

Combatting a failure to report: Juror misconduct and the mum effect

By
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**Combatting a failure to report: Juror misconduct and the mum
effect**

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Abstract

The purpose of this study is to examine strategies used in jury instructions to combat the mum effect in the context of jury misconduct. This study was conducted using a 2x3 experimental design employing three sets of typed jury instructions (e.g. Standard, Punitive, and Modified) and two videos of juror deliberations portraying the absence or presence of juror misconduct. Participants ($N = 222$) were randomly assigned into one of six experiment conditions in which they read one of three sets of jury instructions and completed measures examining constructs of punishment and clarity. They then watched a video of mock jury deliberations containing the absence or presence of jury misconduct and then completed a series of measures to examine perceptions of misconduct and reporting. The study found each of the three sets of jury instructions to be equally clear. The punitive instructions were found to be more punishing than either the standard or the modified jury instructions. However, there were no significant differences in reporting perceived misconduct across the three jury instruction conditions. Instead, participants who reported the perception of misconduct also tended to report the misconduct.

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Chapter 1:

Introduction

In 2010, a manslaughter case in Florida made headlines when the jury foreman's Internet search caused a mistrial (Barrett, 2010). The foreperson used his iPhone to look up the definition of "prudence" on Encarta and shared his findings aloud during deliberations. However, it was only in the days after the verdict had been rendered that a different juror contacted the defense counsel to report the misconduct. The conviction was subsequently overturned, and the case was re-tried (Barrett, 2010).

This example of juror misconduct, aided by progressing technology, can take place on lunch breaks, in cars, and behind the closed doors of deliberations. The increased accessibility of knowledge heavily contributes to a growing number of juror misconduct charges (Bell, 2010). Decades ago, jurors would need to consult tangible texts, visit libraries, or drive to crime scenes to access the information they now find with a single click. While some courts instruct security to confiscate electronic devices prior to entry, most do not (Blackman & Brickman, 2011). Accustomed to the open flow of information, an empaneled juror has access to background, facts, and knowledge not formally entered into evidence. This prohibited retrieval of information is a form of juror misconduct and can result in varying consequences.

The System

The adversarial courtroom system relies on the rules of evidence to determine the information that may be introduced to the jury (Dann, 1993). In this system, jurors remain passive observers. Facts and evidence are filtered through attorneys and judges to the venire, and jurors evaluate the veracity and impact of the presented information (Austin, 1984; Dann, 1993). Evidence that has not been legally admitted during trial has not withstood the rigorous

process of cross-examination and rebuttal, and therefore, cannot be used as a source of information during juror deliberations (Bell, 2010).

Individually gathered information from outside the auspices of the legal system runs the risk of being incomplete, inaccurate, or completely fallacious. Due to these concerns, jurors are strictly prohibited from seeking, gathering, or considering information not presented during trial for the full length of their service (Bell, 2010; Jones & Lightner II, 2011). Failure to comply with these jury instructions constitutes juror misconduct and can result in a host of negative consequences (Jones & Lightner II, 2011). “Contaminating a verdict” with the introduction of outside sources can result in a mistrial and force the process to begin again anew (Bell, 2010, p. 82).

Juror misconduct and judicial consequences. Juror misconduct is a historically understudied area of the law (Hoffmeister, 2011). Most reports of misconduct are anecdotal, and little academic research focuses on the topic (Hoffmeister, 2011). However, while there is an absence of empirical data validating an increase in misconduct charges, Bell’s (2010) Westlaw search of all cases associated with the term “juror misconduct” suggests a growing trend. The search returned “2701 results for years 1980-1990, 3990 results for years 1990-2000, and 8755 results for the years 2000-2010” (Bell, 2010, p. 83). A 2010 report by Reuters Legal found that since 1999, at least 90 verdicts have been challenged due to allegations of juror misconduct centering on prohibited Internet searches (Grow, 2010). Despite a small sample, Hoffmeister (2011) found that 10% of the jurors he surveyed reported personal knowledge of a fellow juror conducting Internet research. Juror misconduct is not an emergent issue, but the evolution of the technological medium has increased its efficiency (McGee, 2009).

For example, after seven weeks of trial and two years of information gathering, a large Federal drug case in Florida ended in a mistrial after eight of the twelve jurors admitted to conducting Internet research (Funcheon, 2009). While a juror initially reported the alleged misconduct of a fellow juror to the presiding justice, the other seven jurors did not admit misconduct until the judge specifically questioned them (Funcheon, 2009). In Indiana, a juror was dismissed after he researched the reliability of blood alcohol testing and shared his Google findings with the rest of the jury (McQuald, 2013). Recently, an empaneled juror in Orlando was dismissed after he searched for further information regarding the defendant, “the Hello Kitty Rapist” (Cherney, 2015). This ability to quickly and easily access information has led to what *The New York Times* writer, John Schwartz (2009), termed the “Google Mistrial.”

Technology at our fingertips has increased access to information and eased the process of its retrieval. It has become almost instinctual to research information that piques curiosity or requires further understanding (Brickman, Blackman, Futterman, & Dinnerstein, 2008). Practicing legal consultant, Douglas Keene, contends that some jurors believe they cannot fully serve their role in administering justice if they are unable to find the answers to certain questions (Schwartz, 2009). Termed “conscientious jurors,” these individuals believe that actively reducing their uncertainty by finding answers is part of performing their role well (Hoffmeister, 2011, p. 419). If these “conscientious jurors” exist, as evidence suggests, then it is likely that at least a percentage of juror misconduct cases go unnoticed by courts.

Discovering extra-legal juror investigations is predominately left to self-disclosure or reports from fellow jurors. Hoffmeister (2011) contends, “jurors, not surprisingly, are reluctant to report that they have violated the courts rules” making misconduct difficult to detect (p. 983).

Only empaneled jurors are allowed into the deliberation room, and they are responsible for policing themselves and each other (Sunwolf & Seibold, 1998).

Allegations of misconduct may lead to consequences such as: sanctions, fines, removal, charges of contempt, or ultimately a mistrial (Jones & Lightner II, 2011). Much like corporate whistleblowing, a juror must “disclose illegal, immoral, or illegitimate practices ... to persons or organizations who may be able to effect action” (Near & Miceli, 1985, p. 6). A juror must be willing to stray from the group to appeal to an outside authority that has the influence to enact change. This action places the juror at a crossroad between allegiance to the group and the rules of the legal system he or she represents (Sunwolf & Seibold, 1998). This stress is further complicated by the hierarchal context and the overwhelming disparity of power.

The judge in the courtroom serves as the arbitrator of facts, evidence, and communication. While objections are noted on the trial record, he or she makes the ultimate decision as to what evidence can be admitted during trial. The judge controls the flow of communication by determining when court begins in the morning and ends in the afternoon, and when witnesses can be called. Some judges have been known to set strict time limits for the length of an attorney’s opening and closing remarks (Cresswell, 2006). The hierarchal power wielded by the judge is overt, and also represented nonverbally.

The judge sits at the bench elevated above the rest of the courtroom and looking down on those who approach. He or she is dressed in a ceremonial black robe, and all those in court must stand during a judge’s entrance and exit. A juror must ultimately be willing to stand before a judge, the ultimate authority in the room, and implicate fellow jurors in misconduct. Not only is this confrontation a serious threat to face, but it also requires the speaker to deliver damaging news with potentially severe consequences.

Theoretical Framework

The mum effect is defined by Rosen and Tesser (1970) as “keeping mum about undesirable messages” (p. 254). This substantiated aversion to delivering undesirable news has been observed in a variety of settings (Bisel, Kelley, Ploeger, & Messersmith, 2011; Rosen & Tesser, 1970; Rosen & Tesser, 1972). It is not surprising that when confronted with the choice whether to communicate negative information to others, individuals usually choose to remain silent rather than share the information. First used to explain the phenomenon occurring in dyadic relationships, the presence of the mum effect has since been documented in a variety of contexts (Rosen & Tesser, 1970). The mum effect has been studied in interpersonal, small group, and organizational disciplines, and its influences on the dissemination of potentially negative information (Bisel, et al., 2011; Kivlighan & Luiza, 2005; Milliken, Morrison, & Hewlin, 2003; Ploeger, Kelley, & Bisel, 2011; Rosen & Tesser, 1970).

While the occurrence of the mum effect and its influence on organizational ethics has been studied amidst corporations (Bisel et al., 2011), its presence and implications have not been examined in a courtroom context. Legal scholars (i.e. Agliandolo, 2014; Brickman et al., 2008; Hoffmeister, 2011/2015; Jones & Lightner II, 2011) published multiple articles highlighting their growing concerns regarding instances of juror misconduct in a digital age. While each of these authors outlines the problem, implications, and recommendations for combatting Internet searches, and the dissemination of extralegal information, the problems associated with getting jurors to report remain unaddressed. The growing number of anecdotal examples, and the trends reported by Bell (2010), indicate that juror misconduct of this nature continues to occur despite current jury instructions and increasing punitive consequences. It is my contention that combatting the mum effect associated with reporting juror misconduct should be just as

important as combatting the misconduct itself. As this study examined the use of jury instructions to increase reports of juror misconduct, the mum effect was a relevant theoretical framework to apply.

Purpose/Rationale

Despite the admonitions in jury instruction which provide behavioral guidelines and boundaries for empaneled jurors, instances of juror misconduct continue and are seemingly increasing (Bell, 2010). However, the reporting of these instances is predominately left to self-disclosure or reports from fellow jurors. Juror misconduct is not being reported due to the reliance on the jurors to report undesirable information. Currently, jury instructions warn jurors not to engage in extralegal activities, but they do not combat the presence of the mum effect or actively seek to compel jurors to report. Therefore, it is likely that instances of juror misconduct go unchecked. This failure to combat the mum effect should be addressed in order to further protect the rigor of the system.

Learning more about potential strategies to combat the mum effect in the context of jury misconduct could provide judges, lawyers, consultants, and scholars insight into the worth of allocating resources to construct and shape jury instructions and communication. Increased understanding of the mum effect in the context of jury deliberations has the potential to strengthen the theory by providing additional breadth and depth of application.

Summary

In summary, while the mum effect has been studied in a variety of settings in the field of communication, currently no research explores its relevance in the small group context of juror deliberations. Over the past decade, legal scholars have highlighted growing concerns regarding juror misconduct in an age of Internet and have proposed changes to policies, instructions, and

protocols to curb the behavior (e.g. Agliandolo, 2014; Hoffmeister, 2011/2015; Shilo, 2014).

However, strategies to encourage the reporting of misconduct when it occurs have been ignored.

As technological capabilities continue to increase, and the amount of information that can be accessed online continues to grow, the juror misconduct associated with extralegal information gathering requires further study. Using the mum effect as a framework, further analysis should be conducted by communication scholars and applied to this nuanced field of law.

Chapter Two provides a review of the relevant literature on the influence of facework and team face, the implications of the mum effect, and the role of jury instructions.

Chapter Three describes the experimental methodology and analytical methods employed.

Chapter Four presents the research results and data analyses.

Chapter Five discusses the research results, the conclusions that may be drawn from the experiment, possible limitations of the study, and directions for future research.

Chapter 2:

Literature Review

First, I provide an overview of facework and team face to explain the pressures inherent in deliberating groups that fuel the presence of the mum effect. Next, I outline the presence of the mum effect in extant research to further develop the rationale for the theory's inclusion as a framework for analysis in the present study. Lastly, I explore role of jury instructions and the efficacy of their current limiting power.

Facework

The legal context of juror deliberations, specific deliberative small groups, complicates communication. Jurors in the midst of deliberations are called upon to render judgments on complex issues and award damages in cases where they might have little experience or knowledge (Greene & Bornstein, 2000). The dynamics of deliberative groups are further complicated by the constant need to negotiate public face among individuals who barely know each other (Ryfe, 2007).

Goffman (1959) describes *face* as an individual's public self-image. The desire to maintain this face and its positive appeal to others is a universal trait (Brown & Levinson, 1987). Not only do people wish to have themselves held in esteem, but they also work to aid others in the preservation of face. According to Brown and Levinson's (1987) assessment, facework is both self-directed and other-directed. This construct is further explicated by the addition of positive and negative face (Brown & Levinson, 1987). Positive face focuses on maintaining and displaying a positive self-image, and it speaks to the desire to be liked or held in high regard by others. Negative face refers to the wish to be autonomous and remain unimpeded by others (Brown & Levinson, 1987). Individuals strive to protect and maintain both positive and negative

face, and as a result, it is not preferential to engage in face-threatening actions. The cultural emphasis placed on face often means that great pains are taken to protect oneself and others from its diminishment (Bisel, Messersmith, & Kelley, 2012). Potential threats are often countered with facework, which attempts to mitigate or ameliorate the impact of the face-threatening action (Brown & Levinson, 1987). Deliberating members must continuously work to negotiate threats to their positive and negative face (Ryfe, 2007).

