got on the horse.

18 PROFESSOR LEDERER: Okay. Got it. You were about
19 to say something.

20 JUROR NO. 5: Well, I was going to say the
21 introduction of the deposition I think helped a lot giving
22 the outsider's opinion.

23 PROFESSOR LEDERER: Did you look at the deposition
24 in the courtroom?

25 JUROR NO. 5: We looked at it. We considered
0173

1 things that he said.

2 PROFESSOR LEDERER: That brings in a question. Did
3 you use the hardware here? I see a big smile.

4 FOREPERSON: And the pointer.

5 PROFESSOR LEDERER: And the pointer. Why the
6 smile?

7 FOREPERSON: Just because I used it.

8 JUROR: She got to use it.

9 PROFESSOR LEDERER: She got to use it. Are you the
10 foreperson because you were seated there or by sheer chance?

11 FOREPERSON: No, I moved.

12 PROFESSOR LEDERER: You moved to do that.
13 Obviously we're interested in the technology. What was your
14 thought about it? Was it helpful, not helpful?

15 FOREPERSON: I think it was helpful.

16 JUROR NO. 5: Very helpful instead of passing
17 things around.

18 PROFESSOR LEDERER: So you didn't have to keep
19 reading it over. Well, did you use the zoom feature making
20 it larger or smaller?

21 JUROR: No, we didn't --

22 PROFESSOR LEDERER: Did you recognize you could do
23 that?

24 JUROR NO. 5: I was thinking that it might have
25 been.

0174

1 PROFESSOR LEDERER: Okay. It said on the
2 instructions, but it didn't occur to you to do it?

3 FOREPERSON: We didn't read them.

4 PROFESSOR LEDERER: We're learning. Okay.

5 JUROR NO. 5: We're very involved in the
6 (inaudible).

7 PROFESSOR LEDERER: Very involved in the

8 discussion. Now, I'm curious. Did you realize you could do
9 that?

10 FOREPERSON: No, actually I didn't. I just saw the
11 pointer.

12 PROFESSOR LEDERER: Okay. That's fine. That's
13 important to us. Is there anything you wanted to do that you
14 couldn't do, anything that, you know, was a waste of time or
15 effort or anything?

16 JUROR NO. 2: I don't know the law, but I wish we
17 could have had the jury instructions. I don't know if they
18 normally give a copy of that.

19 PROFESSOR LEDERER: There are two different
20 approaches. The majority rule is it's all read to the jury,
21 and you're stuck like you are. And then there's the minority
22 where they're actually printed and handed to you.

23 And because we're trying to follow the majority
24 approach, we didn't do that. You're not the first people who
25 expressed interest in that. Do you think this was better
0175

1 having than not having it?

2 FOREPERSON: Yes.

3 JUROR NO. 5: Yeah.

4 JUROR: Yeah.

5 JUROR NO. 2: Yeah.

6 PROFESSOR LEDERER: Okay. Any questions I can
7 answer? Okay. One piece of information and a couple of
8 requests if you will. The request first.

9 As you probably recognize, we're doing multiple
10 variations on the trial. Please don't talk to anyone about
11 it. We'd really appreciate that. Secondly, all forms of
12 basic experimental work are important, but some yield results
13 faster than others. This will be one of those.

14 Based on all you and your colleagues are telling
15 us, we are actually going to be doing this in real trials in
16 Oregon and Florida in second semester in spring in real
17 cases.

18 So I just wanted you to know that what you've done
19 on your weekend is a matter of real importance to the
20 country. You will affect how verdicts in civil and criminal
21 cases take place.

22 Now, I am guessing you all have forms that are to
23 be signed? I'll be happy to do that for you now because you
24 don't want to leave and have that -- okay. Okay.

1 December 2, 2001, Trial 3 [document camera and projector]

2

3 SHEPHERD: Now your task is to decide how the
4 issues in this trial should be resolved using the judge's
5 instructions to you as your guide. These are the
6 instructions. Within the limits described by the judge, you
7 may conduct your deliberative process in any way that makes
8 most sense to you.

9 When you have reached a final decision, please have
10 one person come out and let me know that you're done.
11 There's also copies of the evidence for you. I'll be right
12 outside.

13 JUROR: It says first the jury is to answer the
14 following --

15 JUROR: We can probably put it up here.

16 JUROR: Yeah.

17 JUROR: So what does everyone think?

18 JUROR: How many people think yes to number one?

19 (Raised hands.)

20 JUROR: What about number two? Was it Patty
21 Morton's fault? I don't think it was.

22 JUROR: I think that it was, yeah, unclear. I
23 mean -- I'm leaning towards it wasn't her fault but
24 (inaudible).

25 JUROR: I think it was partially her fault because
0078

1 she had drinks at lunch and stuff.

2 JUROR: The only thing is the thing that he signed.
3 He said that I understand that horses can do --

4 JUROR: Right. I think it was part of each -- what
5 they were talking about in there.

6 JUROR: I think it was his fault because he wasn't
7 listening. I mean, that was, like, a main thing she was
8 telling him. Oh, this horse does this, you know, so.

9 JUROR: I was also thinking of she could have told
10 him not to get on the horse. I mean, he was a beginner.
11 Maybe he was acting like a jackass, you know, but maybe she
12 had the right to not let him get on the horse.

13 And I don't know -- when she was giving the
14 instructions, she should have made sure that he was listening
15 100 percent, and he said he was so nervous that he wasn't
16 even, like, looking. So she should have grabbed his
17 attention.

18 He was a beginner. He said he knew horses. I kind
19 of think that maybe she was trying to, you know, saying that
20 he disrespected the sport and stuff, but I kind of believe
21 that to an extent that she was kind of negligent in
22 explaining about the horse and, like, how it -- she didn't
23 explain how it -- how one of the riders had been thrown off
24 of the horse before.

25 I think that was -- that could have been mentioned,
0079

1 especially since it was a beginner who was riding the horse,
2 and I think, like, if it was a child, there are so many

3 children that had been on a horse as well. Like, I think he
4 should have the same rights like if a child had got up on
5 that horse and acted like an idiot -- I lost my train of
6 thought. Just keep it there actually.

7 JUROR NO. 4: I think that in the case that it were
8 a child, I mean, obviously a lot of people get on this horse.
9 Maybe she was a little careless not saying that, but it seems
10 to me in terms of like -- where's the -- can we have the
11 contract again?

12 JUROR NO. 1: I think -- are there more papers?

13 JUROR NO. 4: No, the evidence.

14 JUROR NO. 1: I only have three.

15 JUROR NO. 2: The defendant's.

16 JUROR NO. 4: Because I think there was a paragraph
17 that they didn't really mention that said something like, you
18 know, many times horses do throw people. I think it was in
19 the second paragraph.

20 And it seems to me that this horse was much like
21 any other beginner horse. I mean, maybe it had thrown a
22 rider before, but it didn't seem like it would be any more
23 aggressive. In fact, it would be more gentle, you know,
24 according to the testimony, than a normal horse.

25 So it's sort of the fact that it had thrown a rider
0080

1 seems almost excusable that she meant to say that and seeing
2 that he didn't have spurs on and she wouldn't expect him to
3 jump on the horse and, like, grab it, although --

4 JUROR NO. 1: I think it was (inaudible) making her
5 legally responsible for not telling him that the horse took
6 off, that that horse has thrown somebody else off of him, the
7 horse, because, you know, every horse has thrown somebody
8 off.

9 JUROR NO. 4: I'd like to know, like, how many
10 horses she had and how many horses have thrown people.

11 JUROR NO. 6: I think that she probably should have
12 said something, just more of a forewarning. Could it
13 possibly have changed his attitude and prevented it, and at
14 the same time, he was not listening. And so it didn't really
15 matter.

16 I don't think that's, like, a major issue that she
17 did or did not tell him. I just -- I think that both parties
18 to an extent are -- share some of the blame here but more so
19 on the side of Mr. Matthews.

