

2019

Civilly Disobedient: Justifying Juror Misconduct

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Recommended Citation

Wilson, Grace K., "Civilly Disobedient: Justifying Juror Misconduct" (2019). *CMC Senior Theses*. 2266.
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Claremont McKenna College

Civilly Disobedient: Justifying Juror Misconduct

submitted to
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by
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for
Senior Thesis
Spring 2019
30 May, 2019

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Acknowledgments:

Thank you to Professor Krauss for your advice regarding my thesis and for your many, many, edits. I couldn't have done this without you.

Thank you to Christopher Schmank for statistics assistance.

Thank you to Allie Carter for your encouragement, and to the rest of the Psychology, Policy, and Law lab at Claremont Mckenna College for the same

Abstract

A fair, unbiased jury that follows the courts instructions is a crucial aspect of the American criminal justice system, mandated by both the California and United States Constitution. When jurors violate judicial instructions, it can jeopardize the impartiality of a case. Despite this, little research has been completed on what individual differences are indicative of greater willingness to commit jury misconduct. Misconduct can occur when jurors fail to follow judicial instructions in circumstances that a reasonable person may be tempted to disobey. This study explores potential individual differences that correlate with a greater likelihood of excusing and even committing juror misconduct under specific circumstances. Participants (N = 148) in an online survey read one of six vignettes relating to a mock court case. These vignettes either presented clear or confusing information, and included one of three types of juror misconduct witness [googled a term, talked to their spouse about the case, or went to the crime scene]. Neither the severity of the juror misconduct nor the clarity of expert testimony significantly affected participant's perceptions of the behavior. However, participants Right Wing Authoritarianism and Belief in a Just World scores did affect their likelihood of reporting the juror misconduct as well as influenced their report of whether they would engage in these behaviors.

Keywords: Jury Misconduct, legal system, decision-making, individual differences, impartial jury

Juror misconduct occurs when jurors violate court rules and potentially introduce bias into deliberations. Misconduct could involve anything from jurors withholding information in *voir dire* (the process by which lawyers from both sides assess potential jurors for biases, and remove those they reasonably suspect cannot be objective) improper and/or unmentioned third party contacts, and obtaining information from outside sources. During a trial, the jury should only consider what is presented in court; anything omitted from these proceedings should not be considered. Such evidence could have been obtained illegally or could simply be inaccurate; using such extralegal evidence in decision-making could jeopardize the defendant's civil rights by inserting bias into the proceedings. Even if a jury does not intend to disobey a judge's instructions, they can still commit juror misconduct (Hoffmeister, 2012). For example, in *State v. Dellinger (2010)* a juror did not disclose a connection with the defendant since, it "didn't feel" as if she knew him. Although unintentional, her personal acquaintanceship with the defendant was inappropriate and should have led to her removal. If jurors are found to have committed misconduct, it can result in a mistrial causing the taxpayers to pay for a second trial and further clogging the overtaxed courts.

However, even if a juror commits an act of juror misconduct, it may or may not be enough to void (i.e. treat as if it never existed, legally speaking) the trial. Even the same act of investigating a specific word in the dictionary could be juror misconduct in one case when in another it might not affect the trial (Thompson, 2015). For example, if the word was a simple term that had a singular objective meaning, the judge would likely not declare a mistrial. In *U.S. vs Cheyenne (1988)*, jurors looked up the definition of "wanton" and "callous" in the dictionary. A subsequent hearing determined that although

the juror behavior definitely occurred, it was not prejudicial (i.e. harmful to the case such that it would unfairly sway the jury) and as such Cheyenne's murder conviction was upheld. However, in *Commonwealth V. Woods (2007)*, a convicted rapist had his sentence overturned because the jurors looked up "rape" in the dictionary, which has a different definition than that of Kentucky law (*Commonwealth v Wood, 2007*). The Merriam-Webster definition of "rape" did not include penetration, whereas Kentucky law requires penetration. This resulted in a mistrial being declared and the case had to be reheard.

Legal standard for juror misconduct

It is on the side alleging juror misconduct to provide compelling evidence that it occurred (McGee, 2009). Once it is shown however, there is presumed prejudice and it falls to the other side to provide proof that the misconduct did not influence the outcome of the case (Gershman, 2005). Normally, it does not matter to the court how the outside information was obtained provided that it influenced the jury (Gershman, 2005). Because of the severe repercussions of a biased jury, such as allowing a guilty party to go free or placing an innocent person in jail due to bias, the courts have broad discretion to investigate and scrutinize alleged juror misconduct (Gershman, 2005). Normally, there is an investigation into the claims, and if the allegations are found plausible and are not successfully proven non-prejudicial by the opposing side, the judge can declare a mistrial either during the proceedings or after the case is concluded, overturning the verdict (Stoltz, N.D.). The defendant can also appeal a sentence based upon juror misconduct. If the appellate court determine there was likely prejudicial misconduct the case is

remanded back to the lower courts and the trial must begin anew (*United States v Bristol Martier, 2009*).

In *Irvin v Dowd, (1961)* the defendant's case was voided and remanded back to the trial courts simply because it was likely the jury pool was biased against him. This was because one of the jurors searched federal laws relating to drug trafficking on the internet; even though this juror was removed, this juror could have influenced the remaining jurors, yet they were allowed to continue serving. A similar issue occurred in *United States v Bristol Martier, (2009)*. A juror who likely completed internet research and shared the definitions of words, such as "possession" was removed for her unsanctioned research, but the other jurors she had potentially tainted were allowed to remain on the jury for the rehearing. This eventually resulted in the defense successfully appealing the verdict and securing a new trial. This was due to the fact the trial court did not appropriately handle potentially affected jurors and did not take appropriate steps to ensure an untainted jury. This case suggests that the court must take allegations of juror misconduct seriously and investigate them thoroughly.