Constraints placed on jurors' autonomy such as: actions, behaviors, and considerations are obstacles to negative face. While jurors do have the power to decide a verdict, they must work within the strict confines of a judge's instructions. They may not conduct research or refer to inadmissible evidence. Therefore, their freedom of information is checked. Failure to adhere to these requirements may result in removal, fines, or mistrial (Jones & Lightner II, 2011). Each of these consequences impairs the positive face by reducing esteem. Should a juror engage in misconduct, he or she must either self-report or be reported by their deliberating colleagues. Misconduct allegations brought against a juror threatens the positive face of all parties involved. Confessing exposes the transgressor as lacking propriety, the reporter as a whistle-blower, and the judge as lacking control. Reporting misconduct is an attack against face and acts in direct opposition to the self-directed and other-directed facework that serves as a cultural norm.

Team face. The role of team face refers to the importance of protecting the collective face of the group. Failure by a single party to appropriately follow the collective places the face of the team at risk. As Goffman (1959) explains, each participant plays an important role in the success of the collective. An individual's poor performance is then reflected as the group's poor performance. In this context, a team is defined as "a set of performers who cooperate in presenting a single performance" (Goffman, 1959, p. 50).

Deliberating jurors effectively fall under the definition of a team- working together through the singular performance of arriving at a verdict. In this context, the failure of one of the team members to follow the directives provided in the jury instructions would result not only in a threat to face for the offending juror, but a threat to the team face should the misconduct be discovered. As a means of protecting the team face, members of the collective may be less inclined to report instances of perceived failings. Goffman's (1959) notion of team face works to unpack the inherent motivations which may enhance the mum effect.

The Mum Effect

The mum effect was first used as lens through which to view interpersonal communication. Participants in a series of studies were found to be more likely to pass along positive information, and often failed in their duties to fully communicate negative information (Rosen & Tesser, 1970; Rosen, Tesser, & Batchelor, 1972).

Rosen and Tesser (1970) first hypothesized that the reluctance to communicate information was directly dependent on whether receiving the message would be desirable for the recipient. The researchers constructed a consumer testing scenario in which participants believed they were there to rate deodorants. During the fake consumer testing, a researcher told the participant that they were expecting another person shortly, and could he please tell the arriving participant (played by a confederate) that "Glenn Lester should be told to call home as soon as he comes in. Apparently there is some very good (bad) news about his family that he has got to get right away." Two minutes later, the confederate entered the room and introduced himself as Glenn Lester. Researchers then noted if the participant immediately conveyed the message, waited to convey the message until after gentle prodding by the confederate, or never

conveyed the message at all. A post-experiment survey was then conducted to ascertain to what degree participants wanted to convey the message.

Rosen and Tesser (1970) concluded that the likelihood that a message will be transferred is directly dependent on whether it is perceived to be pleasant news for the receiver. In instances where the message was negative, the participant might have told the confederate about the call, but did not express the directionality of the news. They also found that if the message was considered by the participants to be urgent, it was more probable that it would be transmitted.

Rosen, Tesser, and Batchelor (1972) extended the first study of the mum effect by examining some confounding variables. They posited that bestowing a responsibility to transmit the information should lead to a reduction in the mum effect. They also questioned whether the directionality of the news affected the expressed desire to communicate and whether desire to communicate is associated with the mum effect. Using role playing, Rosen et al. (1972) presented 24 variations of a scenario to test reporting. Through explicit instruction, participants who were given direct responsibility to pass on information were more likely to do so during the first opportunity for interaction (Rosen et al., 1972). However, the effects of responsibility were substantially reduced during the second opportunity for interaction (Rosen et al., 1972). The intensity of the obligation was still not enough to bring about the complete transmission of negative information to a stranger (Rosen et al., 1972). Instead, the directionality of negative messages was often omitted by the participant to render the information innocuous (Rosen & Tesser, 1970; Rosen et al., 1972).

This reluctance to share unsavory information with others extends across disciplines and contexts. Smith, Keil, and Depledge (2001) used the mum effect in an organizational context to explain the reluctance of employees to report when an internal project was falling apart. The

authors found that participants assuming the role of managers were more likely to report runaway projects when they believed that they had an explicit individual responsibility to do so. Participants were also found to be less likely to report bad news when they felt it would place them at personal risk of negative consequences.

These organizational behaviors may also be applicable in a courtroom context. Instances of jury misconduct may have similar implications to a runaway project or a project perceived to be going under. The possibility of a mistrial related to misconduct could mean that the case would have to be tried again in front of a new jury at additional cost (Jones & Lightner II, 2011). The first trial could be conceived of as a failure, or a project gone under.

Jones and Lightner II (2011) contend that jury instructions should remind jurors that instances of misconduct will likely result in a mistrial and should be framed in terms of the financial toll this exacts. Mistrials result in wasted court costs (e.g. taxpayer money), litigating party's expenses (e.g. preparation, lodging, travel, paid experts, trial technology), and wasted sacrifices of those trying to fulfill their civic duty (e.g. loss of work time, extra childcare, etc.) (Jones & Lightner II, 2011). It is also possible that jurors would be less likely to report misconduct if they believe they would be at personal risk of negative consequences. Therefore, punitive concerns of fines, removal, or being held in contempt may keep jurors from coming forward.

Similar to bystander intervention research, Smith, Keil, and Depledge (2001) posit that as the number of individuals who know a project is going bad increases, specific individuals feel less personal responsibility to report its negative status. While the authors did not test this hypothesis directly, they called for it to be explored in future research. Similarly, a juror

empaneled with five to twelve other jurors may feel less responsibility to report misconduct if other jurors are also aware that it was committed.

The hierarchal mum effect. Frequently studied in an organizational context, the mum effect is found to be particularly salient in impeding the upward movement of perceived undesirable news from a subordinate to a supervisor (Bisel et al. 2012; Milliken et al. 2003; Ploeger et al., 2011). After interviewing 40 employees from a variety of industries, Milliken et al. (2003) found that the majority were uncomfortable voicing concerns and chose not to raise issues thought to be important to their supervisors. The study further explicated the employee's reasons for silence, and found that they feared being labeled negatively, adversely impacting their relationships, and creating an overall perception of futility. These face saving measures compelled employee silence on a variety of issues including: the incompetence of a boss, suggestions for organizational improvement, and pay equity (Milliken et al., 2003).

We can draw comparisons between the mum effect employed when reporting to a supervisor and the same hierarchal disparity inherent when reporting juror misconduct to a presiding judge or courtroom bailiff. Fear of censure, causing disappointment, or being perceived negatively in front of the court may preclude jurors from coming forward. The power differential makes it difficult for a juror even to gain access to the judge to report any misconduct. A juror must first approach a bailiff or member of the court and ask to be heard. These levels of interaction contain multiple possible threats to face and may be avoided by jurors altogether. Therefore, strategies to ameliorate this threat and encourage reporting are also relevant in a courtroom context and warrant further study.

Bisel et al. (2012) described this reluctance to communicate undesirable information upward as *hierarchal mum effect*. They contend that the restriction placed on the flow of

information can be attributed to the command structures in place. The authors hypothesized that a supervisor's public image is placed at greater risk when negative feedback originates from a subordinate. Therefore, to avoid such threats to public face, the subordinate remains silent or employs equivocation to reconfigure the message into a version less threatening (Bisel et al., 2012). This tactic of equivocation is commonly used when relaying the truth could be "against one's own self-interest" (Bavelas, Black, Chovil, & Mullett, 1990, p. 60). The equivocation of messages aids in the preservation of face by drawing attention to some truths rather than others and is similar to the innocuous messages delivered by participants in interpersonal studies (Bisel et al., 2012; Rosen & Tesser, 1970; Rosen et al., 1972).

Subordinates who were asked to respond to an employer's unethical requests also employed equivocation. Ploeger and colleagues (2011) tested the hierarchical mum effect in an investigation of organizational ethics. Participants responded to an unethical request hypothetically brought to them by a subordinate, supervisor, or colleague. The results confirmed the hierarchical mum effect wherein subordinates were less likely to directly call attention to the ethical violation inherent in the request. Instead, relying on the use of equivocation, most subordinates sought to indirectly deny their superior's appeal. The researchers also concluded that females, younger workers, and those with the least amount of work experience were most likely to employ indirect measures (Ploeger et al., 2011). Equivocation and silence are the predominate responses to important topics in the work place, especially concerning ethical matters (Bisel et al., 2012).

The moral mum effect. Bisel and Kramer (2013) extended the mum effect further to explain an individual's reluctance outwardly to term a person's behavior as unethical or immoral. The *moral mum effect* asserts that individuals shy away from outwardly announcing or drawing

attention to others' questionable morals due to the face threat for both parties involved. Bisel and Kramer (2013) examined the justifications workers use when publically denying what they privately believe to be unethical requests in the workplace.

The authors crafted a scenario in which participants were asked to imagine themselves as the office manager and respond to a request from either a co-worker, subordinate, or supervisor to write a check from company funds to reimburse the cost of his own personal luncheon. The rhetorical phrasing of request denials almost never directly mentioned the unethicity implicit in the request (Bisel & Kramer, 2013). Instead, the denial was most frequently couched in language that scapegoated policy as the cause for rejection.

Bisel and Kramer (2013) concluded that charging a request as unethical presents too great a threat to face, and therefore must be veiled in policy or operational justifications in order to depersonalize the interaction. Situated in the context of organizational communication, the authors contended that insight into workers' discursive practices has the potential to improve the development of an organization's policies, codes of conduct, and training initiatives (Bisel & Kramer, 2013). This provides a rationale for why individuals would choose to remain silent or equivocate when exposed to an unethical request. It also provides a foundation to understand why participants might choose to never explicitly label or draw attention to unethicity.

Bisel and Kramer (2013) recommended that organizational leaders should acknowledge the reliance on policy and "craft policies to provide workers this discursive resource" (p. 14). The authors recommended that leaders highlight unethical behavior and use case studies to label examples specifically as "unethical." This purposeful labeling could aid in mitigating the moral mum effect and policy scapegoating and work to build an organization with clear moral standards.

The moral mum effect may also be applied to a courtroom context. It may prove difficult for a juror publically to name another juror's actions or speech as misconduct since this labeling implies failure to follow instructions, unacceptable or inappropriate behavior, and wrongdoing. Instead of engaging in face threatening behavior, jurors may choose to remain silent instead. Bisel and Kramer's (2013) work implies that jurors might also employ forms of equivocation or strategic rhetoric to avoid naming the misconduct directly.

The mum effect in the courtroom. Currently, only one study seems to illustrate these dilemmas in a courtroom context. Sunwolf and Siebold (1998) employed a structuration approach to determine whether jurors invoke a set of informal rules when working through communicative challenges. Potential jurors, waiting in a western state courthouse, were asked to respond to five different scenarios to ascertain what rules jurors might use for (1) selecting a leader, (2) voting procedures, (3) requesting judicial resources, (4) handling member misconduct, and (5) resolving decision disagreement.

In the fourth scenario, potential jurors were presented with an instance of member deviance wherein a fellow juror admitted to withholding information during voir dire that might have resulted in his or her removal from the jury. The results indicated that from a sample of 97 participants, only 21% of the rules conceived resulted in informing the judge of the misconduct. Instead, 39% of the rules constructed decided that the jurors should simply disregard the information by not listening to it. Only two percent of the participants indicated that the rest of the jury had a duty to report instance of misconduct.

Sunwolf and Siebold (1998) contended that juror misconduct represents "a threat of failure to the group" wherein it is a difficult decision whether to report the allegation and even to

whom, or how, it should be reported (p. 290). While the study did not address the mum effect, its presence is implied, and the preliminary findings warrant further study.

Jury Instructions

Jury instructions are designed to provide boundaries and guidelines for the behavior of deliberating jurors when reaching a verdict. While jury instructions may cover a wide variety of areas including court mandated definitions, the roles of each party, or the standards of proof necessary for the case, this study focuses on the admonitions given prior to trial which address juror misconduct. When developing the content for these jury instructions, courts have utilized two different rhetorical strategies in an attempt to mitigate misconduct. However, neither of these strategies appears to be overwhelmingly successful given the increasing instances of juror misconduct.

