

# Summarized Results and Recommendations

## 2016 Attorney Survey: Declining Civil Jury Trials

Prepared by:  
the ASTC Jury  
Consultant  
Advisory Group

*- in collaboration  
with -*

the Civil Jury  
Project at NYU  
School of Law



**CIVIL JURY PROJECT**  
at NYU School of Law

## **TABLE OF CONTENTS**

<b>INTRODUCTION</b>	<b>Page 3</b>
<b>SECTION ONE: HIGHLIGHTS OF THE SURVEY</b>	<b>Page 7</b>
<b>SECTION TWO: DECLINING CIVIL JURY TRIALS</b>	<b>Page 10</b>
<b>SECTION THREE: JURY TRIAL INNOVATIONS</b>	<b>Page 25</b>
<b>APPENDIX: CONTENT ANALYSIS FOR OPEN-ENDED QUESTIONS</b>	<b>Page 44</b>

## **INTRODUCTION**

### **Research Objective**

The decline in civil trials has been documented by empirical research and the courts alike, with data that reveal a downward trend since at least 1962. The Civil Jury Project reports that less than 1% of all cases filed were disposed of by bench or jury trial in the years 2010 through 2015.<sup>1</sup>

*The basic question is whether jury trials continue to serve the role anticipated by the Framers of the Constitution.*

The Civil Jury Project is engaged in an empirical assessment of the current role of the jury in our civil justice system, the reasons for its decline, and the impact of that decline on the functioning of the civil justice system overall. The basic question is whether jury trials continue to serve the role anticipated by the Framers of the Constitution. Relatedly, it is important to examine the consequences of the decline and what other institutions may currently fill the void.

To help understand the current state of civil jury trials, the American Society of Trial Consultants (ASTC), as part of the Trial Consultant Advisory Group of

---

<sup>1</sup> Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-4.

Galanter, Marc and Angela M. Frozena. "A Grin without a Cat: The Continuing Decline & Displacement of Trials in American Courts." *Daedalus*, the Journal of the American Academy of Arts & Sciences 143 (2014): page 115. [http://civiljuryproject.law.nyu.edu/wp-content/uploads/2015/05/Galanter-Frozena\\_A-Cat-without-a-Grin-2012.pdf](http://civiljuryproject.law.nyu.edu/wp-content/uploads/2015/05/Galanter-Frozena_A-Cat-without-a-Grin-2012.pdf)

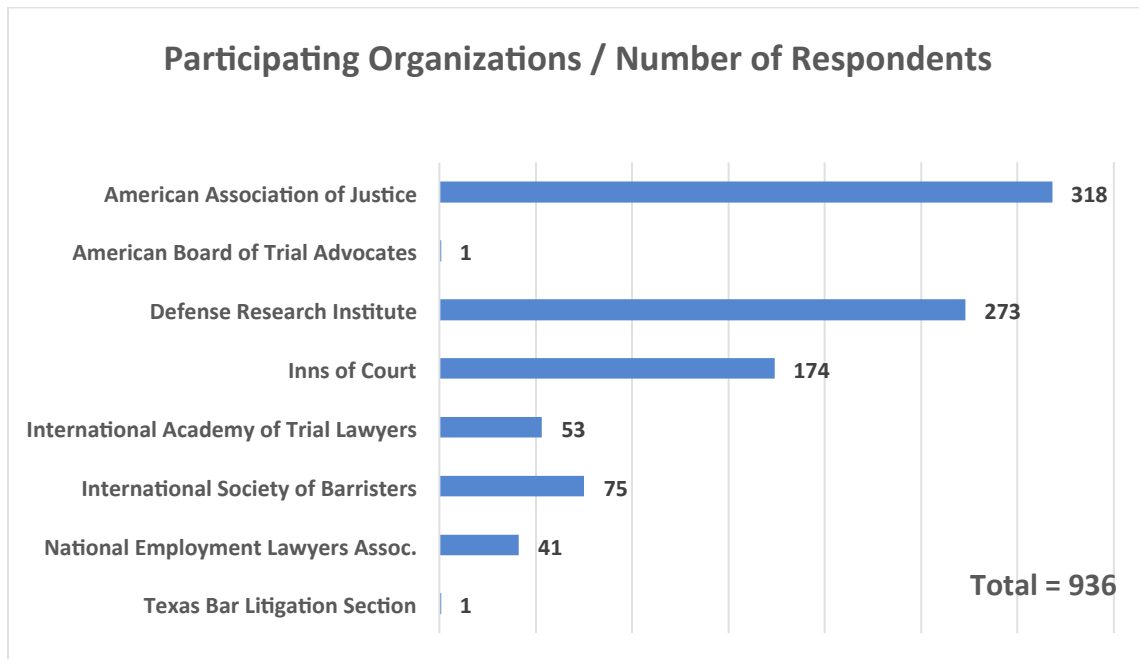
For more information see <http://civiljuryproject.law.nyu.edu/scholarship/>

the NYU Law School Civil Jury Project, conducted a survey of lawyers who try cases in state and federal courts across the country.

This survey addressed the current involvement by attorneys in jury trials, how they viewed the decline in jury trials, their perceptions of the causes for this decline, their experience with jury trial innovations, and what (if anything) they thought could be done to increase the number of jury trials.

## Methodology

The survey was distributed electronically by the Civil Jury Project to a dozen attorney organizations. We received responses from eight of those (shown in chart below) between May 3, 2016 and August 1, 2016.



The survey consisted of 25 multiple choice and open-ended items. Respondents were not required to answer each item, but they were given the opportunity in many instances to give multiple responses. Therefore, the number of responses for each survey item varies. We have noted in this report frequencies and/or percentages to provide clarity throughout. The Appendix at the end of this summary provides the coded content analysis of all open-ended responses; we have focused our comments and conclusions in the body of this report on the greatest number/percentage of responses on the key issues we set out to explore.


Participants also had the option of providing name and contact information, which will be held confidential.

The chart on the following page summarizes the demographic make-up of our sample and highlights the range of practice areas and attorney experience.

- We received responses from attorneys in all 50 U.S. states, with the highest participation coming from Texas, California, New Jersey, Pennsylvania and Florida.
- Respondents practice in a wide variety of types of civil litigation and in law firms large and small.
- More than three-fourths (78%) are men and the average age of all respondents is 54.<sup>2</sup>
- More than half (55%) have practiced 21-40 years and a quarter (25%) have up to 30 career jury trial completions.

---

<sup>2</sup> Women attorneys are under-represented in our sample when compared to national averages. See <http://tinyurl.com/hxy9stn>

<p style="text-align: center;"><b>Attorneys from All 50 States</b></p> 		<p><b>Top Five States</b> <i>(number of respondents)</i></p> <p><b>Texas (158)</b> <b>California (91)</b> <b>New Jersey (89)</b> <b>Pennsylvania (75)</b> <b>Florida (72)</b></p>
<p><b>Practice Areas Include:</b></p> <p><b>Personal injury, medical malpractice, products liability, labor/employment, mass tort, securities, intellectual property, and others</b></p>	<p><b>Firm Size</b></p> <p><b>28%</b> 2 to 5 attorneys</p> <p><b>32%</b> 20 or more attorneys</p>	
<p><b>78% Male</b> <b>22% Female</b></p>	<p><b>Average Age: 54 years</b> Ranging from 25 to 75+</p>	
<p><b>42% have been trying cases for</b> <b>20 to 35</b> years</p>	<p><b>22% have 9 or fewer</b> <b>25% have 10 to 29</b> <b>12% have more than 100</b> <b>7% have more than 200</b> <b>career jury trials</b></p>	
<p><b>55% have practiced civil litigation for</b> <b>21 to 40</b> years</p>		

## **SECTION ONE: HIGHLIGHTS OF THE SURVEY**

Highlights of the major study findings include:

- A relatively large sample size of attorneys on both sides of the bar in a wide variety of case types nationwide.
- The majority of respondents agree that there are too few jury trials.<sup>3</sup>
- The perception of major causes for the decline in jury trials for attorneys' own cases include perceived uncertainty in jury decision-making and the cost of litigation.
- Views on the decline in jury trials, in general, include the cost of litigation (which is likely combined with time factors such as delays in getting to trial and/or the length of trials), risk of uncertain outcomes, mandatory ADR, and perceived pressure by judges to resolve cases without trial.
- Attorneys suggest ways to increase the number of jury trials by promoting greater efficiencies in the system, limiting ADR, and increased support from judges for proceeding to trial.

---

<sup>3</sup> One additional question that could be addressed by statistical analysis of the data is whether or not there are difference between Plaintiff and Defense attorneys on one or more key issues in the survey.

Overall, the survey results support the good ideas that are already alive and well in the Civil Jury Project: raising awareness, providing education, and encouraging greater communication about the decline of civil jury trials.

The Civil Jury Project gives us an opportunity to invite attorneys, judges and trial consultants to talk to each other about how to reform discovery and streamline trials to reduce the cost of litigation as a whole. There are considerable hurdles to clear – consistent/uniform application of reforms across venues and case types will be a tremendous challenge – and meaningful dialogue is a good first step. Of those who oppose jury trial innovations designed to do precisely what attorneys say they want (greater efficiency, lower cost, less time), we also see in the results attorney concerns about: a) losing control over how their cases are tried, and b) judges getting disproportionately more power over case outcomes.

Attorneys surveyed would like to change the hearts and minds of judges who are the gatekeepers of civil jury trials. While they are asking for greater participation of a certain kind (e.g., strict deadlines, consequences for missing them, and strong calendar management), they also want judges to regard jury trials as aspirational rather than as failures of the parties to settle.

Trial consultants have a lot to offer the legal community with respect to attorney perceptions of jury decision-making. Many of the services provided by trial consultants are designed and executed to help lawyers themselves streamline discovery, highlight case strengths, eliminate case weaknesses and minimize risk. We have recurring opportunities in conducting our own jury research to send a positive message of empowerment to jury-eligible citizens



about their ability to make decisions and the importance of their jury service. We also regularly provide continuing legal education to improve the trial advocacy skills of attorneys, so that confidence in their ability to try cases with juries (and the confidence of their clients) will increase.

Finally, we recommend further research into the perceived uncertainty about jury decision-making, which is not currently supported by the literature, and to address this issue in a way that fosters a healthy view of the jury as a dispute resolving institution.

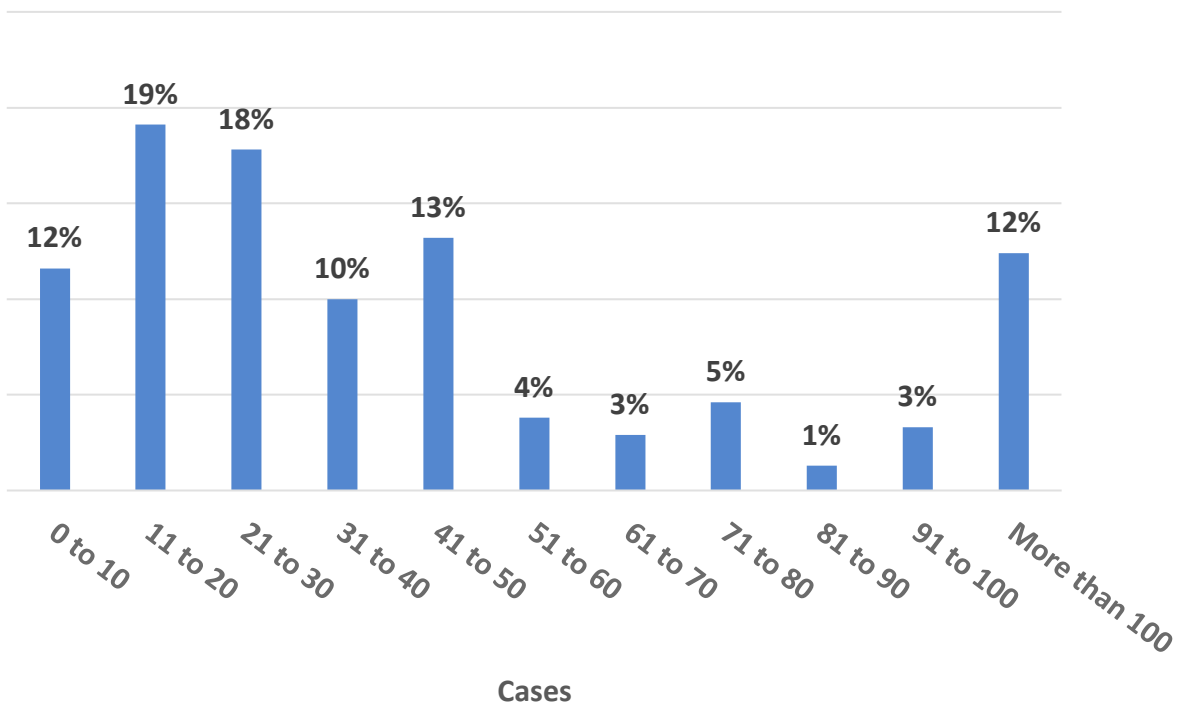
The ASTC Trial Consultant Advisors wish to thank the Civil Jury Project for supporting this survey, including us in the dialogue, and giving an important voice to the promotion of best practices that can restore faith in the civil court system.