20 JUROR NO. 4: I think that this -- this paragraph
21 right here (indicating), "Understand that horses are
22 unpredictable and potentially dangerous animals," I mean, in
23 agreeing to this, in signing his name to this, he's saying I
24 understand it. I'm, like, thrown off (inaudible). So I have
25 to say that, like, he should have known. He should have been

0081

1 listening to everything she says.

2 JUROR NO. 1: Yeah, but she still has the
3 responsibility to make sure he's paying attention. So I
4 think -- I mean, in my opinion, I think it's both their fault
5 because she does have a legal responsibility to make sure
6 that he was paying attention, that she is operating --

7 JUROR NO. 5: Like she -- and then the deposition
8 that we heard, they both said that he just sort of leapt on
9 the horse.

10 So it wasn't even like she had the opportunity,
11 "Are you listening, are you paying attention" to me because
12 he just went ahead and got on there. So there wasn't really
13 anything she could do.

14 JUROR: And she also said, well, she talked to them
15 as they were walking over. So she talked to him a little bit
16 of the amount of time, and she realized -- she thought
17 throughout that time that he probably wasn't paying
18 attention.

19 And I really think she should have picked up on
20 that and said, hey, listen up or I'm not going to let you on
21 this horse.

22 JUROR NO. 4: I am a little bit curious as to when
23 she picked up the horse. Did she pick up the horse before
24 she saw him, like, playing John Wayne or after? It seemed to
25 me like she got the horse out of the stable, saw him goofing
0082

1 off and -- so that, you know, she wasn't trying to find a
2 horse that would be mean, like, because he was acting up. I
3 don't know. I don't know how (inaudible) that.

4 JUROR: I don't think they outright said it, but I
5 think they alluded to the fact that she had chosen the horse
6 after he said he wanted a challenge.

7 JUROR: Okay.

8 JUROR NO. 5: She knew he was a beginner and
9 (inaudible).

10 JUROR NO. 7: And she knew it would be a really big
11 horse and (inaudible) a beginner.

12 JUROR NO. 5: The only thing with that is, like, I
13 took horseback riding a long, long time ago when I was a
14 little girl but, like, don't you have to correspond the size
15 of the person with the horse? I mean, he seemed like a
16 pretty big guy. So don't you --

17 JUROR: You don't put him on a little horse.

18 JUROR NO. 5: Yeah. You need a big horse to put
19 him on.

20 JUROR NO. 4: He does horseshoe things, but they
21 are big animals, I mean, to someone who didn't see the horse
22 from that close up.

23 JUROR: Being a farrier, wouldn't he have seen a
24 horse before? So it really shouldn't be an issue.

25 (Inaudible) a big horse probably.

0083

1 JUROR: Well, even she said it was one of the
2 bigger breeds of horses.

3 JUROR: Okay. So let's get back to the other sheet
4 with the questions and see if we can like (inaudible) this.
5 So you said the answer to that was -- number one was yes.
6 Number two.

7 JUROR: I think it was at least partially his
8 fault.

9 JUROR: Right.

10 JUROR: Yes.

11 JUROR: I don't think it was --

12 JUROR: It wasn't directly.

13 JUROR NO. 4: It was more indirectly. She didn't
14 go out saying this horse has thrown someone, and it's going
15 to throw this guy because he's an arrogant asshole.

16 Maybe she was a little careless in not explaining
17 to him, like, everything about the horse and making sure he
18 was listening, paying attention, but that could only be an
19 indirect cause. So it would be no. Does everyone agree with
20 that?

21 JUROR: Yeah.

22 JUROR: Yeah.

23 JUROR: Then the answer to number three is yes?

24 JUROR: Do we think --

25 JUROR: We had to put some percentage value on

0084

1 whose fault.

2 JUROR: Yeah.

3 JUROR NO. 4: We haven't answered number four
4 because we believed it wasn't directly caused -- do we want
5 to go back and say there was some direct cause just so we can
6 put in a percent?

7 JUROR: I think that thing is wrong. I think it
8 should be up there.

9 JUROR NO. 7: Well, unless they assume that
10 carelessness is a direct cause.

11 JUROR: Yeah.

12 JUROR NO. 4: I mean, are we all in agreeance that
13 it may not have been a direct cause but we still want her
14 to -- she is partially responsible?

15 JUROR NO. 1: She is partially responsible.

16 JUROR NO. 4: And this statement almost says that,
17 like, if it wasn't directly responsible, she shouldn't have
18 to have any percentage.

19 JUROR: Right.

20 JUROR NO. 4: Maybe this is one of those things you
21 have to figure out. It's not like -- if this is the case and
22 what we are seeing is what they want us to see and it's not a

23 typo, do we want to go back to number three and say that it
24 wasn't directly caused by her negligence?

25 I mean, I think that she probably did -- it sounded
0085

1 to me like she does what she always does. She has them sign
2 this consent form that says I understand that horses may kick
3 me off. She was explaining the quirks of Killer to this guy,
4 and it was almost his fault that he wouldn't listen.

5 Though she could have potentially been more direct
6 and said, like, you can't, you know, get on this horse until
7 you, like, repeat what I just said kind of thing. Are we
8 saying that that's reasonable negligence on her part?

9 JUROR NO. 6: I think it is reasonable negligence
10 just because of the fact that the service she's providing is
11 exactly to teach somebody to ride a horse, and part of that
12 would be if she doesn't -- if she's not doing that, then
13 she's not doing her duty.

14 And obviously he wasn't listening. So she wasn't
15 quite doing enough to teach him how to do this. Even though
16 he wasn't listening, which is his fault, but it's her fault
17 because she was providing this service. And this is her duty
18 sort of to make sure that he's doing this in the correct
19 manner so that there will be (inaudible) injuries as much as
20 possible considering that horse isn't going to do what
21 they're going to do. So I would say yes.

22 JUROR NO. 4: Do you think that, like, in another
23 case, if it had been another horse she would have been
24 legally bound to tell the rider, you know, like, a list of
25 things they should be careful about in the horse or do you
0086

1 think that this would cover it saying that, like, I
2 understand horses are unpredictable and, like, people have
3 been injured by horses? Do you think --

4 JUROR NO. 5: I don't think she's responsible for
5 every single horse.

6 JUROR NO. 6: I agree.

7 JUROR NO. 5: That would be pointless to say, oh,
8 okay, this horse kicked someone off and this one they ran a
9 little too fast and scared someone. I mean, you could be
10 there all day.

11 JUROR NO. 7: Right. I think the contract
12 definitely covers it saying you don't know what exactly
13 you're getting into with each horse.

14 But going back to what you were just saying, as an
15 instructor, she's going to come into contact with all sorts
16 of people and all sorts of riding students, and she's not
17 always going to get the perfect riding student that sits and
18 listens attentively and does exactly what she says.

19 You are going to have people that come through that
20 are like this person and for some reason aren't paying

21 attention, whether they're showing off for their girlfriend
22 or they're just extremely nervous, and she, as the
23 instructor, is responsible to see that and snap them out of
24 it, either get them to pay attention and they get on the
25 horse or just be like this isn't working out right now.

0087

1 JUROR NO. 1: But I think also it's part of the
2 participant's.

3 JUROR NO. 7: Right. I agree with that too.
4 That's why I think it's the partial thing, but she
5 definitely, like, was a big part of it as was he.

6 JUROR NO. 5: The only thing is that -- because
7 they said the reason why he got thrown off was because he was
8 digging his heels into the horse's side, and that -- like
9 that wasn't necessarily something she said she covered. She
10 just said about picking up the reins and not doing that but,
11 I mean, that's really more his fault than anything else
12 because I -- I mean, why would you get on a horse and just
13 immediately dig your feet into him?

14 JUROR: He said he was trying to hold on.

15 JUROR NO. 3: If the horse took off because they
16 said he took a flying leap and if the horse took off, that
17 means nobody was probably holding the horse, and if the
18 person getting on was a beginner, wouldn't it make sense that
19 you would hold the horse to make sure it doesn't move until
20 the person is ready to get on the horse?