Standard instructions. Although the language specifically included in jury instructions can vary, the content is similar. The judicial instructions preceding trial typically warn jurors that they should not conduct individual fact-finding missions or search for further information on the Internet (Diamond & Vidmar, 2001). For example, The Model Civil Jury Instructions for the District Courts of the Third Circuit (2015) warn jurors:

In addition, do not try to do any independent research or investigation on your own on matters relating to the case or this type of case. Do not do any research on the Internet, for example. You are to decide the case upon the evidence presented at trial. In other words, you should not consult dictionaries or reference materials, search the Internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom. (p. 5)

While preliminary instructions typically prohibit jurors from conducting independent research, not all instructions indicate whose responsibility it is to report misconduct and how to report if it occurs. The Model Civil Jury Instructions for the District Courts of the Third Circuit (2015) make no mention of how jurors should report misconduct or to whom. The pattern instructions for civil cases held in the Federal Fifth Circuit courts also explain the importance of abstaining from extralegal, research but also only briefly touch on reporting:

Third, do not do any research—on the Internet, in libraries, in books, newspapers, magazines, or using any other source or method. Do not make any investigation about this case on your own. Do not visit or view any place discussed in this case and do not use Internet programs or other devices to search for or view any place discussed in the testimony. Do not in any way research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge, until after you have been excused as jurors. If you happen to see or hear anything touching on this case in the media, turn away and report it to me [the judge] as soon as possible. (2014, p. 2)

While the Federal Fifth Circuit provides jurors with a bit more information regarding reporting protocol, it contains no specific instruction as to how this reporting should take place or compelling rhetoric regarding the duty of the juror to report. Jurors are left to discern the appropriate time and place to approach the judge to report instances of misconduct.

Jurors may not understand or believe that it is their personal responsibility to report instances of Internet misconduct. Some jury instructions fail to mention the responsibility to report at all (e.g., Federal District Courts of the Third Circuit, 2010). Failing to attribute responsibility lessens the likelihood that the undesirable information will be reported (Rosen et

al., 1972). In these instances, jurors may choose to remain silent instead of engaging in face threatening behavior or risking uncertain punitive consequences.

In some examples of jury instructions, jurors are directly charged to promptly report instances of misconduct to the court attendant or bailiff (e.g. The State California Civil Jury Instructions, 2015). While this instruction does place the responsibility of the undesirable message's delivery with each empaneled juror, it does not mean it will be delivered, or that it will be delivered in totality. Extant research also implies that if undesirable information is not reported during the first communication opportunity, the effects of responsibility lessen, and the undesirable information is less likely to be communicated during the second opportunity (Rosen et al., 1972). If the misconduct is perpetrated or discussed in front of others, the responsibility to report may also be shirked or ignored.

The precise consequence of committing extralegal Internet research is also unclear. There is no mandated penalty for the misconduct. Instead, the judge has the discretion to determine the extent of the impact on the trial and take the necessary corrective steps (Jones & Lightner II, 2011). Judges have been known to levy hefty fines, hold jurors in contempt resulting in jail time, and dismiss jurors from service (Jones & Lightner II, 2011). In 2015, a New York foreperson was fined \$1,000 and held in contempt of court after she committed misconduct by posting status updates on Facebook regarding the trial (Matyszczyk, 2015). A juror in Palm Beach County who looked up two words on an online dictionary, and sent Facebook messages regarding the trial to a fellow juror, spent eight days in jail as a result (Freeman, 2016). The Federal Fifth Circuit instructions (2014) explain simply that, "failure to follow these instructions could result in the case having to be retried" (p. 3). The Federal Third

Circuit Model Instructions (2010) make no mention of potential consequences for juror misconduct.

In conclusion, while the standard instructions define instances of extralegal research which are prohibited, they fail to employ several strategies they may enhance the reporting of juror misconduct. Based on extant research, these strategies include: (1) expressly naming and defining the extralegal research as “misconduct,” (2) assigning individual responsibility for reporting misconduct with each juror, (3) framing the “duty to report” as part of the identity of a responsible juror, and (4) outlining a clear reporting protocol. The standard instructions highlight the consequence to the system as opposed to any personal consequences to the juror. They also fail to offer the jurors any active procedure for reporting instances of misconduct.

Punitive instructions. In 2011, California passed legislation that sought to criminalize juror misconduct arising through the use of social media. Section 166(a)(6) of the California Penal Code allows jurors to be charged with a misdemeanor offense should they engage in "willful disobedience by a juror of a court admonishment related to the prohibition on any form of communication or research about the case, including all forms of electronic or wireless communication or research." This admonishment includes social media posting and is punishable by a maximum of six months in jail or a fine of up to \$1,000 (Aglialoro, 2014). Therefore, the State California Civil Jury Instructions (2015) warn jurors:

If you violate any of these prohibitions on communications and research, including prohibitions on electronic communications and research, you may be held in contempt of court or face other sanctions. That means you may have to serve time in jail, pay a fine, or face other punishment for that violation. (p. 7)

These instructions reflect the wide range of potential personal consequences for a juror engaging in misconduct. Legal scholars (Aglialoro, 2014; Hoffmeister, 2015) have questioned the adverse effect that punishing jurors may have on the legal system citing concerns of jurors' resistance to serving and the inability to adequately investigate misconduct. In instances where the behavior is criminalized, jurors would compromise their fifth amendment right to not be forced to incriminate themselves for wrongdoing should they report their misconduct (Aglialoro, 2014). The personal consequences reflected in the State California Civil Jury Instructions (2015) might also serve as an obstacle to a juror's willingness to report allegations of misconduct.

While the State California Civil Jury Instructions (2015) request, "If you receive any information about this case from any source outside of the courtroom, promptly report it to the court [attendant/bailiff]. It is important that all jurors see and hear the same evidence at the same time" (p. 7). These instructions could be confusing and may leave jurors questioning whether they need to report fellow jurors' extralegal activity (i.e. online research) if it was shared at the same time with all jurors during deliberations. These instructions do offer the jurors a means of active response; however, it remains unclear how the information should be reported to the attendant or bailiff.

Defining the Experimental Conditions

The content used in pattern jury instructions to illustrate the behavioral boundaries for jurors operates in two distinct directions. The standard instructions inform jurors of the rules governing their behavior, while the punitive instructions limit the behavior and provide consequences for misconduct. However, neither of these strategies seems efficient at staving off extralegal juror activity. Jury instructions should be used not only to educate jurors of their behavioral restrictions, but to encourage reporting if those restrictions are breached.

This lack of success leads me to consider whether other forms of juror instructions which consider the mum effect may increase reporting of misconduct. If jury instructions do not have the efficacy to stop misconduct from occurring, they should be designed to encourage juror reporting when it occurs. Therefore, the following experiment examined the effects of new jury instructions developed from extant research on the mum effect (Rosen & Tesser, 1970, Rosen et al., 1972). This experiment tested and compared the effects of three types of jury instructions (e.g. standard, punitive and modified) on participant reporting of misconduct when misconduct was present or absent as a condition.

Each set of jury instructions focused on limiting the behaviors of the empaneled jurors and offer little guidance on how to report instances of misconduct when it does occur. Three variations of pattern jury instructions (i.e., standard, punitive, and modified) were used to test strategies meant to encourage juror reporting of misconduct. These conditions reflected pattern jury instructions currently in circulation and offered a third, modified version, based on extant research surrounding the mum effect.

Standard instructions. First, “standard” instructions from the Federal Fifth Circuit Civil Courts (2014) were similar in content to those used in most venues across the country. These instructions outlined the rules for empaneled jurors prohibiting them from speaking to others about the case, researching the case or case facts, or posting about the case on social media. These instructions also framed the consequences of misconduct to the courtroom system while overlooking any potential consequences to individual jurors. They also failed to call for a specific active juror response when faced with instances of misconduct.

Punitive instructions. The “punitive” instructions followed the same standard pattern instructions and outlined the rules for empaneled jurors prohibiting them from speaking to others

about the case, researching the case or case facts, or posting about the case on social media. An additional portion of the State California Civil Instructions (2015) provided the “punitive” condition by outlining the personal consequences to jurors should they engage in misconduct while ignoring the consequences to the system. The punitive portion of the State California Civil Instructions (2015) were added to the standard instructions to form the “punitive” condition.

Modified instructions. The “modified” instructions followed the same standard pattern instructions and outlined the rules for empaneled jurors prohibiting them from speaking to others about the case, researching the case or case facts, or posting about the case on social media. These instructions included strategies which extant research (e.g. Bisel et al., 2011; Bisel & Kramer, 2013) reflects may reduce the mum effect. These included: (1) expressly naming and defining the extra-legal research as “misconduct,” (2) assigning individual responsibility for reporting misconduct with each juror, (3) framing the “duty to report” as part of the identity of a responsible juror, and (4) calling for an active juror response by outlining a clear reporting protocol. The modified instructions did not include any punitive consequences for juror misconduct or consequences to the system. Instead, they framed the failure to report juror misconduct as putting the rigor of the judicial system at risk.

These three conditions were varied with an instance or absence of juror misconduct. In one set of conditions, a mock juror admitted to conducting extralegal research (juror misconduct) and used the information he or she learned by googling the Plaintiff when speaking with the mock jury. The other set of conditions did not contain any instances of juror misconduct during deliberations.

Moderating Variables

Two potential moderating variables were also included to test participants' perceptions of the jury instruction's clarity and punishment.

Clarity. The definition of *clarity* is based on the definition of teacher clarity developed by Chesebro (1988). This extrapolation is warranted as the jury instructions work to teach jurors the rules and restrictions they must follow for engagement. In both contexts, the goal of the communication is to effectively relate information to a secondary party with the hopes of enhancing understanding. Therefore, in this context, clarity is defined as the process by which the instructions are able to effectively stimulate the desired meaning of content and processes in the minds of jurors through the use of appropriately-structured messages. Each set of instructions (standard, punitive, and modified) contain the standard instructions as the bulk of the content.

Punishment. Miller and Vidmar (1981) contend that the definition of *punishment* has long been defined and conceptualized in the social sciences in a variety of confusing ways. They advocate for a straight-forward definition that does not tie the term to complicated technology and avoids the complex issue of defining a particular legal act. Therefore, Miller and Vidmar (1981) conceptualize punishment as being a negative sanction intentionally applied to someone who is perceived to have violated a law, a rule, a norm, or an expectation.

The State California Civil Jury Instructions (2015) apply negative sanctions by punishing jurors who are caught engaging in juror misconduct. The "standard" instructions from the Federal Fifth Circuit Civil Courts (2014) forgo any mention of sanctions placed on offending jurors and instead focus on bounding the rules, norms, and expectations. As Smith, Keil, and Depledge (2001) found, individuals are more likely to abstain from reporting negative

information when they believe there to be a risk of consequences. While reporting the misconduct of another juror may not place the reporter at risk of personal sanctions, reporting also operates as threat to face (Bisel, Messersmith, & Kelley, 2012).

Following these conditions, the subsequent research question and hypotheses are proposed:

RQ₁: Do the experiment conditions (jury instructions) affect participant's perceptions of clarity?

H₁: The experiment conditions (jury instructions) will significantly affect participant's perceptions of punishment.

H₂: Participants will perceive that juror misconduct occurred in each of the three jury instruction conditions (standard, punitive, modified) when misconduct is present as a condition.

H₃: Jury instructions will have ordered success in enhancing participants' reporting of misconduct. The modified instructions will be most effective, followed by the standard instructions, and the punitive instructions will be least effective.

Chapter 3:

Method

Design

This study was conducted using a 2x3 experimental design employing three sets of typed jury instructions (e.g. Standard, Punitive, and Modified) and two videos of juror deliberations portraying the absence or presence of juror misconduct.

Jury Instructions. Three sets of jury instructions were employed in this study. Participants were randomly assigned to a set of jury instructions read by the participant prior to viewing jury deliberations. While pattern jury instructions are lengthy, this study focused only on the portion of the instructions containing preliminary admonitions regarding juror misconduct.

The pattern jury instructions for the Federal Fifth Circuit's civil cases represent "standard" instructions similarly used across the country. The Eastern District of Texas falls within the Federal Fifth Circuit and uses these as pattern instructions in a variety of civil cases. These would also be read to jurors by the judge prior to the start of trial in patent infringement cases with slight changes to wording made at the judge's discretion.

Standard instructions. The "standard" instructions framed the boundaries for empaneled jurors. They warned jurors not speak to others about the case, research the case or case facts, or post about the case on social media. These instructions also outlined the consequences of juror misconduct to the courtroom system (i.e. potential for mistrial) while ignoring any potential consequences to the individual jurors. They also did not call for specific active juror response when confronted with instances of juror misconduct.

Punitive instructions. The "punitive" instructions followed the standard pattern instructions by outlining the same rules and boundaries jurors must follow while empaneled. A

portion of The State California Civil Jury Instructions (2015) was embedded in the standard instructions to outline the personal consequences to jurors who engage in misconduct. The State California Civil Jury Instructions (2015) are considered “punitive” in their attempt to address and criminalize social media usage, misuse of technology, and extralegal Internet searches (Aligoro, 2014; Hoffmeister, 2015). These instructions highlighted the potential individual consequences of juror misconduct while ignoring the consequences to the system. They also failed to provide jurors with instructions for active juror reporting.

