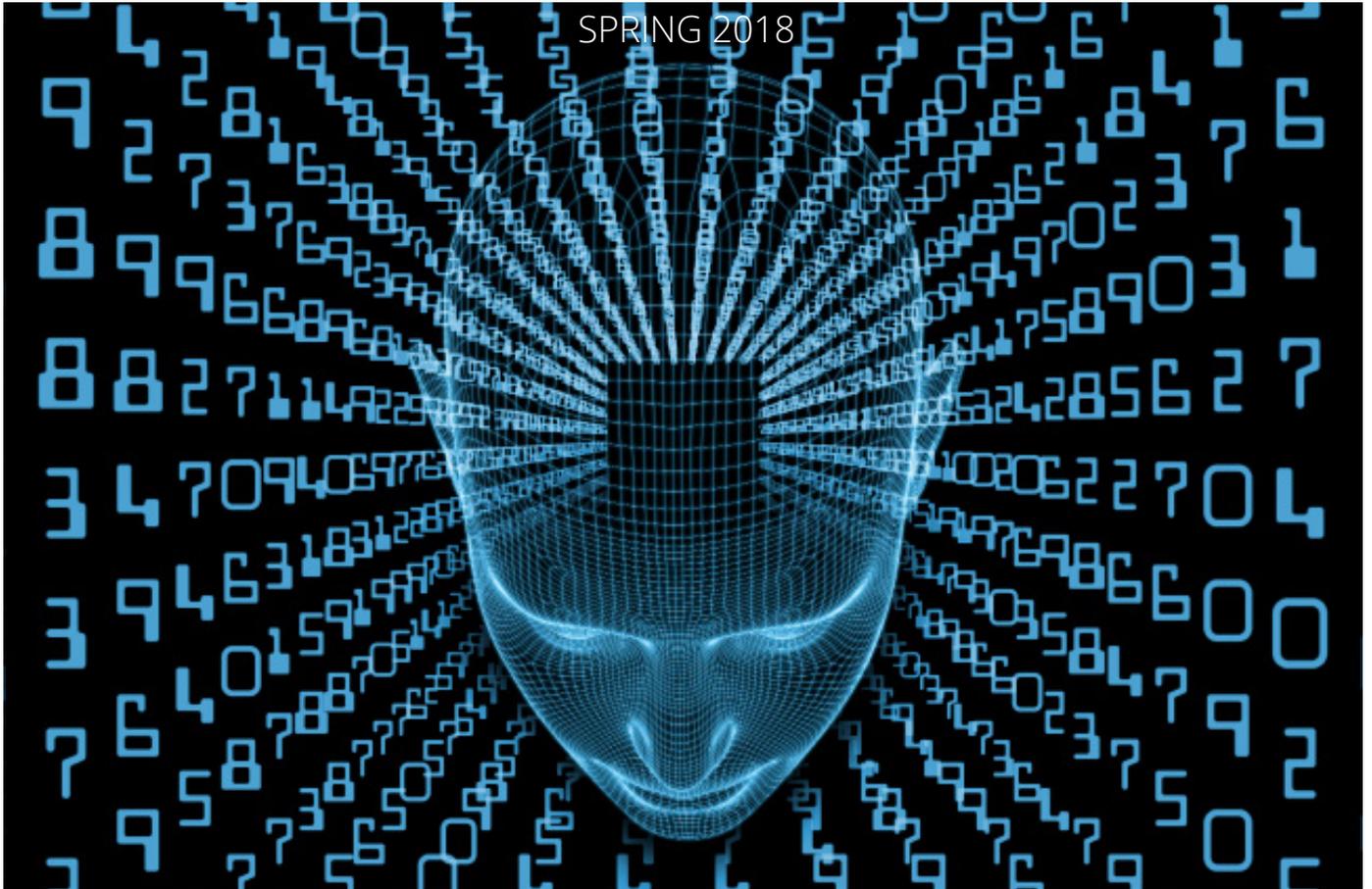


SPRING 2018



DEVIL ON THE JURY



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The Devil on the Jury

ONE HUNDRED PEOPLE

Ask one hundred people, if they were to serve on a jury and were given instructions by a judge not to conduct internet¹ searches related to the trial during their jury service, how many would believe they could abide by that instruction? Most courts assume nearly 100% compliance and therefore that virtually everyone should be confident they could abide by the court's instructions.