Similarly, in *United States v Corbin (1979)*, the rumor of a juror making an inappropriate comment regarding the defendant's guilt resulted in an investigation. This investigation included a recreation of the seating chart of the jury, and interviews of every juror in ear shot at the time of the alleged statement at issue (none of whom had heard any sort of comment). However, the juror in question was still dismissed as a safeguard against potential bias. The defendant lost his appeal and the case was not remanded, because the court went to great lengths to address potential bias. Thus, it is important that psychological research examine juror misconduct, as well as public

perceptions of these behaviors because juries are composed of the lay public. It appears from scholarly writing that misconduct occurs with some regularity (Devine, 2012; Hoffmeister, 2012), and case law suggests that the legal system must take any claim of misconduct very seriously in order to prevent mistrials.

Juror misconduct in the age of the internet

In several instances, when judges have discovered prolific internet access, such as 9 separate jurors admitting to accessing the internet during one trial, they have immediately declared a mistrial (Schwartz, 2009). In the digital age, obtaining information is easier than ever, thus exacerbating the problem of juror misconduct in relation to outside source information (Bell, 2010). In fact, it has become so commonplace that several terms have been coined to describe juror misconduct by technology such as “Google Mistrials”, “Internet-Tainted Jurors” and “the Twitter Effect”. Unfortunately, specific research into this issue is sorely lacking (Schwartz, 2009; Hoffmeister, 2012). According to a survey of judges and lawyers, approximately 10 percent of respondents reported that they knew of a juror improperly using the internet for research (Hoffmeister, 2012). If courts continue to deny the allure of using technology by jurors, it will have broad reaching repercussions such as undermining the adversarial system (Schwartz, 2009). Currently, evidentiary rules require that whatever is presented in court has been subjected to intense scrutiny by both sides in a trial. However, if outside, unsanctioned information is accessed by jurors, it could harm a defendant's right to a fair trial. For example, if a judge found a piece of evidence to be unlawfully obtained by the police (e.g. private Facebooks messages they accessed without a warrant or through other unsanctioned means) but a juror got access to it, it could unfairly sway the

jury against the defendant. This technology is a means that allows jurors to breach legal requirement much easier than before. The law has also fallen behind technological advancement. In *State v Dellinger (2010)*, a juror committed misconduct when she admitted in the midst of the trial that she had “friended” the defendant on Myspace. When asked why she had not disclosed this information in *voir dire* she said she “didn’t feel” like she knew him (Hoffmeister, 2012).

Today, it is also much easier to communicate details about a trial (such as evidence) with third parties. At the touch of a button, a juror could communicate inappropriately with potentially millions of people on social media (Hoffmeister, 2012). This is troubling due to the fact that jurors are required to objectively weight the facts presented and come to a decision based upon legal standards, not the opinions of outside sources or from outside information. If these external influences can be included in the deliberations through social media or technology, they can introduce biases, prejudices, and other influences the courts attempt to prohibit from trials. Furthermore, in the internet age the problem of conflicting legal versus common or colloquial definitions are exacerbated. With one errant google search, anyone could accidentally look up the wrong law or definition or legal term that may be at odds with how the term is defined in a particular jurisdiction (Bell, 2010).

Disobedience in the Courtroom

Yet, disobeying legal instruction in certain circumstances is actually imbedded within the law. Jury nullification is a process by which a juror can find a defendant not guilty because the law is unjust (Butler, 2004). For example, jurors during prohibition were notoriously lenient regarding alcohol offenses in large part because they had severe

moral objections to the legitimacy of the 18th amendment. Approximately 60% of jurors did not enforce the Volstead Act (which started Prohibition) in alcohol distributing cases (Conrad, 2016). Jury nullification is a check that allows the jury to rectify unfair prosecutions. However, research indicates that in some limited circumstances explicit jury nullification instructions can make juries behave differently. When given judicial instructions that inform the jury of their right to nullify, their verdicts change. As compared to a control condition without any nullification instructions, juries were significantly more likely to vote guilty in a drunk driving case, less likely to vote guilty in a euthanasia case, and showed no differences in verdicts in a murder case (Horowitz, 1985). In all three cases, jurors given nullification instructions focused less on the facts and more on other extralegal factors such as the defendant's personal characteristics and attributions, as well as experiences (Horowitz, 1985). Other research indicated that jurors who received nullification instructions judged dangerous defendants more harshly and were more likely to acquit sympathetic defendants (Horowitz, 1988). However, in an additional study by the same researcher, jury nullification instructions only affected decision making when the parity of the law itself was debatable, particularly in a euthanasia case but not in a murder for profit case (Horowitz, 2006). Regardless, although extant research is sparse, it highlights that jurors can act differently when given instructions that they can disobey the letter of the law if they deem its spirit is unjust. This indicates that mock jurors may need explicit instruction that they could nullify in order to nullify. The research also indicates that jurors may bend the traditional rules of a trial, particularly in ethically complicated cases when the fairness of the law itself is questionable.

Following instructions: when people obey and disobey

In a trial setting, it is crucial the jury obeys judicial instructions. The judge administers instructions on how to make the trial fair and equitable, including explicit rules outlining prohibited behavior. Obedience to authority is a broad field. The seminal Milgram obedience studies explored under what circumstances participants will obey the researcher (i.e. the authority figure) and administer electric shocks to another despite signs of duress from the confederate (learner) (Milgram, 1965). Milgram found that factors including 1) immediacy of the learner (if the participant could see, hear, or touch them) and 2) how close the authority figure was (in the same room, instructions by telephone) could affect obedience and disobedience to the authority figure. The most striking finding of this research was, despite their protests, approximately 60 percent participants delivered what would have been a lethal electric shock to the confederate.

What is most central in regard to Milgram's obedience research is that people will obey authority even if they have quandaries or qualms as to what they are being asked to do. Furthermore, historical analysis of participants in "crimes of obedience" such as Watergate and Iran-Contra, and even in such atrocities as the My Lai Massacre, suggests that participants are more likely to obey if they feel more disconnected and less empathetic to the person being harmed (Kelman, 1989).