Modified instructions. The final set of “modified” jury instructions used the Federal Fifth Circuit jury instructions (2014) as a template, and were modified to incorporate additional language meant to diminish the mum effect and encourage the reporting of juror misconduct. These strategies included: (1) expressly and clearly naming and defining the extra-legal research as “misconduct,” (2) assigning individual responsibility for reporting misconduct with each juror, (3) framing the “duty to report” as part of the identity of a responsible juror, and (4) calling for an active juror response by outlining a clear reporting protocol. The modified instructions did not include any punitive consequences for juror misconduct or consequences to the system. Instead, they framed the failure to report juror misconduct as putting the rigor of the judicial system at risk. This set of jury instructions was vetted by a trial attorney in Lawrence, Kansas for legal authenticity. Each of the three sets of jury instructions are printed verbatim in Appendix ‘B.’

Juror Deliberations. The deliberation transcript, used as a script for the juror videos, was the work product of a trial consulting firm, McGee and Associates (a pseudonym). As a part of their services, McGee and Associates perform mock trials at the request of clients to prepare for future litigation or to aid in settlement. The firm is predominately situated in civil torts and

spends a large percentage of time aiding in patent litigation. Employed by one side of the suit, the firm constructs a mock trial made up of 24 potential jurors. These participants reside in the Eastern District of Texas where the case will be filed and fulfill the necessary legal requirements to be placed on a jury (i.e., age, no felonies, citizen of the United States, etc.).

The firm utilizes a purposeful sampling technique to fulfill the demographics that proportionately reflect those of the district and include a variety of ages, races, sexes, and socio-economic backgrounds. After witnessing testimony from both sides of the lawsuit, including some exhibits, deposition footage, and damage discussions, the 24 jurors are broken into three groups and sent into separate rooms to deliberate. The participants are not told which party employed the consulting team, or for what purpose. The deliberation groups are recorded and transcribed.

This resulting transcript was chosen at random from one of the three groups, and contained deliberations on a patent infringement case in the Eastern District of Texas. It was then manipulated to contain an instance of juror misconduct. Minor changes were made to the transcript to enhance clarity and grammar.

The instance of misconduct included a juror explaining that he did not understand the technology in the case, and therefore, Googled the company and the patent to gain more information. The juror then went on to inform the other jurors that he also found that the Plaintiff is a non-practicing entity (patent troll) and that no money should be awarded to a company that does not use its patents to create products. The actor portrayal of this deliberation resulted in a 15-minute video.

The second transcript, with no instance of juror misconduct, maintained its original integrity from the McGee transcription. Other than the instance of juror misconduct (appearing

in bold for reference), the scripts were identical. The scripts were also submitted to a practicing trial attorney in Kansas to check for the authenticity of the alleged misconduct. This version of the script resulted in 14 minutes of recorded deliberations (Appendix 'C').

Two videos of juror deliberations were produced. The eight actors/actresses used to record the footage were recruited locally through an ad on the Theatre Lawrence's social media page by the theatre's artistic director. The researcher then auditioned the actor/actresses using prepared scenes from the transcript to ensure the believability and professionalism of those casted. The deliberation including the instance of misconduct was filmed. The casted actors were paid fifty dollars each through an awarded doctoral research student fund for their participation and time. The instance of misconduct was then edited out in post-production by the researcher to ensure that the two deliberation videos were otherwise the same. The pilot study confirmed that participants could accurately identify the juror misconduct during deliberations and the results are outlined in the following section.

Pilot Study

A pilot study was first conducted ($N = 164$) to establish the validity of the experimental methods and confirm successful manipulations. Pilot study participants were students and adults recruited through communication courses and networks at a university in the Midwest. Students were offered a minimal amount of extra credit in exchange engaging in the experiment and completing an online survey. A total of 164 adults meeting all the requirements of a prospective juror participated in the pilot study. The sample was 59% female, with an average age of 26 ($SD = 13.93$, range 18-73). The race or ethnicity of these adults was 79% Caucasian, 6% Black, 5% Hispanic, 7% Asian, .6% Native American, and 6% "other." The highest level of education

completed was: 20% high school or GED, 57% some college, 5% a two-year degree, 7% a four-year degree, and 11% a graduate degree.

Manipulation checks. To discern whether participants could detect the experimental manipulations, three manipulation check questions were used. Separate Chi Squared analysis examined the difference across conditions for each manipulation check question. The first two manipulation check questions were used to assess the jury instruction conditions.

The first question asked participants to answer “yes” or “no” to the following statement: “Do the jury instructions include specific directions and options as to how to go about reporting jury misconduct?” and was significant, $\chi^2(2) = 22.56, p < .0001$. Further analysis indicated that the standard condition was not different from the punitive condition, $\chi^2(2) = .610, p = .44$. However, the punitive condition was different from the modified condition, $\chi^2(2) = 8.97, p = .003$, as was the standard condition and the modified condition, $\chi^2(2) = .506, p = .02$. Taken together, these results indicate that the manipulation was successful.

Table 1

Instructions as to how to report misconduct across jury instruction conditions

Count/ Percent within jury instructions			
Instruction to Report Misconduct			
Instructions	Yes	No	Adjusted Residual
Standard	23 (28%)	32 (39%)	-.9
Punitive	18 (22)	37 (45.1)	-1.8
Modified	41 (50)	13 (15.9)	2.7*
<i>N</i>	82 (100)	82 (100)	

Note. * $p < .05$ if adjusted residual > 1.96 . Overall Chi square $\chi^2(2) = 22.56, p < .0001$

The second manipulation check question asked participants to indicate whether: “According to the jury instructions, are there any personal consequences for a juror who does not follow the instructions?” and was significant, $\chi^2(2) = 11.99, p = .002$. Further analysis indicated that the standard condition was not different from the modified condition, $\chi^2(2) = .446, p = .50$. However, the punitive condition was different from the standard condition, $\chi^2(2) = 11.03, p = .001$, as was the punitive condition and the modified condition, $\chi^2(2) = 7.13, p = .008$. Taken together, these results indicate that the manipulation was successful.

Table 2

Personal consequences for an offending juror across jury instruction conditions

Count/ Percent within jury instructions			
Personal Consequences			
Instructions	Yes	No	Adjusted Residual
Standard	25 (26.3%)	30 (43.5%)	-2.3
Punitive	42 (44.2)	13 (18.8)	3.4*
Modified	28 (29.5)	26 (37.7)	1.1
<i>N</i>	95 (100)	69 (100)	

Note. * $p < .05$ if adjusted residual > 1.96 . Overall Chi square $\chi^2(2) = 11.99, p = .002$

The final manipulation check question was used to assess the video conditions. This question asked participants to indicate whether “During deliberations, a member of the jury shared the results of his Google internet search.” and was significant, $\chi^2(2) = 12.74, p < .0001$.

Table 3

Google search occurring across jury instruction and video conditions

		Count/ Percent within misconduct		
		Google Search		
Video	Instructions	True	False	Adjusted Residual
Misconduct	Standard	27 (71.1%)	3 (18.8%)	3.5*
	Punitive	25 (71.4)	3 (15)	4.0*
	Modified	21 (61.8)	3 (15)	3.3*
<i>N</i>		73 (100)	9 (100)	
No Misconduct	Standard	11 (28.9)	13 (81.3)	-3.5
	Punitive	10 (28.6)	17 (85)	-4.0
	Modified	13 (38.2)	17 (85)	-3.3
<i>N</i>		34 (100)	47 (100)	

Note. * $p < .05$ if adjusted residual > 1.96 . Overall Chi square $\chi^2(2) = 39.99, p < .0001$

Main Study Procedures

Eligible participants were given a link through MTurk that allowed access to a survey hosted by Qualtrics (Appendix 'A'). The survey instructions detailed a participant's right to cease voluntary participation at any time and clarified that taking the survey is an admission of informed consent. The university's human subjects' committee approved all methods and measures.

After confirming juror eligibility and completing demographic questions, each participant was randomly assigned to one of six conditions (2x3). The conditions began by varying jury

instructions to include the “standard pattern” instructions from the Federal Fifth Circuit (including Texas, Louisiana, and Mississippi) (2014), the “punitive” instructions using the standard instructions with the addition of the punitive segment from the State California Civil Jury Instructions (2015), and the “modified” instructions intended to combat mum effect. After reading the assigned jury instructions, participants responded to measures assessing perceptions of clarity and punishment.

Participants then watched a randomly assigned 15-minute juror deliberation video containing an instance or absence of juror misconduct. Following the video, participants were asked to assess whether there were any instances of juror behavior during the deliberations they watched that should be reported. If the participant answered yes, he or she was then asked to explain his or his answer in an open-ended response. Next, each participant was asked whether he or she would report any behavior he or she witnessed during the video. Those who answered yes were then asked how they would report in an open-ended response. Participants then completed a series of attention check and manipulation check questions, followed by topical questions pertaining to litigation. All completed measures are listed in Appendix ‘A’.

This experiment employed videotaped deliberations to fully capture verbal and nonverbal cues as opposed to transcripts (McAuliff & Kovera, 2012). However, participants read the jury instructions to control for confounding variables that could affect credibility such as nonverbal demeanor, likability, or confidence (Cramer, Brodsky, & DeCoster, 2009). Although it was not explicitly stated, participants were led to believe that the transcriptions were from a real trial, and they were asked to listen to or read each carefully to answer questions.

Participants

Approximately 312 jury eligible adults were recruited through Amazon's MTurk to participate in this study. To be considered jury eligible in the United States, participants must meet six legal requirements (listed in Appendix 'A'). Participants were adults recruited through Amazon's MTurk and paid a subsidy of two dollars for their completion of the study. Up to one dollar in "bonus money" was also paid to participants for correct answers to manipulation check and attention check questions to encourage attentiveness and effort.

These true/false questions included: "During deliberations, there was a recess for jurors to take care of personal needs." "During deliberations, the jury decided the patent was infringed." "During deliberations, the jury chose to award damages to Salco (the Plaintiff)." "During deliberations, a member of the jury shared the results of his Google internet search." "The jury instructions ask that jurors do not bring their children to court." "Jury instructions are to be followed by jurors in a trial." "The jury instructions ask jurors to turn off their cell phones." "According to the jury instructions, there are personal consequences for a juror who does not follow the instructions." "The jury instructions include specific directions and options as to how to go about reporting juror misconduct." Participants who failed to answer all the attention and manipulation check questions correctly were removed from the sample. This resulted in a 29% attrition rate.

A total of 222 adults meeting all the requirements of a prospective juror participated in the study. The sample was 49% female, with an average age of 40.09 ($SD = 11.18$, range 22-69). The race or ethnicity of these adults was 78% Caucasian, 7% Black, 4% Hispanic, 7% Asian, .5% Native American, and 4% "other." The highest level of education completed was: 12% high

school or GED, 22% some college, 3% certificate or apprenticeship, 14% a two-year degree, 40% a four-year degree, and 10% a graduate degree.

Researchers (Buhrmester, Kwang, & Gosling, 2011; Paolacci, Chandler, & Ipeirotis, 2010) have found MTurk samples to be more demographically diverse than standard internet samples and American college samples. Buhrmester et al. (2011) also found that compensation levels for participants do not appear to affect data quality but may reduce data collection speed. Non-response error was also found to be less of a concern using MTurk samples than in Internet convenience samples recruited another way (Paolacci et al., 2010). Most importantly, Buhrmester et al. (2011) found that “the quality of data provided by MTurk met or exceeded the psychometric standards associated with published research” (p. 5). MTurk served as a useful tool to quickly and inexpensively recruit a demographically diverse sample with quality data.

Measurements

First, juror eligibility and demographic information were collected prior to the administering of experimental procedures. Then, based on the concepts present in the extant research, scales were developed to measure the constructs of clarity and punishment in the jury instructions. Based on Chesebro’s (1988) definition of clarity, a six-item bi-polar scale was developed. It included the following descriptors: clear/confusing, understandable/difficult to understand, they made sense/they did not make sense, straight forward/complicated, comprehensible/incomprehensible, I get them/I don’t get them ($\alpha = .93$). These bi-polar scales were coded to place perceptions of clarity at one, and confusion at seven. Based on Miller and Vidmar’s (1981) definition of punishment, a four-item bi-polar scale was developed. It included the following descriptors: rewarding/punishing, lenient/harsh, tolerant/punitive,

forgiving/vindictive ($\alpha = .72$). Perceptions of tolerance were represented by one on the scale and punishment at seven.