WHAT WOULD YOU DO?

In a survey of one hundred people conducted by Vinson & Company, 11% affirmatively disclosed that they "would not be able to completely abide by the instructions and would conduct internet searches" leaving 89% who ostensibly believed they would be able to refrain from internet searches. These findings mean that in a jury of twelve, at least one juror admittedly would not be able to adhere to the court's instruction. Obviously, anything less than 100% compliance is concerning since the information, like gossip, would likely be disseminated among the other eleven jurors in one form or another.

WHAT WOULD MOST PEOPLE DO?

But even more startling, when the same one hundred people were asked what **most people would do**, only 60% thought most people would abide by the court's instructions and 40% felt that most people would not abide by the instructions.²

- 89% said, "I would completely abide by the instructions and I would refrain from internet searches."
- 11% said, "I would not be able to completely abide by the instructions and I would conduct internet searches."
- 60% said, "**Most people** would completely abide by the instructions and they would refrain from internet searches."
- 40% said, "**Most people** would not be able to completely abide by the instructions and they would conduct internet searches."

This suggests that, assuming a jury of twelve and all other things being equal,³ according to these one hundred survey-takers, five members⁴ of a jury *would not* be able to abide by a judge's instructions and *would* conduct internet searches during the trial.

¹ The use of uppercase v lowercase for the term "internet" has changed over the years. *AP*, *WSJ* and the *NY Times* now use lowercase as do many other publications, an acknowledgement that it is common, widespread and familiar. The lowercase form is used herein.

² These questions were asked in reverse order—what most people would do was asked first, then what the survey-taker would do was asked second.

³ This assumes the five do not fess up during jury selection and say that they cannot do as instructed or get themselves removed for other reasons. In fact, we've only heard one juror admit to this during jury selection and the juror was a reporter for a major newspaper who felt that to continue to keep up with some work during the trial, it would be impossible not to see news reports about the case.

⁴ It is actually 4.8 jurors, but for illustration, it is rounded up to 5.



UNREALISTIC CYNICISM OR PSYCHOLOGICAL PROJECTION?⁵

Is this simply an exaggerated cynicism about others? Does it reflect a lack of faith in humanity? A jaded view of how others cannot resist temptation? Possibly. But based upon research methodologies employing an “indirect questioning” approach, the 60% compliance and 40% non-compliance figures are more likely the accurate ones. This indirect approach to obtain “true reads” on sensitive issues has been widely used for decades in social psychology as well as marketing research.⁶ It also reveals a great deal more about the person answering the question than the direct approach does and is especially appropriate for the topic of juror behavior. This is because juror behavior is not something a lay person would have specific knowledge of or unambiguous opinions about. Therefore, any beliefs about jurors’ misbehaviors in a hypothetical courtroom situation would be projections based upon the person’s own self beliefs, viewpoints that may be difficult to admit due to their socially undesirable content.⁷

SOCIAL DESIRABILITY BIAS

Since the 1950s, social psychologists have documented a fairly universal phenomenon where humans have a need to present themselves in the best light possible and to answer questions posed to them in a manner that will be viewed favorably by others. This includes answering questions in a way to make themselves look better or more honest or more caring or more—pick a positive attribute—and less dishonest, less uncaring, less—pick a negative attribute⁸. Because of this biasing effect when self-reporting, it is difficult to get a true read when asking loaded questions like, “would you be able to follow a judge’s instructions?”⁹

INDIRECT QUESTIONS—WHAT WOULD MOST PEOPLE DO? WHAT WOULD YOU DO?

The indirect approach to capture the extent of undesirable attributes generates more valid responses than direct questioning. By asking questions that would ordinarily elicit a socially desirable response rather than an honest one, responses to indirect questions can reveal a more accurate picture of what that person might be likely to do in the real world. A person’s true inclinations may be represented in speculation about what others would do.

JUROR BEHAVIOR INSTRUCTIONS FROM THE COURT

Typically, on the first day of jury selection, a judge verbally admonishes jurors not to tweet, post, research, discuss or otherwise share or obtain information related to the trial or parties that is not obtained through the trial process and through the testimony. Along with the court’s initial verbal caution, if a special jury questionnaire is administered it, too, may contain lengthy admonitions such as this one from an actual trial:

⁵ Psychological projection, in theory, occurs when people deny certain qualities they have and attribute them to others.