However, there is also a body of work that suggests people will obey regardless of their connection to the individual. In one study, participants willingly disturbed a "job applicant" during a test, knowing that if they failed the test they would not receive the job. Despite the fact participants found this to be unfair and an unpleasant task, 90% followed orders and harassed the "job applicant" (Meeus & Raaijmakers, 1986). In other

research, participants were asked to write letters manipulating a group of other participants (who did not exist) into participating in a replication study that involved sensory deprivation. In the “original study”, participants were told that people in the study had experienced deleterious side effects such as impaired cognitive functioning and hallucinations, and 2 of them had asked to quit but the researchers refused. Participants were also then given the opportunity to report or “whistle blow” via an anonymous form to a committee who could halt the abuses. Despite an independent participant sample in which only 4% of participants said they would commit the unethical act, 77% of people in the study complied with the request (Bocchiaro et al., 2011). There is substantial research that indicates that most of the time people will obey authority regardless of their discomfort or personal ethics. Although shocking someone while they scream is extreme, it may highlight why jurors may adhere to rules offered by a judge even if they do not find them reasonable or fair.

Perceptions of others

Obedience and conformity are related to another aspect of jury decision making; how they perceive other members of the jury. A key aspect of juries is their interactions with one another during deliberations. Furthermore, in the deliberation room, jurors are the most likely witnesses of juror misconduct from their peers, and as such are best suited to report them. However, there is very little research concerning if they will report fellow jurors for infractions or if instead they will remain silent. Less than 10% of jury decision-making research focuses on deliberations (Devine, 2001). However, we do know that there is a disconnect in how we judge ourselves and our own behaviors versus how we judge others (Pronin, 2008). People tend to attribute their own behavior to extrinsic

factors and see themselves are more objective. In contrast, they attribute other people's behavior to intrinsic factors such as personal failings (Pronin, 2008). For example, jurors could think that a defendant's actions were merely the result of personal failings and ignore logical mitigating circumstances presented by their attorneys. This is referred to in social psychology as the actor-observer discrepancy or bias.

Additionally, people tend to misjudge their own behavior as well. Humans tend to have a disconnect between their own behavior when they engage in conduct that does not correspond with their personal morals. This is referred to as moral hypocrisy (Batson et al, 1997). In one study, participants had to assign themselves and another unseen person either to an interesting task or a boring task. Across all conditions, participants assigned themselves to the interesting task more often than the boring task; however, when asked to flip a coin, participants regularly misread the coin result in order to designate to themselves to the more interesting task (Batson et al, 1997). The desire to appear fair while simultaneously not acting in an equitable manner demonstrates the inherent disconnect between our own actions and our perceptions of others behavior as well as judgment of our own behavior. As such, we are not the best judges of our own behavior nor are we ideal judges of others.

Procedural justice

In addition to psychological research on obedience to the law, there is a philosophical component to legal obedience. Although this research is not substantial, there is indication that perceived legitimacy of the law affects if participants obey it or not. This contradicts other general obedience research that has overall suggested people will obey even if the rules and regulations are unfair or unreasonable. Procedural justice

is the process by which the justice system operates. Within this research, it appears that legitimacy of the institution or authority figure (including perceived legitimacy) is an important component of compliance or noncompliance behavior. Sherman et al. 1993 proposed a theory of criminal sanctions that claims perceptions of legitimacy are crucial for a lawbreaker to experience shame, which in turn increases deterrence. When there is perceived lack of legitimacy of the law, actors do not acknowledge shame and instead have “defiant pride” that does not lead to deterrence of law breaking behavior, but instead to future crime. In other words, if the rules are not logical or fair people are unwilling to follow them.

Other research has indicated that when the system is designed to be procedurally equitable, citizens are more compliant and have more positive feelings towards police. For example, when police control their demeanor, both civilian disrespect and civilian noncompliance were significantly reduced (Donnor, 2012). Similarly, in a longitudinal study in Australia relating to taxes, when people felt threatened or intimidated by the Tax Office’s authority, it made them less likely to comply and pay their taxes (Murphy, 2005). Further, surveys of over 2000 Australian drivers demonstrated that those who had been spoken to with a procedurally just script during a traffic stop reported a more positive and fair experience with the police officer than those who did not experience a procedural justice script (Murphy, 2014). As such, when the process of the law is considered fair, people tend to respond with greater compliance behaviors.

The procedural justice research explicitly examines what was suggested in the Milgram studies; that if people stop viewing an authority figure as legitimate, they are less likely to follow the authority figure’s commands. Returning to the present study, if

mock jurors perceive the rules surrounding juror misconduct as fair and/or reasonable, they should be less likely to engage in misconduct.

Inadmissible Evidence

A separate, but similar legal issue to juror misconduct is that of inadmissible evidence. More precisely jurors' use of inadmissible evidence. Inadmissible evidence is evidence that for a variety of reasons, jurors are not allowed to consider when making their final determination. However, despite being told not to do so, juries sometimes consider inadmissible evidence in the deliberations (Sue, Smith, & Caldwell, 1973; Carretta & Moreland, 1983; Wolf & Montgomery, 1977; Steblay, Hosch, Culhane, & Mcwethy, 2006). There is disagreement concerning when and why jurors consider inadmissible evidence. Some research indicates that juries only used evidence deemed inadmissible when the rest of the evidence introduced in the case is weak (Sue, Smith, & Caldwell, 1973). However, in other research juror's use of inadmissible evidence did not vary based upon the strength of prosecutor's case (Carretta & Moreland, 1983). As such, there is a lack of clarity surrounding what causes jurors to use or not use inadmissible evidence in their decisions.