**SECTION TWO: DECLINING CIVIL JURY TRIALS**

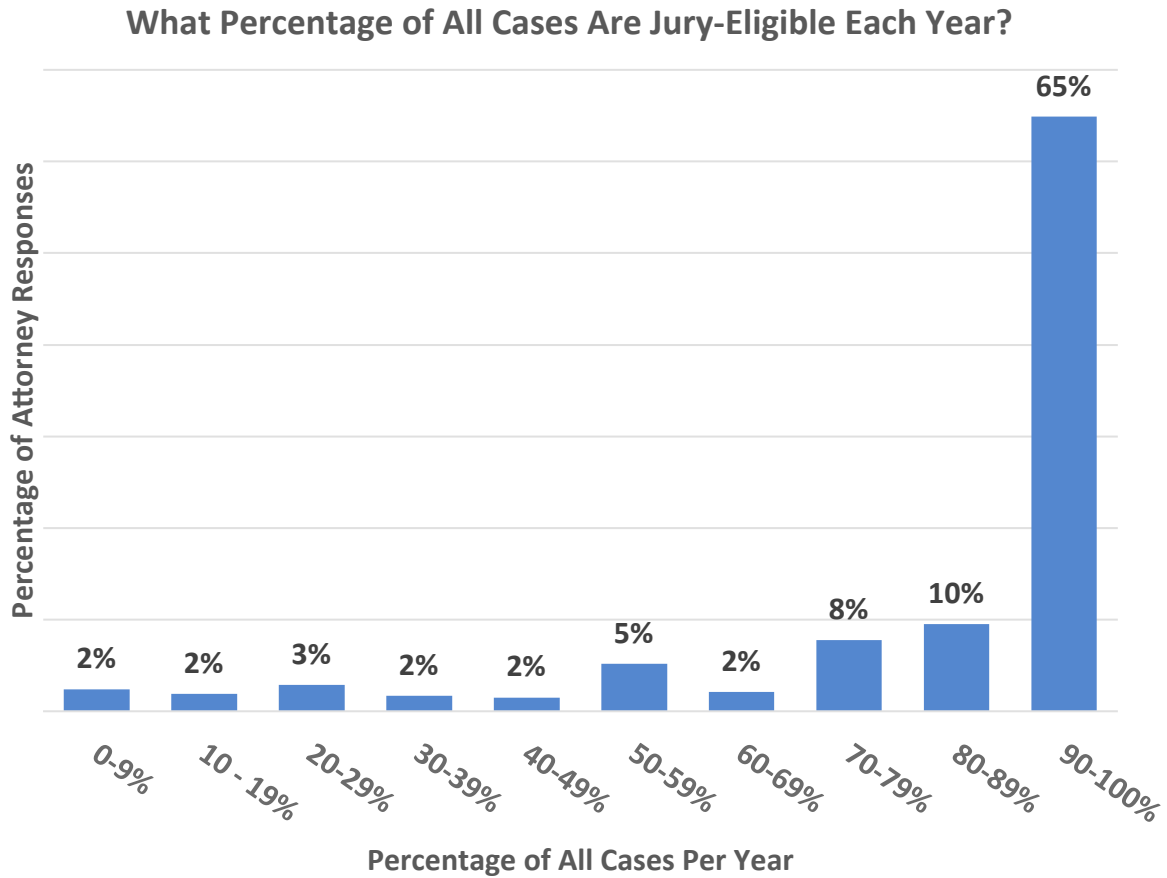
We asked attorneys to tell us – on average – how many cases they handle in a typical year and what percentage of those are eligible for a jury trial.

**Seventy-two percent (72%) of our sample handles up to 50 total cases per year.**

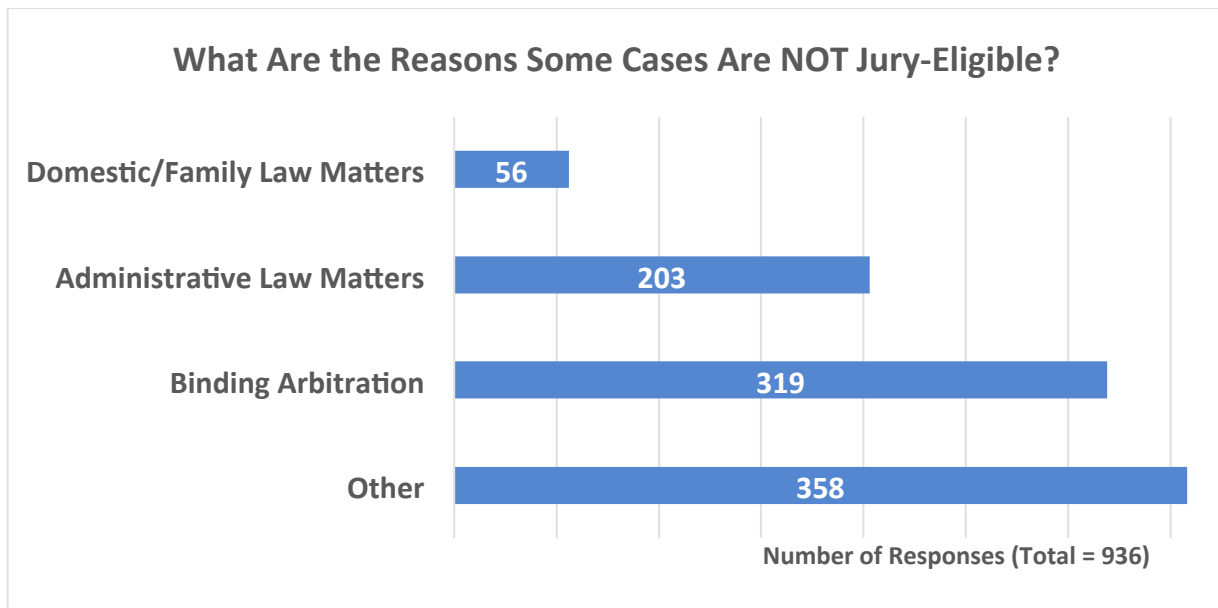
Average Number of Cases Per Year



**Sixty-five percent (65%) of our sample says that 90-100% of the cases they handle in an average year are eligible for a jury trial.**



For those whose cases are not jury-eligible, we also wanted to know why not. The top three specific reasons are shown in the chart below and all “Other” responses (the largest category of response) can be found in the Appendix.



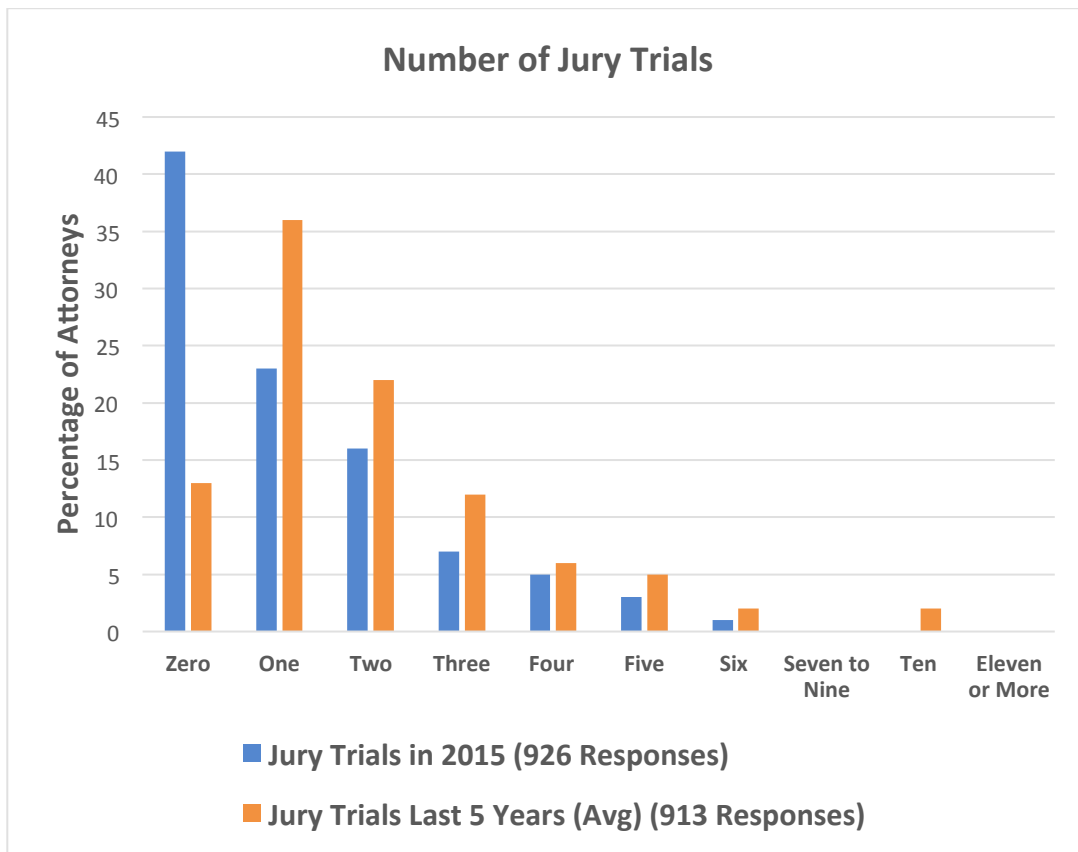
Participants were given an open-ended opportunity to specify what they mean by “Other” and to this question we received 398 individual reasons that cases were not eligible for jury trial including: Claims in equity, transactional matters, Federal Torts Claims Act cases, and cases that do not meet the threshold for amount in controversy.<sup>4</sup>

---

<sup>4</sup> See Appendix: What are some of the other reasons your cases are not jury-eligible?

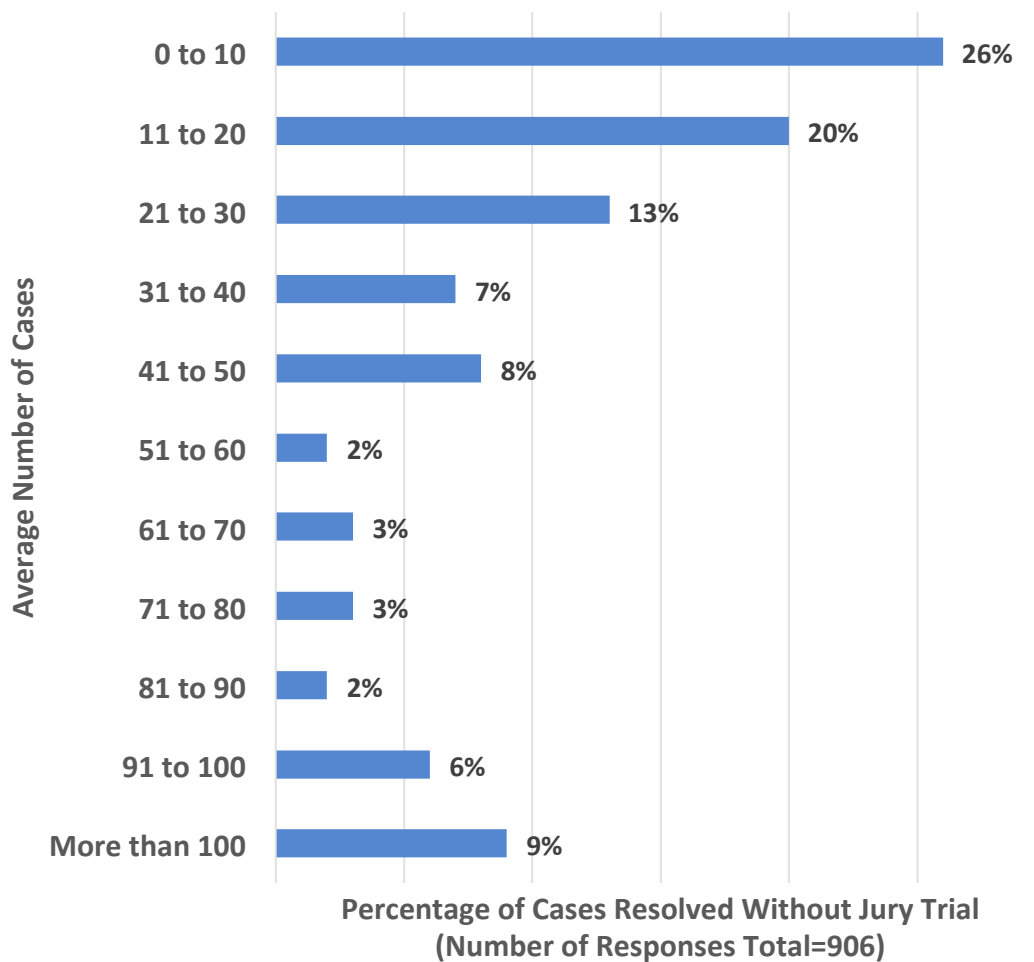
To determine whether attorneys surveyed have experienced a decline in civil jury trials recently, we asked respondents to tell us how many jury trials they had in 2015 and how many they had (on average) in the previous five years.