⁶ For a review of three validation studies refer to Robert J. Fisher’s article cited in the references.

⁷ This may not be accurate for the 25% of the sample who have previously served on a jury. 20% of those individuals felt they would not be able to abide by the court’s instructions. Thus, those with experience as a juror say they would have more compliance than those who have not served on a jury.

⁸ As examples, these are from the Marlowe-Crowne Social Desirability Scale and were administered to our 100 survey-takers at the conclusion of the survey: “I sometimes feel resentful when I don’t get my way,” 26% said it was true for them while 68% said it was false for them. Similarly, 92% said it was true that “No matter who I’m talking to, I’m always a good listener,” while only 6% said it was false for them. Both of these statements have a degree of social desirability attached to them and, from the answers, the survey-takers’ propensity to provide more socially desirable responses in specific situations can be extrapolated.

⁹ There are profound implications for the effects of the social desirability bias in jury selection proceedings, as well as ways to avoid or minimize it, which are beyond the narrow scope of this paper.

Please read these instructions carefully before you fill out the questionnaire.

From this moment forward, and through the entire time you are involved with this case, you are ordered not to discuss this case with anyone; do not allow anyone to discuss the case with you. The only information you may tell anyone is that you are in a jury pool for a trial and the time requirements of that trial. You are also ordered not to read, listen to, or watch any news, internet, or other media accounts of this case, past or present.

You are further ORDERED not to email, text, tweet or blog about this case or any of the issues, parties or attorneys involved in the case with anyone. Do not use any search engines such as Yahoo or Google to obtain or share information about the parties, attorneys or issues in this case. Do not visit any social network chat rooms or sites like Facebook or any other sites on the world wide web that might in any way contain information relating to the issues, attorneys or parties in this case.

You may not do research about the parties or subject matter involved in the case.

LONG TRIALS, SHORT TRIALS, IT DOESN'T MATTER

Most judges, lawyers and court personnel who are involved in lengthy trials of several weeks assume this admonition not to research the case might be somewhat problematic for some jurors while trials of lesser duration - one or two days - should pose no problems for jurors at all. The questions discussed above, however, were asked within the framework of "a trial," not a long trial or a high-profile, highly publicized trial, just "a trial." At the very least, it can be concluded that these survey-takers were not influenced by the length of the trial when considering the temptation to research the parties or issues involved.

During a lengthy trial, parties with enough resources can monitor jurors' public social media postings to identify if and when that aspect of the court's instructions are violated, but it's virtually impossible to monitor other internet activity, which jurors may engage in, such as researching the trial, the subject matter or researching the parties involved.

PROBLEMS WHEN JURORS TAKE CONTROL

The problems inherent in jurors conducting independent research are many, but principally, jurors can be exposed to potentially prejudicial, irrelevant, inaccurate information that cannot be addressed in the trial through cross-examination or rebuttal. The parties in the trial may be unaware of the information or misinformation obtained by jurors. Additionally, not all jurors may be exposed to the same information or have the information shared among all jurors. Internet access makes independent research easy and readily available. One such incident in 2012, cited by author Robbie Manhas in an article in the *Michigan Law Review*, serves as an example:

In 2012, the Fourth Circuit considered an instance of independent juror internet research in *United States v. Lawson*. There, a jury had convicted Lawson and other defendants of violating the animal fighting prohibition of the Animal Welfare Act for participating in “gamefowl derbies,” or “cockfighting.” The statute in question prohibited, among other things, “sponsor[ing] or exhibit[ing] an animal in an animal fighting venture.” Six days after the jury returned its verdict finding Lawson guilty on all charges, it came to light that a juror had consulted some internet sources, including Wikipedia’s definition of the term “sponsor,” the morning before the jury reached its verdict. Further, the same juror brought a printout of the Wikipedia entry to the jury room during deliberations. All of this conduct occurred despite the explicit instructions of the district court, “which had admonished the jurors not to conduct any outside research about the case, including research on the internet.” Although the district court had denied Lawson’s motion for a new trial, the Fourth Circuit found that the government had failed “to rebut the presumption of prejudice” that arose from the juror’s actions. It thus vacated the appellants’ convictions under the animal fighting statute and awarded them a new trial.

AN ISOLATED INCIDENT?

