Exhibit 2

CIVIL JURY PROJECT
at NYU School of Law

FACT SHEET:

Interim Arguments By Counsel

Summary: Interim arguments are arguments that counsel make to the jury between opening and closing statements. Counsel are generally given an overall time limit for interim statements and can chose how to allocate that time. Interim arguments are encouraged by Standard 13(G) of the ABA American Jury Project Principles and Standards, which provides that "[p]arties and courts should be open to a variety of trial techniques to enhance juror comprehension of the issues including: alteration of the sequencing of expert witness testimony, mini- or interim openings and closings, and the use of computer simulations, deposition summaries and other aids."[1]

Empirical Studies: 2008 ABA Seventh Circuit Project: In seventeen (17) trials, over eighty percent (80%) of the jurors reported that interim statements of counsel were helpful to aid juror comprehension of the case.[2] Over eighty-five percent (85%) of participating judges thought the use of interim statements increased the jurors' understanding and said they would permit interim statements during trials in the future. Over ninety percent (90%) of jurors thought that interim statements were helpful when used to introduce or summarize evidence.

Current Usage: Only one percent (1%) of civil trials included interim summaries of evidence.[3] An ongoing questionnaire circulated by the NYU Civil Jury Project noted that nineteen percent (19%) of judges have permitted counsel to make interim statements during trial.[4]

Legal Support: The advisory notes to Rule 51(b)(1) of the Federal Rules of Civil Procedure reference the use of interim statements by some courts: "The time limit is addressed to final jury arguments to reflect the practice that allows interim arguments during trial in complex cases; it may not be feasible to develop final instructions before such interim arguments." FED. R. CIV. PRO. 51(b)(1). And interim arguments (or "summations") in some form have been permitted in lengthy and/or complex civil trials. *See* Consorti v. Armstrong World Industries, Inc., 72 F.3d 1003, 1008 (2d Cir. 1995), *judgment vacated on other grounds*,

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[1] American Bar Ass'n, Principles for Juries & Jury Trials (Aug. 2005), http://www.americanbar.org/content/dam/aba/migrated/juryprojectstandards/principles.authcheckdam.pdf

[2] SEVENTH CIRCUIT BAR ASS'N AMERICAN JURY PROJECT COMM'N, *SEVENTH CIRCUIT AMERICAN JURY PROJECT FINAL REPORT 37-38 (Sept. 2008).*

[3] See Paula Hannaford-Agor, NCSC Center for Jury Studies, But have we made any progress? An update on the status of jury improvement efforts in state and federal courts (2015).

[4] Out of twenty-one (21) judicial advisors to the project, four (4) judges have had counsel make interim statements as to what a witness will prove or has proved or failed to prove, and seventeen (17) 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.

518 U.S. 1031 (1996) ("[W]e have noted repeatedly that a district court can greatly assist a jury in comprehending complex evidence through the use of intelligent management devices. Such management devices include . . . interim explanations by the judge on issues of law and fact and on the limited use of evidence, [and] interim addresses to the jury by counsel . . . ."); In re Brooklyn Navy Yard Asbestos Litigation, 971 F.2d 831, 836 (2d Cir. 1992) (as part of handling the consolidated trial of 79 asbestos-related personal injury and wrongful death actions "to ensure that the jurors could assimilate the vast amounts of information necessary to assess the claims," the district court employed an interim summation procedure); In re New York Asbestos Litigation, 149 F.R.D. 490, 499 (S.D.N.Y. 1993) (interim summations "considered and adopted where appropriate during the consolidated trial" of tort actions based on asbestos exposure). *Cf.* Baez-Cruz v. Municipality of Dorado, 780 F. Supp. 2d 149, 151 (D.P.R. 2011) (stating that in a Title VII discrimination action where there was to be a month-long hiatus in the presentation of evidence and the jury requested some mechanism to refresh their recollection of the testimony upon their return to court, "[i]nterim summations would have been considered but the case [was] not lengthy and complex, and only plaintiffs [had] presented witnesses.").