In 2015, the percentage of attorneys who had zero trials was 42% compared to only 13% over the previous five years. The percentage of attorneys reporting one to three jury trials was less in 2015 (47% combined) than the average over the past five years (70% combined).

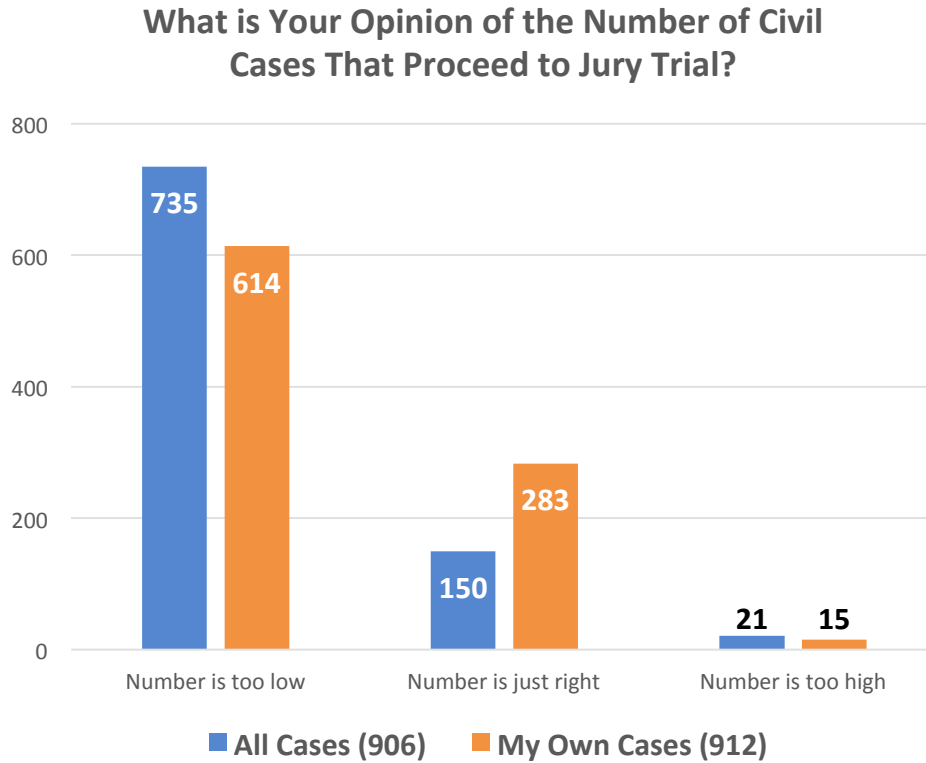


The majority of respondents have – on average – up to 30 jury-eligible cases per year, of which 59% are resolved without a jury trial.

How many cases – on average over the last five years – have been resolved without a jury trial?



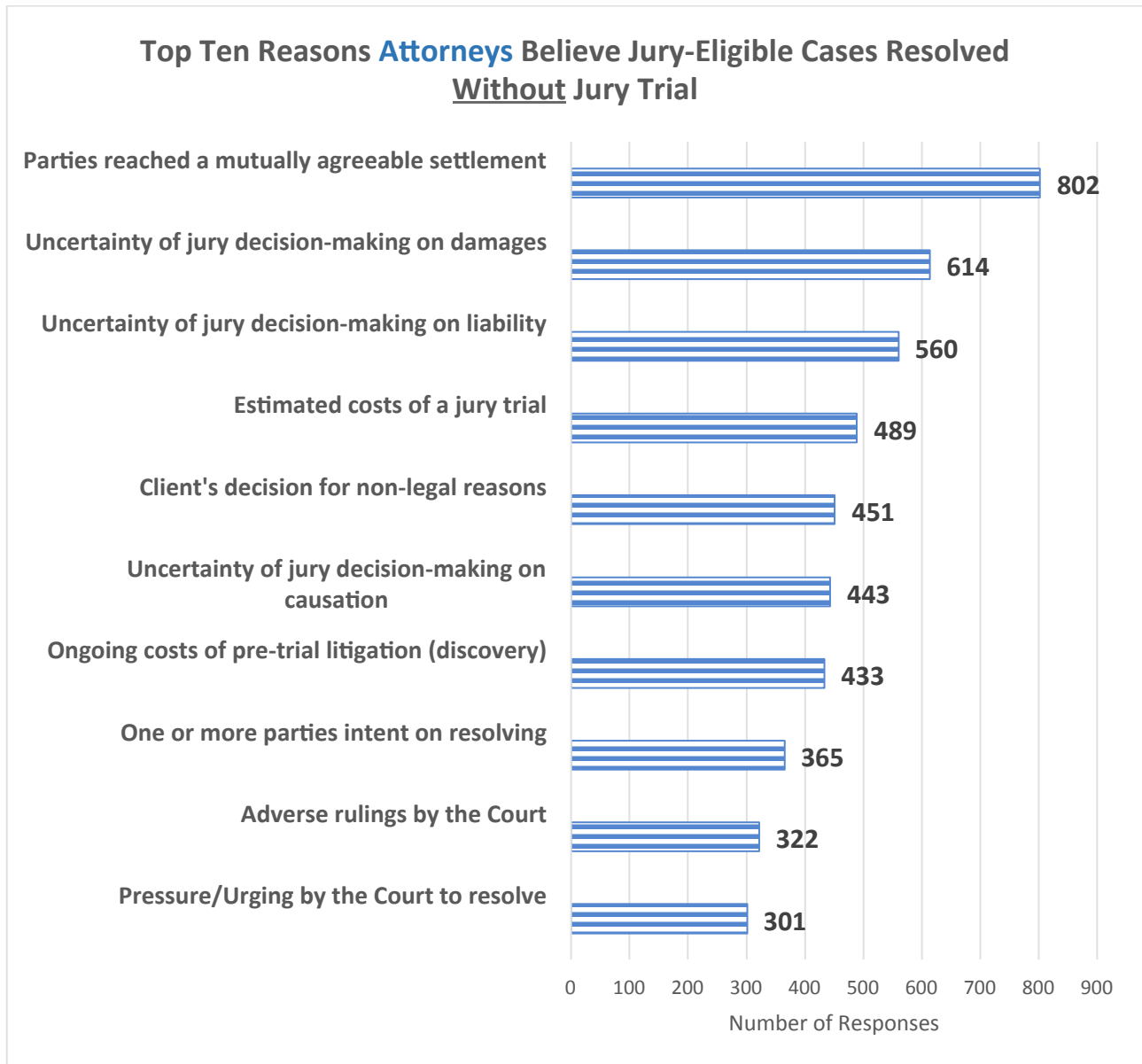
The majority of respondents **agree that the number of their own cases – and of all cases – that proceed to jury trials is too low.**



Next, we asked attorneys to tell us *why they believe* civil cases are resolved short of trial and what reasons they believe *their clients* might give. The following charts show the top ten most frequent multiple-choice answers (respondents were instructed to check all that apply), ranked from highest number of responses to lowest. Respondents were also asked an open-ended question about other reasons they would give for cases not proceeding to trial.<sup>5</sup>

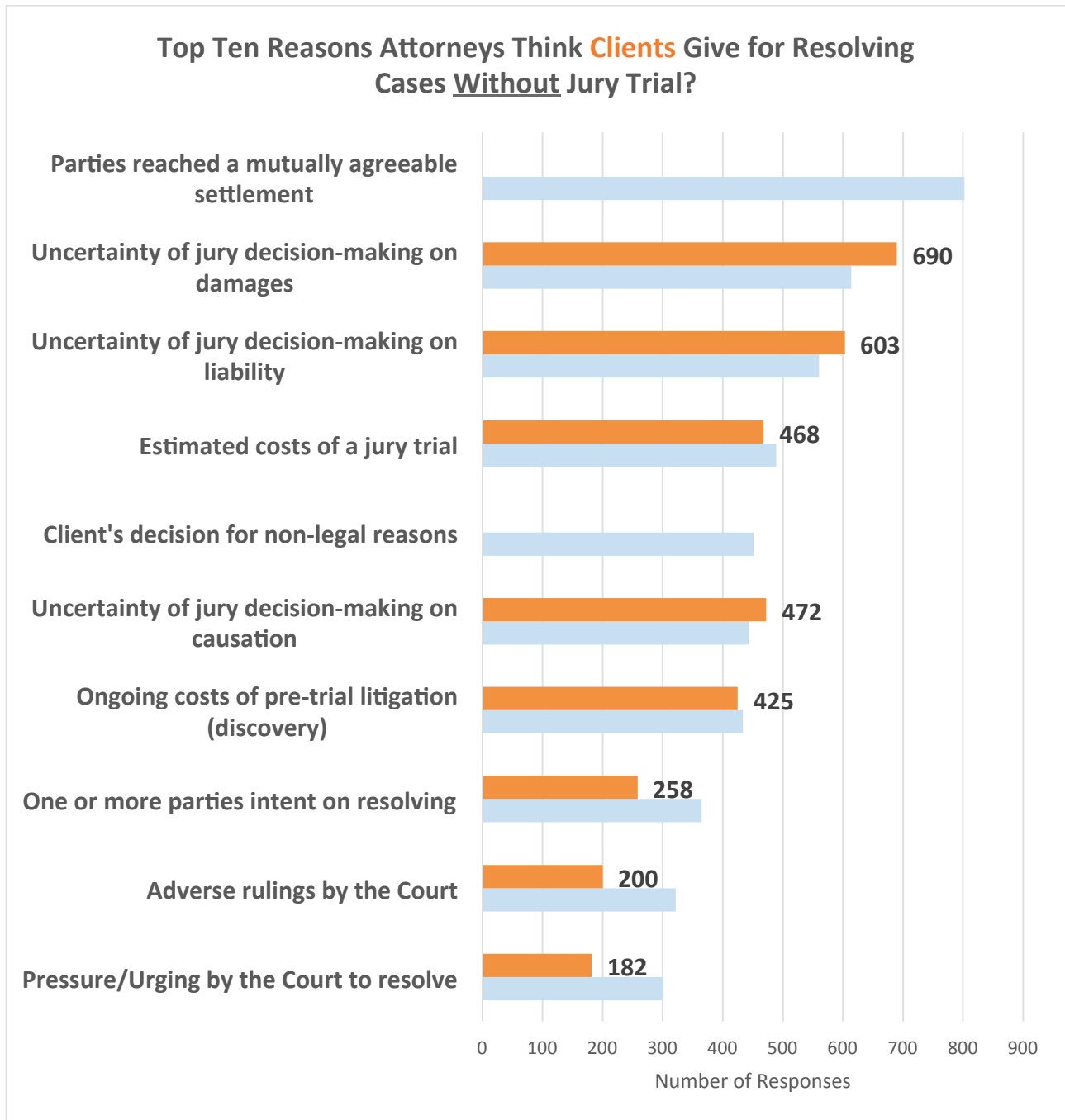
<sup>5</sup> See Appendix: What are some of the other reasons jury-eligible cases do not go to trial?