Is this an isolated incident? Definitely not. It is not uncommon to observe similar behavior during jury research. Mock jurors are paid for their time to participate in research. They are given specific instructions that threaten non-payment if they violate the ground rules. One ground rule is not to conduct outside research related to the case they are discussing. Mock jurors are aware that their deliberations are being videotaped and that they are being observed behind a one-way mirror. Despite that knowledge and despite specific instructions against doing so, mock jurors in heated debate and often with the consensus of their fellow mock jurors, will reach for their cell phones to look up a company’s net worth, profits, history, CEO salaries, previous cases and verdicts involving the parties, etc., to help them make decisions about liability or damages. Is there any reason to doubt that in the privacy of their homes, some jurors might engage in similar behavior?

POSTING: A REFLEX

Younger people who have grown up with a cell phone as an appendage to their bodies do not necessarily view obtaining information from the internet or posting on social media as violating a court’s instructions. It is almost a reflex for many to reach for their phone and search for information or post on social media in real-time. The phenomenon, however, is no longer limited to the young. In fact, a recent Gallup poll found that while Facebook usage, for example, was highest for the 18-29, year-old group hovering around 73% with no significant change for that age group between 2011 and 2018, usage for the older groups, on the other hand, had rising significantly in that same time period. The 30-49, year-old group moved from 57% to 65% and the 50-64, year-old group increased from 34% to 52%. Reflexive use of social media is no longer the sole purview of the young.

HOOCHIE-COOCHIE PANTS

In one example, during jury selection, a 45 year-old venire member had posted on her Facebook page that she was utterly bored with the proceedings and was going to wear her “hoochie-coochie pants” to court the following day in an attempt to be dismissed. The judge in that case read the riot act to the juror and dismissed her.

YET ANOTHER BORING TRIAL IN FORT LAUDERDALE

In another example of improper posting on Facebook, a juror was brought in front of the judge and admonished for posting about the trial. The posting displayed a photo of other jurors waiting outside the courtroom, with the courtroom number clearly marked on the wall. The caption on the photo read, “yet another day of jury duty in a very boring trial in Fort Lauderdale.” When confronted by the judge, the juror seemed genuinely clueless and did not seem to understand how his behavior in any way violated the court’s instructions about posting information online. These kinds of activities seem perfectly harmless to jurors but not so much to a judge or to the parties involved in the trial.

JURORS AGREE BUT DO THEY UNDERSTAND?

When jurors are instructed not to research, post, or investigate anything to do with a trial, they most often agree to the extent that they understand what they are agreeing with. If they do not agree, they are typically excused. Almost no one disagrees. The demand characteristics in a courtroom are significant and regardless if they understand completely or not, potential jurors typically will not single themselves out by disagreeing with a judge.

JURORS HAVE SHORT MEMORIES

Further, as the trial progresses and jurors become more interested in the issues or when the issues become more personal, jurors may forget their initial oath and revert to more comfortable and common activities—activities they engage in daily, such as chatting with others or perusing the internet. Those are the issues this survey was designed to answer; do jurors violate instructions and how often can we estimate that it occurs?¹⁰

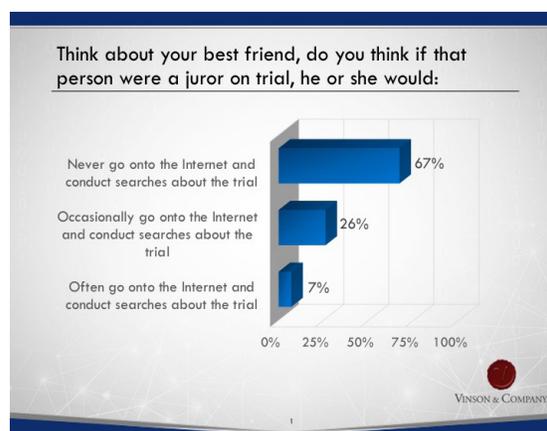
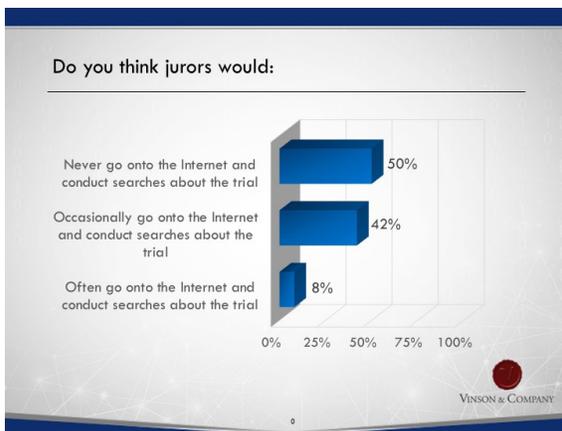
A JUROR, YOUR BEST FRIEND AND YOUR SPOUSE WALK INTO A COURTROOM. . .