Legal scholars have also noted the helpfulness of interim statements in complex and lengthy civil trials. *See, e.g.*, Tom M. Dees, III, *Juries: On the Verge of Extinction? A Discussion of Jury Reform*, 54 S.M.U. L. REV. 1755, 1778–80 (2001) (summarizing arguments for and against interim summations and citing state task forces advocating use of said); Douglas G. Smith, *Structural and Functional Aspects of the Jury: Comparative Analysis and Proposals for Reform*, 48 ALA. L. REV. 441, 537 (1997) (nothing that interim summations are particularly desirable in lengthy or complex cases); Robert M. Parker, *Streamlining Complex Cases*, 10 REV. LITIG. 547, 553-54 (1991) (discussing the many advantages of interim argument in many week or month-long trials). And the Federal Judicial Center, MANUAL FOR COMPLEX LITIGATION § 22.34, at 143 (3d ed. 1995) recognizes the technique of having "counsel from time to time . . . summarize the evidence that has been presented or outline forthcoming evidence." The manual clarifies interim statements should not be used to argue the case—rather, to facilitate the jury's understanding and recollection of evidence presented. *Id.* at 143–44.

CIVIL JURY PROJECT
at NYU School of Law

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 predeliberation 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.").

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[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.

CIVIL JURY PROJECT
at NYU School of Law

FACT SHEET:

Preliminary Substantive Instructions

Summary: Preliminary substantive jury instructions are instructions provided to jurors at the start of a trial, before the presentation of evidence by the parties, on the elements of a claim or defense. Such instructions aim to facilitate (1) better decision making by jurors, and (2) greater understanding by jurors of their duty in the decision-making process by providing them with a legal framework for the parties' argument.[1] These instructions address Principle 6 of the American Bar Association's *Principles for Juries and Jury Trials*, which suggests that "[c]ourts should educate jurors regarding the essential aspects of a jury trial."[2]

Empirical Studies: 2005 New York State Jury Trial Project: Tested in twenty-six (26) civil trials. Ninety-two percent (92%) of judges and seventy-nine percent (79%) of attorneys thought that preliminary substantive instructions were helpful to jurors' understanding of the law.[3]

2008 ABA Seventh Circuit Project: In thirty-four (34) trials, more than eighty percent (80%) of the jurors, eighty-five percent (85%) of the judges and seventy percent (70%) of the attorneys who participated stated they believed that the intended goal of enhancing juror understanding was accomplished.[4]

2009 Houston Project: While no data was formally collected, more than seventy-five percent (75%) of jurors in nine (9) trials found that preliminary substantive instructions were helpful in keeping jurors focused on the evidence, increased the fairness of the trial, increased the efficacy of the trial, and should be used in future trials.[5]

Current Usage: In 2015, a National Center of State Courts survey of participants in state and federal civil trials noted that nineteen percent (19%) included preliminary instructions on the legal elements of the claims involved in the case.[6] An ongoing questionnaire circulated by the NYU Civil Jury Project noted that

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[1] SEVENTH CIRCUIT BAR ASS'N AMERICAN JURY PROJECT COMM'N, *SEVENTH CIRCUIT AMERICAN JURY PROJECT FINAL REPORT* 25 (Sept. 2008), http://www.uscourts.gov/file/3467/download.

[2] American Bar Ass'n, *Principles for Juries & Jury Trials* § III (Aug. 2005).

[3] *Final Report of the Committees of the Jury Trial Project*, NEW YORK STATE UNIFIED COURT SYSTEM 31-40 (2005), https://www.nycourts.gov/publications/jury-materials/Final_Report_of_the_Committees_of_the_Jury_Trial_Project.pdf.

[4] SEVENTH CIRCUIT BAR ASS'N AMERICAN JURY PROJECT COMM'N, *supra* note 1, at 25.

[5] Data compiled from results submitted to the Committee of the Jury Innovations Project. JURY INNOVATIONS PROJECT: AN EFFORT TO ENHANCE JURY TRIALS IN TEXAS STATE AND FEDERAL COURTS (2009), http://www.txs.uscourts.gov/sites/txs/files/PilotProgramManual.pdf.