First, we see in the chart below the top ten reasons **attorneys** gave for why they believe cases resolved without jury trial. On the following page, we compare these results to the reasons attorneys believe **their clients** would give, exposing some interesting variation.





Most notably, **none of the attorneys say their clients believe cases settled because the parties reached agreeable terms.**



### ***Concern about Jury Decision-Making***

The results charted on the previous pages suggest that attorneys believe they and their clients are most often resolving cases short of trial because of uncertainty about *jury decision-making*.

- Forty-six percent (46%) (1,765 out of 3,826 responses combined) cited the uncertainty of clients about jury decision-making on liability, causation, and damages.
- Thirty percent (30%) (1,617 out of 5,315 responses combined) cited attorney uncertainty about jury decision-making on liability, causation, or damages.<sup>6</sup>

From the jury research community's perspective, this concern about the uncertainty of jury decision-making need not be the most compelling reason to avoid the courtroom. Social science research has amassed a body of empirical studies on jury behavior, and collectively trial consultants are conducting hundreds (if not thousands) of case-specific small group research projects (e.g., focus groups, mock trials) designed and executed for the very purpose of mitigating against such uncertainty.

---

<sup>6</sup> Another 186 and 1992 responses regarding "concern about jury comprehension" by attorneys and their clients, respectively.

### ***Concerns about Cost***

Concerns about the cost of pre-trial litigation and the cost of trial are a distant second to concerns about jury decision-making. The responses of attorneys who express concern about costs – combined with responses expressing attorney perceptions of their clients' concern about costs – are as follows:

- Ten percent (10%) (947 out of 9,141 attorney + client concerns combined) cited the **cost of trial** as the reason for resolving cases short of trial.
- Nine percent (9%) (858 out of 9,141 attorney + client concerns combined) cited the **cost of pre-trial litigation** as the reason for resolving cases short of trial.

### ***Concern about the Length of Trials***

In relative terms, only a small fraction of all responses given by attorneys – three percent (3% or 279 out of 9,141 attorney + client concerns) – cite concern about the **length of trials**.

### ***Is Mandatory Alternative Dispute Resolution the Reason for Decline?***

Our survey also set out to test the hypothesis that factors other than uncertainty, timing, or costs may be driving the number of civil jury trials downward. Specifically, we wanted to address some lawyers' concerns that various forms of mandatory alternative dispute resolution (ADR) may be

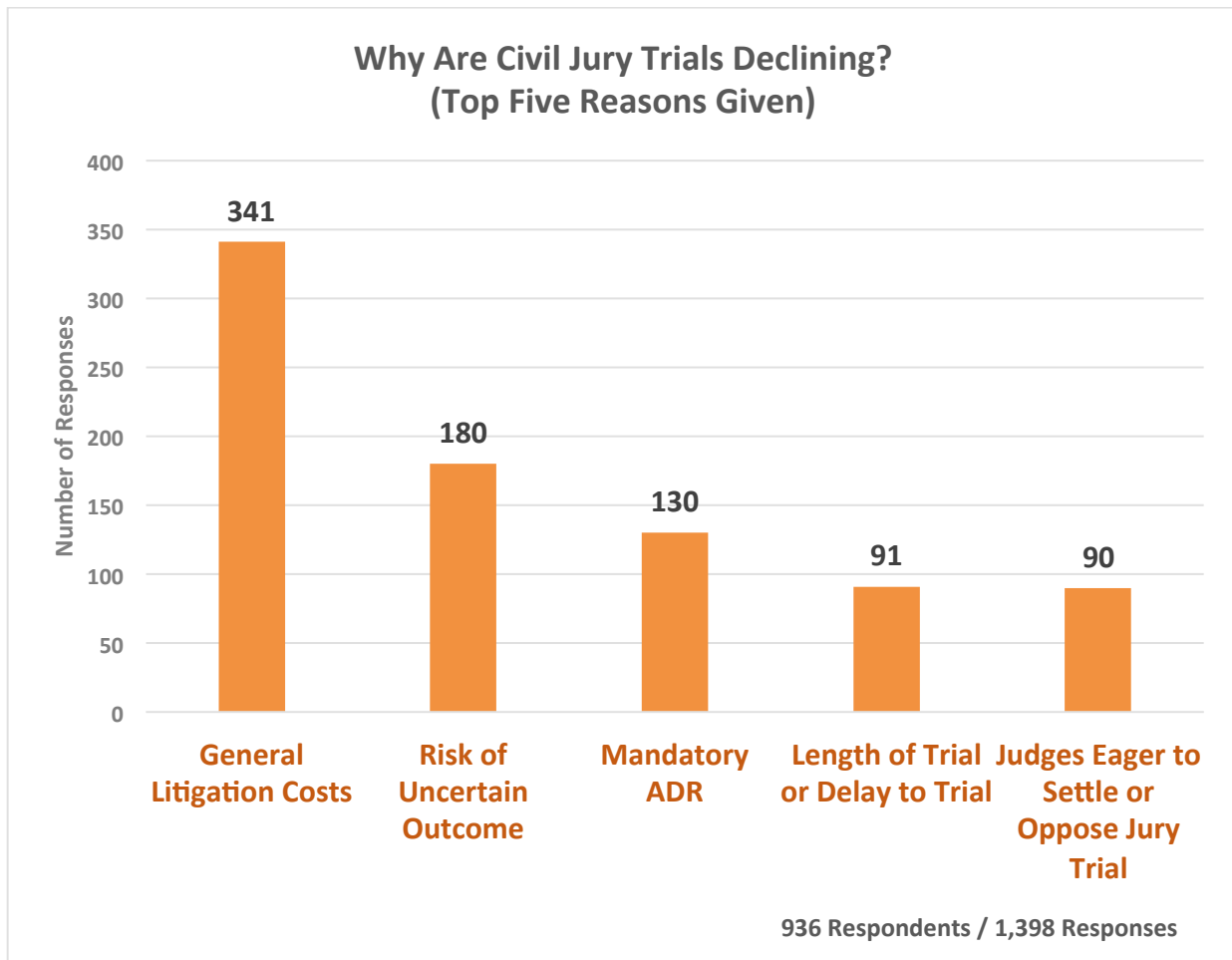
disproportionately separating parties from their Seventh Amendment right to trial by jury.

Of those surveyed only 20% of attorneys (183 out of 936) select mandatory arbitration from the list of multiple-choice options (ranked 11<sup>th</sup> out of 15) on the question about why their own cases do not go to jury trial. Another 27% of open-ended responses (35 out of 127) say mandatory ADR of any kind (including mediation) is a reason their cases were resolved without a trial.

**However, nearly one-third (301 out of 936) of lawyers surveyed cite the informal “pressure” or “urging” of the court to resolve the case as a reason for them or their client opting out of a jury trial. We see more of this same sentiment in a later question about general causes of the decline (found in the pages that follow).**

## Why Are Civil Jury Trials Declining?

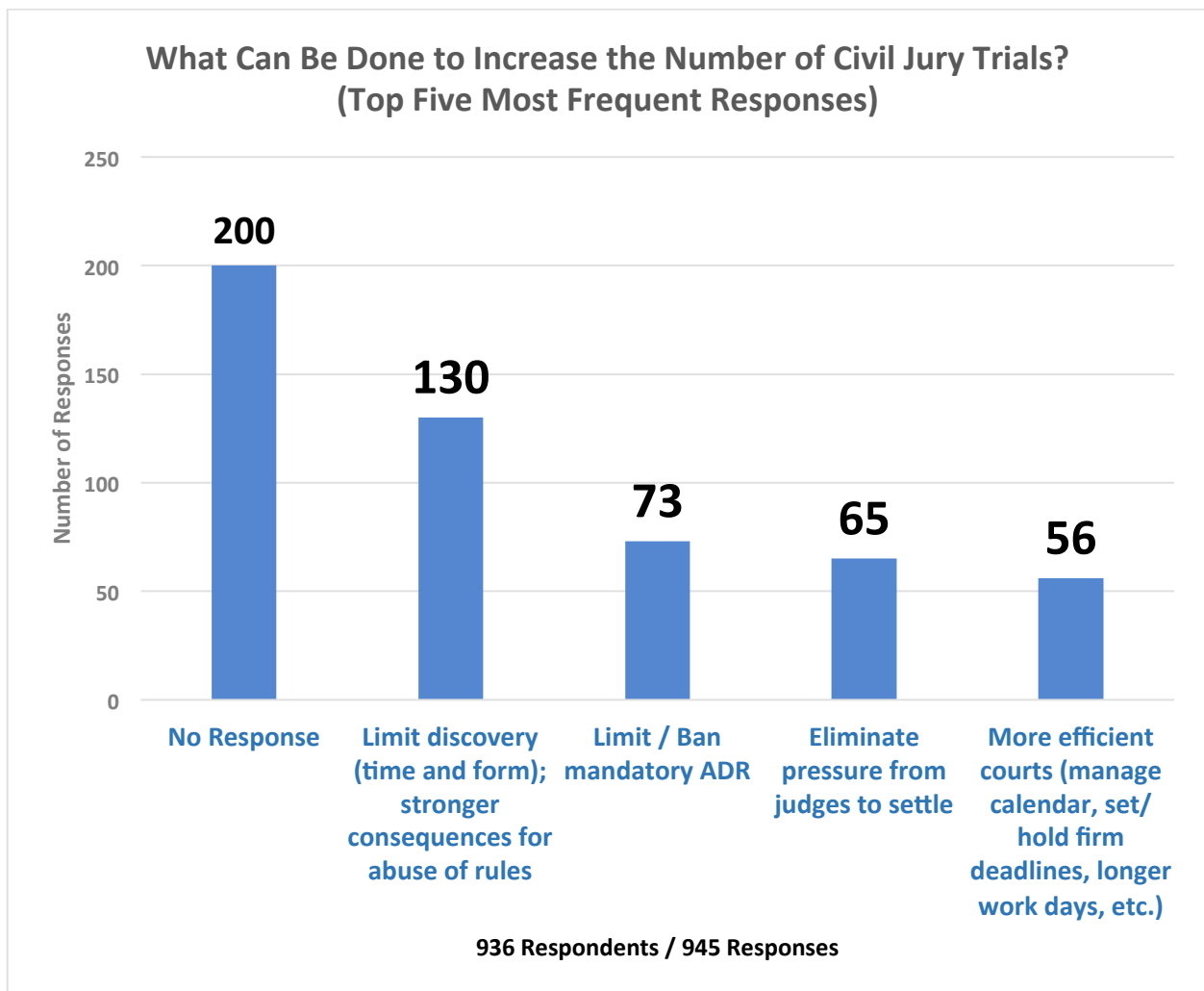
After giving the reasons their own cases do not result in jury trials, we also asked attorney respondents to give “the main one or two reasons that the number of civil cases being tried by a jury is declining,” and the top five most frequent responses are shown in the chart below.<sup>7</sup> Results are similar for cases in general: attorneys say there are fewer trials due to cost (which may also combine with timing), uncertainty, the role of mandatory ADR, and judicial urging to settle out of court.



<sup>7</sup> See Appendix: Why are civil jury trials declining?

**What can be Done to Increase the Number of Jury Trials, or at Least Stop the Decline?**

Finally, we asked attorneys to give us their best ideas for increasing the number of jury trials or at least stopping the decline. The top five response categories are shown in the chart below. Notably, the greatest percentage is “no response” and 53 more attorneys answered “not sure” or “don’t know.”<sup>8</sup>



<sup>8</sup> See Appendix: Would Could be Done to Increase the Number of Jury Trials, or at Least Stop the Decline?

Just below the top five categories of response, we see nearly 50 responses that call for **more money to support our court system**. Another nearly 50 responses call for **more education/awareness** that **jury trials are a good and desirable** way to resolve civil disputes and **juries can be trusted to make good decisions**.

There is still a lot of room for discussion and problem-solving to occur between the bench and the bar. Based on the wide variety of suggestions in these results, it appears that attorneys want judges to spend less of their time pressing for settlement, and more of their time setting firm deadlines for discovery and holding attorneys to them. We see in these results a desire by many attorneys for the courts to focus on promoting greater efficiencies within the system (e.g., expedited discovery, more firm and efficient calendar management, use of summary jury trials) rather than encouraging litigants and attorneys to opt out of it.