Research on judicial authority to influence juror behavior has also found equivocal results. Wolf & Montgomery (1977) demonstrated that, when mock jurors were admonished not to use inadmissible evidence, they were swayed by it. However, if they were not admonished, they did not use it (Wolf & Montgomery, 1977). This reflects their prior work, Wolf and Montgomery (1974), which found similar results. Students were given a legal explanation for not using inadmissible evidence when it was presented by the prosecution or the defense, but their verdicts were still influenced by the

inadmissible evidence. Their verdicts fell in the direction of the inadmissible evidence. Additionally, Pickel et al. 1995, in a study of 647 students, examined critical evidence from the prosecution ruled either admissible or inadmissible. They found that participants were more likely to consider the inadmissible evidence if given a legal explanation for why they should not use the inadmissible evidence. Essentially, the explanation “backfired”. Yet, in other research this “backfire” effect was not supported. Participants in a separate study, when told not to use the evidence and offered a reasonable explanation, elected not to use the inadmissible evidence in their decision-making (Stebly, Hosch, Culhane, & Mcwethy, 2006). As a result of these contradictory findings, it is not clear when jurors will follow legal rules and not use inadmissible evidence or when legal instructions will “backfire” and make it more likely they will rely on the inadmissible evidence.

Potential individual differences in rule breaking behavior

In one follow up to Milgram’s research, individual differences as to who was more or less predisposed to shock the learner were explored. Social intelligence (i.e. the ability to build relationships and navigate interpersonal relationships) was found to mediate the relationship. Participants generally followed the “teachers” instructions, but those who scored higher on social intelligence scales were more likely to be noncompliant (Burley et al, 1977). Nagin and Paternoster 1994 administered a vignette to participants and asked under what conditions they would commit crimes described in the vignette. They were also asked questions regarding social control and factors that would influence their decision, such as: the probability of arrest, their moral beliefs, their perceived utility of the crime, etc. Results indicated that participants who were more self-

centered were less likely to be deterred by social norms, and thus, were more likely to commit crimes. Although criminal behavior or deviancy indicates disobedience to social norms and legal authority, criminal behavior is not a perfect analog for a willingness to commit juror misconduct because juror misconduct is quite minor in comparison to crime. Unfortunately, even more general studies relating to individual differences and obedience to the law in regard to criminal behavior or deviancy do not exist. This study will use broader individual difference measures related to authority and rule following as an exploratory first step in studying the relationship between individual differences and juror misconduct.

The present study

There is a plethora of research surrounding obedience and criminality. However, there is a dearth of literature specifically measuring juror misconduct, including its frequency and under what circumstances it occurs. Additionally, there is limited research on jurors' individual differences predicting their obedience or disobedience to legal instruction. As such, it is crucial to explore this topic from two fronts: 1) what personality traits generally predispose people to accepting juror misconduct and 2) under what situations are people more likely to disobey instructions or view disobedience as justified. This research offers the following hypotheses based on the limited available research:

- 1) Juror misconduct will be viewed more favorably by participants when expert testimony is confusing than when it is clear, because mock jurors will judge an inability to understand the information as unfair, and thus will be more willing to break the rules themselves and view others who do it as justified.

- 2) As the jurors' perceptions of the legal system, belief in a just world, and right wing authoritarian individual difference measures increase (all measures of adherence to rules), they will be less likely to excuse jury misconduct, and their rating of juror misconduct will be more severe.
- 3) The effects of both manipulated scenario clarity and severity of misconduct on mock jurors' ratings of misconduct will be greater when the perceptions of the legal system scale, belief in a just world, and right wing authoritarianism individual difference measures are lower. In other words, there will be a moderating effect of individual differences measures such that those jurors who score higher on rule adherence will be less affected by scenario clarity or severity of juror misconduct.

Method

Participants

Participants were recruited via Amazon's Mechanical Turk (MTURK). They were compensated a small monetary fee of 0.75¢ for their participation. Participants were removed if they failed the attention check questions, the manipulation check questions, took too long or completed the task too quickly (i.e. less than 5 minutes or more than 20 minutes), or if they did not complete all the survey questions. Over 416 participants completed the study, however only 148 participants successfully answered all manipulation check and attention check questions. As such, the analyses were run two ways: first on the full 416 participant sample and on the culled 148 sample. The manipulation check questions examined whether they attended to both independent

variables [scenario clarity and level of misconduct] whereas the attention check questions examined whether they paid attention to the judge's instructions.

Design

There are two independent variables: scenario clarity [clear wording, confusing wording] & severity of misconduct [googling a term, asking their spouse, going to the crime scene] as well as a composite score of three dependent variable questions related to how they perceive the misconduct (referred to as degree of misconduct excused, or the dependent variable composite) with a higher score indicating a greater willingness to excuse misconduct. The relationship between the independent and dependent variables were examined to see if any of three individual difference measures [perceptions of the legal system (POLS), belief in a just world (BJW), and right wing authoritarianism (RWA)] moderated the effect of the independent variables.

Measures

Perceptions of the Legal System (POLS)

Research has indicated that citizens opinions of law enforcement affects whether they cooperate with law enforcement officials or not (Donnor, 2012; Murphy et al, 2013). If participants does not have faith in the justice system, they may be more willing to disobey instructions. The Perceptions of Police Scale by Nadal and Davidoff (2015) has a Cronbach's alpha of .92, and with slight language modifications can be transformed into the Perceptions of the Legal System Scale. The modified version of the scale in the present study achieved a Cronbach's alpha of .90. This scale is internally reliable and includes items such as "The legal system provides safety" and "The legal system is trustworthy". All questions are scored on a 5-point Likert scale from Strongly Disagree to

Strongly Agree. The final scale consisted of 8 items, with the wording changed from “police officers” to “the legal system” when grammatically correct.

Belief in a Just World (BJW)

The Belief in a Just World scale measures whether people believe that others get the outcomes they deserve in life. Underlying those that score highly on this scale is the overarching feeling that people want to believe the world is fair. Someone with a strong belief that people receive the outcomes they deserve may not question an unfair legal proceeding due to this strong belief. Those who score high on Belief in a Just World measures tend to be more authoritarian, more religious and more admiring of social institutions (Rubin & Peplau, 1975). As such, it is likely that those who score high on this measure may also be more willing to accept a judge’s instruction, and be less forgiving of those that violate them. The Global Belief in a Just World Scale was selected due to its brevity and its higher reliability score than other BJW measures, a Cronbach’s alpha of 0.68 (Hellman et al, 2007). In the present study, this scale had a Cronbach's Alpha of .93. It consists of 8 items, such as “I feel that people generally earn the rewards and punishments that they get in this world” and “People usually receive the outcomes that they deserve” (Hellman et al, 2007). It is also scored on a 5-point Likert scale.