[6] *See generally* Paula Hannaford-Agor, *But have we made any progress? An update on the status of jury improvement efforts in state and federal courts*, NAT'L CTR. FOR STATE COURTS (NCSC) CTR. FOR JURY STUDIES (2015),

eighty-one percent (81%) of judges have employed preliminary substantive instructions.[7] [Highlighting present because it is unclear whether our questionnaire actually asked about preliminary substantive instructions.]

Legal Support: Federal Rule of Civil Procedure 51(b)(3) provides courts with considerable leeway in determining when to instruct a jury. FED. R. CIV. P. 51(b)(3) ("The court may instruct the jury at any time before the jury is discharged.").[8] The Advisory Committee Notes to the 1987 Amendment of Rule 51 also explain that instructing jurors before argument:

> gives counsel the opportunity to explain the instructions, argue their application to the facts and thereby give the jury the maximum assistance in determining the issues and arriving at a good verdict on the law and the evidence. As an ancillary benefit, this approach aids counsel by supplying a natural outline so that arguments may be directed to the essential fact issues which the jury must decide . . . . Moreover, if the court instructs before an argument, counsel then know the precise words the court has chosen and need not speculate as to the words the court will later use in its instructions. Finally, by instructing ahead of argument the court has the attention of the jurors when they are fresh and can give their full attention to the court's instructions. It is more difficult to hold the attention of jurors after lengthy arguments.

While preliminary substantive instructions have been discussed in depth with regard to criminal cases,[9] only the Ninth Circuit has explicitly addressed substantive preliminary instructions in civil trials. Jerrold Elecs. Corp. v. Wescoast Broad. Co., 341 F.2d 653, 665 (9th Cir. 1965), *cert. denied,* 382 U.S. 817 (1965) (trial court's conduct in advising jury at outset of trial of the nature of the case and anticipated issues was not prejudicial to defendants as violation of rule that jury should be instructed after argument).

Some state rules of civil procedure explicitly permit the administration of preliminary substantive jury instructions. MINN. R. CIV. P. 39.03 (2016) ("After the jury has been impaneled and sworn, and before opening statements of counsel, the court may instruct the jury as to the respective claims of the parties and as to such other matters as will aid the jury in comprehending the trial procedure and sequence to be followed."); MASS. R. CIV. P. 51 ("At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests."). Furthermore, though a criminal case, People v. Harper, 818 N.Y.S.2d 113, 2006 WL 1543932 (N.Y. App. Div. 2006), cited the ABA Principles for Juries and Jury Trials alongside the 2005 New York State study as demonstrating the usefulness of a trial court providing preliminary substantive instructions to juries.

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http://www.law.nyu.edu/sites/default/files/upload_documents/But-have-we-made.pdf. Data was collected from 1,673 state and federal court trials. Other types of preliminary jury instructions are more prevalent. For example, 87% of cases included preliminary instructions on jury conduct; 70% included preliminary instructions on internet use by jurors; and 49% included preliminary instructions on the burden of proof

[7] Out of twenty-one (21) judicial advisors to the project, eleven (11) judges regularly use the innovation, six (6) judges have used it, and four (4) judges have never used it. Questionnaire for Judges on Use of Jury Innovations (on file with the NYU Civil Jury Project), data current as of April 2016.

[8] *See also* 3 FEDERAL JURY PRACTICE AND INSTRUCTIONS—CIVIL ch. 101 (5th ed. 2009) (stating that preliminary instructions should provide a preliminary statement of legal principles and factual issues and explain briefly the basic elements of claims and defenses to be proved).

[9] JURY INNOVATIONS PROJECT, *supra* note 5, at 80-83 (collecting cases).

CIVIL JURY PROJECT
at NYU School of Law

FACT SHEET:

Limiting Length of Trials

Summary: This innovation involves limiting the length of trials by setting a maximum number of trial hours per party. Principle 12 of the ABA American Jury Project Principles and Standards provides that "Courts should limit the length of jury trials insofar as justice allows and jurors should be fully informed of the trial schedule established."[1] This is to eliminate unnecessary trial delay and disruption.[2]

Limiting the length of trials involves judges establishing time limits at the pretrial conference based on a number of factors, including the complexity of the issues, the burden of proof on each party and the nature of proof offered, and input from the parties.[3] A judge may also choose to limit the time counsel has to conduct specific parts of the trial.[4] Importantly, the judge should instruct the jury of the time limits and inform them should any changes to the schedule become necessary.