One item was used to assess participant's perceptions of misconduct during deliberations. In each of the conditions, participants were asked, "Imagine yourself as a juror on this panel, based on the jury instructions you read, did you view anything during the deliberations that should be reported?" Responses were measure on a binary yes/no scale. If the participant answered yes, he or she was then asked to "Please explain your answer" in an open-ended response for descriptive/explanatory purposes.

Participants were then asked, "Imagine yourself as a juror on this panel, would YOU report juror misconduct in this case?" Responses were measure on a binary yes/no scale. This singular item is representative of the ultimate and binary choice empaneled jurors face during deliberations. Those who answered yes were then asked, "If so, how would you report?" in an open-ended response for descriptive/explanatory purposes.

A series of items followed the mediated items, and were used to assess participants' understanding of the case and attentiveness to the jury deliberations. The attention check and manipulation check questions were ordered as to avoid priming participants by drawing attention to misconduct or reporting. At the conclusion of the survey, supplemental questions were included to conceal the intent of the study from the participants.

Chapter 4:

Results

Research Question One

The research question asked whether the type of jury instructions would significantly affect participants' perceptions of clarity. This question was analyzed using a one-way ANOVA. The results indicated that the type of jury instructions (i.e., standard, punitive, and modified instructions) did not have a significant effect on participants' perceptions of clarity of the instructions, $F(2, 219) = .267, p = .77, \eta^2_p = .002$. Specifically, participants who received the standard jury instructions ($M = 1.46, SD = .71$), the punitive instructions ($M = 1.39, SD = .83$), and the modified instructions ($M = 1.48, SD = .78$), perceived the instructions as equally clear.

Hypothesis One

Hypothesis one predicted that, the type of jury instructions would affect participants' perceptions of punishment. To test hypothesis two, a one-way ANOVA was conducted on perceptions of punishment in the three jury instructions conditions. Results demonstrated that the three groups of participants significantly differed in their perceptions of punishment across the three jury instruction conditions (standard, punitive, modified) $F(2, 219) = 9.48, p < .001, \eta^2_p = .08$. Post hoc comparisons using Fisher's LSD indicated that the mean difference between the punitive condition ($M = 4.64, SD = 1.11$) and standard condition ($M = 4.03, SD = .89$) was significantly different. In addition, the mean difference between the punitive condition ($M = 4.64, SD = 1.11$) and the modified condition ($M = 4.06, SD = .91$) was also significant. There was no difference ($M = .03, SD = .17$) between the modified ($M = 4.06, SD = .91$) and standard conditions ($M = 4.03, SD = .89$). Taken together, these results indicate that punitive instructions

were perceived as significantly more punishing than either the standard or modified instructions; therefore, hypothesis one was supported.

Table 4

Perceptions of clarity and punishment in jury instruction conditions

	Standard	Punitive	Modified
Clarity <i>M (SD)</i>	1.46 (.71) _a	1.39 (.83) _a	1.48 (.78) _a
Punishment <i>M (SD)</i>	4.03 (.89) _a	4.63 (1.11) _b	4.06 (.92) _a

Note: Means that do not share subscripts are significantly different ($p < .001$, Fisher's LSD)

Hypothesis Two

Hypothesis two asserted that participants would perceive that juror misconduct occurred in each of the three jury instruction conditions (standard, punitive, modified) when misconduct was present as a condition. Cross-tabulation analysis was conducted to ascertain the difference in perceptions of misconduct in the six experimental conditions. Based on the results of the analysis, perceptions of misconduct did not differ by group, $\chi^2(2) = 1.24$, $p = .54$. Participants correctly identified jury misconduct when it was present as a condition, and therefore, hypothesis two was supported.

Table 5

Perceptions of misconduct across jury instruction conditions and video conditions

		Count/ Percent within misconduct		
		Misconduct		
Video	Instructions	Yes	No	Adjusted Residual
Misconduct	Standard	37 (38.1%)	0	
	Punitive	33 (34)	0	
	Modified	27 (27.8)	3	
<i>N</i>		97 (100)	3 (100)	100
No Misconduct	Standard	3 (43)	33 (32.2)	<i>n</i> <5
	Punitive	3 (43)	45 (39.1)	<i>n</i> <5
	Modified	1 (14)	34 (28.7)	<i>n</i> <5
<i>N</i>		7 (100)	115 (100)	122

Note. * $p < .05$ if adjusted residual > 1.96 . Overall Chi square $\chi^2(2) = 1.24, p = .54$

Hypothesis Three

Hypothesis three predicted that the jury instructions would have ordered success in enhancing participants' reporting of misconduct with the modified instructions as most effective, followed by the standard instructions, and the punitive instructions as least effective. Cross-tabulation analysis was used to test hypothesis four. As reporting of misconduct was measured dichotomously (i.e., yes or no). Cross-tabulation analysis was appropriate to examine the effects of the type of jury instructions on reporting within each video condition.

The type of jury instructions had no effect on reporting within the misconduct condition. Chi square analysis performed on participants' reporting of misconduct in the video condition

containing misconduct was not significant, $\chi^2(2) = 1.31, p = .52$. Chi square analysis performed on participants' reporting of misconduct in the video condition containing no misconduct was not significant, $\chi^2(2) = 4.05, p = .13$. Participants did not change reporting behaviors regardless of the jury instructions they were presented. None of the three sets of jury instructions significantly influenced participant reporting; therefore, hypothesis three was not supported.

Table 6

Reports of misconduct across jury instruction conditions and video conditions

		Count/ Percent within report		
		Reporting		
Video	Instructions	Yes	No	Adjusted Residual
Misconduct	Standard	31 (39.2%)	6 (28.6%)	.9
	Punitive	24 (30.4)	9 (42.9)	-1.1
	Modified	24 (30.4)	6 (28.6)	.2
<i>N</i>		79 (100)	21 (100)	100
No Misconduct	Standard	2 (28.5)	38 (95)	$n < 5$
	Punitive	5 (71.4)	43 (37.4)	1.8
	Modified	0	34 (29.4)	$n < 5$
<i>N</i>		7 (100)	115 (100)	122

Note. * $p < .05$ if adjusted residual > 1.96 . Overall Chi square $\chi^2(2) = .89, p = .64$

Additional Analyses

Chi square analysis performed on participants' perceptions of misconduct on the reporting of misconduct across all conditions was significant, $\chi^2(2) = 126.34, p < .001$.

Therefore, participants indicated overwhelmingly across all conditions that if they witnessed misconduct, they would report the misconduct. A simple examination of descriptive statistics shows that 97% of participants reported viewing misconduct when it happened, and 95% of participants reported no misconduct when it was not present.

Perceptions of misconduct. Open-ended responses indicated that of the 97% of participants who correctly reported viewing misconduct, 99% of those who recognized misconduct explained that the instance occurred when one of the jurors conducted extralegal research via the internet and reported his findings to the jury:

“One juror talked about researching the case online, which is an obvious violation of the jury instructions.”

“The guy that was talking about looking stuff up on the internet was against the jury instructions.”

“The dumb guy admitted to researching the defendant and the patent at stake online, which was strictly prohibited by the jury instructions.”

Only one participant indicated a different reason for his or her perception of juror misconduct:

“For civil trials, almost one-third of states only require a majority for a verdict. Some states require a majority if the money at issue in the trial is below a certain amount, and a unanimous verdict all other times.”

Reporting misconduct. Eighty-two percent of the participants who indicated they witnessed misconduct during the deliberations indicated that they would report the misconduct. Seventy-nine percent of reporting participants specified that they would report to various court officials including the bailiff or judge.

“I would ask to speak with the bailiff and report what I witnessed immediately to the bailiff.”

“I’d go to the judge immediately. If the judge wasn’t available, I’d ask the bailiff or one of the other officials in the courtroom to get him immediately.”

“I would report the violation to the judge immediately. The next time I had access to the judge, I would feel completely obligated to tell him or her what I had heard the other judge saying. Since all the jurors have now heard this information, we’re all tainted now. I would report it ASAP.”

Sixteen percent of the reporting jurors specifically indicated that they would report the occurrence to the judge/bailiff privately or anonymously.

“I would try to speak to a guard privately and indiscreetly, like needing to use the restroom and then quietly reporting the incident to them.”

“I would see if I would pull aside the judge or bailiff and let them know a juror had looked up information online and shared it with the rest of us. As privately as possible.”

“I would pass a not to the bailiff asking if I could speak to him privately.”

Two participants expressed uncertainty regarding reporting.

“I’m not sure. I say I would, but I would be hesitant. Firstly, I wouldn’t want to be there any longer or cause a mistrial. Second, I wouldn’t want that nice man to be fined/arrested/held in contempt. If I DID report it, I would go tell the person who provided those juror instructions. It said ‘please report it to me immediately’. But I’m not totally sure I would go through with it, especially since it didn’t seem to change the outcome all that much.”

“Don’t know.”

Eighteen percent of participants indicated that despite acknowledging the misconduct, they would not report its occurrence. While not directly asked to explain this decision, one participant wrote:

“Utter ridiculous uneconomic and fallacious arguments in favor of a barbaric practice of awarding money to the people who ‘got there first’ even though they did nothing with the tech. I would absolutely NOT report the coward who Googled the patent troll and then didn’t have the sense to conceal it by proposing that the plaintiff could be a patent troll without admitting to using google as a source, then utterly failing to defend his position.”

Cross-tabulation analysis was conducted to ascertain whether the jury instructions made a difference in the above participants’ choice not to report. Based on the results of the analysis, perceptions of the decision not to report did vary by group, $\chi^2(2) = 6.60, p = .037$. While this does seem to indicate the presence of the main effect, these results are the converse to the overarching results that the decision to report does not vary by jury instruction condition. The small sample size also warrants further study to explore these potential differences.

Table 7

Non-reporting across jury instruction conditions

		Count/ Percent within jury instruction condition	
		Reporting	
Video	Instructions	No	Adjusted Residual
Misconduct	Standard	4 (11%)	-.8
	Punitive	9 (27%)	2.4*
	Modified	1 (4%)	-1.8
<i>N</i>		14	

Note. * $p < .05$ if adjusted residual > 1.96 . Overall Chi square $\chi^2(2) = .6.60, p = .037$

Summary

Research question one asked whether the jury instructions would significantly affect participant's perceptions of clarity; the results indicated that they do not. Hypothesis one posited that the jury instructions would significantly affect participants' perceptions of punishment, and this hypothesis was supported.

Hypothesis two asserted that participants would perceive that juror misconduct occurred in each of the conditions (standard, punitive, modified) when misconduct is present as a condition. Results indicated that participants correctly perceived misconduct in each of the jury instructions conditions when it was present; this hypothesis was supported.

Hypothesis three was not supported. The results indicated that there are not significant differences in participants' reporting of misconduct in any of the experimental conditions. The jury instructions did not have a significant effect on juror reporting as previously posited.

Participants overwhelmingly indicated in their open-ended responses across all

conditions that if they witnessed misconduct, they would report the misconduct.

Chapter 5:

Discussion and Conclusion

This chapter includes a discussion of the research question, hypotheses, and the overall conclusions. The implications of this study, its limitations, and proposed areas for future research are also explored.

Research Question One

Participants did not perceive a difference in clarity across the three sets of jury instructions. Each of the three sets of jury instructions incorporated the “standard” instructions from the Federal Fifth Circuit Civil Courts (2014) as the foundation. The “punitive” instructions embedded a paragraph from The State California Civil Jury Instructions (2015) in the standard instructions to outline the personal consequences to jurors who engage in misconduct. The “modified” instructions also incorporated a paragraph written to mitigation the effects of the mum effect into the standard instructions. Based on the results, these additions of text were not significant enough to enhance or reduce clarity across conditions.

Hypothesis One

As anticipated, the punitive jury instructions were perceived by participants to be more punishing than the standard or modified instructions. The addition of the language used in The State California Civil Jury Instructions (2015) was considered “punitive” in its attempt to address and criminalize social media usage, misuse of technology, and extralegal Internet searches (Aligoro, 2014; Hoffmeister, 2015). Based on these results, participants acknowledged the repercussions of engaging in juror misconduct and perceived the instructions to be punishing in nature.

Conversely, participants did not find the standard or modified instructions to be as punishing as the punitive instructions, or even significantly different from one another. These two sets of jury instructions did not include any personal consequences for a juror who engaged in misconduct. However, both the standard and modified jury instructions briefly outlined consequences to the legal system should misconduct occur. The standard instructions from the Federal Fifth Circuit Civil Courts (2014) explains to jurors:

Each of the parties is entitled to a fair trial by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide the case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this country and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions could result in the case having to be retried. (p. 2)

While the legal consequences (e.g. declaring mistrial, denying a fair trial, removing the juror) could be viewed as punishing, the instances of personal consequences outlined in the punitive instructions affected participant perceptions to a greater degree.