Right wing authoritarianism (RWA)

The Right Wing Authoritarianism scale assesses three main components: Authoritarian submission, authoritarian aggression, and conventionalism. Overall, those who score high on the RWA scale tend to defer to authority figures such as the government, police, and religious leaders (Altemeyer, 1981). Altemeyer (1981) suggested that those who scored high on this scale had reverence for authority. It is logical to

postulate that those who score higher on this scale would be more likely to defer to the authority figure in a court case (the judge) across all scenarios. The scale consists of 22 items, such as “The ‘old-fashioned ways’ and the ‘old-fashioned values’ still show the best way to live” and “you have to admire those who challenged the law and the majority's view by protesting for women's abortion rights, for animal rights, or to abolish school prayer” (this question, among others, is reversed scored). This scale had a Cronbach's alpha of 0.90 in the previous research and a Cronbach's alpha of 0.96 in the current study.

The dependent variable (Appendix C) are three questions on a 7-point Likert scale ranging from 0 to 6 (extremely unlikely to extremely likely). These questions are: “How immoral do you think you fellow jurors' actions were”, “how willing would you be to report your fellow juror to the court” and “if you were in the same position as your fellow juror, how likely would you be to act in the same manner”. The last question was reverse coded (as designated by the ® before any question in the Appendix. The scores were averaged to create a composite juror misconduct excused score, which a higher value indicating greater acceptance of misconduct. This composite dependent variable had a Cronbach's alpha of 0.70.

Procedure

All of the participants completed the study online. First, they signed a consent form explaining that they would be mock jurors in a case. Subsequently, they were exposed to a video of a judge explaining to the jurors their duty in analyzing the evidence, highlighting what they were not allowed to do. This video lasted just over four minutes (Appendix A). This video included explicit instructions prohibiting jurors from

looking up words, asking third parties (including other people or an online search), or going to the crime scene. After, they completed two attention check questions regarding the instructions (Appendix B). They then were exposed to one of 6 possible short vignettes, identical save for the two independent variables. Vignettes either had a simple phrase or a complicated, deliberately obfuscating one: “The materials science expert witness stated that the parts of the bridge had slowly cooled when being created, causing it to become more malleable” or “The metallurgy expert witness attested to the fact the bridge had gone through a process of infridgidtion causing it to anneal and become variant” respectively. Vignettes also included a description of one of three types of juror misconduct, increasing in severity, each vignette followed by: “After the trial you found out a fellow juror...” These three were “... looked up some terms on Google” “... asked their spouse, an engineer, their opinion on the bridge” and “... went to the crime scene” (Appendix C). Participants then completed two basic manipulation check questions to insure they attended to the vignette (Appendix E) They were then asked the dependent variable questions: “How immoral do you think you fellow jurors' actions were?” along with several others (Appendix D). Next, they completed the individual difference measures (modified Perceptions of Police scale to be the Perceptions of the Legal System scale, Belief in a Just World, and Right Wing Authoritarianism) (Appendices E, F, and G).

Results

All analyses were completed on 2 data sets: (1) full dataset with no participants removed due do failed attention or manipulation checks ($N = 416$) and (2) participants

who successfully completed both manipulation and attention check questions ($N = 148$). There were no significant differences between statistical analyses, thus the statistics presented below represent the 148 participants who successfully completed each attention and manipulation check. This sample consisted of 67 participants in the clear condition and 81 in the confusing condition. Within these conditions 45 participants received the google misconduct condition, 54 participants received the spouse misconduct condition, and 49 participants received the crime scene misconduct condition.

Reliability Analysis

The three dependent variable measures relating to the palatability of juror misconduct achieved a Cronbach's alpha of .70. Per accepted standards, this level of Cronbach's alpha indicates that the dependent variables had sufficient internal reliability (Cortina, 1993). Subsequent statistical analyses were completed on an aggregate composite of all three dependent variable scores. Next, the three individual difference measures (Perceptions of the Legal System Scale, Belief in a Just World, and Right-Wing Authoritarianism) evidenced acceptable reliability with Cronbach's alpha scores greater than .90 (.90, .93, .96, respectively). As such, they demonstrated high internal reliability.

ANOVA Assumptions

Correlations were completed on all variables, and there were no correlations between any dependent variable (either the three individual dependent variables or the composite variable) and any independent variable or individual differences measures. As such, the initial plan to run regression analysis was inappropriate. The primary statistical test run was a 2 x 3 analysis of variance (ANOVA). All data met the ANOVA assumptions. First, the dependent variable was interval. The assumption of normality was

met for all variables as skewness and kurtosis values all fell within a widely accepted range of -1.00 to 1.00. The assumption of homogeneity of variance was also satisfied, with Levene's test demonstrating a non-statistically significant p -value greater than .05.

It was hypothesized that participants would be significantly more judgmental towards juror misconduct if the scenario was clear, the juror misconduct was less severe, and if the participants scored high on the POLS, BJW, and/or RWA scales. The overall mean juror misconduct judgment score across all six conditions was 1.71 (SD=1.29). The median dependent variable composite was 1.33 in a potential range from 0 to 6, and dependent variable scores ranged from 0 to 5.67.

Factorial ANOVA

A 2 (Juror Instruction Condition [clear, confusing]) x 3 (Juror Misconduct Condition [Google, spouse, crime scene]) factorial ANOVA was conducted to determine if any main effects or interactions occurred on the composite dependent variable of interest. There was no main effect of Juror Instruction Condition, $F(1, 148) = 0.01, p = .93$ and no main effect of Juror Misconduct Condition, $F(1, 148) = 1.43, p = .24$. Finally, there was no interaction between Juror Instruction and Juror Misconduct conditions, $F(1, 148) = 0.05, p = .95$.