We have seen how the one hundred survey-takers believed how they or how most people would follow the judge’s instructions regarding internet searches during a trial. Another way to measure how often the survey-takers believe others (i.e. themselves) may engage in behavior that violates a judge’s instructions, is to ask more specific questions that hit closer to home. What did the survey-takers believe about their best friend, their spouse or jurors in general? The following information was provided to the survey-takers:

Another instruction the judge gives to jurors is that during the trial or the deliberations they should not go onto the internet and conduct any research about the trial or the attorneys or the parties involved in the case.

At this point, survey-takers were asked their opinions about 1) jurors; 2) their best friend; and 3) their current or former spouse or significant other.

¹⁰ One hundred volunteers were paid \$5.00 to complete an eight-minute survey online. The survey contained thirty-two questions. All questions were multiple choice. The volunteers are members of Vinson & Company’s 2,000 person online database, Darwin’s Data©. Extensive demographic information is maintained on each volunteer in the database, thus quotas could be met for important demographics such as gender or age. Quality controls are employed to screen individuals not qualified for the survey and to ensure consistency and validity of answers throughout the survey.



The survey-takers viewed their friend and other jurors as more likely to violate the judge's instructions than would their spouse. Half of the survey-takers felt jurors would search online and one-third felt that their best friend would also search online, at least occasionally. This degree of non-compliance is considerably more than the court and the parties presume.

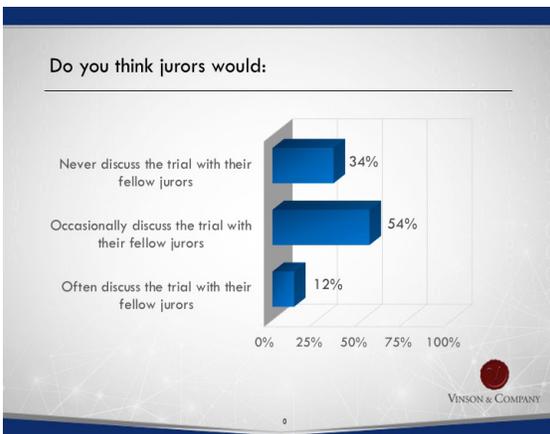
DO NOT DISCUSS THE CASE

As reported above, 11% of survey-takers admitted outright that they would research a case and could not follow the judge's instructions regarding the internet. But fully 40% felt that most people would do the same. When asked more specifically about a spouse, a best friend or jurors, survey-takers were less sanguine about jurors' ability to follow the judge's instructions but more confident that their own spouse or best friend could do so. Fully 50% felt that jurors would not be able to refrain from internet searches. But are other admonitions seen as more or less likely to be violated? Another important instruction almost always given by the judge on the first day of jury selection (unless he/she forgets) cautions jurors about discussing any element of the case or the evidence with their fellow venire persons until deliberations begin.

Would it be more, the same or less difficult for jurors to refrain from discussing the case with their fellow jurors as it would be to refrain from searching the internet for information about the case? Much like the mock jurors who reach for a cell phone to look up a company's net worth during a jury research exercise, mock jurors during research exercises are often overheard discussing the case or the parties while on break, at lunch or in the restrooms. Because discussion so readily happens in research settings, despite admonitions against it, might premature discussions be something that would occur in a real trial? The same one hundred survey-takers in the current study were given the explanation below:

In a jury trial, the judge instructs jurors that they should and shouldn't do certain things during the trial. One thing the judge instructs is that the jurors should not discuss the trial amongst themselves before the end of the trial. How difficult do you think that would be for jurors who are meeting together daily, eating lunch together and sitting in a courtroom together?

Using the same inquiry approach as before, survey-takers were then asked their opinion about 1) jurors; 2) their best friend; and 3) their current or former spouse or significant other, and how often each of them might be prone to violate the court's instruction not to discuss the case with one another before deliberating.