Hypothesis Two

As hypothesized, participants were able perceive that juror misconduct occurred in each of the three jury instruction conditions (standard, punitive, modified) when misconduct was present as a condition. While some legal scholars (e.g. Marder, 2006; Steele & Thornburg, 1988) have expressed concern regarding the ability of jurors to understand and follow jury instructions, the results of this study indicate that the three sets of jury instructions were not misleading to participants.

The rhetoric used to describe the responsibilities and conditions surrounding juror service did not mislead jurors to falsely report misconduct when it was not present. The addition of consequences to the system, consequences to the individual, or specific instructions used in the modified instructions meant to combat the mum effect did not affect participants' ability to correctly identify misconduct when it was present as a condition. Therefore, there is no evidence to suggest that any of these three sets of instructions, if adopted by a court, would increase instances of false reporting.

Hypothesis Three

Contrary to the hypothesis, the jury instructions did not have ordered success in enhancing participants' reporting of misconduct. Instead, the three sets of jury instructions had no effect participants' reporting. As described above, participants were able to correctly identify juror misconduct across all three conditions when it was present as a condition. As previously discussed, the results indicated a strong relationship between perceptions of misconduct and reporting misconduct. Participants across the three jury instruction conditions indicated that if they perceived there to be misconduct, they would report the misconduct. This finding was further reified by the open-ended responses which correctly identified the instance of misconduct and indicated participants' intent to report to court authorities.

These results are at odds with extant research regarding the mum effect. While Rosen et al. (1972) found that participants are more likely to report undesirable news if given the direct responsibility to report, jurors in these conditions indicated they would report misconduct even when no direct responsibility was given. Similarly, Smith, Keil, and Depledge (2001) found that participants assuming the role of manager were more likely to report due to a perceived explicit individual responsibility to do so. Although participants in this study were asked to imagine

themselves as one of the panel of eight jurors, the results indicated that participants would report misconduct across all jury instruction conditions. The modified instructions including language addressing the responsibility of all jurors to report did not enhance reporting.

Extant research also indicates that the moral mum effect is particularly salient in contexts where there is the upward movement of perceived undesirable news from a subordinate to a supervisor (Bisel et al. 2012; Milliken et al. 2003; Ploeger et al., 2011). While a similar threat to face might exist for a juror reporting behavior to court officials, it is possible the organizational context was not fully applicable in this setting. Although jurors do receive instructions and follow directions as laid out by the judge, they are not directly employed or face the same ongoing daily interaction as an employee would when interfacing with an employer. The modified instructions which gave specific directions as to how to report the misconduct, in hopes of diminishing face threat, shared the same high rate of juror reporting as the standard and punitive conditions.

Bisel and Kramer (2013) advocate for the purposeful labeling of unethical behavior in order to mitigate instances of moral mum effect. Although the modified instructions specifically labeled and named the behavior as “misconduct,” this set of jury instructions did not increase participant reporting. Participants were able to correctly identify juror misconduct regardless of the assigned jury instruction, and indicated they would report when present.

It was hypothesized that the punitive instructions would be the least successful in inducing participant reporting of misconduct. Smith, Keil, and Depledge (2001) found that participants were less likely to report bad news when they felt it would place them at risk of negative consequences. While these instructions outlined consequences for the offender, they did not state consequences for a juror that reports the behavior. Therefore, while participants believed the punitive instructions to be more punishing than the standard or modified

instructions, it is possible they did not view the instructions to be punishing them. Instead, the consequences to the judicial system or the consequences to the offending juror did not dissuade participants from reporting.

Theoretical Contributions

The results of this study provide additional analysis for use in the ongoing examination of the mum effect. Extant research examining the mum effect in organizational and interpersonal contexts did not translate as hypothesized into this study. Instead, when confronted with undesirable information, participants indicated that they would report to court authorities.

Although extant research (Bell, 2010; Grow, 2010; Sunwolf & Siebold, 1998) implies the presence of the mum effect operating in the courtroom context, this study was unable to create a situation which produced the effect. While it is possible that participants imagining themselves as empaneled jurors hold such reverence for the judicial process that they are able to overcome the mum effect, it seems more likely that the experimental conditions necessary to conduct the study reduce the ecological validity to such a degree that participants over estimate their willingness to report.

Hoffmeister (2011) notes that juror misconduct is a historically understudied area of the law which requires to jurors to accurately self-report or report instances of juror misconduct. Similarly, studying the presence of the mum effect in cases of juror misconduct requires participants to accurately self-report and resist social desirability bias. The experimental context further reduces ecological validity by removing any pretense that the participants' decisions would be binding or produce consequences.

Sunwolf and Siebold (1998) found that when faced with an instance of juror misconduct, 39% of the rules constructed by participants resulted in jurors choosing to disregard the

information. Only 21% of the rules developed by participants resulted in reporting the misconduct to the judge. These results seem to indicate that the researchers were able to produce a scenario in which participants chose to remain silent rather than report the undesirable information. Future studies should consider using an interview protocol similar to the work of Sunwolf and Siebold (1998) to allow for more robust and detailed responses.

The open-ended responses indicated that sixteen percent of the reporting jurors would prefer to report misconduct privately or anonymously. This indicates that for some participants, reporting misconduct openly may still serve as a face threat or result in varying levels of the mum effect. Future studies could examine the protocol participants say they would use to report misconduct to examine the use of equivocation or anonymity often used to mitigate the mum effect (Bisel & Kramer, 2013).

Practical Implications

The results of this study indicate that amending jury instructions with the intent of encouraging jurors to report instances of misconduct is not efficacious. This is especially important to note in states which might consider amending jury instructions to combat misconduct reports. These results indicate that further efforts to rhetorically enhance reporting make no significant difference. Overall, participants who reported witnessing misconduct also indicated that they would report the misconduct observed. Therefore, it would not be a worthy use of the Courts' resources to spend time and money developing new jury instructions with the goal of reducing mum effect and encouraging reporting.

Instead, the results indicate that when jurors can identify the behavior as misconduct, they are likely to report. Therefore, courts should continue to include specific examples of the behaviors that constitute misconduct. The three sets of jury instructions used in this study

contained identical language defining and outlining forms of misconduct. The instance of misconduct that took place in the experimental condition was specifically outlined as a banned behavior in each of the three instruction conditions. The results of the study suggest that when jurors can see the misconduct, they are likely to say something about the misconduct.

Finally, while participants found the punitive instructions to be significantly more punishing than the other two sets of instructions, they did not make a significant difference in participants' reporting. Therefore, should other states choose to follow California's example, and criminalize jury misconduct, there is no evidence to support residual negative effects on juror reporting, nor any benefits.

This study has important practical implications for the justice system. In this context where precedence is critical, and justices are concerned with the implications of amending jury instructions should they face appeal, there is no evidence to suggest that time and resources should be allocated to change the language in jury instructions with the goal of enhancing juror reporting of misconduct.

Limitations

There are several potential limitations that should be considered. First, participants viewed a video of jury deliberations instead of taking part in them. While the video condition ensured content and delivery were maintained across the two experimental conditions, it does not allow participants to engage in deliberations the way they would if they were empaneled on a jury. Therefore, it is possible that participants did not experience the same pressures to conform, reach a verdict, or negotiate face in the manner an empaneled jury would. Participants also knew their answers were not binding, and therefore, their decisions and actions may not have been made with the same rigor of an empaneled jury.

Also, since participants were making decisions in an experimental context as opposed to real juror deliberations, it is possible that participants did not feel the same threat to face or fear the changes to group dynamics that might have occurred in a real context. The design of this study was based on extant research (Bisel & Kramer, 2013; Rosen & Tesser, 1972; Smith, Keil, & Depedde, 2001) that effectively tested the mum effect through hypothetical scenarios wherein participants were also asked to “consider the following” and respond. However, due to the experimental context, participants also knew that the results of their choices were not binding, and therefore, may have elected to select “the correct answer” and not have taken into consideration the full implications of their decisions.

Next, participants were recruited using Amazon’s MTurk. While extant research has defended the use of MTurk as a viable means of participant recruitment (Buhrmester et al., 2011; Paolacci et al., 2010), these individuals receive payment for their services and are accustomed to taking surveys and completing measures. While the sample was indicative of the demographics that would be called for juror service, the criticism could be levied that these individuals self-select into the study and are more familiar with the types of questions and answers included than those empaneled on a typical jury.

Lastly, it is possible that the rigorous design of the study removed prospective participants that would have responded differently to questions concerning the mum effect. Participants were required to correctly answer at least seven attention and manipulation check questions. Those who failed to answer even one question accurately were removed from the sample. While this protocol increased the rigor of the study and enhanced the validity of the measures, it does mean that people who serve everyday on juries, and might fail to answer

questions about the jury instructions correctly, were removed from the pool. The rigorous steps taken to enhance accurate reporting might have reduced the ecological validity.

This limitation highlights the tension between conducting good research and preserving ecological validity. While some empaneled jurors may listen carefully, take notes on protocols, and strictly adhere to the nuances of the law, it is also possible that some empaneled jurors may not be able to answer attention-check questions were they to be administered after the jury instructions. The rigor of this design does not account for instances of the mum effect which could occur in the portion of removed participants.

Future Research

There are several areas for future research to pursue. First, this study included an overt instance of juror misconduct. All three sets of jury instructions specifically ban jurors from engaging in outside internet research on any aspect of the case. The juror in the misconduct condition also overtly stated that he had conducted a Google search at home and discovered biasing information. Not all jury misconduct is as overt and can be introduced through subtext (i.e. I heard that the Plaintiff has sued multiple companies and that's how he makes money). Future research should examine the effects of levels of misconduct or types of misconduct on the likelihood of reporting.

In the current study, the example of misconduct did not play a large role in the outcome of the jurors' deliberations. While the empaneled jurors did agree to lower their damage amount slightly, the offending juror did not significantly sway the outcome of the trial. Future research should also consider varying levels of the effects of the misconduct on verdict and the likelihood of reporting. It would be important to learn if jurors are more likely to report misconduct when they perceive the offense to have a greater effect on verdict.

Lastly, future research could also examine the role of the other deliberating jurors when misconduct occurs. Conditions could be varied to include levels of intervention to measure the effects on reporting. It could also have important implications for the justice system to learn whether jurors are less likely to report instances of misconduct if fellow jurors intervene and condemn the behavior while it is occurring rather than awkwardly ignoring it, or asking for more information.

Conclusion

Results indicate that participants can correctly identify misconduct across the three jury instruction conditions when it is present as a condition. While the mum effect serves as a strong theoretical framework for study in the judicial context, the results of this study indicate juror reporting of misconduct is not significantly altered across the three jury instruction conditions. Instead, when jurors can identify the misconduct they state that they would report it. This provides important knowledge for those who continue to work to uphold the rigor and sanctity of the legal system.

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Appendix A

Information Statement. The department of Communication Studies at the University of Kansas supports the practice of protection for human subjects participating in research. The following information is provided for you to decide whether you wish to participate in the present study. You should be aware that even if you agree to participate, you are free to withdraw at any time without penalty. We are conducting this study to better understand jury deliberations in civil trials. This will entail you watching a short video of mock jury deliberations and completing a survey. Your participation is expected to take approximately 25-35 minutes. Although participation may not benefit you directly, we believe that the information obtained from this study will help us gain a better understanding of jury deliberations in civil trials. Your participation is solicited, although strictly voluntary. Your name will not be associated in any way with the research findings, as only aggregated, not individualized, data will be shared or published. Additionally, your identifiable information will not be shared unless (a) it is required by law or university policy, or (b) you give written permission. It is possible, however, with internet communications, that through intent or accident someone other than the intended recipient may see your response. If you would like additional information concerning this study before or after it is completed, please feel free to contact us by phone or mail. Completion of the survey indicates your willingness to take part in this study and that you are at least 18 years old. If you have any additional questions about your rights as a research participant, you may call (785) 864-7429 or write the Human Subjects Committee Lawrence Campus (HSCL), University of Kansas, 2385 Irving Hill Road, Lawrence, Kansas 66045-7563, email, irb@ku.edu. Sincerely, Hailey Drescher, M.S. Principal Investigator Bailey Hall University of Kansas Lawrence, KS 66045 (214) 789-5256 haileydrescher@ku.edu Dr. Thomas Beisecker Faculty Supervisor Department of Communication Studies Bailey Hall University of Kansas (785) 864-9882 south40@ku.edu

To continue with this study, please click the double arrow button to acknowledge that you understand the content presented in the above information statement.

The following questions address your background. Please answer each to the best of your ability.

To be legally qualified for jury service, an individual must:- be a United States citizen;- be at least 18 years of age;- be adequately proficient in English;- have no intellectual disability;- not currently be subject to felony charges punishable by imprisonment for more than one year;- never have been convicted of a felony (unless civil rights have been legally restored)To your knowledge, do you meet the requirements to serve on a jury?

