



FACT SHEET:

Juror Discussion of Evidence Before Deliberation

Summary: While jurors are traditionally informed not to discuss evidence before deliberation, some courts have begun to permit juror discussion of evidence before deliberation in order to motivate juror involvement in the trial and ensure more accurate fact-finding.¹ Jurors who discuss evidence during the trial may recall the evidence more easily when deliberations begin.²

Empirical Studies: The Arizona Jury Project found that eighty nine percent (89%) of juries that were instructed that they could discuss evidence in the case before deliberation chose to do so.³

Current Usage: An ongoing questionnaire circulated by the NYU Civil Jury Project noted that fourteen percent (14%) of judges have permitted jurors to discuss evidence prior to final deliberations.⁴

Legal Support:

A few state rules explicitly permit juror discussion of evidence before deliberation. See ARIZ. R. CIV. P. 39(f) (“[J]urors shall be instructed that they will be permitted to discuss the evidence among themselves in the jury room during recesses from trial when all are present, as long as they reserve judgment about the outcome of the case until deliberations commence.”); COLO. R. CIV. P. 47(a)(5) (“[J]urors may discuss the evidence among themselves in the jury room when all jurors are present.”); N.D. R. CT. 6.11 (“In a civil case, the court may, without objection, allow the jury to engage in pre-deliberation discussion.”). And some states have not explicitly prohibited the practice. See *Steele v. Atlanta Maternal–Fetal Medicine*, 610 S.E.2d 546, 552 (2005), *overruled in part on other grounds by Smith v. Finch*, 681 S.E.2d 147 (2009) (“Although Georgia is not one of the states that have codified the prohibition of pre-deliberation discussions, the Supreme Court of Georgia has found it ‘clearly erroneous’ for jurors to violate the trial court’s instructions not to discuss the case before final deliberations.”).

¹ B. Michael Dann, “*Learning Lessons*” and “*Speaking Rights*”: *Creating Educated and Democratic Juries*, 68 IND. L.J. 1229, 1240 (1993).

² *Id.*

³ Shari Diamond et al., *Juror Discussions During Civil Trials: Studying an Arizona Innovation*, 45 ARIZ. L. REV. 1 (2003); Valerie P. Hans et al., *The Arizona Jury Reform Permitting Civil Jury Trial Discussions: The Views of Trial Participants, Judges and Jurors*, 32 U. MICH. J.L. REFORM 349 (1999).

⁴ Out of twenty-one (21) judicial advisors to the project, one (1) judge has permitted pre-deliberative juror discussion of evidence, two (2) regularly use the innovation, and eighteen (18) judges have never used the innovation. Questionnaire for Judges on Use of Jury Innovations (on file with the NYU Civil Jury Project), data current as of April 2016.