21 JUROR NO. 5: I don't think she was holding it. It
22 was the other guy. So it would have been that other guy,
23 Jerry, who was the assistant.

24 JUROR NO. 6: He works for her, so.

25 JUROR NO. 1: Is it a civil suit against her or is

0088

1 it a civil suit against the company?

2 JUROR NO. 5: I think it's against her.

3 JUROR NO. 7: Was it the assistant that was holding
4 the horse?

5 JUROR NO. 5: Yeah.

6 JUROR NO. 4: Yeah, the guy kind of jumped on the
7 horse and pulled up the reins and the horse is going to jet
8 anyway.

9 JUROR NO. 7: Right. You think if he was climbing
10 on him carefully (inaudible). That's what I would do.

11 JUROR NO. 5: That was more his fault than hers.
12 You could sit there all day and be like, pay attention to me.
13 Don't do this, don't do this, and he'll be like, okay, okay,
14 I won't do that. And as soon as he gets on the horse, he
15 pulls up the reins and clamps down his legs.

16 JUROR NO. 6: Well, she also feels that if he's not
17 listening, she can say, no, I don't want him to do this.
18 You're not listening. I don't think you're ready and so

19 that's -- that's the only reason why I say that. Like, yes,
20 it directly -- her negligence is directly related to the
21 injury because she could have denied him to get on the horse,
22 but, like you said, I fully agree that he shares a large part
23 of the blame in this. But that's just my whole reasoning
24 behind that.

25 JUROR NO. 5: So we're all in agreement on it was
0089

1 his fault, somewhat her fault. So I guess we have to decide
2 whether or not he gets any money or not.

3 JUROR NO. 2: Or how much money he gets.

4 JUROR NO. 5: And how much money he gets.

5 JUROR NO. 7: I think it's important to consider
6 the fact that she was at lunch drinking, and had she not been
7 drinking at lunch, would she have realized that he wasn't
8 paying attention and needed some more time before she allowed
9 him to get on the horse?

10 JUROR NO. 4: About that, I was a little bit, like,
11 surprised when she brought that up because, like, they hadn't
12 mentioned that at all throughout the entire proceedings.

13 JUROR: It seems significant to me.

14 JUROR NO. 4: It seems maybe possibly significant,
15 but it also seemed like it was tacked on. And it was like
16 Plan B. Let's get this. Oh, she was drinking. There's no
17 other evidence.

18 It could have been that she has a real high
19 tolerance. I mean, there's a lot of different elements that
20 come into you making the assumption that because she had a
21 few glasses of wine, she therefore, you know, is, like,
22 unable to fulfill her duties as a trainer. I was a little
23 bit perplexed by that.

24 JUROR: (Inaudible) professional before you go
25 horseback riding.

0090

1 JUROR NO. 4: It's true, but how many business
2 people, like, go out in the middle of the day for a luncheon
3 with a client and have, you know, a glass of wine?

4 JUROR NO. 7: But it said she had several glasses
5 of wine, and whether or not she had a high tolerance, several
6 glasses of wine is going to affect her judgment. And in the
7 contract before he signed it, it promised, like, proper
8 instructions and things like that.

9 JUROR NO. 5: There was also another guy present,
10 and if she was really drunk and not be able to make wise
11 decisions, why wouldn't there have been another accident
12 during the day, you know?

13 JUROR NO. 7: Well, I don't necessarily think she
14 was drunk and stumbling and such, but I think it was possible
15 it was still affecting her judgment. And there's no way she
16 could think as clearly after several drinks than she could

17 think clearly without several drinks.

18 JUROR NO. 4: If we want to go and nitpick, we can
19 look at, like, the injury part, and it doesn't seem to have
20 any, like, things on it. We don't even know how long it's
21 been since she had lunch, which could be --

22 JUROR NO. 1: There was no mention of her being
23 really inebriated by anybody there. They came up with a
24 varium like you said.

25 JUROR NO. 4: I don't even know if we could take
0091

1 that into account. I mean, there are several things that I'm
2 just -- like, do we need to know this information? I don't
3 think that -- I think we realized that -- I mean, take the
4 fact that he was not paying attention. We don't need to know
5 whether it was because he was nervous or he was showing off
6 for his girlfriend. The fact was he wasn't paying attention.

7 You know, the fact she didn't explain everything as
8 clearly as was possible might be something we could take into
9 account, but I don't know if we could, like, point the blame
10 on her because she was inebriated. Like, it just seems like
11 too loosely put together and two, I don't know,
12 unsubstantiated claims.

13 JUROR: I thought her reaction was kind of
14 (inaudible), that laughing. I mean, like, the guy was 30,
15 35. I don't know how old he was, and he was acting like a
16 jerk on a horse that fell off.

17 JUROR NO. 5: He was 25.

18 JUROR: 25. Well, if there was a 16- or
19 17-year-old who fell off or something, I don't know if
20 there's some age discrimination there or whether her
21 laughing -- I don't know if you can necessarily relate that
22 to her being drunk.

23 JUROR NO. 5: I don't really think so. This is
24 terrible, but if someone falls, it's kind of funny.

25 JUROR: Especially (inaudible) I might have done
0092

1 the same thing.

2 JUROR NO. 5: I know I probably wouldn't have done
3 the exact same thing if I were in her spot.

4 JUROR: And then being --

5 JUROR NO. 4: Yeah, she went over and tried to
6 administer first aid.

7 JUROR NO. 7: I don't think you can say anything
8 for her laughing because it's a reaction, especially if he
9 had been showing off. You'd be like, oh, that serves him
10 right, and that's where it comes into being partially his
11 fault. He was showing off (inaudible).

12 Well, I think we should go ahead and choose yes for
13 three and four and then come up with a percentage.

14 JUROR: Yeah.

15 JUROR NO. 7: I think we all agree on that.

16 JUROR NO. 5: So I don't think that she should pay
17 for his psychology or visits to the psychologists.

18 JUROR: Is it a lump -- I think it's a lump sum,
19 and we just choose what percentage.

20 JUROR NO. 5: But that's how you decide. This is
21 \$1,650. I don't think she needs to pay that much, and then
22 the other bill was \$185.

23 JUROR NO. 7: And then the rest is all for loss of
24 wages.

25 JUROR NO. 4: And mental suffering.

0093

1 JUROR NO. 7: The strain stuff.

2 JUROR NO. 2: (Inaudible) visit.

3 JUROR NO. 5: The doctor's visit.

4 JUROR NO. 2: Yeah.

5 JUROR NO. 5: So the \$185 --

6 JUROR NO. 4: There was something in the --

7 JUROR NO. 2: Something working with a sprained
8 wrist.

9 JUROR: I would say more than that because he could
10 go get a new job. That's what I thought about that.

11 JUROR NO. 1: Sprains his wrist he's --

12 JUROR NO. 4: Diagnosis is about embarrassment over
13 the incident occurring in front of female date, so. It's not
14 that he fell. It was more like he was embarrassed because
15 his girlfriend was there. So I think you're right in that
16 the whole psychological thing --

17 JUROR: (Inaudible) five days of work. How much
18 would the five days of work be? He can't be getting paid
19 that much. He's just, like, an apprentice and puts
20 horseshoes on.

21 JUROR NO. 4: I think we need to settle on a
22 percentage.

23 JUROR NO. 5: I don't think it should be that much.

24 JUROR NO. 2: Five percent.

25 JUROR NO. 1: Five percent.

0094

1 JUROR NO. 2: Ten tops.

2 JUROR NO. 1: Tops.

3 JUROR NO. 5: I say five percent.

4 JUROR NO. 4: Are we saying she's guilty?

5 JUROR NO. 5: No.

6 JUROR NO. 2: No. It's like....

7 JUROR NO. 4: Do we need to fill this out or can we
8 not write on this?

9 JUROR NO. 1: That's it. We pretty much fill this
10 out.

11 JUROR NO. 4: Okay. I'm sorry. I should -- there
12 we go. And then how much, you said five percent, to the

13 defendant was five percent, and then who's four percent? And
14 on the general verdict we're going to find defendant -- I
15 guess she has to be guilty, right?