- Yes
- No
- I'm not sure

What is your sex?

- Male
- Female

What is your race? Choose all that you feel apply.

- White/Caucasian
- African American/Black
- Hispanic
- Asian
- Native American
- Pacific Islander
- Other _____

How old are you?

_____ Age

What is the highest level of education you have completed?

- Some grade school
- High School / GED
- Some College
- Certificate or Apprenticeship (e.g., medical assistant, firefighter, welder, etc.)
- 2-year College Degree (e.g. Associate's degree)
- 4-year College Degree (e.g., BA, BS)
- Master's Degree (e.g., MA, MFA, MS, MBA)
- Doctoral or Professional Degree (e.g., PhD, JD, MD, DVM, DDS, etc.)

How would you best describe your political ideology?

- Republican
- Democrat
- Independent
- Libertarian
- Socialist
- Other, please specify _____

BONUS MONEY OPPORTUNITY You have the potential to earn BONUS MONEY during this study by paying close attention to all of the readings and videos. Questions in sections marked BONUS MONEY have correct answers. Up to \$1 (total) in bonus money will be added for correct answers to those questions following the completion and review of your survey.

PLEASE READ CAREFULLY We are conducting this study to better understand the role of communication during jury deliberations. The following are jury instructions written and read by a judge prior to juror deliberations in a civil trial. Please read the following jury instructions carefully and fully in preparation to answer the questions that follow.

****The survey will not advance until enough time has passed to read the jury instructions.****

Standard Instructions

Punitive Instructions

Modified Instructions

The following statements ask your opinion regarding the jury instructions you read. Please answer each to the best of your ability.

Please rate your opinion of the jury instructions you read on the following scales.

	1	2	3	4	5	6	7
Clear:Confusing	<input type="radio"/>						
Helping:Hurting	<input type="radio"/>						
Understandable:Difficult to understand	<input type="radio"/>						
Rewarding:Punishing	<input type="radio"/>						
They made sense:They did not make sense	<input type="radio"/>						
Lenient:Harsh	<input type="radio"/>						
Straight Forward:Complicated	<input type="radio"/>						
Tolerant:Punitive	<input type="radio"/>						
Comprehensible:Incomprehensible	<input type="radio"/>						
Lax:Strict	<input type="radio"/>						
I get them:I don't get them	<input type="radio"/>						
Forgiving:Vindictive	<input type="radio"/>						

PLEASE READ CAREFULLY The following jury deliberations are taken from a civil trial in which Salco (the Plaintiff) claims its patent was infringed (used without permission or rights) by Quintech (the Defendant). This means that Salco believes its patent was stolen and that Quintech should pay it money. The jury must decide whether the patent was infringed, and what monetary amount of damages, if any, should be awarded to Salco. Please watch the following 15-minute juror deliberation video carefully and fully in preparation to answer the questions that follow.

The link for the video appears on the next page.

****The survey will not advance until the video ends.****

Imagine yourself as a juror on this panel, based on the jury instructions you read, did you view anything during the deliberations that should be reported?

- Yes
- No

Please explain your answer.

Imagine yourself as one of the jurors in the video you just watched, would YOU report juror misconduct in this case?

- Yes
- No

If so, how would you report?

PLEASE READ CAREFULLY- POSSIBLE BONUS MONEY Basing your answers on the jury deliberations you watched, please answer the following true/false and yes/no questions. Select "True" if you believe the statement is a true and accurate account of what you heard, or "False" if you believe the statement to be false or an inaccurate account of what you heard.

During the deliberations, there was a recess for jurors to take care of personal needs.

- True
- False

During deliberations, the jury decided the patent was infringed.

- True
- False

During deliberations, the jury chose to award damages to Salco (the Plaintiff).

- True
- False

During deliberations, a member of the jury shared the results of his Google internet search.

- True
- False

PLEASE READ CAREFULLY- POSSIBLE BONUS MONEY Basing your answers on the jury deliberations you watched, please answer the following true/false and yes/no questions. Select "True" if you believe the statement is a true and accurate account of what you heard, or "False" if you believe the statement to be false or an inaccurate account of what you heard.

During the deliberations, there was a recess for jurors to take care of personal needs.

- True
- False

During deliberations, the jury decided the patent was infringed.

- True
- False

During deliberations, the jury chose to award damages to Salco (the Plaintiff).

- True
- False

PLEASE READ CAREFULLY- POSSIBLE BONUS MONEY Basing your answers on the jury instructions you read, please answer the following true/false and yes/no questions. Select "True" if you believe the statement is a true and accurate account of what you heard, or "False" if you believe the statement to be false or an inaccurate account of what you heard.

The jury instructions ask that jurors do not bring their children to court.

- True
- False

Jury instructions are to be followed by jurors in a trial.

- True
- False

The jury instructions ask jurors to turn off their cell phones.

- True
- False

PLEASE READ CAREFULLY- POSSIBLE BONUS MONEY Basing your answers on the jury instructions you read, please answer the following true/false and yes/no questions. Select "True" if you believe the statement is a true and accurate account of what you heard, or "False" if you believe the statement to be false or an inaccurate account of what you heard.

The jury instructions ask that jurors do not bring their children to court.

- True
- False

Jury instructions are to be followed by jurors in a trial.

- True
- False

The jury instructions ask jurors to turn off their cell phones.

- True
- False

According to the jury instructions, there are personal consequences for a juror who does not follow the instructions.

- True
- False

According to the jury instructions, a juror could face jail time for violating the instructions.

- True
- False

PLEASE READ CAREFULLY- POSSIBLE BONUS MONEY Basing your answers on the jury instructions you read, please answer the following true/false and yes/no questions. Select "True" if you believe the statement is a true and accurate account of what you heard, or "False" if you believe the statement to be false or an inaccurate account of what you heard.

The jury instructions ask that jurors do not bring their children to court.

- True
- False

Jury instructions are to be followed by jurors in a trial.

- True
- False

The jury instructions ask jurors to turn off their cell phones.

- True
- False

The jury instructions include specific directions and options as to how to go about reporting juror misconduct.

- True
- False

Directions: Please indicate the extent to which you agree or disagree with the following statements. There are no correct or incorrect answers- we are interested in your opinions.

The majority of lawsuits are frivolous.

- Strongly disagree
- Disagree
- Somewhat disagree
- Somewhat agree
- Agree
- Strongly agree

Companies should only be awarded patents if they are going to make something with it.

- Strongly disagree
- Disagree
- Somewhat disagree
- Somewhat agree
- Agree
- Strongly agree

Businesses that operate as non-practicing entities (do not produce a good or service) should not be awarded damages in patent infringement cases.

- Strongly disagree
- Disagree
- Somewhat disagree
- Somewhat agree
- Agree
- Strongly agree

As the owner of a patent, a person or company is entitled to enforce the patent by seeking licenses or royalties from those who use it.

- Strongly disagree
- Disagree
- Somewhat disagree
- Somewhat agree
- Agree
- Strongly agree

Companies have a right to protect their patents through litigation.

- Strongly disagree
- Disagree
- Somewhat disagree
- Somewhat agree
- Agree
- Strongly agree

If the Patent and Trademark Office issues a patent, the patent is ultimately valid.

- Strongly disagree
- Disagree
- Somewhat disagree
- Somewhat agree
- Agree
- Strongly agree

Are you familiar with the term "patent troll"?

- Yes, I have heard and understand the term.
- I have heard the term, but I am not certain of what it means.
- No, I have never heard the term.

Thank you for taking the time to participate in this study. Your thoughts are important to us. If you have any additional comments, please feel free to write them in the space below. When you are finished, click on the "complete" button to submit your responses.

Appendix B

Standard Instructions

1.1 Instructions for Beginning of Trial

Members of the jury panel, if you have a cell phone, PDA, Blackberry, smart phone, iPhone or any other wireless communication device with you, please take it out now and turn it off. Do not turn it to vibrate or silent; power it down. During jury selection, you must leave it off. There are certain rules you must follow while participating in this trial.

First, you may not communicate with anyone about the case, including your fellow jurors, until it is time to deliberate. I understand you may want to tell your family, close friends and other people that you have been called for jury service so that you can explain when you are required to be in court. You should warn them not to ask you about this case, tell you anything they know or think they know about it, or discuss this case in your presence, until after I accept your verdict or excuse you as a juror.

Similarly, you must not give any information to anyone by any means about this case. For example, do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, camera, recording device, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, YouTube, or Twitter, or any other way to communicate to anyone any information about this case until I accept your verdict or until you have been excused as a juror. This includes any information about the parties, witnesses, participants, claims, charges, evidence, or anything else related to this case.

Second, do not speak with anyone in or around the courthouse other than your fellow jurors or court personnel. Some of the people you encounter may have some connection to the case. If you were to speak with them, that could create an appearance or raise a suspicion of impropriety.

Third, do not do any research—on the Internet, in libraries, in books, newspapers, magazines, or using any other source or method. Do not make any investigation about this case on your own. Do not visit or view any place discussed in this case and do not use Internet programs or other devices to search for or view any place discussed in the testimony. Do not in any way research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge, until after you have been excused as jurors. If you happen to see or hear anything touching on this case in the media, turn away and report it to me as soon as possible.

These rules protect the parties' right to have this case decided only on evidence they know about, that has been presented here in court. If you do any research, investigation or experiment that we do not know about, or gain any information through improper communications, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, which includes the oath to tell the truth and cross-examination. It could also be unfair to the parties' right to know what information the jurors are relying on to decide the

case. Each of the parties is entitled to a fair trial by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide the case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this country and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions could result in the case having to be retried.

Punitive Instructions

1.2 Instructions for Beginning of Trial

Members of the jury panel, if you have a cell phone, PDA, Blackberry, smart phone, iPhone or any other wireless communication device with you, please take it out now and turn it off. Do not turn it to vibrate or silent; power it down. During jury selection, you must leave it off. There are certain rules you must follow while participating in this trial.

First, you may not communicate with anyone about the case, including your fellow jurors, until it is time to deliberate. I understand you may want to tell your family, close friends and other people that you have been called for jury service so that you can explain when you are required to be in court. You should warn them not to ask you about this case, tell you anything they know or think they know about it, or discuss this case in your presence, until after I accept your verdict or excuse you as a juror.

Similarly, you must not give any information to anyone by any means about this case. For example, do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, camera, recording device, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, YouTube, or Twitter, or any other way to communicate to anyone any information about this case until I accept your verdict or until you have been excused as a juror. This includes any information about the parties, witnesses, participants, claims, charges, evidence, or anything else related to this case.

Second, do not speak with anyone in or around the courthouse other than your fellow jurors or court personnel. Some of the people you encounter may have some connection to the case. If you were to speak with them, that could create an appearance or raise a suspicion of impropriety.

Third, do not do any research—on the Internet, in libraries, in books, newspapers, magazines, or using any other source or method. Do not make any investigation about this case on your own. Do not visit or view any place discussed in this case and do not use Internet programs or other devices to search for or view any place discussed in the testimony. Do not in any way research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge, until after you have been excused as jurors. If you happen to see or hear anything touching on this case in the media, turn away and report it to me as soon as possible.

If you violate any of these prohibitions on communications and research, including prohibitions on electronic communications and research, you may be held in contempt of court or face other sanctions. That means that you may have to serve time in jail, pay a fine, or face other punishment for that violation.

Modified Instructions

1.3 Instructions for Beginning of Trial

Members of the jury panel, if you have a cell phone, PDA, Blackberry, smart phone, iPhone or any other wireless communication device with you, please take it out now and turn it off. Do not turn it to vibrate or silent; power it down. During jury selection, you must leave it off. There are certain rules you must follow while participating in this trial.

First, you may not communicate with anyone about the case, including your fellow jurors, until it is time to deliberate. I understand you may want to tell your family, close friends and other people that you have been called for jury service so that you can explain when you are required to be in court. You should warn them not to ask you about this case, tell you anything they know or think they know about it, or discuss this case in your presence, until after I accept your verdict or excuse you as a juror.

Similarly, you must not give any information to anyone by any means about this case. For example, do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, camera, recording device, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, YouTube, or Twitter, or any other way to communicate to anyone any information about this case until I accept your verdict or until you have been excused as a juror. This includes any information about the parties, witnesses, participants, claims, charges, evidence, or anything else related to this case.

Second, do not speak with anyone in or around the courthouse other than your fellow jurors or court personnel. Some of the people you encounter may have some connection to the case. If you were to speak with them, that could create an appearance or raise a suspicion of impropriety.