According to the survey-takers, their spouse and best friend would be almost twice as likely to adhere to the court's instruction than other jurors would. However, all three entities were viewed as violating the discussion restriction to some degree, with hypothetical jurors viewed as being the least bounded by the instructions: 66% of survey-takers felt other jurors would occasionally or often discuss the case before the end of the trial, despite the judge's instructions.

I'M OKAY, YOU'RE NOT, UNLESS YOU'RE A LOT LIKE ME

For the two issue areas that were explored above: 1) discussing the case amongst other jurors before the end of trial and 2) conducting internet searches about the trial, the closer the relationship to the survey-taker, the less likely the survey-taker assumed that person would violate the instructions. In other words, more socially desirable responses were given the closer the relationship was to the survey-taker.¹¹

1. Jurors would never discuss: 34%
 2. Best friend would never discuss: 59%
 3. Spouse would never discuss: 61%
-
1. Jurors would never go onto the internet: 50%
 2. Best friend would never go onto the internet: 67%
 3. Spouse would never go onto the internet: 73%

DON'T TOUCH THAT DIAL

Even if jurors are not internet junkies or socially gregarious and chatty individuals, they may welcome some time in front of the TV after a day in the courtroom. TV watching is generally a fairly benign activity. Nonetheless, fully 46% of the survey-takers felt that jurors **would** watch TV reports related to the trial even after the judge had instructed them not to. A little over half, 54%, felt that jurors would obediently turn the TV to another channel if reports related to the trial came on.

THE JUDGE ALSO TELLS JURORS THEY MUST NOT READ OR WATCH ANY NEWS OR TV REPORTS RELATED TO THE TRIAL OR THE TOPIC OF THE TRIAL. WHICH OF THE FOLLOWING DO YOU THINK WOULD BE **MORE** LIKELY TO HAPPEN?

46%	Jurors would watch TV reports related to the trial.
54%	Jurors would turn the TV to another channel if reports related to the trial came on.

It takes a great deal of effort to turn away from a TV report about a trial one is currently involved in as a juror: first, the juror has to recognize that the report relates in some way to the trial; next the juror has to try to block out the information from consciousness and feign disinterest; and finally the juror has to physically either leave the room or turn the channel and forget whatever was heard as well as the source of the information.¹²

¹¹ This finding is consistent with academic research using indirect questions: the closer the person's relationship is to the survey-taker, the more socially desirable the evaluations are of that person.

¹² Psychologists have long identified what is called the "sleeper effect." This occurs when people remember the content of a message, but forget the source of the message, often causing the message to have even greater impact. In other words, jurors might recall the content of a message, but fail to recall that the information was from a TV editorial, from an op-ed newspaper article, or from a witness in the courtroom. For example, during political campaigns when undecided voters see negative ads about a candidate and notice that the ad was paid for by the opposing candidate, they may initially doubt the veracity of the ad. Over time, however, the source of the ad may be forgotten but the message maintained as even more true.

IS POST-TRIAL CURIOSITY A THING?

Do jurors continue to be curious about or invested in the outcome of a trial after they have served? Would they make the effort to conduct research about the trial, afterwards? This question has fewer demand characteristics because there are no admonitions by a judge forbidding the activity. The majority, 59%, of the survey-takers in this study, believed that most jurors *would* research a trial after the verdict. Only one person felt that “no one does.” Thus, interest in a hypothetical trial appeared to be high, high enough to make an effort to clarify, delve deeper, confirm or rebut the jury’s verdict or follow the implications of the jury’s decisions.

THE JUDGE GENERALLY INSTRUCTS THE JURORS THAT AFTER THE TRIAL IS OVER AND JURORS GO HOME, THEY ARE FREE TO CONDUCT ANY RESEARCH OR INTERNET SEARCHES THEY WANT. WHICH OF THE FOLLOWING DO YOU THINK WOULD BE MOST LIKELY? IF JURORS ARE ALLOWED TO CONDUCT SEARCHES ON THE INTERNET AFTER THE TRIAL:

59%	Most of them do.
34%	Some of them do.
6%	Only one or two might.
1%	No one does.