16 JUROR NO. 4: What's the thing about partially?

17 JUROR NO. 5: Partial. Do we say she's
18 comparatively negligent? I don't know the legal terms.

19 JUROR NO. 2: I don't think she's guilty. I think
20 we just don't award her anything.

21 JUROR NO. 5: Okay.

22 JUROR: Five percent.

23 JUROR: What's five percent of 15,000?

24 JUROR NO. 5: Ten percent is \$7,500.

25 JUROR: Seven hundred fifty.

0095

1 JUROR: Seven fifty plus the hospital bills.

2 JUROR NO. 5: It's 750 total.

3 JUROR NO. 6: I think that's just like what we --
4 750. Is that going to cover -- do you think that covers five
5 days of work and hospital?

6 JUROR NO. 5: The hospital bill was 185.

7 JUROR: 180.

8 JUROR: Forty hours a week.

9 JUROR NO. 5: Well, he was an apprentice.

10 JUROR: Yeah.

11 JUROR NO. 5: Yeah, that should cover it and then
12 the defendant, not guilty, guilty?

13 JUROR NO. 3: We find for the plaintiff. So if we
14 find for the defendant, we sign there.

15 JUROR NO. 5: So she's guilty.

16 JUROR NO. 3: She's not really guilty.

17 JUROR NO. 2: She's not guilty.

18 JUROR NO. 3: There's no guilty or innocent. We're
19 just awarding an amount there.

20 JUROR NO. 5: So just, "We the jury find for the
21 defendant."

22 JUROR: You see where it says --

23 JUROR NO. 5: Oh, okay. Okay. Okay.

24 (Brief Pause)

25 PROFESSOR LEDERER: Ladies and gentlemen, I

0096

1 understand that you have a verdict; is that correct?

2 JUROR: Yes.

3 PROFESSOR LEDERER: Who's the foreperson? Okay.

4 If you can, ma'am, we have some forms, and then I'll take
5 your verdict from you and then also ask some questions if I
6 may. You're on.

7 SHEPHERD: Okay. Now I'd like to have you answer
8 again some of the questions I had you answer just before your
9 deliberation. Remember there are no right or wrong answers.

10 We are really interested in your honest impression at this

11 point, whether they are the same as before or different. So
12 would you please answer these questions and, again, please
13 put your name and gender on the form

14 (Brief Pause)

15 SHEPHERD: Did everybody put their name and gender
16 on there?

17 PROFESSOR LEDERER: Madam foreperson, we have the
18 verdict you say?

19 FOREPERSON: Yes.

20 PROFESSOR LEDERER: May I have the verdict forms,
21 please? They indicate a verdict for the plaintiff in the
22 amount of \$750. Ladies and gentlemen, is this your verdict,
23 one and all?

24 JURORS: Yes.

25 PROFESSOR LEDERER: Thank you. We have one
0097

1 paragraph to read to you, and then we'll talk for about five
2 minutes and we'll be done. You're on.

3 SHEPHERD: As I mentioned at the beginning of the
4 study, we're interested in jury deliberations. Specifically,
5 we're examining how the use of the technology in the
6 courtroom itself might carry over into jury deliberations.

7 Currently there are courtrooms that are fully
8 outfitted with many of the technological features we used
9 here this afternoon, but in the real world outside of here,
10 there are no jury deliberation rooms that have the
11 (inaudible).

12 We believe that if the use of technology in legal
13 proceedings is going to reach its fullest potential, the jury
14 rooms themselves will likely require technical modification.

15 Understandably, however, courts are reluctant to
16 (reading) with advanced technological features unless they
17 know that, A, (reading) and, B, the trial outcomes are
18 essentially the same with or without the added technology.

19 Basically, these are the questions that our
20 research has been designed to answer. Does anyone have any
21 questions? Well, if there are no more questions, then our
22 study is concluded.

23 By the way, if you would like to see the results of
24 the study, you can find them at the end of the semester on
25 the Web at www.wm.edu/psyc/results.html, and if you want
0098

1 that, I can give that to you again afterwards. Thanks again
2 for taking part.

3 PROFESSOR LEDERER: As it happens, since we have
4 completed all the variations and such that we're doing, we
5 probably won't have that by the end of the semester, probably
6 about the end of the second.

7 I'm Professor Fred Lederer. I'm responsible for
8 the courtroom and related matters here today, and I'm just

9 wondering -- I'm going to ask you a couple of questions.

10 What is it that led in particular to your verdict,

11 any particular evidence, anything counsel did or didn't do?

12 Was there some particular thing that weighed especially

13 heavily in your decision? Why did you come out the way you

14 did?

15 JUROR: We talked a lot about him signing the

16 contract that said that horses were dangerous animals.

17 JUROR NO. 4: There was a paragraph right here they

18 didn't really touch upon but we thought was extremely

19 important. "I understand that horses are unpredictable."

20 PROFESSOR LEDERER: But you did decide to give him

21 some money.

22 JUROR NO. 4: Yes.

23 PROFESSOR LEDERER: Okay. What was the reason for

24 that? I'm not complaining. I'm just curious.

25 JUROR NO. 7: We feel that since she was the

0099

1 instructor that it was her responsibility to be able to deal

2 appropriately with any sort of person that came through,

3 whether they were paying attention or if they were the

4 perfect student regardless of what type of student it was.

5 PROFESSOR LEDERER: Is there anything the lawyers

6 did or didn't do that was of importance or interest to you or

7 something you would have done if you had been them or

8 something like that?

9 JUROR NO. 4: We thought it was interesting how

10 they -- it almost seemed like they tacked on the whole part

11 about her having a few drinks before.

12 PROFESSOR LEDERER: Uh-huh.

13 JUROR NO. 4: And there was a lot of evidence.

14 Like, we didn't know what the time she had the drinks was.

15 It seemed like we just threw it out. She might have been a

16 little negligent, but we can't really rely on the fact.

17 PROFESSOR LEDERER: Okay. All right. Anything

18 else that made a difference to you? Was there something you

19 really wanted to know and there was inadequate evidence?

20 JUROR NO. 7: We were curious as to how often

21 horses threw people off. Like, what if her other horses

22 threw people off or if that was normal or abnormal or how

23 normal that was.

24 PROFESSOR LEDERER: Got it.

25 JUROR NO. 5: Why didn't they bring the girlfriend

0100

1 in?

2 PROFESSOR LEDERER: In this case, she simply wasn't

3 available. However, that's a legitimate question.

4 JUROR NO. 5: That would have helped.

5 PROFESSOR LEDERER: Keep in mind that if we had

6 done that, you would have been here longer.

7 JUROR NO. 4: Yeah. I don't know how much
8 evidence, like, a picture of a horse was. Was that supposed
9 to perhaps bring an emotional response like, oh, no, it was a
10 scary horse?

11 PROFESSOR LEDERER: No. We thought you should have
12 the image of Killer. Okay. A question, did you use the
13 technology? Obviously you did. And what was your reaction?

14 JUROR: Saved a lot of time.

15 PROFESSOR LEDERER: You said it saved a lot of time
16 so you could all look at it and see it. Who ran it so to
17 speak? You did. Okay. Why you?

18 JUROR NO. 4: I was closest to it.

19 PROFESSOR LEDERER: You were the closest to it.
20 Fine. Okay. And what did you do with it? I mean, what use
21 did you make of it?

22 JUROR NO. 4: If we ever had any kind of question
23 or thing about the evidence, we put it on there so we could
24 all see it instead of passing it around.

25 JUROR: It made it easier.

0101

1 PROFESSOR LEDERER: Did you use the pointer to?

2 JUROR NO. 4: I didn't know it was a pointer. I
3 thought it was a letter opener.

4 PROFESSOR LEDERER: It is a letter opener. That's
5 not part of the experiment, just trying to get something that
6 would do its job properly. Did you use the zoom feature by
7 any chance?