For example, many of the full responses given on the issue of pressure from judges contain language that suggests attorneys feel they and their clients are treated by judges as “failures” if cases do not settle, and judges communicate that going all the way to a jury trial is “a bad thing.” Similarly, we see attorneys asking for fewer summary judgment rulings that eliminate cases altogether, but more dispositive rulings that would help streamline the presentation of evidence at trial. Many also want greater limits on the number of experts allowed in a case (and tougher *Daubert* rulings), which would shorten the length of trials and result in substantial cost savings.

Many attorneys surveyed also say they want to re-engage with judges in **the ideals** of our civil justice system, where more experienced trial lawyers and more experienced trial judges are **less “afraid”** and **more “courageous”** about trying cases. In short, **attorneys are looking for the active participation of judges in their civil cases, but in greater pursuit of a jury trial rather than in practices that discourage it.**

We also see suggestions for more and better education and training of both judges and attorneys, along with innovations that would allow many more cases with lower threshold values to reach summary jury trials that could be “fast-tracked.”

Suggestions for improvements like these are given by our respondents as ways to increase the value of participation – to promote greater “buy-in” – for judges, lawyers, litigants, and jurors alike.



### **SECTION THREE: JURY TRIAL INNOVATIONS<sup>9</sup>**

In addition to asking attorneys to describe their own practices and share their opinions about the decline of civil jury trials, the survey also included a series of questions about innovations that have been developed, proposed, and practiced in courtrooms throughout the country. These practices are designed to streamline jury trials, increase jury comprehension, and assist jurors with decision-making (all of which are goals reflected in the results discussed in Section One).

Briefly, the first chart (on the following page) shows there are just three jury trial innovations with which more than half of our sample (>50% of 936 total) have some experience:

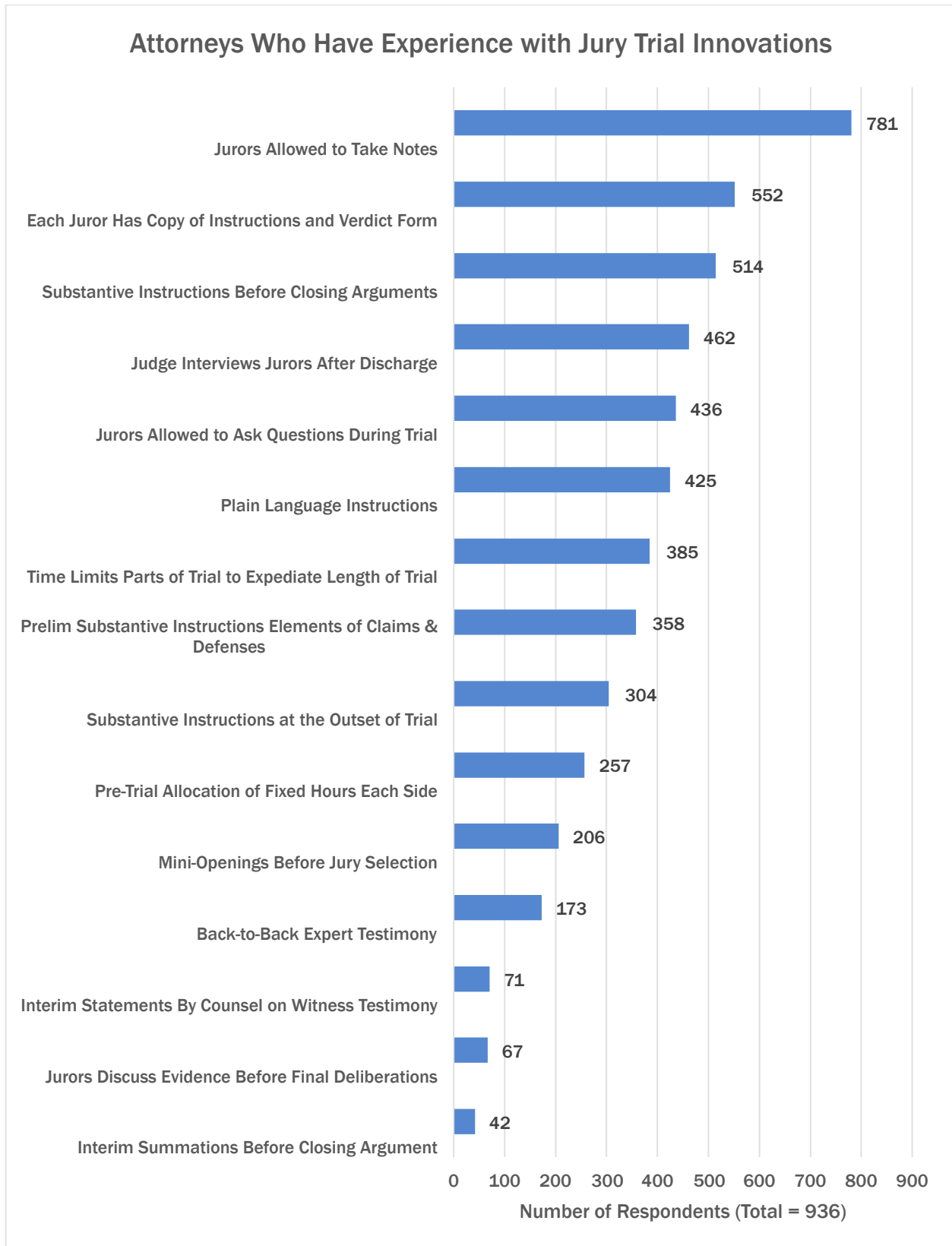
- Jurors are allowed to take notes (83%)
- Each juror has a copy of instructions and verdict form (59%)
- Substantive instructions of law are given before closing arguments rather than after (55%)

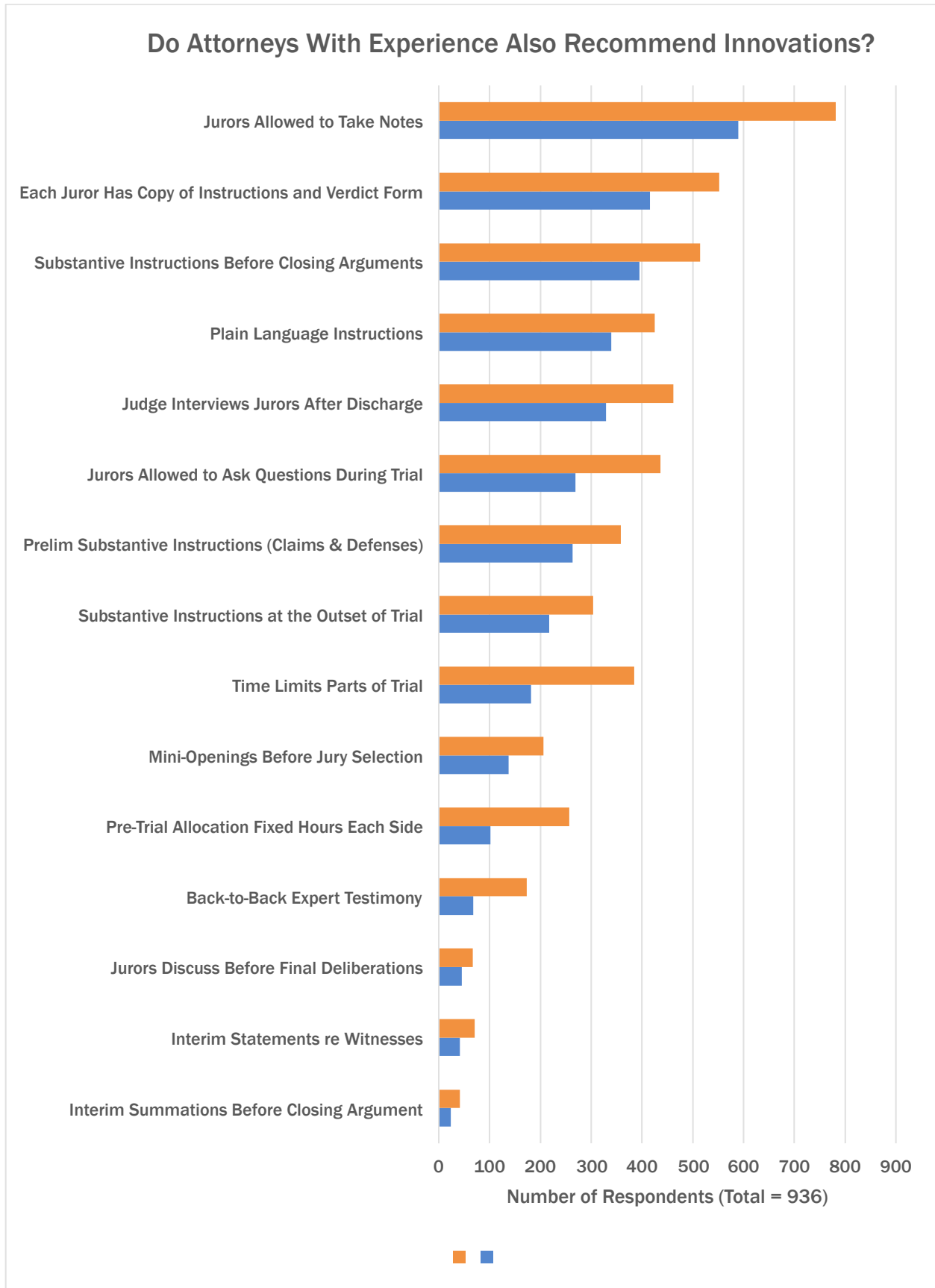
The second chart shows how likely attorneys who have experience with each of the innovations are to also recommend them. Of the top three:

- 76% would recommend allowing jurors to take notes;
- 75% would recommend giving each juror a copy of instructions and verdict form; and
- 77% would recommend giving substantive instructions of law before closing arguments.

---

<sup>9</sup> Questions about jury trial innovations yielded fewer total affirmative responses overall and will be shared with the Academic Advisors working in collaboration with the NYU School of Law Civil Jury Project for further comment and/or analysis.



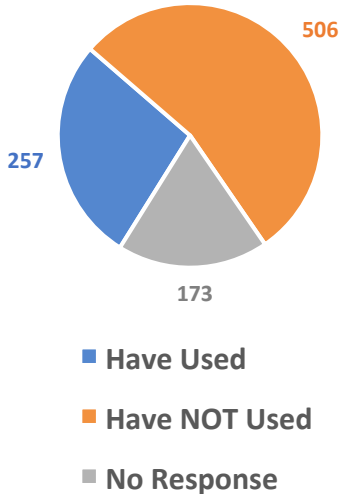


For each innovation shown on the following pages, participants are given the opportunity to tell us: a) if they have any experience with the innovation, and b) whether or not they would recommend the innovation.

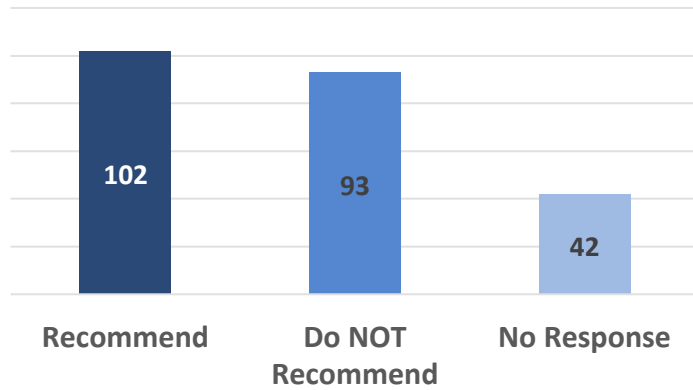
Then we also asked a single open-ended question to all respondents about why they would NOT RECOMMEND one or more of the jury trial innovations, and we received comments from attorneys who had experience, and from attorneys who had NO experience, with each.

We have reported here the frequency of responses to each multiple-choice item in the survey and included the content analysis of the relatively small number of open-ended responses that could be clearly attributed to each innovation.