ASSUMPTIONS AND REMEDIES

This short survey has identified potential inaccuracies in the court’s assumptions about juror behaviors. At the very least, 11% of participants in this study admitted outright that they would be unable to follow instructions not to conduct their own research during a trial. If we accept the polling practice of using indirect questions to uncover true undesirable behavior propensities, we can conclude that closer to 40% would have difficulty with the court’s instructions regarding internet research and 66% would have difficulty following the court’s instructions regarding premature discussions with other jurors. If these are in fact better approximations, it would seem that the parties and the court might want to reexamine the assumptions they hold and the remedies available.

JURORS HAVE GOOD REASONS FOR DISREGARDING INSTRUCTIONS

Understanding the reasons for jurors’ failure to abide by the court’s instructions may help eliminate or reduce this behavior. Jurors generally try to do the right thing. They approach their task seriously and conscientiously, especially once empaneled on the jury. They want their time to be well-spent, contributory and valuable to the process. Most jurors go to great lengths to avoid a mistrial; a mistrial would suggest to them that they had failed in their appointed task.

UNANSWERED QUESTIONS

When jurors want more information or clarification of the information they have been provided throughout the trial, they may feel that they have done something wrong or failed to pay proper attention to the evidence. After all, if jurors continue to have questions, which were not answered, it suggests conscientiousness rather than rebellion. If that is the motivation for seeking outside information, instead of viewing the behavior as a wrongful, rebellious act, it should be viewed as an attempt by jurors to do a better job. Questions should therefore be encouraged by the court and answered either directly or with an explanation as to why the direct answer is not possible given the law and the protections enjoyed by all parties in the lawsuit. All too often, if a juror's question cannot be answered, it is pushed aside and not addressed, or is given only a cursory response, such as "refer to the jury instructions." Instead of failing to address the question, an explanation as to why the question cannot be answered should be provided. When jurors understand the "why" of what they are asked to do, they generally go to great lengths to abide by the "how."

UNSUCCESSFUL ARGUMENTS

Some jurors, perhaps those holding a minority view, may find themselves thwarted by other jurors and feel that they are not being heard or that they are not putting forth their arguments forcefully enough with enough evidence to back them up. If that is the motivation to seek additional information beyond the scope of the evidence, perhaps a preliminary caution by the judge that such a dynamic may in fact occur and would be a perfectly normal expectation in a deliberation process while further explaining how such behavior should be addressed by jurors, within the boundaries of the instructions and the law rather than by utilizing outside research.

PEER PRESSURE

Often, enlisting the group's agreement that all views will be considered and thoroughly vetted before arriving at a final verdict, can create an atmosphere that would discourage resorting to outside information to investigate ideas. A simple acknowledgement that jurors may want more information – that it's only natural that they would – but have been given enough to make a fair decision may be enough. In fact, when asked the following: "How reasonable and fair is it that a judge forbids jurors to conduct internet searches about the trial during the trial?" fully 91% of the current survey-takers felt it was "very reasonable and fair" and only 9% felt it was "not reasonable or fair."¹³

Further, when questioned about the quality of the information that jurors might obtain through internet searches, 85% realistically felt that the searches can mislead jurors with inaccurate information that might cause jurors to make a bad decision, while 15% felt that internet searches can turn up important information that jurors should know to make a good decision.

¹³ There were none survey-takers who felt that the judge's requirement was "not reasonable or fair" but nevertheless, only one of them asserted that they would "not be able to completely abide by the instructions and refrain from internet searches." On a separate question, however, five of the nine (56%) felt that "most people would not be able to completely abide by the instructions and would conduct internet searches." This suggests that the belief the judge's instructions were unfair is the genesis for some jurors disregarding the instructions. Further, the effects of socially desirable responding seem to be at play here as well—most people are loath to express a belief that a judge would make unreasonable requests of jurors.

WHICH OF THE FOLLOWING DO YOU AGREE WITH MORE?	
15%	Internet searches can turn up important information that jurors should know to make a good decision.
85%	Internet searches can mislead jurors with inaccurate information that might cause jurors to make a bad decision.

If a judge would address these seemingly minority-held beliefs upfront, it might serve to clarify for all who hold these beliefs that internet searches may lead to inaccurate information leading to a bad decision. Often the judge's comments about not doing research beyond the trial are left unexplained. And jurors may wonder, "Why would more information lead to a bad decision? Isn't more information better?" Concrete examples of internet misinformation could go a long way to helping jurors understand this counterintuitive concept.