8 JUROR NO. 4: No, I looked at this and I saw there
9 was a zoom feature, but I didn't know we needed to use it.

10 PROFESSOR LEDERER: Would anybody have wanted to
11 make the picture bigger or smaller? No?

12 JUROR NO. 4: Zoom in on the horse's head if we
13 wanted to.

14 PROFESSOR LEDERER: But you did know.

15 JUROR NO. 4: Yeah.

16 PROFESSOR LEDERER: Because that question has come
17 up. Is there anything you wanted to do that you couldn't do?

18 JUROR NO. 4: It's not possible in a jury
19 situation -- I'm not saying that this would have affected it,
20 but is it possible to -- you know, I know it's illegal to
21 tape things in the jury and go back to a testimony piece.

22 PROFESSOR LEDERER: Yes, it is possible. Well,
23 what would happen in a real trial is that if you were
24 interested, you would send a note to the judge saying you
25 would like to have the following piece of the testimony

0102

1 replayed, and probably what would happen is they would bring
2 you back into the courtroom. And then the court reporter
3 would read back, as it's called, from the court reporter's
4 record or if it were a digital or an audio courtroom, we

5 might play it back for you.

6 This courtroom actually can do that and a good deal
7 more, and one of the steps coming second semester we are
8 debating is whether to give you the ability to pull that up
9 in the jury room. I'm not sure we'll be able to do that, but
10 that's one of the ongoing discussions right now.

11 There are some very severe policy questions on
12 this, such as, if a jury in a long case had the ability to at
13 an instant pull up the testimony, will they argue over the
14 testimony forever or will it solve a problem and make life go
15 better for everyone?

16 We don't know the answer to that. It's one of the
17 many questions we're curious about that we'll touch
18 tangentially on in the study.

19 Anybody else have anything else? I thought I might
20 add the following. All experimental work is potentially
21 valuable, and some of you obviously will probably be doing
22 some of your own experimenting. Some basic experimental
23 work, however, doesn't seem to have a real-world immediate
24 consequence for quite some time as it makes its way through
25 the field, and it's replicated and considered and sometimes

0103

1 adapted.

2 That's not the case on this. Based on what all of
3 you are telling us and what we're learning, this will be
4 field-tested in real federal and state courtrooms before
5 June. We want you to know that you are playing a substantial
6 part in what we hope to be an improvement of the
7 administration of justice in real cases.

8 So what you have done on your Sunday, not long
9 before finals, actually has some very substantial real-world
10 effect, and for that we thank you and hope that that will
11 compensate in part for the fact that you had to be here on
12 Sunday.

13 Now, I think you need to have either Amanda or me
14 go ahead and sign your forms so as to take care of the fact
15 that you did have the requirement, and we'll be delighted to
16 do that at this point. Do you have any of the yellow forms
17 or anything? Oh, you're afraid of me, ma'am. I do
18 apologize. It's a pleasure working with you.

19 SHEPHERD: I do have one comment, and I didn't tell
20 you this ahead of time.

21 PROFESSOR LEDERER: Oh, yes, I forgot one too but
22 go ahead.

23 SHEPHERD: I'm not sure if we're going to be
24 redoing this trial, but please don't speak about this with
25 your colleagues in your classrooms if there are other

0104

1 students who are going to be participating in this study.

2 JUROR: Is it the same thing?

3 PROFESSOR LEDERER: There are variations here that
4 I don't want to go into now which are part of the experiment,
5 but we would ask you not to talk about the trial or what you
6 did here and not only this semester but also next semester
7 because some of this is going to continue into second
8 semester as well.

9 Okay? Thank you very much and enjoy the rest of
10 the weekend, such that it may be

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Appendix G

Jury Room Deliberation Technology Manual



Courtroom 21

*A Joint Project of the William & Mary School of Law
and the National Center for State Courts
www.courtroom21.net*

Manual for Jury Room Deliberation Technology*



This document was developed under Grant SJI-01—062 from the State Justice Institute. The points of view expressed are those of the Courtroom 21 Project and do not necessarily represent the official position or policies of the State Justice Institute. This manual is based on the SJI-funded Courtroom 21 Research Report, *The Use of Technology in the Jury Room to Enhance Deliberations* which may be consulted at www.courtroom21.net for additional information.

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§ 1-10.00 Introduction

§ 1-11.00 Scope

This Manual is intended to supply judges, court administrators, and court technologists with the information necessary to easily install and successfully use technology, including portable technology, to assist jurors in their deliberations. It primarily concentrates on using display technology to give jurors the ability to view evidentiary exhibits together as a jury, quickly and easily. ***This Manual applies both to traditional trials in which no technology is used*** and to technology-enhanced trials in which evidence is presented electronically.

Research proves conclusively that it is not enough to just give jurors technology. For them to use it, and use it properly, they must comply with a given procedure. That procedure, the Deliberation Technology Protocol, is set forth the below.

§ 1-12.00 Why Use Technology in Deliberations?

A trial is conducted so that we can settle a dispute, whether civil or criminal. In jury trials, the jurors settle that dispute with their verdict. Everything rests on the quality of the jury's deliberations and its verdict. During trial, lawyers present the evidence to the jury so that the jury will be able to decide what happened in the case and then, following the judge's explanation of the law, reach a verdict. During deliberations, jurors customarily exchange their memories and interpretations of the key pieces of evidence. Most jurisdictions supply the jurors with at least a substantial amount of the evidence that was formally received during trial, especially documents. Jurors can then review the evidence and argue its meaning to one another in order to decide the facts of the case. At present, jurors ordinarily must either pass the exhibits around or consult individual copies in jury notebooks or similar collections of materials.

Deliberation room display technology lets all the jurors look at a single exhibit at the same time and discuss its meaning. When the same technology is used to display jury instructions, jurors make special efforts to comply with the court's explanation of the law. Research tells us that jurors appreciate modern display technology and believe that it is a major help. In fact, the jurors have been incredibly positive in reporting how much they appreciate this help. At the same time, the research tells us that deliberation room technology does not appear to adversely affect the verdict or have any other disadvantage. Although more research needs to be conducted, deliberation room technology does not appear to make deliberations any longer, and it may make them shorter.

When a trial includes electronically displayed evidence - e.g., the lawyers show evidence with VCR's, document cameras, or computers - using deliberation display technology may be the best, or sometimes the only, feasible way of allowing the jury to review evidence.

Non-display technologies can also be important. Assistive technologies help jurors who may have difficulties in hearing or seeing, in particular.

Happily, deliberation room technology can be easily operated by jurors without any assistance other than a brief demonstration by a bailiff or other member of the court staff.

§ 1-13.00 *Background - the Courtroom 21 Study, The Use of Technology in the Jury Room to Enhance Deliberations*

With the financial assistance of the State Justice Institute, during 2001-2002 the Courtroom 21 Project conducted a major study of deliberation room technology. The study had five parts:

- i Legal research to determine the law that governs the use of admitted evidence during deliberations;
- i A review of potential jury room technologies;
- i A survey of the state courts, and, through the kind assistance of the Federal Judicial Center, the federal district courts, to find out what exhibits went to the jury, the degree to which display or other technology was in use for deliberations, the process by which technology-presented evidence was reviewed by the jury, and related questions;
- i Scientifically controlled studies at William & Mary Law School involving 15 jury trials of the same case to determine how useful different types of deliberation room technology could be; and
- i Field tests in real trials in real cases of the protocol developed by the earlier experiments (in Florida's 9th Judicial Circuit and the United States District Court for the District of Oregon).

The report of that year-long study, *The Use of Technology in the Jury Room to Enhance Deliberations*, conducted under Grant SJI-01-N-062, is available through the Courtroom 21 web site, www.courtroom21.net. This Manual incorporates what was learned as a result of that study. Readers interested in learning more about what was done and learned should consult the detailed report. This Manual is primarily a "how-to" guide. The Report details the research that was done to reach the conclusions presented in this Manual.