Correlation analysis

However, there was a correlation between two individual difference measures and the dependent variable composite such that BJW ($M = 4.03$ $SD = 1.19$) and the dependent variable composite had a positive correlation ($M = 2.27$ $SD = 1.16$), $r = .130, p < .001, n = 411$ as well as the dependent variable composite and RWA ($M = 2.56$ $SD = 1.08$), $r = .224, p < .001, n = 411$. These two measures both had significant positive correlations

with dependent variable 3 (if you were in the same position as your fellow juror, how likely would you be to act in the same manner) $M = 2.93$ $SD = 2.08$), such that the relationship with BJW was $r = .403$, $p < .001$, $n = 411$ and with RWA was $r = .436$, $p < .001$, $n = 411$. There was a negative correlation with dependent variable 2 (how willing would you be to report your fellow juror to the court) ($M = 1.83$ $SD = 1.48$), and BJW such that $r = -.290$, $p < .001$, $n = 411$ and RWA was $r = -.177$, $p < .001$, $n = 411$. However, even though significant, they only explain small portions of the variation in the dependent variable. Overall, individual difference personality measures did not moderate any effect between the independent and dependent measures, as there was not a significant relationship to moderate.

The three individual difference measures all significantly correlated with each other such that the POLS ($M = 2.17$ $SD = 0.85$) and BJW ($M = 3.45$ $SD = 1.26$) were positively correlated $r = .737$, $p < .001$, $n = 148$, POLS ($M = 2.17$ $SD = 0.85$) and RWA ($M = 1.86$ $SD = 1.25$) were positively correlated $r = .373$, $p < .001$, $n = 148$, and BJW and RWA were significantly correlated $r = .384$, $p < .001$, $n = 148$. As such, participants who scored high on one measure were likely to score high the others and vice versa.

ANCOVA

Because the BJW and RWA measures had a significant correlation to the dependent measure, an ANCOVA was additionally run with RWA and BJW individual difference measures as covariates (see Table 1). There were no significant main effects of scenario clarity or severity of misconduct on degree of misconducted excused, nor were

there any interactions. Thus, this ANCOVA did not change the results demonstrated in the ANOVA.

Table 1

Analysis of Covariance table between Scenario Clarity and Misconduct Level on Juror Misconduct Excused with Belief in a Just World Composite and Right Wing Authoritarianism Composite

Source	Sum of Squares	Degrees of Freedom	Mean Square	<i>F</i>	<i>p</i>	η_p^2
BJW	5.79	1	5.73	3.43	.07	.02
RWA	1.95	1	1.95	1.17	.28	.01
Scenario Clarity	0.04	1	0.04	0.02	.33	< .001
Misconduct Level	3.78	2	1.89	1.13	.35	.02
Interaction	0.04	2	0.02	0.01	.99	< .001
Error	234.04	140	1.67			
Total	245.05	147				

Note. BJW = Belief in a Just World Composite; RWA = Right Wing Authoritarianism Composite.

Discussion

It was hypothesized that there would be a main effect of clear versus confusing scenario and severity of juror misconduct, as well as individual difference measures serving as a moderator to this relationship. Results indicate it is not possible to reject the null hypotheses, as there were no relevant, statistically significant relationships. The key implications of this study are that jurors had the same opinion of the case regardless of individual difference measures, situation, or type of misconduct. This study did not successfully capture what makes jurors more prone to perceiving misconduct as acceptable or their willingness to report others misconduct, but it did rule out several possibilities.

This study does raise an important concept relevant to jury research: vigilance decrement. Vigilance decrement, as defined by Robertson, Manly, Andrade, Baddeley, and Yiend (1997), is “decline in performance efficiency over time in vigilance tasks” (Robertson et al 1997). Overall trials are long and sometimes tedious; although this study took participants only between 12 and 20 minutes, 4 of these minutes involved watching a video of fairly dry instructions. A lack of focused attention could result in an underload of stimulation and thus inattention from participants (Pattyn et al, 2008). Pattyn et al (2008) found that physiological (respiratory and heart) vigilance decrement as operationalized by slower reaction times was related to decreased physiological indicators (Pattyn et al. (2008)). As such, when given a non-stimulating task people tended to decrease cognitive functioning. It quite likely participants were inattentive: of 411 completed surveys, only 148 participants passed both attention and manipulation check questions. Even though this simulation was ecologically valid, as it included patterned jury instruction, these instructions are tedious and difficult to comprehend. Saxton (1998) found that civil jurors only could answer 58% of questions regarding the trial correctly. A meta-analysis of studies on juror comprehension of trial material found that mean comprehension scores in the research range between 50 and 70 percent. (Ogloff & Rose, 2005; Devine, 2012). As such, a sample which does not understand much of the material is actually a good representation of a trial, and as such contains fairly dry legal language.

One overarching issue with MTURK is the participant sample. Unfortunately, participants from MTURK tend to click through studies as quickly as possible to maximize payout. As such, inattention is an issue. With both the attention check

questions and manipulation check questions, only 148 people answered both correctly. Although there is no guarantee juries are paying attention to materials presented, the purpose of this study was to see if jurors would knowingly commit misconduct under certain scenarios, and their lack of attention in this experiment by their high failure rate on attention and manipulation check questions raises concerns whether they did indeed “know”.

A second issue regarding MTURK is the influx of bots. Although this study included two attention checks, two manipulation checks, and a free response short answer, there is a risk of bots being considered in the final calculations. There is a rising concern about the use of bots affecting MTURK data’s reliability (Dreyfuss, 2018). MTURK workers are beginning to use bots to increase their efficiency in answering surveys and thus their payout (Hunt & Scheetz, 2018). The inclusion of bots in the sample would have increased error and made it more difficult to find significant effects.

Lastly, and most crucially, there was no voir dire as part of this study; as such, it is unknown if participants had any biases before beginning this study. We attempted to capture individual differences relating to rule following behavior; however, we cannot see if our sample had been in a car crash, or had a bad experience with the legal system, or even hated bridges. In a real trial, people with bias are removed. In this study, we tried to capture one potential bias that could influence results.