INTERNET USE—I CAN QUIT ANYTIME

While it would be impossible to control the information available over the internet, it would behoove the parties to be aware of the amount and content of information related to the trial available online, and further to identify prospective jurors who frequently access information via the internet. One would expect that jurors who seem to obtain the most information via the internet would be those most likely to have difficulty abiding by the judge's instructions. These jurors can be identified during jury selection by means of questions contained in a jury questionnaire, such as, "How often do you access news on the internet?"

If survey-takers were realistic about their abilities to curtail their internet usage, one would expect those who access news sites "several times per day" to see themselves as having some difficulties avoiding information about a trial. However, those who used the internet most seemed to feel fairly confident they would have no problems and be able to abide by the judge's instructions even more than those who accessed news sites once a day.

COULD NOT ABIDE BY JUDGE'S INSTRUCTION	
29%	Access internet news once per day
11%	Access internet news several times per day

Based on the one hundred survey-takers in this study, 29% of those who access internet news "once a day" directly admitted their own inability to abide by a judge's instructions to avoid information about a trial. But baffling is the finding that only 11% of those who peruse the news "several times a day" believed they would not be able to abide by those instructions. It seems unlikely that jurors who habitually tune in to internet news would be **more** successful at shutting down the internet to search for information about a trial they are involved with – as compared to those who use the medium only once a day. It would be logical to assume that the percentage should be greater for those who peruse the news several times a day and calls into question how valid their responses are and how realistic are their views of themselves given their habitual usage of internet news.

IN DENIAL

One explanation may be that those who say they view internet news several times per day perceive their usage as excessive or socially undesirable and try to minimize its allure for them through a more socially acceptable response (i.e., I can quit anytime). On the other hand, those who use the internet for news only once per day may not interpret their usage as excessive and may, therefore, be more accurate in their estimation of whether they would be unable to follow a judge's instructions. If this explanation is correct, then a significant percentage of those who use the internet the most may be kidding themselves and/or the court when giving the socially desirable response that they will abstain from internet searches regarding the trial.¹⁴

THE NUTSHELL

This short survey revealed interesting and sometimes surprising findings regarding jurors' ability to adhere to the court's instructions. While on the surface one in ten potential jurors admit they would have difficulty following a court's instructions, digging deeper using indirect questioning methods revealed that the percentage is likely much higher. Conservatively speaking, between 40% and 60% of prospective jurors might not be able to follow instructions about discussing or researching a case they may be asked to adjudicate. Several suggestions for possibly ameliorating this phenomenon were outlined, but in truth the only surefire solution is jury sequestration and removal of all electronic devices and access to media – obviously not a realistic option. The proffered suggestions, however, may serve to mitigate the impact of the failure to comply, which in the end, is as close to justice as may be possible in the Internet Age.

REFERENCES

- Crowne, D.P., & Marlowe, D. (1960). A new scale of social desirability independent of psychopathology. *Journal of Consulting Psychology*, **24**, 349-354.
- Fisher, R.J. (1993). Social desirability bias and the validity of indirect questioning. *Journal of Consumer Research*, **20**, 303-315.
- Hays R.D., Hayashi T., Stewart A.L. (1989) A five-item measure of socially desirable response set. *Educational and Psychological Measurement*, **49**, 629-636.
- Manhas, R. (2014) Responding to independent juror research in the internet age: positive rules, negative rules, and outside mechanisms, *Michigan Law Review*, **112**, 809-831.
- McCarthy, J. (2018) "Older Americans' use of Facebook up from 2011." *Gallup Poll, April 30, 2018*. Retrieved from <http://news.gallup.com/poll/233456/older-americans-facebook-2011-2018>.



¹⁴ Items from the Marlowe-Crowne Social Desirability Scale were included in the survey. The item that generated the most significant degree ($p=.008$) of socially desirable responding (i.e., not genuine) among the group who felt they could "completely abide by the judge's instructions," was the following: "There have been times when I felt like rebelling against people in authority even though I knew they were right." More importantly, when comparing the survey-takers' evaluations of "jurors" ability to abide by instructions, there was no effect of social desirability bias. In other words, social desirability bias was influencing the estimation of compliance for self and not the estimation of compliance for others. This finding supports the hypothesis that self-reports of compliance were underreported and evaluations of other's compliance were more valid.

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