Empirical Studies: The 2008 ABA Seventh Circuit Project tested this innovation, but only in seven (7) trials, which was too small a sample size from which to draw meaningful conclusions.[5] Of those seven (7) trials, five (5) responses[6] reported that those time limits did not at all alter the fairness, efficiency, or their overall satisfaction with the trial process.

In the 2009 Houston Project, eighty-six percent (86%) of jurors in twelve (12) trials reported that they very strongly or strongly believed in the importance of knowing how long a trial would take at the outset.[7]

Current Usage: An ongoing questionnaire circulated by the NYU Civil Jury Project noted that about sixty-seven percent (67%) of judges have set time limits on jury trials.[8]

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[1] American Bar Ass'n, *Principles for Juries & Jury Trials* § IV (Aug. 2005)
[2] *Id.*
[3] Seventh Circuit Bar Ass'n American Jury Project Comm'n, *Seventh Circuit American Jury Project Final Report* 44-47 (Sept. 2008), http://www.uscourts.gov/file/3467/download.
[4] *Id.*
[5] *Id.* at 58-59.
[6] Time limits were implemented in seven trials, but the data was reported in the number of responses rather than the unique number of judges involved.
[7] Data compiled from results submitted to the Committee of the Jury Innovations Project. *JURY INNOVATIONS PROJECT: AN EFFORT TO ENHANCE JURY TRIALS IN TEXAS STATE AND FEDERAL COURTS* (2009), https://www.justex.net/JustexDocuments/0/CourtsAndLaw/Jury%20Innovation%20Project%20Manual%20101411.pdf.
[8] The questionnaire, circulated to twenty-one (21) judicial advisors to the project, found that six (6) judges regularly use the innovation, eight (8) judges have used it, and seven (7) judges have never used it. Questionnaire for Judges on Use of Jury Innovations (on file with the NYU Civil Jury Project), data current as of April 2016.

Legal Support: The Federal Rules of Civil Procedure and Evidence support the usage of trial time limits. FED. R. CIV. P. 16(c) ("At any [pretrial] conference under this rule consideration may be given, and the judge may take appropriate action, with respect to . . . (4) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 of the Federal Rules of Evidence; . . . (15) an order establishing a reasonable limit on the time allowed for presenting evidence; and (16) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action."). Fed. R. Evid. 611(a) ("The judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.").

Furthermore, a number of federal courts have supported limiting trial times. Wantanabe Realty Corp. v. City of New York, 01 CIV. 10137 (LAK), 2004 WL 2112566, at *2 (S.D.N.Y. Sept. 23, 2004) ("Trial courts have discretion to impose reasonable time limits on the presentation of evidence at trial. This is essential if they are to manage their dockets, as many cases compete for trials and for the attention of judges, and no party has an unlimited call on their time."); Life Plus Int'l v. Brown, 317 F.3d 799, 807 (8th Cir. 2003) ("Trial courts are permitted to impose reasonable time limits on the presentation of evidence to prevent undue delay, waste of time, or needless presentation of cumulative evidence."); Sparshott v. Feld Entm't, Inc., 311 F.3d 425, 433 (D.C.Cir. 2002) ("The district court's decisions on how to structure time limits are reviewable only for abuse of discretion.") (citations omitted); Amarel v. Connell, 102 F.3d 1494, 1513-15 (9th Cir. 1996) ("The case law makes clear that where a district court has set reasonable time limits and has shown flexibility in applying them, that court does not abuse its discretion. Moreover, to overturn a jury verdict based on a party's failure to use its limited time for witness cross-examination would be to invite parties to exhaust their time limits without completing cross-examination, then appeal on due process grounds."); Deus v. Allstate Ins. Co., 15 F.3d 506, 520 (5th Cir. 1994), *cert. denied,* 513 U.S. 1014 (1994) ("In the management of its docket, the court has an inherent right to place reasonable limitations on the time allotted to any given trial."); Borges v. Our Lady of the Sea Corp., 935 F.2d 436, 442-43 (1st Cir. 1991) ("District courts may impose reasonable time limits on the presentation of evidence."); Flaminio v. Honda Motor Co., 733 F.2d 463, 473 (7th Cir. 1984) ("[I]n this era of crowded district court dockets federal district judges not only may but must exercise strict control over the length of trials, and are therefore entirely within their rights in setting reasonable deadlines in advance and holding the parties to them....").

