

HELPING TROUBLED DELIBERATING JURIES

Module #1: Improving the Deliberative Process

[1 hour]

Learning Objectives:

After this session, the participants will be able to:

1. Recite at least two empirically proven methods for improving group decision-making;
2. Recite methods by which a judge, during final instructions to a jury, can promote not only juror understanding about the law and evidence in the case, but also citizen education about the courts and legal processes generally; and
3. Create a list of informational guides for reducing juror confusion while not mandating any particular deliberation style or manner for consideration of evidence.

Learning Activities:

1. **Opening and mini-lecture:** One of the instructors, perhaps a social scientist rather than a lawyer, begins by highlighting the latest empirical research about factors that promote or hinder efficient group decision-making. A faculty member distributes “Behind Closed Doors – A Guide for Jury Deliberations,” AMERICAN JUDICATURE SOCIETY [“AJS”](1999) and highlights its components: (1) getting started, (2) selecting a presiding juror, (3) getting organized, (4) discussing the evidence and the law, (5) voting, (6) getting assistance from the court, (7) the verdict, and (8) once jury duty is over. This booklet will be the catalyst for group discussions that follow. (15 minutes)
2. **Group discussion:** The lead instructor asks the participants to divide into smaller discussion groups approximating the size of a deliberating jury in a civil or criminal case. These “juries” will be asked to role-play using the guide booklet in a mock deliberation setting. Thereafter they should address and report on the following: (1) what are the legal and practical merits and demerits of providing such deliberation guidance to jurors, (2) to what degree, if any, should a trial judge be an educator to a deliberating jury, and (3) what are the minimum, practical steps that a trial judge should take to reduce juror confusion. After reconvening of groups into a plenary session, the instructor explains the design for its juror guide is to have a positive, yet benign, effect – increasing efficiency and juror satisfaction with deliberations while not altering the verdict or manner in which jurors consider the evidence. • (35 minutes)
3. **Closing:** The instructor closes by facilitating a plenary discussion about whether any participant judge plans to institute any new deliberation guidance technique in

• See, Robert G. Boatright & Beth Murphy, “How Judges Can Help Deliberating Jurors: Using the Guide for Jury Deliberations,” 36 COURT REVIEW 38-45 (1999).

his courtroom in the future. The instructor also identifies any available resources on this subject. In addition to AJS's "Behind Closed Doors – A Guide for Jury Deliberations," she/he suggests Principles 14 and 15 of the ABA *Principles for Juries & Jury Trials*. (10 minutes).

Materials:

1. For use during class: "Behind Closed Doors – A Guide for Jury Deliberations," AMERICAN JUDICATURE SOCIETY (1999) and Principles 14 & 15 of the ABA *Principles for Juries & Jury Trials*.
2. Reference materials
 - a. Annotated bibliography. Local instructor will add any state-specific reference materials that would be helpful for the participants (e.g., bench books, case law, statutes, court rules, etc.)
 - b. Sample jury instructions offering non-coercive assistance to a jury on how to deliberate, picking a foreperson, etc.

Bibliography:

Core Documents

AMERICAN BAR ASSOCIATION, PRINCIPLES FOR JURIES & JURY TRIALS (2005), http://www.abanet.org/jury/pdf/final%20commentary_july_1205.pdf
BEHIND CLOSED DOORS: A GUIDE FOR JURY DELIBERATIONS, American Judicature Society (1999) (http://www.ajs.org/jc/juries/AJS.JuryDelib_04.pdf).

Journals/Periodicals

Robert G. Boatright & Beth Murphy, *How Judges Can Help Deliberating Jurors: Using the Guide for Jury Deliberations*, 36 COURT REVIEW 38-45 (1999).
B. Michael Dann, "Learning Lessons" and "Speaking Rights": *Creating Educated and Democratic Juries*, 68 IND.L.J. 1229 (1993).
Shari Seidman Diamond & Jonathan D. Casper, *Blindfolding the Jury to Verdict Consequences: Damages, Experts, and the Civil Jury*, 26 LAW & SOC'Y REV. 513, 548-53 (1992).
Shari Seidman Diamond & Neil Vidmar, *Jury Room Ruminations on Forbidden Topics*, 87 VA. L. REV. 1857 (2001).
Meyer & Rosenberg, *Questions Juries Ask: Untapped Springs of Insight*, 55 JUDICATURE 105 (1971).
Fred L. Strodbeck & Richard M. Lipinsky, *Becoming First Among Equals: Moral Considerations in Jury Foreman Selection*, 49 J. PERSONALITY & SOC. PSYCHOL. 927, 934-36 (1985).

Books and Other Works

G.Thomas Munsterman, Paula L. Hannaford-Agor & G.Marc Whitehead, **Jury Trial Innovations, 2nd Edition**, 149-154, Appendix 4, NATIONAL CENTER FOR STATE COURTS (2006).

Neil Vidmar & Valerie P. Hans, **American Juries**, Prometheus Books (2007).