Furthermore, demographic information such as age and gender were not collected due to researcher error. This is unfortunate because an analysis of demographics on individual difference measures could shed light on what characteristics are associated with certain demographics. Further research should explore demographics as potentially

significant factors, as they could be related to the individual differences measures and potential demographic differences in viewpoints.

What is perhaps most concerning regarding these results is that jurors did not seem to view the severity of misconduct differently. Googling terms ($M = 1.92$ $SD = 1.53$), asking their spouse their opinion of the case ($M = 1.77$ $SD = 1.28$) and physically visiting the crime scene ($M = 1.48$ $SD = 1.06$) all had very similar means and broad overlapping standard deviations. This suggests that, although it seems evident that physically going to the crime scene is worse than using Google, jurors did not make such a distinction between the types of misconduct. As mentioned, when juror misconduct is deemed not prejudicial, the case can continue without a mistrial. However, if a judge determined that jurors were intentionally visiting crime scenes it would certainly be considered prejudicial and the case would be reheard. If a juror just googled “metallurgy” it is likely that the juror would just be reprimanded and the case would continue.

One potential explanation for this lack of difference is that the judicial instructions or “charge” to the jury did not make a distinction between types of misconduct in terms of severity. Instead all types of misconduct were listed and the jury was told potential consequences if they committed any of the acts. Because the instructions lumped all the types of misconduct together it could have lead jurors to view them as equivalently prejudicial. Although the courts desires that jurors do not commit any type of misconduct, they certainly do not want them committing more severe types such as a crime scene visit.

Lastly, it is interesting that jurors did not excuse the misconduct in the confusing expert testimony scenario. Perhaps the sample happened to be highly educated; one

participant mentioned they were an engineer. In the short response questions, only one juror complained about not understanding the terminology in the confusing condition. It is also possible the sample was demonstrating demand characteristics. Given their instructions, it is likely that they were trying to make a judgement regarding the case and were not considering if the rules were reasonable given the one confusing sentence. It could also be, as mentioned, inattention.

This study also raises interesting future directions for jury misconduct research. The overall field of trial research only includes approximately 1500 studies published between 1970 and 2011 (Devine, 2012). Jury decision making is under-researched, and given its immediate, real life application, it is crucial that researchers complete more research on juries. For one, a qualitative exploration of the optional short response included to rule out bots revealed participants who were thoughtful regarding the scenario; eighty-two of the 148 person sample participants wrote that the most important factor of the case was that the judge's instructions should always be followed in order to maintain a fair trial. In other words, over half the sample claimed that the judicial instructions must always be followed regardless of circumstance. However, although people wrote very strongly worded responses that the rules must always be followed, the results do not reflect this. The composite dependent variable mean across all conditions was 1.77, below the median of the potential score range of 0-6, however, this is just within one standard deviation of the median. As such, although people said they judged juror misconduct harshly, they did not seemingly record it as extremely immoral in the dependent variable questions.

Additionally, roughly 30 other participants offered responses along the lines that they saw nothing wrong with fellow jurors trying to make a more informed decision, even though it was against the rules. As such, there is potential for future studies to follow up on why some people believe the rules must always be followed and why others ignore them in favor of more “accurate” information. A follow up to this study could be increasing the importance of the decision-making in the scenario by including a long jail sentence or perhaps even the death penalty. To what extent rule followers will obey even in the face of extreme consequences would be important to determine. This also taps into procedural justice, as jurors seemed to have opinions on fairness and abiding by the rules, but only when they are consistent with their notions of justice. Commonsense justice is a term coined by Norman J. Finkel that describes what average people believe to be fair or just (Finkel, 2000). Although theoretically the law is codified, black and white rules, jurors clearly have their own perceptions of what is just (Finkel, 1993). They bring these beliefs into the courtroom, and no amount of *voir dire* can account for society-wide notions that conflict with the written law. It is crucial to understand commonly held beliefs regarding what regular people believe about justice. Only then will we fully understand why jurors make the choices they do, and when they are more inclined to follow or break the rules.

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Figures

Table 1

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Misconduct Level	3.78	2	1.89	1.13	.35	.02
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Error	234.04	140	1.67			
Total	245.05	147				

Note. BJW = Belief in a Just World Composite; RWA = Right Wing Authoritarianism Composite.

Appendices

Appendix A: Jury Instructions Transcript

Our system of justice requires that trials be conducted in open court with the parties presenting evidence and the judge deciding the law that applies to the case. It is unfair to the parties if you receive additional information from any other source because that information may be unreliable or irrelevant and the parties will not have had the opportunity to examine and respond to it. Your verdict must be based only on the evidence presented during trial in this court and the law as I provide it to you. During the trial, do not talk about the case or about any of the people or any subject involved in the case with anyone, not even your family, friends, spiritual advisors, or therapists. Do not share information about the case in writing, by email, by telephone, on the Internet, or by any other means of communication. You must not talk about these things with other jurors either, until you begin deliberating. As jurors, you may discuss the case together only after all of the evidence has been presented, the attorneys have completed their arguments, and I have instructed you on the law. After I tell you to begin your deliberations, you may discuss the case only in the jury room, and only when all jurors are present. You must not allow anything that happens outside of the courtroom to affect your decision [unless I tell you otherwise]. During the trial, do not read, listen to, or watch any news report or commentary about the case from any source. Do not use the Internet, a dictionary or other relevant source of information or means of communication in any way in connection with this case, either on your own or as a group. Do not investigate the facts or the law or do any research regarding this case. Do not conduct any tests or experiments, or visit the scene of any event involved in this case. If you happen to