§ 2-10.00 *A Short Legal Note about Jury Exhibits*

In order to help a jury look at trial exhibits, it is important to know what those exhibits may be. Ordinarily, the jury may receive an exhibit during deliberations only if it has been received into evidence at trial *and* is also sent to the jury during deliberations. The types of evidentiary exhibits that are usually sent to the jury room include documents and photographs. Physical evidence, video, or audio tapes may be sent or available.

Many courts will not allow jurors in the jury room to review videotaped depositions or their equivalent. Similarly, at least some courts will not let the jurors see what is often called

“demonstrative evidence” (information used at trial to help explain testimony or other evidence). This can include information summaries, charts, and time-lines, and computer animations showing expert views of how or why an incident took place.

Whether jurors will automatically be given exhibits when they go into the deliberation room, may ask the court for them, or may even be prohibited from reviewing them, depends on the court. In most jurisdictions, what happens is controlled by local custom. Different judges in the same court may have different practices.

Before a court technologist can properly assist a jury with deliberation room technology, the technologist must know what types of exhibits may be reviewed by the jury during deliberations.

§ 3-10.00 Giving the Jury the Ability To Look At Exhibits Together

§ 3-11.00 The Goal

The goal is to give the jurors the ability to look at exhibits quickly and easily by projecting them electronically so that all the jurors can see them clearly. One or more jurors must also have the ability to enlarge (zoom in) or decrease (zoom out) the image and also point to part of it. The ability to zoom in and out is **essential**.

§ 3-12.00 Equipment Types¹

§ 3-12.10 Traditional Trials

In a traditional trial, the evidence will consist primarily of witness testimony, documents, photographs, charts, and, possibly, audio or video tapes. Jurors most often will review documents in the jury room.

§ 3-12.11 What to Use to Show Exhibits

The type of technology that will most easily permit the presentation of documentary evidence to jurors is the document camera. Most document cameras consist of a vertically mounted color television camera aimed downwards at a horizontal base upon which a document or object can be placed. Most document cameras have at least a manual or autofocus control as well as the ability to zoom in or out so as to enlarge or diminish the area of the document or object to be displayed. Sophisticated document cameras increasingly tend to have hand-held remote controls.

¹ The equipment used in the experiments upon which these recommendations are based was loaned to the Courtroom 21 Project by its Participating Companies. Other vendors often supply similar equipment. This Manual, however, reflects the equipment with which the Project has first-hand familiarity.

Many document cameras provide overhead lighting of the base in order to enhance the visibility of the item to be displayed. In some cases this lighting is provided by bulbs that are mounted on moveable arms; the arms may take up significant vertical space.

Nearly all document cameras are designed so that they can show transparencies, x-rays, and slides. Some cameras come equipped with internally illuminated bases for this purpose; others have optional light boxes that can be placed on the base to provide similar functionality.

Document cameras must be connected to some form of display device. Ordinarily this would be one or more televisions, monitors, or projection units.²



Portable WolfVision Visualizer

Document cameras are relatively simple to operate. The most basic provide zoom-in, zoom-out, and autofocus capabilities. All that a juror need do is place a document, photo, chart, etc. on the base, and an image immediately appears on the display device. Document cameras used in the jury room should be VERY simple to operate. ***Jurors will not use equipment that they do not easily understand.*** Equipment with multiple features may discourage juror use.

Court staff should always check the focus of a document camera or display device or the tracking on a VCR just before the jurors are due to deliberate. That will minimize the risk of accidental equipment failure through “human error” on the part of someone who wandered in.

Other input devices of potential application to deliberations are audio tape players and video tape players. As law enforcement increasingly shifts to CD-recordings, CD players will be necessary for wiretaps and the like. We can anticipate a similar move from tape to DVD in the years to come; we have already moved some video footage to CD's. For traditional trials, these technology needs will best be met by using basic equipment such as a VCR and TV to play back a videotape.

² Leigh Kades, *Document Cameras*, COURTROOM 21 COURT AFFILIATES TECHNOLOGY WHITE PAPER 2002-06-01 (Draft June, 2002).

§ 3-12.12 What To Use To Display Exhibits

The primary display means available are:

- i traditional televisions
- i television monitors³
- i computer monitors capable of displaying traditional video
- i LCD or plasma displays
- i rear projection devices
- i front projection devices

Most courts will have traditional televisions or television monitors available.⁴ Unfortunately, these ordinarily are the least desirable display devices for the deliberation room. Even when large enough, they tend to be hard to see from the sides and are usually susceptible to glare. Courtroom 21 experimentation indicates that televisions should be used to display documents only when there are no other reasonable alternatives. Very large high-end monitors likely would prove useful if available, however. Subject to glare from room lighting or outside windows, televisions can be highly effective for showing photographs or videotapes.

At present, most LCD screens are designed for personal use, and those that are reasonably priced will range up to 18 inches in diagonal measurement. Use of these monitors is customary in high-tech courtrooms where jurors often use them either on a one-juror-to-one-screen basis or two jurors to a single screen. So long as these monitors are linked to equipment that could also show traditional video,⁵ they are highly desirable. Given the need for multiple monitors ordinarily they would best be used in a permanent or semi-permanent installation. This is not a probable deliberation room use for most courts.

Plasma screens are large, high-resolution screens usually with diagonal measurements ranging from 40 to 61 inches. Customarily they can display any usual video image. They can be wall-mounted or placed on any large flat surface via an optional stand. When image



³ Capable of displaying computer output as well as traditional video.

⁴ Ordinarily these cannot display computer output unless a scan converter is used. Such converters are easily available and inexpensive; some notebook computers can output composite the type of signal that every television should handle, or even S video, a higher quality signal that some televisions can use.

⁵ It is easily possible to design a deliberation room in which all display images are digital in nature. However, this would entail sufficient expense or complexity that we believe that most courts would *for the moment* prefer the ability to show document camera or VCR images more easily, especially as equipment must often be moved from one jury room to another.

clarity, viewing angle, and room size are considered, plasma screens ordinarily are the display means of choice. Unfortunately, although they are fairly common in high-technology courtrooms, they are rare in most state courtrooms. Their chief (perhaps sole) disadvantage is their cost; high resolution units frequently cost \$ 15,000 or more apiece. They are becoming cheaper, however, as manufacturers position them for home TV use.

Projection units are simply units that display images on a flat surface. They range in size from small models the size of a large hard-cover book to the enormous desk-sized units often used in rock concerts; most are highly portable. Projection units can display images from either the rear or the front. Most can display any type of video signal, including computer output. Rear projection is highly desirable because viewers do not see the projection unit - only the screen. Unfortunately, rear projection is not ordinarily possible

except in large rooms where the projector can be located far enough to the rear of the screen. The critical exception to this statement takes place when manufacturers install projection units in special enclosures with mirrors that eliminate the need for a large physical distance between projector and screen. Although a number of



40 inch SMART Board in corner



3000i SMART Board in Courtroom 21 jury room

manufacturers produce these products, SMART Technologies is best known in the legal world for its rear projection SMART Boards. These single-unit rear-projection displays are especially useful in conference/jury room sized spaces. Although technically portable, their size makes significant movement difficult, and they range in price from \$10,000 to about \$20,000. Given enough space, a large rear projection system such as SMART's 67-inch diagonal 3000i might be ideal.

Front-projection units are usually placed on stands or tables and project their images onto screens or, if need be, walls.⁶ They can cost from about \$5,000 to \$15,000 for units of potential interest in jury rooms. Critical concerns include resolution (cheaper ones may not handle all customary computer outputs) and brightness. Those units that cannot cope with bright

⁶ A recent advance by NEC is a projector, the DT 100, with a top that is a scanner. A juror could place a paper exhibit on top of the unit and press a button, and an image of the paper will be displayed without the need of a document camera.



indoor lights or the results of windows will require dimming room light or using drapes, or both. Their noise and often the need to put them on the jury room table where they may disturb jurors and interfere with people and paper are problematic. However, inasmuch as many high-technology courtrooms were equipped with such projectors and many courts are now replacing those units either with more capable devices or alternative display devices, a number of courts are likely to find themselves with available projectors that could be used in jury deliberation rooms.