**Pre-Trial Allocation of Fixed Hours Each Side**



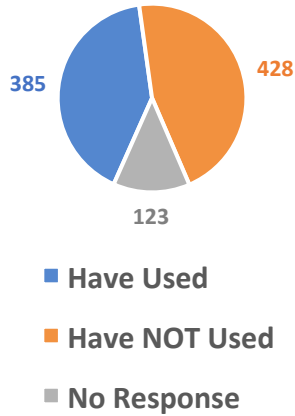
**Pre-Trial Allocation of Fixed Hours Each Side**



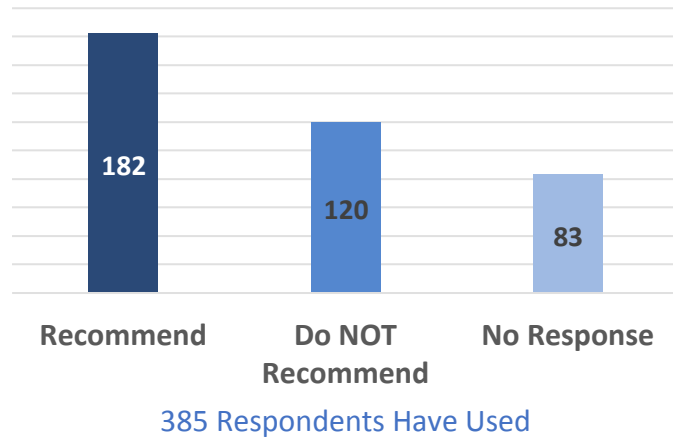
257 Respondents Have Used

<u>Do Not Recommend: Pretrial Allocation Fixed Hours Each Side</u>	Have Used	Have Not Used
Biased against party with the burden of proof	15	9
Too limiting on the process, prevents development of facts	13	14
Miscellaneous (includes increased pressure on attorneys, increased conflict in courtroom, confusing for juries, uniqueness of cases, skill level of attorney, etc.)	7	7
Time consuming and ineffective	6	6
The allotted times are too arbitrary because cases are too unpredictable to justify time limits	9	6
Gives too much power to the judge	4	
Time limits impede on a client's right to a "full day in court" or attorney-client privilege	3	4
<b>Total Responses</b>	<b>57</b>	<b>46</b>

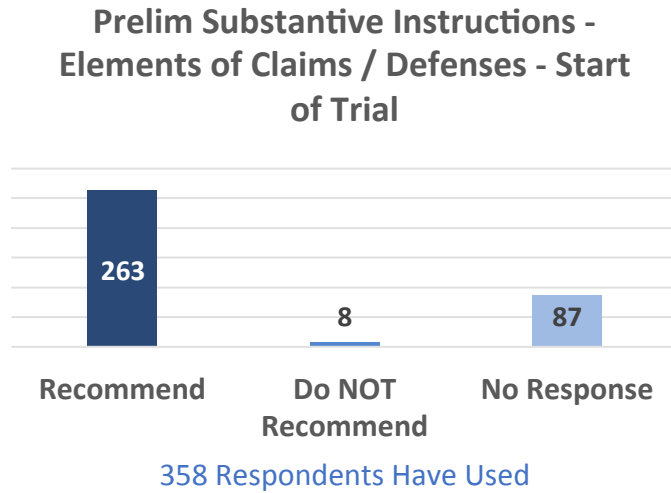
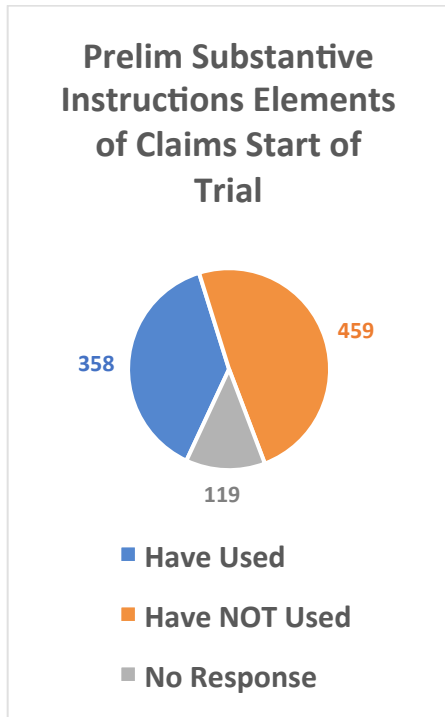
**Time Limits Parts of Trial**



**Time Limits Parts of Trials**



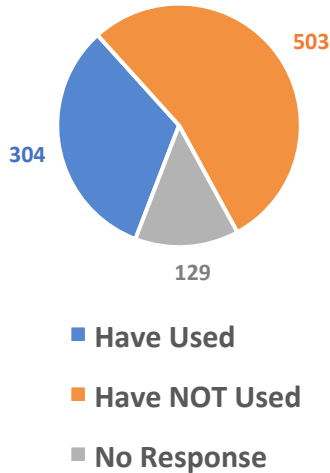
<b><u>Do Not Recommend: Time Limits Trial to Expedite the Length of Trial</u></b>	<b>Have Used</b>	<b>Have Not Used</b>
Too limiting on the process, prevents development of facts	22	10
Time consuming and ineffective	11	6
Biased in one or more ways	10	5
Miscellaneous (includes increased pressure on attorneys, increased conflict in courtroom, confusing for juries, uniqueness of cases, attorney skill, etc.)	10	6
Gives too much power to the judge	9	
The allotted times are too arbitrary; cases become too unpredictable	7	3
Limits jury pool exploration in voir dire	6	
Sways juries to come to a premature verdict	4	
Had a bad experience with time limits or something of a similar nature in trial	3	1
<b>Total Responses</b>	<b>82</b>	<b>31</b>



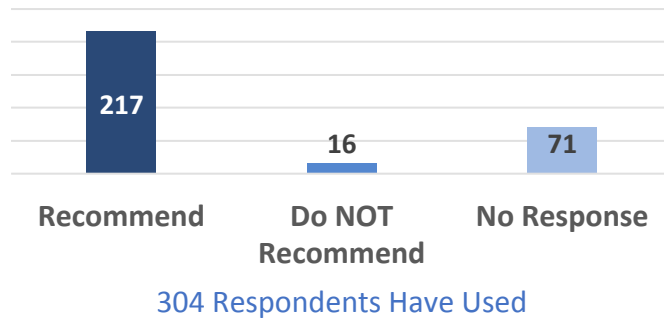
**Do Not Recommend: Prelim Substantive Instructions on Elements of Claims/Defenses at Start of Case**

	Have Used	Have Not Used
Time consuming and ineffective		3
Bad experience with an innovation of a similar nature		2
Jurors have no context around the instructions at the beginning of the trial		2
Miscellaneous (includes biased in more than one ways, too limiting on the process, etc.)		2
Trial is too unpredictable to give accurate instructions at the start (facts change, charges change, etc.)		2
<b>Total Responses</b>	<b>0</b>	<b>11</b>

**Substantive Instructions  
Start of Trial**



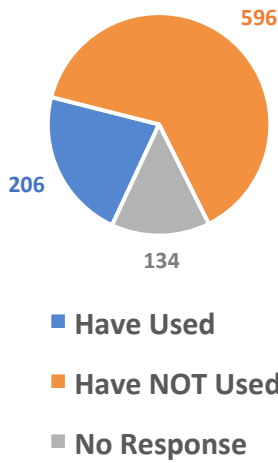
**Substantive Instructions Start of  
Trial**



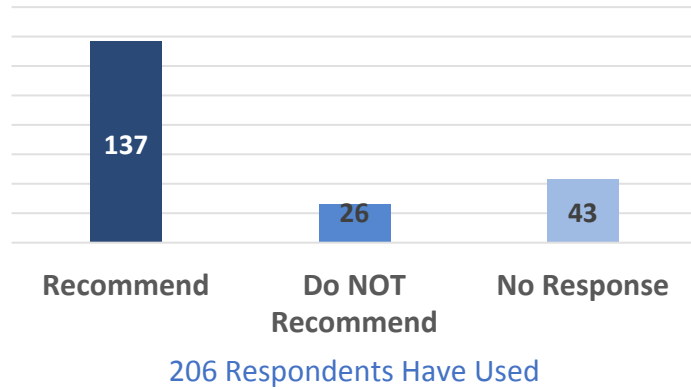
<b><u>Do Not Recommend: Substantive Instructions at the Outset of Case</u></b>	<b>Have Used</b>	<b>Have Not Used</b>
Creates confusion in the courtroom because instructions are out of context	2	6
Sways juries to come to a premature verdict	2	
Creates undue emphasis on certain parts of the case	1	
Time consuming and ineffective		3
Miscellaneous (includes biased in one or more ways, content as is with the system, bad experiences with juries, etc.)		3
<b>Total Responses</b>	<b>5</b>	<b>12</b>



**Mini-Openings Before Jury Selection**

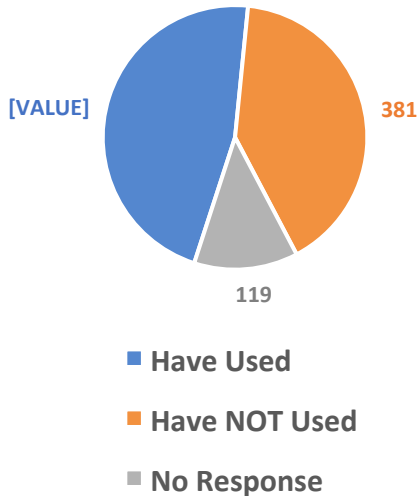


**Mini-Openings Before Jury Selection**

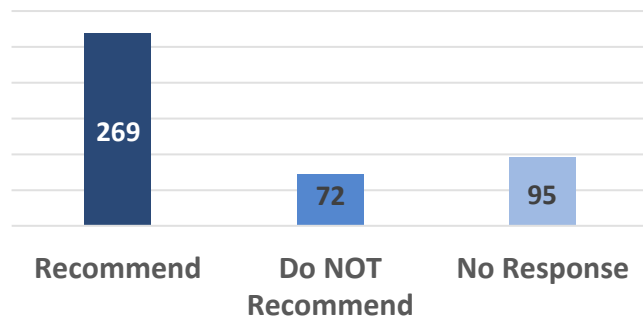


<b><u>Do Not Recommend: Attorneys Allowed to Give Mini-Openings Prior to Jury Selection</u></b>	<b>Have Used</b>	<b>Have Not Used</b>
Time consuming and ineffective	3	14
Biased in more than one ways or places undue weight on certain areas	2	11
Sways juries to come to a premature verdict	2	1
Miscellaneous (includes encourages courtroom mischief, jury self-selection, bad experiences, repetitive, too much emphasis on attorneys, etc.)	2	11
Creates conflict and/or confusion in the courtroom		4
<b>Total Responses</b>	<b>9</b>	<b>41</b>

**Jurors Allowed to Ask Qs During Trial**



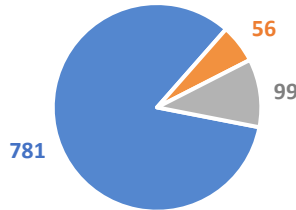
**Jurors Allowed To Ask Qs During Trial**



436 Respondents Have Used

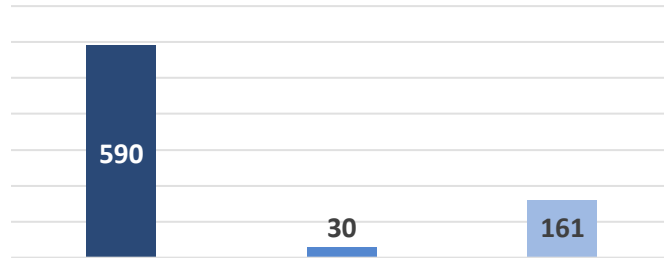
<b><u>Do Not Recommend: Jurors Allowed to Ask Questions During Trial</u></b>	<b>Have Used</b>	<b>Have Not Used</b>
Jurors ask questions that are not allowed or are subject to objections, which increases probability of mistrial claims	12	3
Creates confusion in the courtroom or causes a change in focus during the case	11	4
Time consuming and ineffective	8	5
Bias in one or more ways or makes one side appear more hostile to the jury	4	5
Miscellaneous (emphasis placed on questions, individualized per juror, too limiting on the process, etc.)	3	1
Bad experience with innovation of a similar nature	2	
Skeptical of how juror questions could be addressed without issues, but open to discussion about it		2
<b>Total Responses</b>	<b>40</b>	<b>20</b>