State courts have likewise limited trial times. Sneberger v. Morrison, 776 S.E.2d 156, 164 (W. Va. 2015) (holding that the Federal Rules of Procedure inform West Virginia Rules of Procedure and therefore permit judges to set time limits on trials); Varnum v. Varnum, 586 A.2d 1107, 1115 (Vt. 1990) ("We think that the power granted by [Vermont Rule of Evidence 611(a)] includes the authority to set reasonable limits on the consumption of time in examining witnesses."), *cited with approval in* Cenate v. Martelle, 2012-451, 2013 WL 3491182, at *3 (Vt. July 11, 2013); Hicks v. Kentucky, 805 S.W.2d 144, 151 (Ky. 1990) ("A trial court clearly has the power to impose reasonable time limits on the trial of both civil and criminal cases in the exercise of its reasonable discretion."); Brown v. Brown, 488 P.2d 689 (Ariz. 1971) (holding that it was reasonable for the trial judge to place a time limit on the presentation of the case); Messinger v. Mount Sinai Med. Ctr., 15 A.D.3d 189, 189 (N.Y. App. Div. 2005) ("The trial court has broad discretion to control the courtroom, rule on the admission of evidence, elicit and clarify testimony, expedite the proceedings and to admonish counsel and witnesses when necessary."); California Crane Sch., Inc. v. Nat'l Comm'n for Certification of Crane Operators, 171 Cal. Rptr. 3d 752, 760 (Cal. Ct. App. 2014] ("[I]t is clearly within the power of the court to impose time limits before the trial commences.").

CIVIL JURY PROJECT
at NYU School of Law

FACT SHEET:

Back-to-Back Experts

Summary: Allow experts to testify sequentially based on the subjects covered by their testimony. Alternatively, allow concurrent expert testimony, wherein both experts testify and answer questions at the same time. The goal is to aid juror comprehension by allowing jurors to more easily compare the testimonies of "battling" experts, as compared with the current practice wherein experts may testify days or even weeks apart. It may also be helpful for the judge to explain why the experts are testifying back-to-back, in part to alert jurors that the subject of the experts' testimony is likely to be sharply contested by the parties.[1]

Empirical Studies: Empirical studies of the use of these forms of expert testimony in the United States are not available.

Current Usage: Concurrent expert testimony is common in Australia, where experts both testify and answer questions at the same time[2], but it is not used there in jury trials[3]. The U.S. experience is limited and there is no nationwide survey data available about the usage of back-to-back or concurrent expert testimony. There are limited examples of concurrent expert testimony, including a 2003 case in the District of Massachusetts[4] and a 2005 Court of Federal Claims case[5].

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[1] Shari Seidman Diamond, *How Jurors Deal with Expert Testimony and How Judges Can Help*, 16 J.L. & POL'Y 47, 65 (2007).

[2] *See* Megan A. Yarnall, Comment, Dueling Scientific Experts: Is Australia's Hot Tub Method a Viable Solution for the American Judiciary, 88 Or. L. Rev. 311, 312 (2009); Lisa C. Wood, *Experts in the Tube*, 21 Antitrust 95, 95 (2006)

[3] *Room in American Courts for an Australian Hot Tub?*, JONES DAY PUBLICATIONS (Apr. 2013), http://www.jonesday.com/room_in_american_courts/#_edn1.

[4] *See*, *Id.*; *Black Political Task Force v. Galvin*, 300 F.Supp.2d 291 (D. Mass. 2004).

[5] *Anchor v. United States*, 597 F.3d 1356 (Fed. Cir. 2010).

Legal Support: The discussion of this technique is relatively new, and there is not a robust body of court decisions or rules of procedure that specifically mention this practice. However, allowing experts to testify concurrently is one of the methods suggested by Wigmore to improve the use of expert testimony.[6] Further, the Federal Rules of Evidence Rule 611 gives trial courts "control over the mode and order of examining witnesses and presenting evidence…" which suggest that this technique is not precluded in federal courts.

