

We are a full-service litigation consulting firm and experts in Los Angeles jury pools.

A Simple Solution for Lessening Social Media Defiance in the Courtroom (and Promoting Trial Fairness)

According to the *Arizona Daily Star*, this past February a man on trial in an [Arizona State Court](#) was convicted of murder and sentenced to death by a jury that was allowed to ask a total of 36 questions. This case is unique because in 47 out of 50 U.S. states (all but Arizona, Colorado and Indiana), jurors do not have the absolute right to ask questions during criminal trials. According to the [National Center for State Courts](#), 11 U.S. states flatly prohibit juror questions, while the remaining 36 states leave it to the trial judge's discretion.

Whether the Arizona jury would have convicted the man anyway, we'll never know. But this case illustrates a major incongruity within our criminal justice system; the individuals tasked with the greatest responsibility at the *end* of a trial are typically no more than passive bystanders *during* a trial.

Allowing jurors to ask questions during any type of trial (criminal or civil) is a controversial topic.

Proponents believe that the practice of allowing juror questions during witness testimony improves jurors' comprehension of case issues, and therefore results in better, i.e. fairer, verdicts. But some attorneys and judges argue that when jurors insert themselves into the trial process midway, they risk endangering its fairness by blurring the lines between what is legally admissible and what is not.

From a practical standpoint, there are a few reasons why allowing jurors to ask questions might make good sense, especially if certain pre-determined parameters were maintained. This includes keeping judges as the gatekeepers of evidence, allowing them to assess each question for its probative value and permissibility, and admonishing jurors that all questions must be submitted individually, in writing, without group discussion for the judge's consideration.

Benefits of Allowing Juror Questions During Witness Testimony

There are several possible benefits of allowing juror questions during witness testimony.

First, jurors may in fact be better positioned to comprehensively understand and fairly decide a case. And, as stated in Principle 13 of the [ABA Principles for Juries and Jury Trials](#), "The court and parties should vigorously promote juror understanding of the facts and the law."

Second, jurors would arguably become more active listeners. If you've ever observed a jury trial, you've undoubtedly seen at least one juror nodding off during testimony. Advising jurors of their right to clear up points of confusion or close gaps in witness testimony would likely have the effect of better engaging their attention.

Third – and perhaps most significantly in the current age – jurors who receive answers to (at some of) their most burning questions may be less inclined to defy the court and take matters into their own hands by Googling parties or points of law.

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For attorneys who still have doubts, juror questioning could help them and their clients by elucidating which areas of their case are being misunderstood, and where they need to focus.

In an upcoming post, we'll discuss the results of an in-depth study conducted by the Seventh Circuit which tested Principle 13 and the concept of juror questions for witnesses during trial.

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Link to the full *Arizona Daily Star* article:

https://tucson.com/news/local/article_c3c684dc-f816-512e-b4cb-a5814300f65e.html

National Center for State Courts: <http://www.ncsconline.org/>

ABA Principles for Juries and Jury Trials: <https://www.uscourts.gov/file/document/aba-principles-juries-and-jury-trials-2005>

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Tags: ABA principles for juries and jury trials, juror questions for witnesses, social media in the courtroom