**Jurors Allowed to Take Notes**



- Have Used
- Have NOT Used
- No Response

**Jurors Allowed to Take Notes**

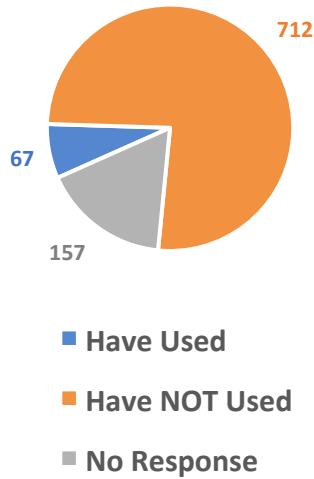


781 Respondents Have Used

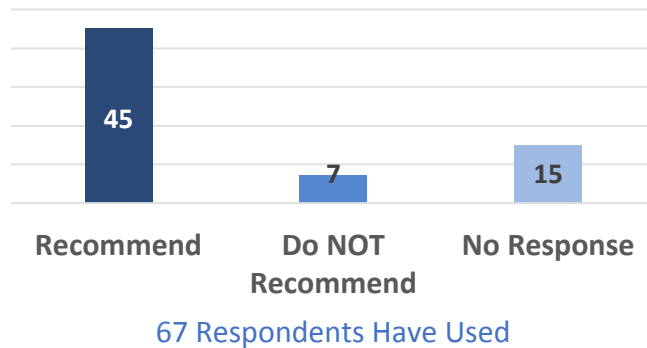
**Do NOT Recommend**

<b><u>Do Not Recommend: Jurors Allowed to Take Notes</u></b>	<b>Do NOT Recommend</b>	
	<b>Have Used</b>	<b>Have Not Used</b>
Note-taking distracts jurors from what is happening in real-time during trial	4	1
Jurors are prone to making notational errors	2	
Time consuming and ineffective	2	
Jurors will place too much emphasis on their notes in the deliberation room	2	1
Already content with the way trials are run		1
<b>Total Responses</b>	<b>10</b>	<b>3</b>

**Jurors Discuss Evidence Before Final Deliberations**

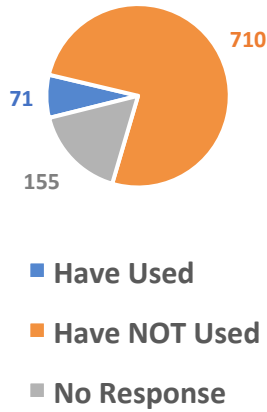


**Jurors Discuss Evidence Before Final Deliberations**

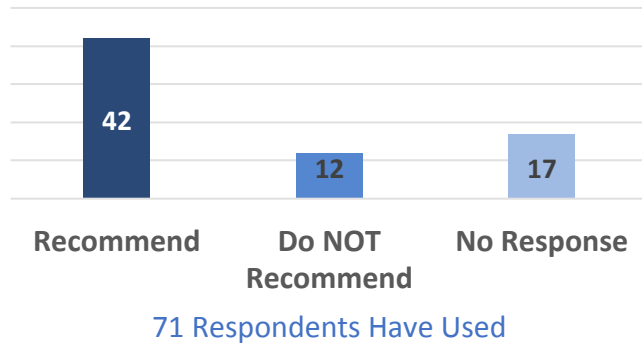


<b><u>Do Not Recommend: Juror Discussion of Evidence Prior to Final Deliberations</u></b>	<b>Have Used</b>	<b>Have Not Used</b>
Sways juries to come to a premature verdict and remain there	2	53
Time consuming and ineffective	1	17
Miscellaneous (includes bias in more than one way, confusion, integrity of process, content with system already, etc.)		18
<b>Total Responses</b>	<b>3</b>	<b>88</b>

**Interim Statements by Counsel on Witness Testimony**

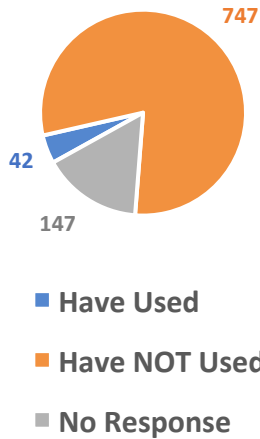


**Interim Statements by Counsel on Witness Testimony**

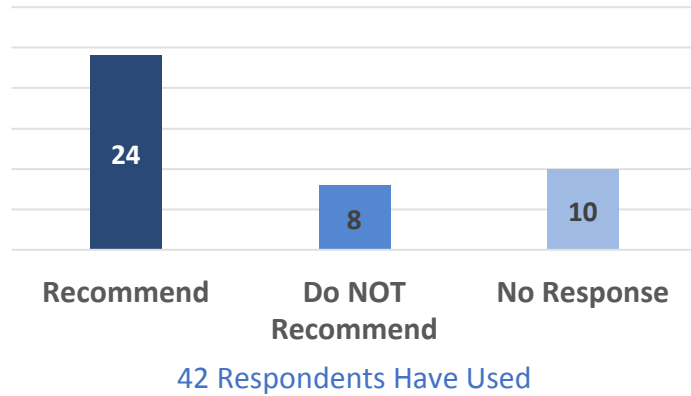


<b><u>Do Not Recommend: Interim Statements by Counsel as to what Witness will Prove or Proved/Failed to Prove</u></b>	<b>Have Used</b>	<b>Have Not Used</b>
Invites error and/or bias in one or more ways, as well as the jury placing more or less weight on specific pieces of evidence	2	19
Time consuming and ineffective	1	25
Creates confusion and/or conflict in the courtroom	1	9
Already content with the system as it is		4
It is the jury's job to determine what a witness has or has not proven		3
Miscellaneous (includes preserving common law, integrity of the court system, too much power to the judge, etc.)		8
Places too much emphasis on the attorney and his/her argument, rather than on the evidence presented		15
Too limiting on the process, prevents development of fact		3
<b>Total Responses</b>	<b>4</b>	<b>86</b>

**Interim Summations  
Before Closing  
Argument**

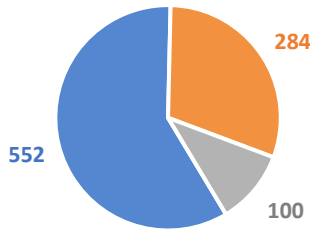


**Interim Summations Before Closing  
Argument**



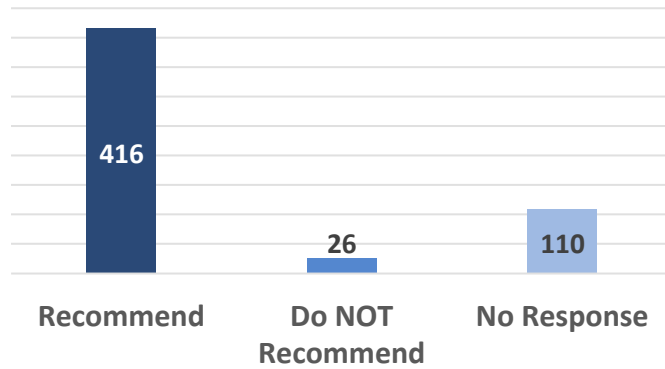
<b><u>Do Not Recommend: Attorneys Give Interim Summations Before Closing Argument</u></b>	<b>Have Used</b>	<b>Have Not Used</b>
Invites error and/or bias in one or more ways; allows attorneys to spin the evidence	1	14
Time consuming and ineffective		25
Places too much emphasis on the attorney and his/her argument, rather than on the evidence presented		16
Miscellaneous (includes integrity of process, bad experiences with juries, content with system already, etc.)		13
Creates confusion in the courtroom		6
Premature, as not all the evidence has been presented		4
<b>Total Responses</b>	<b>1</b>	<b>78</b>

**Each Juror Has Copy of Instructions and Verdict Form**



- Have Used
- Have NOT Used
- No Response

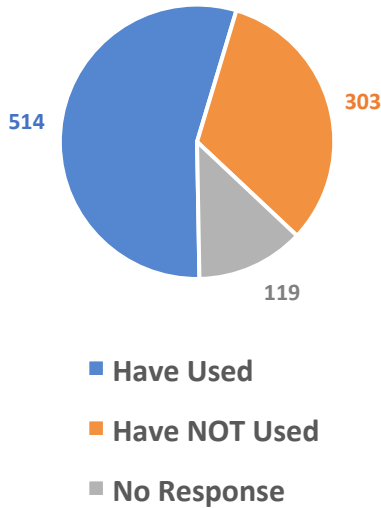
**Each Juror Has Copy of Instructions and Verdict Form**



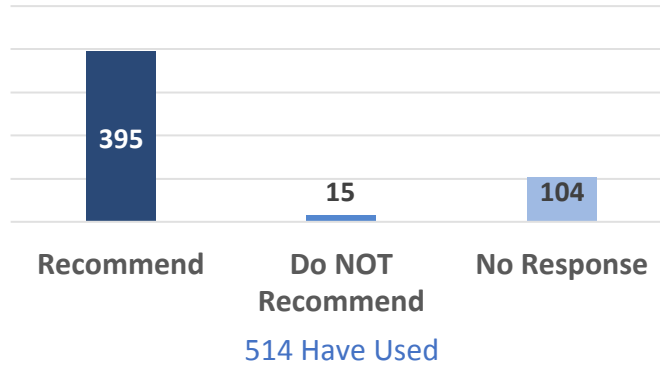
552 Respondents Have Used

<b><u>Do Not Recommend: Providing Each Juror with a Copy of the Instructions and Verdict Form</u></b>	<b>Have Used</b>	<b>Have Not Used</b>
Creates confusion in the deliberation room	3	2
Creates a distraction in the deliberation room	2	
Waste of valuable resources	1	
Bad experience with the innovation or one of a similar nature	1	
Already content with the trial process as a whole		2
Discourages sharing of legal meanings between jurors		2
Jurors unlikely to consider the law as a whole		1
<b>Total Responses</b>	<b>7</b>	<b>7</b>

**Substantive Instructions Before Closing Arguments**



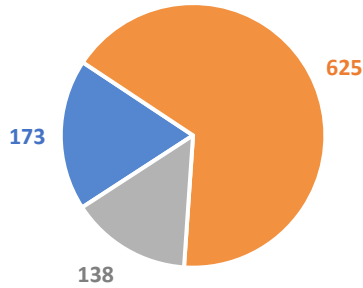
**Substantive Instructions Before Closing Arguments**



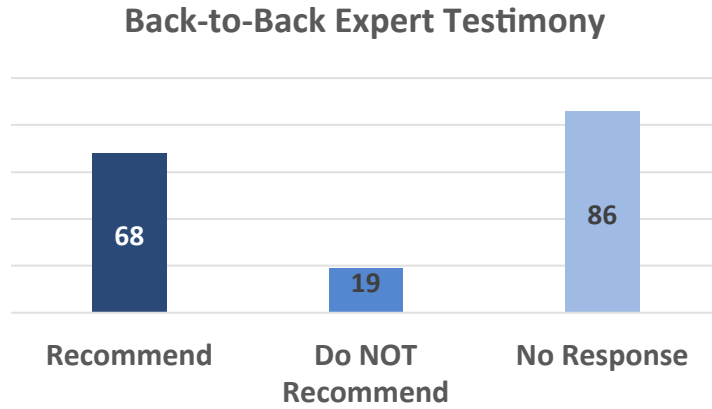
<b><u>Do Not Recommend: Substantive Instructions Before Closing Arguments</u></b>	<b>Have Used</b>	<b>Have Not Used</b>
Creates confusion in the courtroom	2	
Premature, as not all the evidence has been presented	2	1
Time consuming and ineffective	2	
Miscellaneous (includes too limiting, already content, bad idea, etc.)	1	3
<b>Total Responses</b>	<b>7</b>	<b>4</b>



