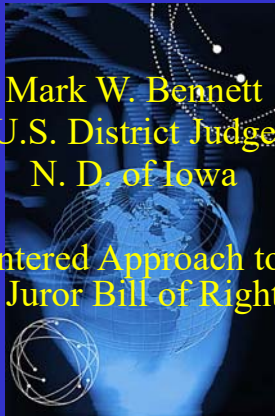


Mark W. Bennett
U.S. District Judge
N. D. of Iowa

A Jury Centered Approach to Judging:
“A Juror Bill of Rights”



Statistics (Actions per Judgeship)

District	Trials Completed	Numerical Standing (US/Circuit)
Missouri Eastern	21	24/7
Missouri Western	32	9/3
Kansas	21	24/1
Iowa Northern	80	1/1

“The most stunning and successful experiment in direct popular sovereignty in all history is the American jury.”

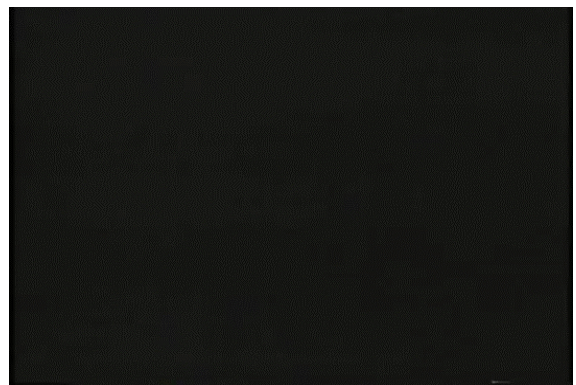
-- Judge William Young
District of Massachusetts



Two Overarching Principles:

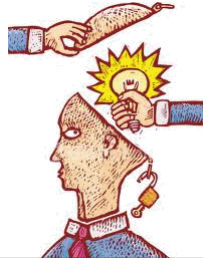


- What can I do to make jury trials more user friendly for litigants, lawyers and jurors?
- What can I do to significantly improve the chances that jurors and litigants leaving our court become committed goodwill ambassadors for our jury system?



Don't worry about people stealing your ideas. If your ideas are any good, you'll have to ram them down people's throats."

-- Howard Aiken



Mark W. Bennett, *Reinvigorating And Enhancing Jury Trials Through An Overdue Juror Bill of Rights A Federal Trial Judge's View*, 38 ARIZ. ST. L. J. 481 (2016)



WWJW "What Would Jurors Want?"

PREVIEW

- Arizona/Seventh Circuit Bar Association Jury Projects
- Right No. I: No time-wasting
- Right No II: Truth as to length of trial
- Right No. III: Plain English jury instructions & chart verdict forms
- Right No. IV: Innovations
- Right No. V: Creature Comforts

Greeting the Jurors – the Handshake



Arizona/Seventh Circuit Bar Projects

1. Arizona Jury Project – April 14, 1993
2. Arizona Supreme Court - Committee on More Effective Use of Juries
3. 15 of 55 recommendations in Arizona adopted

Arizona/Seventh Circuit Bar Projects (cont.)

4. Seventh Circuit Project – October of 2005- April 2008
 - 22 federal district judges
 - 50 jury trials
 - 434 jurors
 - 86 lawyers

Right No. I – No Time Wasting

1. Just Say No to Sidebars



Right No. I – No Time Wasting

2. Always start and end court on time – including breaks
3. Computer-generated random ordering of potential jurors for the start of jury selection

Right No. I – No Time Wasting

4. Hard time limits on opening statements and closing arguments



Right No. I – No Time Wasting

5. Strong judicial oversight of the FPTC to eliminate redundant, cumulative, and excessive witnesses and exhibits
6. Trial By Agreement – movement – my requirement in Trial Management Order

Trial By Agreement

Steve D. Susman and Thomas M. Melsheimer,
Trial by Agreement: How Trial Lawyers Hold the Key to Improving Jury Trials in Civil Cases, 32
 REV. LITIG. 431 (2013).

<http://trialbyagreement.com/pretrial-agreements/pretrial-agreements-made-easy>

Right No. II – Truth as to Length of Trial



Right No. II – Truth as to Length of Trial

1. Firm time limits on length of trial
2. Hour limits established at FPT
3. How I track time in trial
4. Every lawyer has told me afterwards “Time limits helped me try a better case.”
5. No lawyer has ever used all the time allocated
6. Frequent juror updates

Right No. III – Plain English Jury Instructions & Verdict Forms

1. Each juror has own set of plain English final instructions BEFORE opening statements
2. Development of my plain English instructions
3. Enormous room for improvement
 - Use of preliminary instructions on legal elements increased in federal courts in civil cases from 17% in 2005 to 25% in 2014
 - State courts from 18% to 19%

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
vs.
DARWIN ZOCH,
Defendant.