Third, do not do any research—on the Internet, in libraries, in books, newspapers, magazines, or using any other source or method. Do not make any investigation about this case on your own. Do not visit or view any place discussed in this case and do not use Internet programs or other devices to search for or view any place discussed in the testimony. Do not in any way research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge, until after you have been excused as jurors.

Taking part in any of the above instances is considered juror misconduct. If a juror attempts to introduce any information researched from the Internet, books, or investigated from a source outside the courtroom, it is every juror's responsibility to report this instance of misconduct immediately. As an empaneled juror, it is your duty and responsibility to uphold the sanctity of the adversarial court system by reporting any instance of misconduct to the bailiff immediately. Do not rely on another juror to report- reporting is every juror's responsibility. The bailiff will escort you to and from the courtroom multiple times during your day/s in court. Should you need to report misconduct, please ask to speak with the bailiff privately during one of these times or hand him/her a note asking to speak privately. Reporting another juror's misconduct should not be viewed as the jury's failure. Instead, reporting misconduct reflects on the integrity of the

jury to uphold the rigor of the process and the rights of the litigating parties. Failure to report misconduct places the judicial system at risk.

Appendix C

Salco v. Quintech Patent Infringement and Damages

Jurors: 1, 8, 10, 12, 15, 21, 23 (Foreperson), 25

#23- Okay, question one- (*reads from jury instructions*) Did Salco prove by a preponderance of the evidence that Quintech directly infringes claim 6 of the '948 patent? Let's take a vote and raise our hands. All who say yes? Okay, those who say no?

(*She takes a vote- 5 yes #1, #12, #21, #23, #25, 3 no: #10, #15, #8*)

#12- Wait, did I misunderstand the question?

#23- Yes, if you are in favor of Salco, and no if you are in favor of Quintech.

#12- Ok, so I did it right.

#23- Anybody want to volunteer an opinion of why you vote yes to infringement?

#8- I think that even at the time, the lawyer for Quintech admitted that they had done it- that's what I was getting out of it. I thought it was clear cut that Quintech definitely did it. One little minor change, or a couple of changes is all they made.

#25- I agree. I agree with that. Cause Quintech basically said yeah we did it, but Salco's patent is not worth 140 million, it's only worth 4 million. They admitted it, so yeah, I'm with Salco.

#23- Anybody else?

#12- I just believe that it was proven that Quintech did infringe.

#15- I think that the lawyer for Quintech was more interested in trying to get into the technicalities of it. Instead of getting so technical about it and saying was it this button or this button or this thing or that thing.. he was more like, yes, they might have a button, but that is not the same. But overall... yeah, I think that was.

#8- Even when that lawyer came in, he kept saying, 'if they really had a patent.' I mean, come on, they had a patent.

#15- Right, it's there (*gestures to patent on table*). One thing I noticed as well, the defense lawyer, he kept on talking about how many people used the product. It doesn't matter. It doesn't matter if two people used the product, Quintech still infringed on the patent.

#1- That was something I had written down, it's not a question of who is using it, it is a question that the patented technology is in there, and Quintech had full knowledge of what Mr. Jackson, the inventor, was trying to do, and they went and spent a lot of money to try to make the same thing, and refused to license Mr. Jackson's technology, and now they're trying to say, no we didn't infringe. That's my thought.

#8- I'm kind of leaning toward Quintech on this. I really don't see where anything was proven against them. Mr. Jackson, if he did have the patent rights, he never made a dollar off of it, he never marketed it.

#1- Well, part of that is because he offered the technology to Quintech, and they refused the licensing of it, and they made it themselves.

#8- Yeah, well, I just didn't see that, they were both working on it at the same time. Quintech was working on the same project that Mr. Jackson was.

#1- But it's a matter of who gets there first.

#8- It just seemed like such a minor thing, like one little, what was it? Like one little button...?

#12- A processor. It's more of a processor than a button. But I think that since he did patent it, he deserves to get damages for what Quintech is infringing on. Whether it is one time, two times, like the attorney said, or a hundred times... the bottom line is Quintech used it.

#15- We may not agree with the patent. We may not agree with what is going on, but the bottom line is Mr. Jackson does have a patent with the US government, and Quintech did infringe on that patent whether we like it or not.

#12- Exactly.

#25- If Quintech had come up with it first, when Mr. Jackson introduced it to them, they would have told him, we already got this. That's why they laid it out... We're working on it.

#8- And then said, Wow... yours is almost exactly like ours.

#10- I'm going to be honest with y'all. A lot of this is over my head ya know? It's computer language when you get in there like that. It's too complicated for me.

#15- Oh, it is. It is complex. You know, I don't understand everything... all the technical mumbo jumbo.

#10- To me, it just looks like if you had a patent, it would be on something that is physical, something you can see. You know?

#15- Yeah, Not these days.

#10- All this stuff on the computer is up for grabs ya know? Whoever is there first, you know, gets it.

#8- Well, and it's like the attorneys said, Mr. Jackson sold the company for \$100,000 or whatever it was. But the Walmart man, remember the attorney said he opened up one little old store in Arkansas, and now his family is worth who knows what. That's what I wrote down there, the attorney kept saying he had to do this, he had to do this, he had to do this, in order to get his patent filed. And that's what I wrote on my pad there, that's the American way, keep at it. And that's what he did.

#21- See I wondered about that too. If it was something that everyone needed, why was he not able to market it better? Was it because of the lack of funds? To get that person with expertise out there to help him to market what he has. Cause some people are smart enough to invent something, it doesn't mean they have the communication skills to be able to sell something to you.

#8- Right, yes Ma'am.

#21- And I'm thinking maybe he was just so brilliant that he didn't know how to go about selling it to other people. Or manage it. But that doesn't mean that he doesn't know how to create it himself.

#8- And that one attorney for Quintech kept saying that Mr. Jackson and Salco doesn't have but 22 employees and we've got 52,000 of them. I don't care.

#15- He was trying to play the economy card. So many unemployed, this and that.

#10- Well, I'm outnumbered on supporting Quintech.

#12- That's okay, we'll turn you!

#21- It's fine. You should have your opinion.

#10- Well, y'all are smarter than I am.

#12- No, no no.

#10- I think that there was some stuff maybe I missed.

#25- Everybody has their own opinion, and that's okay.

#23- Yeah, that's okay.

#15- I wasn't, I'm not a hundred percent. There was enough in each side where it was like... well... yeah, yeah maybe.

#21- Lawyers are good at doing that.

#23- So let's vote again? All who agree that Quintech did infringe Salco's patent? Raise your hand if you agree? *(All except #10)*

#10- I just don't see where Salco has proved anything to be honest with you. I just don't see no proof there, just allegations from one side. How do you prove something like that?

#8- One way Quintech proved it they're infringing, is they're willing to pay Salco. Just not a 140 million, but they're willing to pay them. That's one way of saying, oh okay, I get it. I guess, but you're only worth 4 million. That is one way of saying I know I did it. Cause if I didn't do it, I'm not going to pay you.

#10- Yeah, you got a point there. Okay, I'll go with y'all.

#23- Okay, now that we found that Salco infringed, we need to consider damages. *(reads)* What sum of money, if paid now in cash, do you find by a preponderance of the evidence should be awarded to Salco as reasonable royalty to compensate it for the infringement of Claim 6 of the '948 patent? Basically, how much should- if we say that Quintech owes Salco money, how much should they pay is basically what we're asking.

#8- I think that the 140 million Salco is asking for is a little deep personally.

#1- Yeah, it's a little deep.

#12- Yeah, it's deep.

#23- Right, but in comparison to the 4.2 billion dollars that Quintech made in revenue...

#12- Right, but did we see anything definitely proving that? I would have liked a chart. I would have liked something specifically showing me that that's what they got. Don't you agree?

#15- Oh, yes. The attorney for Salco said that though.

#23- It's based on Quintech made this much revenue off of a product that used their patent, and then based on that. I would think okay, you owe a percentage of that. And it just happened in this case to be 4.2 billion...

#12- Supposedly. See, I don't buy that. So 140 million to me is absolutely out of the question.

#21- One reason I am leaning more toward on the high side is why didn't Quintech buy the license? Back to my point, buy the license, give them the lump sum, and we wouldn't be here. Quintech has drug this out over years, and they continued to use that product over the years and haven't pulled it from their shelves.

#8- Until now.

#12- But see, I still feel a lot of these cases, they are really asking for an enormous amount hoping they'll get it. But even if they get the smaller amount, that's a lot of money.

#15- To us.

#8- She [juror 21] just said something, it never crossed my mind either. Quintech knew that they have been using that patent, this has been going on for seven years now, and they never bothered, they just kept on making their money, so now... I'm like wow.

#21- When this started, why didn't Quintech just start talking with Salco and say let's start talking dollar amounts.

#15- Yeah, why didn't they say let's settle this? Let's get it taken care of.

#23- Why didn't Quintech do a release without that patented technology in their product?

#1-But a 140 million, I feel like is too much. I feel like Quintech proved that had they been buying the patent license back at the time, it would have been a lower lump sum. So, I feel like 140 million is too much, but I feel like it is worth a little more than the four million Quintech says, just based on the fact that they drug this out for so long.

#8- So somewhere in the middle?

#12- I agree.

#15- Yeah, somewhere in the middle.

#12- Yeah, good point.

#25- That's what I was thinking too.

#23- Well there is 136-million-dollar difference between what the two attorneys said.

#15- Yeah, I was going to say like 40. But you know...

#1-I mean how many years has this been going on?

#15- Seven.

#8- I say 70 million.

#25- 70 million, that's what I thought. I was like half the 140 million.

#1- Yeah, somewhere in that area.

#23- Wait, I can't do math. 72 if I do an exact half of the difference. So 70 million is okay.

#25- Yeah, that's right.

#10- Okay, hang on-- Like I said, I was having a hard time understanding all of this technology and patent stuff, so I Googled Mr. Jackson and the patent. Turns out that not only did Mr. Jackson never make or produce anything with his patent, but he has declared bankruptcy several times. The articles I read said that he's sued like five other big companies and made money off of them. I think that's just what he's doing here. He's trying to make money off of something he wasn't even smart enough to produce. According to the stuff I read online, he's one of those patent trolls. He makes his living off of suing people.

#23- I don't think we're supposed to consider information that wasn't presented in court, and Mr. Jackson has the patents to back up why he's suing people. And he has spent money to produce...

#8- These Quintech people stole money from him.

#10- Y'all are probably right, but I ain't seeing it the same way.

#25- Well we can talk about it more.

#10- I mean, y'all are throwing these millions away like that are chump change. This Quintech does run a good business. They are making a profit, they are doing good. I don't know whether they stole from this guy or not.

#12- But there is proof that they are using that processor that they want to call 'just a button' but it is really not a button right? It is a processor right?

#15- It's a function inside a program.

#25- But you know at one point, the Quintech system didn't even work without using the patented technology remember seeing that? They couldn't use one without the other.

#15- It's like buying a 4x4 truck, you may not use the 4x4, but you're going to pay for it. If that's the way the truck comes...

#10- Okay, I'm on board with y'all now for compensation for Mr. Jackson, but y'all are way over my head with this. But I say 4 million that Quintech said that patent was worth.

#8- Even though using his product probably made Quintech over a billion bucks we're going to give them 4 million?

#1- One thing to consider, is that four million sounds like a lot to us, but whenever Mr. Jackson brought his patent idea to Quintech, they then went out and spent hundreds of millions of dollars to find the same thing that Mr. Jackson basically brought to them initially. If Quintech had just bought the licensing in the first place, they would have spent at least that much to begin with.

#8- They're still getting out cheap.

#23- So Salco is asking for 140, and the middle between 4 and 140 was 72.

#25- He got that patent.

#8- That's my point, Quintech was trying to bash Mr. Jackson because he couldn't get it done right away, but he kept going back to the drawing board, and like the great Americans we are, he made it work. They owe him money.

#25- He proved that he did the patent, he got proof of that.

#1- I think it's more of the amount really. We all agree that he deserves compensation, it is the amount and I think it is hard for us, I lived on a farm, a million dollars, \$200, is a lot for me, I could do a lot with \$200 free dollars...

#10- Mr. Jackson ain't going to get all that money.

#12- Even more reason to get him that much.

#1- True, the fact that they are forcing him to go through all of the lawyer stuff and drag this out over the years.

#8- After what she just said, I want to add about 10 more million.

#23- Now, all in favor or 72 million? And we're still waiting on an answer. What do you have?

#10- Four million.

#25- No, that's too low.

#1- If I had done it and they wanted to give me four million after seven years of using my product, I would want a lot more than four million.

#15- 4.2 billion in revenue...

#10- Okay, fine. I'll do 55 million, just not a full 72. That's too high.

#8- That's fine. That's a lot of money they wouldn't have otherwise.

General nodding of heads and agreement.

#23- That works for me. All agreed?

(All jurors raise their hands)