**Back-to-Back Expert Testimony**



- Have Used
- Have NOT Used
- No Response

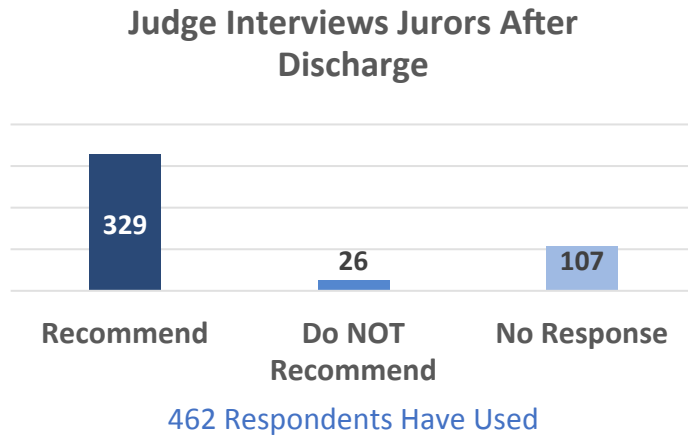
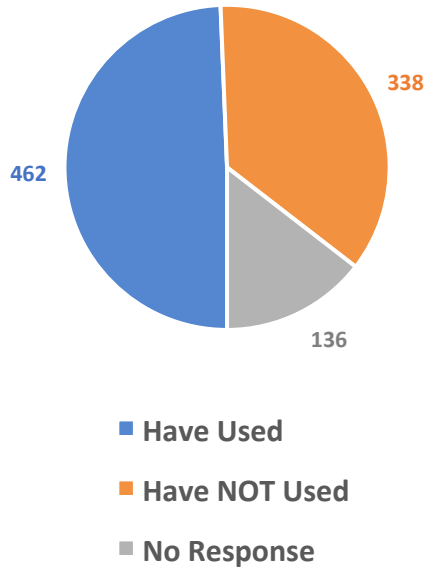


173 Respondents Have Used

**Do Not Recommend: Back-to-Back Expert Testimony**

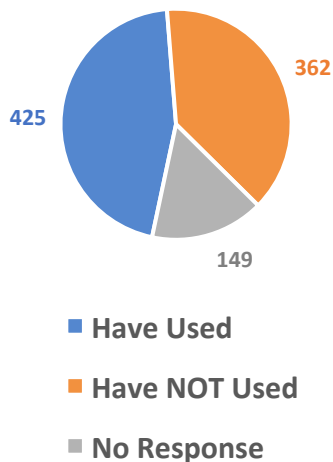
	Have Used	Have Not Used
Biased in one or more ways	2	1
Creates confusion in the courtroom	2	1
Disrupts attorney strategy during trial	1	10
Time consuming and ineffective		8
Miscellaneous (includes already content, factual predicate needed, etc.)		4
<b>Total Responses</b>	<b>5</b>	<b>24</b>

**Judge Interviews  
Jurors After Discharge**

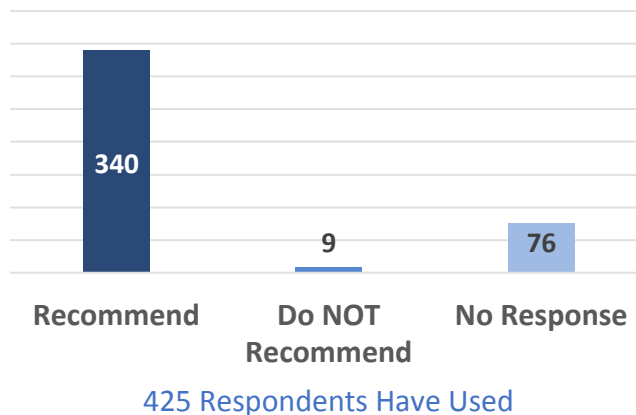


<b><u>Do Not Recommend: Judicial Interviewing of Jurors after they are Discharged</u></b>	<b>Have Used</b>	<b>Have Not Used</b>
Time consuming and ineffective	2	4
Judicial review of the verdict could result in a verdict being thrown out, mistrial, etc.	1	3
Interviewing jurors after they have reached a verdict is often intimidating, especially when it is involuntary		4
Miscellaneous (includes integrity of process, bad experiences with juries, content with system already, etc.)		3
<b>Total Responses</b>	<b>3</b>	<b>14</b>

Plain Language Instructions



Plain Language Instructions



<u>Do Not Recommend: The Use of Plain Language Instructions to Jurors</u>	Have Used	Have Not Used
Plain language can be quite lengthy		1
Technical language often doesn't translate to plain language well and can be confusing		1
<b>Total Responses</b>	<b>0</b>	<b>2</b>

It is our hope that the survey results specific to jury trial innovations will provide greater insights that can be shared with the bench. If, in fact, judges are most concerned about the very real and pressing constraints of time and money on our court system, one or more of the jury trial innovations mentioned in this survey could address those concerns and minimize or eliminate the judicial “pressure to settle out of court” that one-third of attorneys surveyed tell us they routinely face.

**APPENDIX: CONTENT ANALYSIS FOR OPEN-ENDED QUESTIONS**

**What are some of the other reasons your cases are not jury-eligible?**

**(Total Other Reasons = 394)**

48	Miscellaneous (non-jury case work including: pre-litigation, UIM, vaccine court, counseling only, investigative, <i>sui generis</i> , etc.)
39	Claims in Equity
35	Business (Contracts, Transactional, etc.)
34	Federal Torts Claims Act (FTCA)
32	Amount in controversy does not meet threshold for jury trial
16	Waiver
15	Bench Trial
13	Probate/Family Law
12	Waiver (Contractual)
11	Declaratory Judgment
11	Insurance Coverage Questions
9	Worker's Compensation
9	ERISA
7	Injunctive Relief
7	Statutory Bar on Jury Trial
6	Mandatory Arbitration
6	Mediation
5	Appellate Law
5	Settlement

*Continued on next page*



4	ADR
4	Class Action/Mass Tort
4	Criminal Cases (e.g., misdemeanor offenses)
4	State/Municipality Claims
2	Environmental
2	Hatch-Waxman Cases
2	Intellectual Property/Patent Cases
2	Idiosyncratic Response
1	Maritime Law
1	Personal Injury Protection (PIP)
1	Real Estate
1	Social Security Disability
1	Title VII
45	<i>NA - Not applicable</i>

**What are some of the other reasons jury-eligible cases do not go to trial? (Total Other Responses = 127)**

21	Voluntary ADR (e.g., mediation)
14	Mandatory ADR
13	Risk of Jury Decision-making
12	Costs
10	Miscellaneous (includes: death of a party, case not in suit, <i>Iqbal/Twombly</i> ruling, no insurance, etc.)
9	Summary Judgment Granted
7	Dispositive Rulings
7	Settled
7	Timing - Delay (trial date or length of trial)
4	Concern about Appeal
4	Concern about Judicial Decision-making
4	Judge exerting pressure to resolve without jury trial
4	Risk to Client Reputation/ Sales/Stock
4	Voluntary Dismissal
3	Opposing Counsel Misconduct
2	Criminal Plea
2	Fatigue
2	Idiosyncratic
2	NA
2	Policy limits paid
1	Concern about Confidence in Attorney
1	Damage Caps

**What are some of the other reasons your clients believe jury-eligible cases do not go to trial?  
(Total Other Responses = 105)**

16	Emotional Cost (fear, anxiety, etc.)
12	Financial Cost
12	Risk of Jury Decision-making (uncertainty)
12	Timing or Delays
10	Settles
8	Mediation
8	Risk to Client Reputation/Sales/Stock
7	Plaintiff Needs Money
6	Client Fatigue
5	Mandatory ADR
3	Idiosyncratic response
3	Risk of Damages
2	Damage Caps
2	Dispositive Rulings
2	Opposing Counsel Misconduct
1	Inconvenience
1	Insurer wants to settle
1	Negative opinions of lawyers
1	Risk of Judicial Decision-making
1	Summary Judgment Ruling



**Why Are Civil Jury Trials Declining****(All Reasons = 1,398)**

<b>341</b>	<b>General Litigation Costs</b>
<b>180</b>	<b>Risk of Uncertain Outcome</b>
<b>130</b>	<b>Alternative Dispute Resolution (Mandatory Arbitration / Mediation)</b>
<b>91</b>	<b>Length of Trial / Delay Getting to Trial</b>
<b>90</b>	<b>Judges Eager to Settle / Oppose Jury Trial</b>
<b>78</b>	<b>Tort Reform (Legislation and Social Movement)</b>
<b>73</b>	<b>Miscellaneous</b>
<b>64</b>	<b>Pretrial Costs / Discovery Costs</b>
<b>54</b>	<b>Inadequate Jurors (Incompetence, Bias, Untrustworthy)</b>
<b>54</b>	<b>Summary Judgment / Pretrial Motions Practice</b>
<b>47</b>	<b>Big Business, Insurance Co., etc. strongly against jury trials because of cost, risk, negative publicity, etc.</b>
<b>35</b>	<b>Settlement as Rational</b>
<b>34</b>	<b>Runaway Verdict (or publicity of them)</b>
<b>29</b>	<b>Cost of Experts</b>
<b>29</b>	<b>Inexperienced Lawyers</b>
<b>22</b>	<b>Court Ordered/Mandated Mediation</b>
<b>12</b>	<b>Inadequate Judges (Bias, etc.)</b>
<b>12</b>	<b>Attorney Fear</b>
<b>11</b>	<b>Post-Trial Motions Undermine Value of Jury Verdict</b>
<b>10</b>	<b>Jury Verdicts Too Small</b>
<b>2</b>	<b>Court Fees</b>

**What Could be Done to Increase the Number of Jury Trials, or At Least Stop the Decline? (Total Number of Responses = 945)**

- 200 No Response Given
- 130 Expedite/limit/govern the time and form of discovery / stronger consequences for abuse of discovery
- 73 Limit / Eliminate mandatory arbitration clauses/mandatory mediations
- 65 Get judges to recommit themselves to jury trials; eliminate judicial pressure to settle.
- 56 More efficient courts (managing calendar, setting deadlines, holding parties to deadlines, longer work days, etc.)
- 54 Expedited jury trials/summary jury trials; including fast-track for low-dollar cases
- 53 Not sure/don't know
- 46 Reduce cost of litigation (non-specific)
- 47 Educate public, attorneys, clients and judges that juries make good decisions/jury trials are important/jury duty is important
- 41 More money for the courts (more courtrooms, more judges, more training for judges better pay for jurors)
- 30 Limit/Restrict summary judgment rulings
- 28 More caps on damages
- 28 Overturn tort reform legislation

*Continued on next page*

- 27 Limits on number of expert witnesses (to lower expense); tougher on Daubert rulings; set limits on expert fees
- 24 More judges with trial/case-specific experience
- 24 Idiosyncratic response or no solution proposed
- 22 Streamline presentation of evidence/testimony (dispositive rulings, motions in limine)
- 19 Nothing; clients like mediation, clients risk-adverse
- 15 Lawyers must be willing to take more cases to trial
- 12 Better lawyering, more training for inexperienced lawyers
- 12 Loser pays costs
- 12 Make it harder to evade and better to serve on jury duty (e.g. we need better educated, more working jurors)
- 11 Take decisions out of hands of insurance company
- 11 Make insurance companies honor agreements
- 11 Mandate consent to settle provisions
- 11 More experienced claims managers/trial counsel
- 9 Why increase number of jury trials?
- 9 More high-low agreements
- 8 Lower threshold for amount in controversy
- 7 Improve voir dire (expanded time, allow us to explore and eliminate juror bias)
- 7 Separate civil and criminal courts so judges are experts/specialists in one or the other
- 6 Alternative fee structures for attorneys so clients can afford to go to trial
- 5 Expand summary judgment rulings

*Continued on next page*

- 5 Reduce jury size (to 8 or 6) or majority rule
- 4 Convince clients that cases should be tried
- 3 More training for inexperienced judges
- 3 Reform appellate process
- 3 Better technology in courtrooms
- 3 Fewer damage caps
- 3 Less biased jurors
- 3 Inform jurors if the parties have insurance
- 2 Attorneys need to bring better cases
- 2 Notice pleading standards
- 2 More judge remitters on runaway verdicts / Repeal fee-shifting laws
- 1 Stop venue shopping
- 1 Bifurcate liability/damages
- 1 Abolish Rule 56 for disclosure of documents
- 1 More interactive jury trial innovations
- 1 Stop lawyer advertising
- 1 Educate legislatures
- 1 Increase Statute of Limitations
- 1 Educate public about lies of insurance companies
- 1 More plaintiff's verdicts
- 1 Term limits appellate judges
- 1 Eliminate Daubert/Jury research
- 1 Jury of peers in professional negligence cases
- 1 Enforce arbitration clauses
- 1 Keep or eliminate Rule 56

*Continued on next page*

- 1**            **Ease evidence restrictions**
- 1**            **Vote Democrat**
- 1**            **Simplify jury instructions**
- 1**            **Abolish/limit Rule 23 and CAFA**
- 1**            **Limit for exposure to bad faith claims for insurers**
- 1**            **Force disclosure of damages so risk is known**