No. CR 11-4031-MWB
INSTRUCTIONS
TO THE JURY

TABLE OF CONTENTS	
INSTRUCTIONS	1
NO. 1 - INTRODUCTION	1
NO. 2 - PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF	3
NO. 3 - REASONABLE DOUBT	5
NO. 4 - OTHER IMPORTANT TERMS	6
NO. 5 - FELON IN POSSESSION OF FIREARMS AND AMMUNITION	8
NO. 6 - DEFINITION OF EVIDENCE	11
NO. 7 - TESTIMONY OF WITNESSES	13
NO. 8 - OBJECTIONS	15
NO. 9 - BENCH CONFERENCES	16
NO. 10 - NOTE-TAKING	17
NO. 11 - CONDUCT OF JURORS DURING TRIAL	18
NO. 12 - DUTY TO DELIBERATE	21
NO. 13 - DUTY DURING DELIBERATIONS	23
VERDICT FORM	

INSTRUCTION NO. 7 - TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.
In evaluating a witness's testimony, consider the following:

- the witness's
 - intelligence
 - memory
 - opportunity to have seen and heard what happened
 - motives for testifying
 - interest in the outcome of the case
 - manner while testifying
 - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

SPECIAL VERDICT FORMS



Don't assume the jury is gonna understand it !

Verdict Forms in Chart Format

1. Much easier for the jurors to follow the special interrogatories
2. Saves paper :)
3. Helps reduce inconsistent verdicts – integrates the jury instructions with the verdict
4. Is a single snapshot of the entire case (for jurors and for me)!

PART I: LIABILITY

On the claims of plaintiff Maria Bergdale, we, the Jury, find as follows:

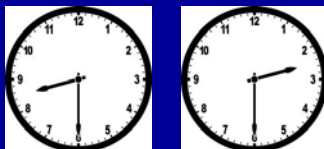
FAILURE TO PROVIDE REASONABLE ACCOMMODATION		VERDICT
Step 1: Verdict	On the claim of failure to provide reasonable accommodation for Ms. Bergdale's disability, as explained in Final Jury Instruction No. 6, in whose favor do you find?	<input type="checkbox"/> Ms. Bergdale <input type="checkbox"/> Uni-Select
Step 2: Major life activity	<i>If you found in favor of Ms. Bergdale on this claim, in what one or more "major life activities" do you find that she was "substantially limited," as explained in Final Jury Instruction No. 4? (Remember, you should only consider the "major life activity" of "working," if you find that Ms. Bergdale is not substantially limited in any other major life activity.)</i>	<input type="checkbox"/> lifting <input type="checkbox"/> standing <input type="checkbox"/> walking OR <input type="checkbox"/> working
Step 3: Failure to accommodate	<i>If you found in favor of Ms. Bergdale on this claim, what one or more "reasonable accommodations" do you find that the defendant failed to provide, as "reasonable accommodation" is explained in Final Jury Instruction No. 5?</i>	<input type="checkbox"/> A transfer to another available position <input type="checkbox"/> A combination of jobs to make a full-time position

PUNITIVE DAMAGES		AMOUNT
Claim 1	What amount of punitive damages, if any, do you award on Ms. Bergdale's claim of failure to provide reasonable accommodation for her disability, as punitive damages are explained in Final Jury Instruction No. 13?	\$ _____
Claim 2	What amount of punitive damages, if any, do you award on Ms. Bergdale's claim of adverse employment action because of her disability, as punitive damages are explained in Final Jury Instruction No. 13?	\$ _____
Claim 3	What amount of punitive damages, if any, do you award on Ms. Bergdale's claim of retaliation for filing workers compensation claims, as punitive damages are explained in Final Jury Instruction No. 13?	\$ _____
<i>If you awarded punitive damages on this claim, was the conduct at issue in this claim directed specifically at the plaintiff?</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No

Step 4: "Mitigating" Factors	Which "Mitigating Factors," if any, do any of you find the defendant has proved by the greater weight of the evidence for a particular count? "Mitigating Factors" specifically asserted by the defendant are identified for you in Final "Penalty Phase" Instruction No. 5. You may also identify any further "Mitigating Factors" that any juror finds. (Please indicate the number of jurors finding any "Mitigating Factor" in the columns for any count for which those jurors find that the "Mitigating Factor" applies.)	VICTIMS AND COUNTS									
		Gregory Nicholson		Lori Duncan		Amber Duncan		Kandi Duncan		Terry DeGeus	
		Count 8	Count 13	Count 9	Count 14	Count 10	Count 15	Count 11	Count 16	Count 12	Count 17
	"Mitigating Factor"										
	Dustin Honken does not have a history of significant criminal convictions prior to the offenses at issue here.	12	12	12	12	12	12	12	12	12	12
	Dustin Honken does not have a history of violent or assaultive behavior prior to the offenses at issue here.	12	12	12	12	12	12	12	12	12	12
	Dustin Honken loves his son, Ryan.	7	7	7	7	7	7	7	7	7	7
	Dustin Honken is loved by his son, Ryan, and the execution of Dustin Honken would cause his innocent son extraordinary emotional harm.	7	7	7	7	7	7	7	7	7	7
	Dustin Honken loves his daughter, Marvea.	7	7	7	7	7	7	7	7	7	7
	Dustin Honken is loved by his daughter, Marvea, and the execution of Dustin Honken would cause his innocent daughter extraordinary emotional harm.	7	7	7	7	7	7	7	7	7	7
	Dustin Honken loves Kathy Rick's son, Brandon, and has always treated Brandon as if he were Dustin Honken's biological son.	7	7	7	7	7	7	7	7	7	7