[6] 3 THE NEW WIGMORE: A TREATISE ON EVIDENCE: EXPERT EVIDENCE § 11.5 (Aspen Publishers 2012)

CIVIL JURY PROJECT
at NYU School of Law

FACT SHEET:

Juror Questions

Summary: Allow jurors to ask questions of the witnesses. This is traditionally done in writing, and questions are screened by the judge for admissibility. Parties have an opportunity to object to questions. Allowing jurors to ask questions is intended to help jurors better understand the facts and evidence presented in the case, and to stay engaged with the trial proceedings. Juror questions may also help jurors better understand complex expert testimony as juror questions may quickly bring clarity to confusing aspects of the expert's testimony.[1]

Empirical Studies: 2008 ABA Seventh Circuit Project: In thirty-eight (38) trials, eighty-three percent (83%) of jurors reported that the ability to submit written questions **helped jurors understand the facts**.[2] The timing of when judges inform jurors of their opportunity to ask questions may also matter: post-trial questionnaires revealed that only thirty-eight percent (38%) of jurors knew that they could submit questions when judges mentioned the option only in opening remarks, while ninety-nine percent (99%) of jurors understood that they could ask questions when judges mentioned this during trial.[3]

2005 New York State Jury Trial Project: In twenty-seven (27) civil trials[4], seventy-four percent (74%) of judges[5], fifty percent (50%) of attorneys[6], and 87% of jurors[7] in civil trials believed that juror questions **helped jurors to better understand evidence presented**.

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[1] Shari Seidman Diamond, *How Jurors Deal with Expert Testimony and How Judges Can Help*, 16 J.L. & POL'Y 47, 64-65 (2007).
[2] SEVENTH CIRCUIT BAR ASS'N AMERICAN JURY PROJECT COMM'N, *SEVENTH CIRCUIT AMERICAN JURY PROJECT FINAL REPORT* 13 (Sept. 2008).
[3] Shari Seidman Diamond, *Juror Questions at Trial: In Principle and In Fact*, 78 NEW YORK STATE BAR ASSOC. J. 23 (2006). Unfortunately, the sample size of the number of jurors who submitted questionnaires with answers to each of these questions is not available.
[4] *Final Report of the Committees of the Jury Trial Project*, NEW YORK STATE UNIFIED COURT SYSTEM 59-60 (2005), https://www.nycourts.gov/publications/jury-materials/Final_Report_of_the_Committees_of_the_Jury_Trial_Project.pdf.
[5] *Id*. at 65
[6] *Id*. at 69
[7] *Id*. at 70

Current Usage: **Juror questions were permitted in twenty-five percent (25%) of civil jury trials** in a 2015 survey of 1,673 state and federal court trials nationwide.[8] This is up from sixteen percent (16%) in a 2005 survey also by the National Center for State Courts.[9] A questionnaire circulated by the NYU Civil Jury Project to X judicial advisors suggests that 71% have permitted jurors to ask questions.[10]

[8] Paula Hannaford-Agor, *But have we made any progress? An update on the status of jury improvement efforts in state and federal courts*, NAT'L CTR. FOR STATE COURTS (NCSC) CTR. FOR JURY STUDIES 7 (2015), http://www.law.nyu.edu/sites/default/files/upload_documents/But-have-we-made.pdf.

[9] *Id*.

[10] Questionnaire for Judges on Use of Jury Innovations (on file with Civil Jury Project). Of the twenty-one (21) judges who have responded, eight (8) regularly use the innovation, seven (7) have used it, and six (6) have never used it.

CIVIL JURY PROJECT
at NYU School of Law

FACT SHEET:

Mini-Openings Before Voir Dire

Summary: Mini-openings allow counsel to present the key aspects of the case to potential jurors. The goal is to help potential jurors understand the relevance of questioning and provide more complete answers.