Assuming normal deliberation room sizes, for display purposes in declining order of utility, we recommend plasma screens, rear-projection units, front-projection units and televisions. We assume that individual LCD monitors are not a viable alternative for most courts.



Document “call-out” displayed by computer using TrialPro software.

§ 3-12.20 Technology-Augmented Trials

Technology augmented litigation usually means the electronic display in court of evidentiary exhibits. Although there are a wide range of possible courtroom technologies, the core function is the display of documents, photographs, charts, and similar exhibits. These trials are much faster than are traditionally presented cases, and the federal courts are moving rapidly to wholesale adoption of evidence presentation technology, an adoption that will spur state court adoption. It is at least desirable to enable courts to make digitally presented exhibits available to the jurors during deliberation in the same way in which they were presented at trial. Further, some computerized exhibits have never had a physical form, and jury review of them in an altered nature seems questionable.

Providing jurors with a meaningful opportunity to review electronically presented evidence is not a simple matter. Not only must the deliberation room be equipped with the technology to review computer-based exhibits, but from a practical perspective the jurors must be supplied with a way to operate that equipment that does not require any computer literacy or expertise.

If a trial has generated any written exhibits or written jury instructions, the court should place a document camera as well as a computer and display device in the deliberation room.

§ 3-12.21 Showing Computer-Based information

The key piece of equipment for technology-augmented trial jury deliberations is a computer. Either a desktop or notebook computer can be used, but a desktop may be preferable if a keyboard is used.

The evidence must be loaded into the computer by a member of the court staff, and the jurors must be able to operate the computer easily. We accomplished this in our experiments by using a high-end litigation software package, TrialPro by IDEA, Inc., to enable access to the exhibits. We supplied the jurors with a list of the exhibits and simple codes with which to recall them. For example, in our experimental trial, “X1” brought up an image of the case’s contract.⁷ The software gives lawyers many different ways to mark up the evidence during trial. We were concerned that the user menu would be too complicated for jury use. As a result, we then modified the usual TrialPro menu to eliminate nearly all of the user options except the ability to enlarge text (to make call-outs). Our jurors had no problem using the software to retrieve, display, and enlarge pieces of the documents and images stored in the computer.



“Front” of jury room with document camera, computer keyboard, and plasma screen.

When showing information from a computer, the computer must be connected to a display. Technologists must be sure that the display device’s resolution capabilities match those of the computer. Otherwise, the computer’s resolution must be lowered, or a better display obtained. Courtroom 21 experiments showed that low computer resolution, (640 x 480) ordinarily was sufficient to display documents. Higher resolution gave only a slight improvement.

§ 3-20.00 Annotation Technology

Many courts supply jurors with chalk boards or flip charts; nearly all supply them with paper and pencil/pen. Giving jurors the ability to communicate with each other through writing would seem to be an important need - especially when jurors are attempting to present their views of physical relationships, create visible calculations, or visually argue their points. Annotation technology permits this electronically though what are usually called, “whiteboards.” Speaking generally, there have been four “generations” of electronic⁸ whiteboards. The first

⁷ The software also permits the use of a barcode reader which would be even more effective.

⁸ The original white board, of course, was exactly that - a flat white surface usually wall-mounted- that could be written on with erasable colored markers.

generation permitted a person to write on the board and the writing was then subject to either being printed out electronically or displayed electronically, or both. The second generation added a separate front-projection unit so that the writer could also mark or annotate on a displayed image, such as a street intersection.⁹ Third-generation whiteboards are rear-projection display units that provide the writer with the ability to write on the display screen, with or without an underlying image. Fourth-generation whiteboards are large plasma display screens fitted with overlays that turn the screen into a touchscreen. Coupled with the proper software this permits the writer to mark or annotate on the screen, with or without an underlying image. Both third- and fourth-generation whiteboards may be capable, as are SMART Boards, of controlling a remote computer via the writer's use of a finger or lightpen. All generations of whiteboards are commercially available, and all have potential use in a jury deliberation room. A number of firms now market inexpensive products that can be placed on or over flat surfaces to convert them into first-generation whiteboards.¹⁰

Where electronic whiteboards are especially useful is in their ability to permit a juror to display a video or computer image and then write on the image. One can easily imagine, for example, jurors debating how an intersection collision could have occurred, with differing jurors drawing electronically on a still photograph of the intersection.

Courts should consider installing electronic whiteboards in deliberation rooms. However, Courtroom 21 experimental work suggests that this is of lesser importance than giving the jurors the ability to see documents electronically.

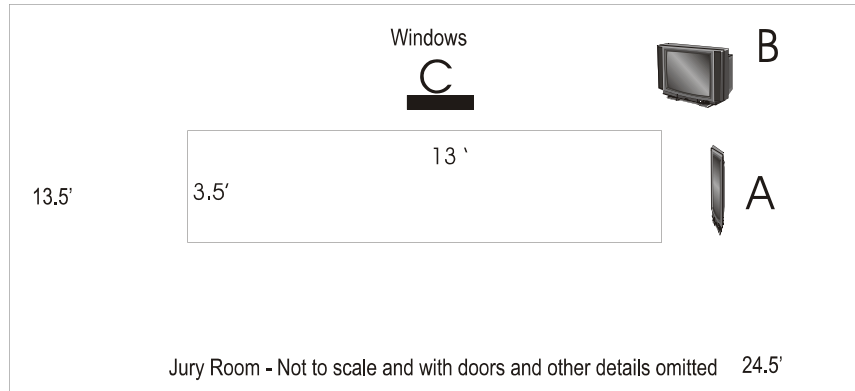
§ 3-30.00 Where to Put the Equipment

§ 3-31.00 Displays

If a court uses a traditional rectangular jury deliberation room, there are only a few primary locations in which to put a television, plasma screen, or projection device. The diagram that follows shows the Courtroom 21 jury room. Primary display equipment locations are at Points A, B, and C.

⁹ This requires careful projector location to keep the writer from stepping between the projector and the whiteboard. The Courtroom 21 Project has considered these boards relatively undesirable because of that concern.

¹⁰ Polyvision, for example, has a "CopyCam" that "is an image capturing system that uses NASA-level optical technology in a wall-mounted arm to snap pictures of everything written on an ordinary whiteboard or chalkboard. . . . [U]sers can send the contents of the board to a diskette, a Web site, or a wireless color printer. . . ." I The Insider News, # 1, Summer, 2002 at 4 (Infocomm promotional materials). The Courtroom 21 Project will install and test a copycam to be loaned by Polyvision in the Courtroom 21 jury room.

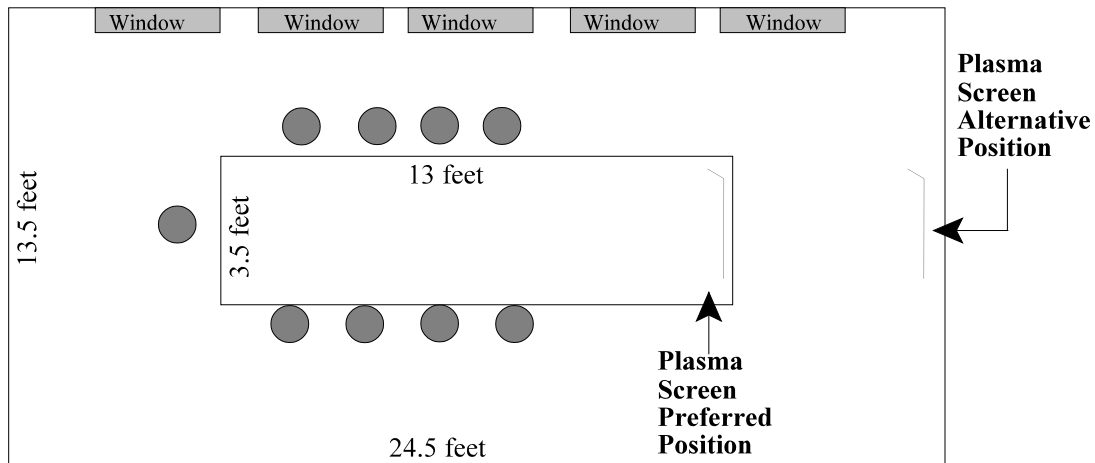


Room lighting is critical. Overhead lighting or bright outside lighting may cause crippling glare problems. Outside light in particular may wash out front projection images, which must be displayed on screens.