Right No. IV – Innovations

1. Juror-friendly daily trial schedule



Right No. IV – Innovations

2. Visual voir dire

PowerPoint Voir Dire

"The genius of it is that it was designed for any idiot to use. I learned it in a few hours." – David Byrne, formerly of the Talking Heads

1. Used in every civil and criminal trial for nearly 20 years
2. Levels the technology playing field for the parties
3. Helps capture visual as well as oral learners
4. Helps grab the potential jurors' attention and keeps their interest level higher

PowerPoint Voir Dire (cont.)

5. I find the potential jurors are more engaged in the jury selection process
6. Heightens the jurors' expectations and interest for "visualizing" the trial evidence

Welcome to your United
States District Court for
the Northern District of
Iowa

Mark W. Bennett
U.S. District Court Judge
Northern District of Iowa

Scott Honomichl
v.
Menard, Inc.

Introduction of Attorneys & Parties

- Edward Keane
- Plaintiff: Scott Honomichl
- Timothy Clausen
- Defendant: Menard, Inc.; client representative Roderick "Woody" Woodward (Store Manager)

STATEMENT OF THE CASE

- Liability
- Damages

A Little About the Federal Courts:

- USA: 94 Federal District Courts
- Two Districts in Iowa: Northern and Southern
- Northern District:
 - Two District Court Judges
 - Two Senior Judges
 - Two Magistrate Judges



A Little About the Federal Courts:

- USA: 94 Federal District Courts
- Two Districts in Iowa: Northern and Southern
- Northern District:
 - Two District Court Judges
 - Two Senior Judges
 - Two Magistrate Judges
- Places of Holding Court:
 - Sioux City
 - Cedar Rapids

Courtroom Participants

- Lawyers and parties they represent
- Clerk
- Court reporter
- Court Security Officers ("CSO's")
- Jury
- Judge

Importance of Jury Duty:

Three great civic responsibilities

- Voting
- Paying taxes

★ Jury duty

History and importance of jury trials:

- England – 1066
- Replaced trial by ordeal & combat
- Mentioned in Declaration of Independence
- Trial by Jury --- Appears three in the U.S. Constitution

“Voir dire”

- Speak the truth.
- Goal: find 8 jurors who can be *fair* and *impartial*.
- There are no “right” or “wrong” answers.
- For our justice system to work –you must answer *openly* and *honestly*.
- Sometimes you have a duty not to serve.



Severe or extraordinary hardship (2 days)?

Mr. Keane

- Introduce yourself
- Other members of your firm
- Client
- Witnesses

Does anybody know:

Mr. Keane

Members of the firm

Scott Honomichl

Witnesses

Physical or mental
injury, disability, or
condition affecting
ability to serve

- Written jury instructions and application of the law
- Must follow instructions

- Relationship with “Menard’s”
– store on Gordon Drive, any other stores
- Corporate headquarters- Eau Claire, Wisconsin

- Any injured at retail store?
- Are there too many lawsuits?
- Anyone feel there are too many frivolous lawsuits filed?
–Can you think of any?



You will be allowed to ask questions!

NOW IT IS TIME FOR THE
LAWYERS TO ASK THEIR
QUESTIONS!

Right No. IV – Innovations

3. Juror note-taking
4. Juror questioning of witnesses
5. Juror electronic retrieval of evidence during deliberations

Right No. IV – Innovations

6. Debriefing the jury following their verdict



End of debriefing

Encourage each juror to tell 5 friends and neighbors about their jury experience



Right No. IV – Innovations

7. Empowering the jury and obtaining crucial feedback – juror evaluations of the judge, lawyers, and trial process
8. Interim summaries or arguments by counsel in complex or lengthy civil jury trials
9. Allowing jurors to discuss the evidence among themselves before deliberations

Right No. V – Creature Comforts

1. Comfortable seating in the jury box

Right No. V – Creature Comforts

2. Stretch breaks



Right No. V – Creature Comforts

3. More frequent stretch breaks and standing to listen to testimony
4. Nutritious snacks
5. Microwave oven and refrigerator
6. Cup holders in jury box



Right No. V – Creature Comforts

7. Cookies



Innovations As a Result of Juror Comments

1. Trial schedule – 8:30 to 2:30 (lawyers like it, too!)
2. Jury room improvements
 - a. Microwave & Refrigerator
 - b. Ceiling fan
 - c. Whiteboard & Flip Chart



“The juror was a central figure in the creation of America. As individual hero, [a] collective voice of protest, or part of an institution that symbolized a democratic, local, and leveling power, jurors intertwined themselves [in] the American character.”

- Andrew Guthrie Ferguson



Thank you

THE END !