pass by the scene, do not stop or investigate. If you have a cell phone or other electronic device, keep it turned off while you are in the courtroom and during jury deliberations. An Electronic device includes any data storage device. If someone needs to contact you in an emergency, the court can receive messages that it will deliver to you without delay.]During the trial, do not speak to a defendant, witness, lawyer, or anyone associated with them. Do not listen to anyone who tries to talk to you about the case or about any of the people or subjects involved in it. If someone asks you about the case, tell him or her that you cannot discuss it. If that person keeps talking to you about the case, you must end the conversation. If you receive any information about this case from any source outside of the trial, even unintentionally, do not share that information with another juror. If you do receive such information, or if anyone tries to influence you or any juror, you must immediately tell the bailiff. Keep an open mind throughout the trial. Do not make up your mind about the verdict or any issue until after you have discussed the case with the other jurors during deliberations. Do not take anything I say or do during the trial as an indication of what I think about the facts, the witnesses, or what your verdict should be. Do not let bias, sympathy, prejudice, or public opinion influence your decision. You must reach your verdict without any consideration of punishment. I want to emphasize that you may not use any form of research or communication, including electronic or wireless research or communication, to research, share, communicate, or allow someone else to communicate with you regarding any subject of the trial. If you violate this rule, you may be subject to jail time, a fine, or other punishment. When the trial has ended and you have been released as jurors, you may discuss the case with anyone. [But under

California law, you must wait at least 90 days before negotiating or agreeing to accept any payment for information about the case.

Appendix B: Attention Check questions

1) Who can a juror discuss the case with outside the courtroom?

No one

Spiritual Advisors

Family

Therapist

2) If you violate the juror instructions, what are the potential legal repercussions?

Jail Time

Fine

Another Punishment

All of the above

Appendix C: Vignette

On October 3 2017, J Smith was driving down main street in Crestline, California. While he was on the bridge, he hit the side. This caused a collapse, injuring J Smith along with a pedestrian who was walking on the bridge at the time of the incident. The pedestrian sustained a broken arm, and the bridge will need be replaced. The prosecution claims that he was driving recklessly over a small bridge, which caused him to swerve and hit the side of the bridge. This means that he is a fault for both the bridge collapse and the

bystanders injury. However, the defense alleges that the bridge itself was faulty. **The materials science expert witness stated that the parts of the bridge had slowly cooled when being created, causing it to become more malleable/The metallurgy expert witness attested to the fact the bridge had gone through a process of in fridgidtion causing it to anneal and become variant.** Thus, according to the defense there was no way the defendant would be at fault. It is the juries job to determine if he is guilty, beyond a reasonable doubt, for both criminal damage to property and personal injury damages. After the trial you found out a fellow juror **looked up some terms on Google/asked their spouse, an engineer, their opinion on the bridge/went to the crime scene.**

Appendix D: Dependent Variable Questions

(5 point scale, -2 -1 0 1 2)

1. How immoral do you think you fellow jurors' actions were?
2. How willing would you be to report your fellow juror to the court?
3. If you were in the same position as your fellow juror, how likely would you be to act in the same manner?

Appendix E: Modified POPS questions (POLS)

(5 point scale, -2 -1 0 1 2)

1. Police officers are friendly

2. The legal system protects me
3. The legal system treats all people fairly
4. I like the legal system
5. The legal system does not discriminate
6. The legal system provides safety
7. The legal system is trustworthy
8. The legal system is unbiased

Appendix F: BJW questions

(5 point scale, -2 -1 0 1 2)

1. I feel that people generally earn the rewards and punishments that they get in this world.
2. People usually receive the outcomes that they deserve.
3. People generally deserve the things that they are accorded.
4. I feel that people usually receive the outcomes that they are due.
5. People usually use fair procedures in dealing with others.
6. I feel that people generally use methods that are fair in their evaluations of others.
7. Regardless of the specific outcomes they receive, people are subjected to fair procedures.
8. People are generally subjected to processes that are fair.

Appendix G: RWA Questions

(7 point scale, -3 -2 -1 0 1 2 3) (reverse coded denoted by ®)

1. Women should have to promise to obey their husbands when they get married.
2. Our country desperately needs a mighty leader who will do what has to be done to destroy the radical new ways and sinfulness that are ruining us.
3. Gays and lesbians are just as healthy and moral as anybody else. ®
4. It is always better to trust the judgement of the proper authorities in government and religion than to listen to the noisy rabble-rousers in our society who are trying to create doubt in people's minds.
5. Atheists and others who have rebelled against the established religions are no doubt every bit as good and virtuous as those who attend church regularly. ®
- 6.
7. The only way our country can get through the crisis ahead is to get back to our traditional values, put some tough leaders in power, and silence the troublemakers spreading bad ideas.
8. There is absolutely nothing wrong with nudist camps ®
9. Our country needs free thinkers who have the courage to defy traditional ways, even if this upsets many people. ®
10. Our country will be destroyed someday if we do not smash the perversions eating away at our moral fiber and traditional beliefs.
11. Everyone should have their own lifestyle, religious beliefs, and sexual preferences, even if it makes them different from everyone else. ®
12. The "old-fashioned ways" and the "old-fashioned values" still show the best way to live.

13. You have to admire those who challenged the law and the majority's view by protesting for women's abortion rights, for animal rights, or to abolish school prayer. ®
14. What our country really needs is a strong, determined leader who will crush evil, and take us back to our true path.
15. Some of the best people in our country are those who are challenging our government, criticizing religion, and ignoring the "normal way things are supposed to be done." ®
16. God's laws about abortion, pornography and marriage must be strictly followed before it is too late, and those who break them must be strongly punished.
17. There are many radical, immoral people in our country today, who are trying to ruin it for their own godless purposes, whom the authorities should put out of action.
18. A "woman's place" should be wherever she wants to be. The days when women are submissive to their husbands and social conventions belong strictly in the past. ®
19. Our country will be great if we honor the ways of our forefathers, do what the authorities tell us to do, and get rid of the "rotten apples" who are ruining everything.
20. There is no "one right way" to live life; everybody has to create their own way. ®
21. Homosexuals and feminists should be praised for being brave enough to defy "traditional family values." ®

22. This country would work a lot better if certain groups of troublemakers would just shut up and accept their group's traditional place in society.