Because of the individual variations of each room and its lighting as well as that of the equipment to be used, it is not possible to predict in advance how well any piece of display equipment will work without actually trying it. However, experimental work shows that with jurors seated along the table, Point A in the diagram above is nearly always the best place to put the display device. Point B, a corner, is often at least adequate but may cause readability problems for those viewing the screen from the side. Point C ordinarily is a very distant third. Among other problems, Point C requires jurors on one side of the table to either turn their backs to the other jurors or to sit next to a display they cannot read.

When using a plasma screen, the best location at to put it on top of the table in the Point A location.

The alternative location for a plasma screen is to wall-mount it or stand it in front of the wall facing the end of the table, as shown below:.



When using a large rear projection unit that cannot be placed at Point A, a corner (Point B) location, usually will be adequate.

When using a television, Point C is likely to be especially difficult; jurors at the far ends of the table may not be able to read it at all.

§ 3-32.00 Document Cameras and Computers

The location of a plasma screen or projection unit may affect where to put other equipment. However, we found that a highly effective place to put the document camera was on a small table adjoining the jury room conference table near Point A. By keeping the camera off the main table the table is uncluttered and does not interrupt the sight line to the display screen. We found that the document camera would be operated either by the jurors who happened to sit closest to it or by the juror most interested in doing so.

In a high-technology trial deliberation, we recommend placing the keyboard and mouse (and bar code reader, if any) near the document camera. The same juror can operate both.

§ 4-10.00 How to Do It - The Deliberation Technology Protocol

Assuming that the equipment is installed in the jury deliberation room as discussed above, jurors will use jury room technology easily and efficiently, but only if the following procedure is followed:

1. Jurors *should be told* as part of the concluding jury instructions in substance that:

We have installed in the jury deliberation room equipment that you may wish to use so that you can all see the trial exhibits at the same time. The [bailiff] will show you how to operate it.

The wording is not critical; the substance is. The judge should **not** instruct:

We have installed in the jury deliberation room equipment that you may wish to use, *if you think it necessary*, so that you can all see the trial exhibits at the same time.

2. The jurors should be given an index of the exhibits with sufficient detail to enable them to identify the specific exhibits. This is especially important if the exhibits are stored on a jury room computer.
3. A simple set of written directions for the use of the deliberation room technology should be placed in a highly visible location in the room, preferably under the document camera's camera, and **displayed** on the screen
4. A member of the court staff **must** show the jurors on arrival in the jury room how to operate the equipment, hands-on. In the case of a document camera, the staff member must demonstrate how to use the camera controls to zoom in and out. With a computer-based system, the staff member must show how to retrieve an exhibit from the index and how to use the software to enlarge portions of a page.

Step 4 is the most important. Courtroom 21 experiments show that most jurors ordinarily will not use equipment that they feel is unnecessary. However, they are both highly sensitive to what they perceive as the judge's desires and reluctant to do anything that might be inappropriate. Without the demonstration in Step 4, many jurors either will not use the equipment or will not understand how to use it properly. Perhaps due to the stress of deliberations and having to reach a verdict, they can also be oblivious to the obvious. During the Courtroom 21 study, numerous jurors ignored electronically displayed (and very large) written instructions as to how to use the document camera. In at least one trial, one or more jurors failed to use a chalkboard because the orienting staff member hadn't pointed it out.

§ 5-10.00 Helping Those with Difficulties Hearing and Seeing - Assistive Technology

In modern times we have worked to ensure that all members of our nation are available for jury service.¹¹ Accordingly, we are increasingly faced with jurors who are in need of special assistance to assure their ability to function properly as jurors. In most circumstances, this means assisting the hard-of-hearing, although it may refer to the visually challenged as well.

In addition to sign language interpretation, there are two general approaches for helping the hard of hearing. Those who can hear to some degree can be assisted through infrared headphones. One or more microphones conveys sound to the infrared emitter which transmits it to individual headphones worn by jurors via infra-red. Each headphone-wearing juror then hears a personally amplified version of what is occurring.¹² This approach has the added advantage that it can be used to convey foreign language interpretation. Indeed, systems capable of multiple frequencies permit transmission of multiple languages. A substantial number of state and federal courts have access to infrared hearing assistance devices.

Those who cannot benefit from these devices but who can read can use the services of a realtime court reporter. Communication Access Realtime Translation (CART) is a service provided by a court reporter to assist persons who are deaf, late-deafened or hard of hearing (HOH) in any proceeding. During a trial or deliberations, CART requires a separate reporter other than the reporter taking down the trial to provide CART services to the HOH juror or trial participant. The CART reporter ordinarily will use his or her own equipment, including, but not limited to, a steno machine with laptop computer with appropriate software or voicewriting enabled computer. The CART reporter ordinarily sets up next to the person needing assistance during the trial and/or during deliberations. The CART court reporter's output would be displayed on a computer monitor screen in realtime. The screen would face the person so that he or she could read along during trial or deliberations. The difference between court record realtime and CART reporting is that CART is not necessarily verbatim. It enables the HOH person to understand the proceedings. Therefore, paraphrasing by the reporter is commonplace in order to get the meaning across to the juror.

Assistance to the visually challenged can also be of importance. Those who can see with assistance may benefit from using computer software that displays images which are substantially enlarged on the monitor. In the event that a blind juror who can read braille is part

¹¹ See, e.g., *Standard 1: Opportunity for Service*, ABA STANDARDS RELATING TO JUROR USE AND MANAGEMENT (1993). "Among the suggested steps for implementation" is:

9. Examine the need for communications technology and services so that persons with hearing and sensory disabilities can serve on juries.

¹² This same technology can work with hearing aids as well.

of a jury panel, documents can be scanned to a computer and then sent to handheld braille devices which will permit the juror to read the document in braille. This was done successfully for a blind witness in the 2001 Courtroom 21 Laboratory Trial, *United States v. Linsor*.

§ 6-10.00 Conclusion

A juror in a criminal trial tried in the United States District Court for the District of Oregon using deliberation room technology conducted under the protocol set forth in this Manual volunteered that:

It cut *way* back on paper & I believe it made the time more effectively used.
(Emphasis in original).

[The jury] viewed several items multiple times & it aided in our discussion.

Without the technology the jurors “wouldn’t have been able to track specifics together otherwise.”

All of the responding jurors in that trial enthusiastically endorsed the use of jury deliberation room technology. All reported the perception that deliberations were faster due to the technology than they would have been without it.

It is rare to determine a way in which we can assist our hard-working jurors so easily. Of course, cost is always a factor. As courts increasingly acquire courtroom technology, they will have the opportunity as they upgrade to move some of it into deliberation rooms permanently. As courts acquire portable equipment, much of that will be able to be moved from the courtroom to the deliberation room. And happily, of course, technology prices for this type of equipment keep dropping so that equipment can be purchased directly to assist the jury.

As one perceptive American jurist long ago noted,

*Jury service honorably performed is as important in the defense of our country, its Constitution and laws, and the ideals and standards for which they stand, as the service that is rendered by the soldier on the field of battle in time of war.*¹³

Jury room deliberation technology provides an additional tool with which to equip our jurors and make their difficult and often arduous service easier. We ought to proceed to do so as rapidly as may be reasonable. We trust that this Manual may be of assistance in doing so.

¹³ELIZABETH FROST-KNAPPMAN & DAVID S. SHRAGER, *THE QUOTABLE LAWYER* 171-72 (1998 rev. ed.) quoting the Honorable George H. Boldt.