Empirical Studies: 2005 New York State Jury Trial Project: Tested in six (6) civil trials and sixteen (16) criminal trials. Seventy-seven percent (77%) of judges[1] and attorneys in civil trials believed mini-openings **aided juror understanding of why they were being questioned**. Of the twenty-one (21) attorneys who participated in trials where mini-openings were used, eighty-one percent (81%) approved of the use of these openings.[2] If the 186 jurors who heard mini-openings before voir dire, ninety-one percent (91%) said that they were very **helpful for understanding what the case was about**, while only eighty-two percent (82%) of jurors in typical introductions thought those introductions were helpful.[3]

Current Usage: Data on usage across federal and state courts is not currently available.

Legal Support: Some states have civil procedure laws that already provide for mini vior dire openings. For example, California Code of Civil Procedure §222.5 states that the "trial judge should allow a brief opening statement by counsel for each party prior to the commencement of the oral questioning phase of the voir dire process." Arizona provides for something similar. See Rule 47(b)and 51(a), Ariz.R.Civ.P., and Rule 18.5(c) and 18.6(c), Ariz.R.Crim.P. Conversely, some states have civil procedure laws that suggest mini openings would not be allowed, for example Oklahoma provides that "Counsel shall scrupulously guard against injecting any argument in their voir dire examination." Okla. Dist. Ct. R. 6. The Federal Rules do not discuss the practice. Fed. R. Civ. P. 47

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[1] *Final Report of the Committees of the Jury Trial Project*, NEW YORK STATE UNIFIED COURT SYSTEM 23 (2005). While the result is encouraging, the sample size of six trials and thus presumably six or fewer judges is very small, making it difficult to draw conclusive results.

[2] *Id*. at 24.

[3] *Id*. at 25.

CIVIL JURY PROJECT
at NYU School of Law

FACT SHEET:

Pre-Voir Dire Jury Questionnaires

Summary: Jurors complete questionnaires in advance of voir dire. The contents of the questionnaire may vary but a goal is to allow potential jurors to be dismissed for cause without coming into court. By narrowing the pool of potential jurors who come into court and by eliminating the need for some preliminary questions during voir dire, questionnaires can also give counsel more time to question potential jurors on more relevant issues.

Empirical Studies: 2008 ABA Seventh Circuit Project: Seventy-eight percent (78%) of judges and forty-seven percent (47%) of attorneys believed the use of juror selection questionnaires **did not affect the fairness of the trial process**. A majority of the judges and attorneys believed using jury selection questionnaires **increased the efficiency of the trial process**.[1]

Current Usage: According to a 2015 survey of state and federal courts, federal courts used general questionnaires in thirty-two percent (32%) of cases that went to trial and state courts used questionnaires in twenty-six percent (26%) of such cases. Case-specific questionnaires were used in nineteen percent (19%) of federal court cases and nine percent (9%) of state court cases.[2]

The U.S. District Court for the District of Nevada uses juror questionnaires before voir dire through their eJuror system.[3]

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[1] SEVENTH CIRCUIT BAR ASS'N AMERICAN JURY PROJECT COMM'N, *SEVENTH CIRCUIT AMERICAN JURY PROJECT FINAL REPORT* 37-38 (Sept. 2008).

[2] Paula Hannaford-Agor, *But have we made any progress? An update on the status of jury improvement efforts in state and federal courts*, NAT'L CTR. FOR STATE COURTS (NCSC) CTR. FOR JURY STUDIES 4-5 (2015), http://www.law.nyu.edu/sites/default/files/upload_documents/But-have-we-made.pdf.

[3] *See* http://www.nvd.uscourts.gov/JuryInformationVegas.aspx.

Legal Support: Some states specifically provide for jury questionnaires. For example, Missouri provides that a jury questionnaire shall be mailed to and completed by all prospective jurors. MO R 23 CIR Rule 52. Other states similarly provide rules governing the use of questionnaires, including Kansas, California and Ohio. KS R 11 Dist Rule 6, CA ST CIVIL RULES Rule 3.1548, OH R USDCTND LR 47.2. A number of districts within states similarly provide rules governing the use of juror questionnaires, including districts in Kentucky, Indiana, and Wisconsin. KY R CHRISTIAN CIR CT Rule 15, IN ST WAYNE CR Rule 011, Wis. R. App. P. L WALWORTH 16.