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TRUST, TECHNOLOGY, AND TRIALS

THE CHANGING LANDSCAPE OF JUROR
COMPLIANCE

June 26th, 2025



TRUST, TECHNOLOGY, AND TRIALS: THE CHANGING LANDSCAPE OF JUROR COMPLIANCE

Is there a relationship between jurors' trust in the US justice system and jurors' adherence to the court's instructions?

To answer that question, this review examines three trends: 1) lack of trust and confidence in the justice system, 2) increased internet usage, and 3) juror misconduct. A nexus suggests that, regardless of an objective measure of causation, there has been a change in all three and changes in one may have impacted changes in the other two. The first two are quantifiable issues and a considerable body of qualitative and quantitative research has documented those changes over time. The last, juror misconduct, is a bit different and a more recent phenomenon.

This review will also discuss empirical research findings from two surveys conducted by Vinson & Company conducted in March of 2018 and another in December of 2024. These surveys obtained reactions from random samples of jury-qualified persons regarding what they believed would be their behavior abiding by a judge's instructions if seated as a juror. Changes over time will also be discussed.

How is Juror Misconduct Defined Here?

Inappropriate discussions with others.

Juror misconduct can take several forms, but two of the more common are discussing the case before deliberations and conducting outside research. The first form, and one that is explicitly prohibited by the judge for jurors in most trials¹, is to refrain from discussing the case among themselves or with others prior to deliberations. Even when prohibited, however, jurors do discuss the case among themselves as well as with friends and family as confirmed by Hannaford-Agor et al. (2002). The authors conducted a post hoc examination of 613 Arizona trials, and found that despite the court's prohibition, juror discussions occurred in 14% of those trials and discussions with friends or family members occurred in another 14% (with an overlap of 4% doing both).²

¹ In 1995, Arizona allowed pre-deliberation discussions in civil litigation and under certain conditions. (16 A.R.S. Rules of Civil Procedure, Rule 40) The reform permits jurors to discuss the evidence during breaks in the trial, but only in the jury room and only when all jurors are present. Jurors are also instructed to reserve judgment until deliberations. Other states, such as Colorado (Colo. R. Civ. P. 47(a)(5)) and Indiana (Ind. Ju. R. 20) have also adopted this reform for civil trials. Moreover, the courts in states that have adopted this reform continue to restrict independent use of technology by jurors during the trial.

² An indirect measure of jurors' discussing a case prior to deliberations has also been revealed in post-trial juror interviews conducted by Vinson & Company. At times, jurors seem to know the verdict leanings of another juror(s) before deliberations. Jurors also form cliques of "like-minded" individuals, during the trial. Some jurors have been observed actively attempting to recruit other jurors to support a particular view during the trial. As an example, in one lengthy trial that lasted longer than the court had anticipated, one juror had to leave before deliberations began. Before he left, that juror was desperately recruiting and cajoling jurors to reach the verdict that the juror thought was the correct one. That is an overt example that was witnessed by court staff. While the influence may be less overt and absent bonafide mind-reading, it would be safe to assume some unreported verbal communication has occasionally transpired among jurors throughout the years.



Although this research regarding inappropriate discussions was conducted in 2002, it is likely that, before the turn of the century, jurors may have also engaged in discussions before deliberations.

Inappropriate use of technology.

The second form of required prohibition is that jurors refrain from conducting outside research about the case, either by attending to news reports or searching on the internet for information about the parties or the case. This form of misconduct, inappropriate use of technology, would have been incredibly difficult before the advent of the smartphone, Wi-Fi, and internet. Reports of inappropriate use of technology from 1994 to 2020 demonstrate the largest cumulative increase in jurors conducting outside research occurred after the first iPhone was released in 2006 (Hannaford-Agor et al., 2021).

This paper proposes that these two forms of juror misconduct, referred to as [inappropriate] discussions and [inappropriate] use of technology, specifically the internet, have a possible nexus with a decreasing trust in the US justice system.

What Behaviors Demonstrate Both Forms of Juror Misconduct?

Based upon archival analysis (Hannaford-Agor et al., 2021) and empirical research conducted by Vinson & Company in 2018, we know that jurors do not always comply with the court's instructions. At times, jurors do discuss the case amongst themselves during breaks or over lunch, despite having been instructed by the judge not to do so. They use their phones and, at times, their computers to search for information to fill in the blanks of presented evidence. They look up the definition of terms found in the jury instructions, the verdict form, and the meaning of obscure technical jargon used in the trial. Additionally, they search to discover the backgrounds of the parties, the attorneys, the judge, and the law firms. Lastly, they search for outcomes of other related cases, verdicts and damages, corporate profits, net worth, and media coverage about the trial they are seated on.

Why Does Juror Misconduct Occur?

There are many reasons for jurors to disregard the court's instructions, e.g. they may misunderstand or forget the court's rules, they may simply be in the habit of using others as sounding boards or using the internet for information. The structure of a jury trial and fact finding is foreign to the structure of most decision-making tasks people undertake. Making decisions in the normal course of human affairs, especially important decisions, frequently involve discussions with others, conducting self-driven research and inquiries to understand the issues that are important to the person, and even debating with friends, family, and coworkers to help make good decisions. In other words it is an iterative process with incremental steps more or less initiated and controlled by the juror, rather than a linear process that involves relying on the court's schedule of information dissemination, necessitating jurors acting as passive receptacles (Payne et al., 1993; Simon, 1957).

That iterative process is completely subverted in most jury trials as jurors are instructed to refrain from discussion, self-directed research, or information gathering during the evidentiary stage. Instead, they must passively observe proceedings and absorb presented information. Only after all evidence has been presented may they discuss the case with fellow jurors, while still being prohibited from conducting outside research. Instead of an iterative process, it is a process that depends upon memory and notetaking and, to a substantial degree, heuristics and bias.³ It should be no surprise

³ A frequent criticism from both surrogate jurors during research and actual jurors in post-trial interviews is: "We weren't given enough information."

that jurors, tasked with deciding important issues, may want to engage in the same dynamic decision-making process they typically employ in their daily lives by actively searching for information to assist in their decision-making.

Having established a potential motive behind juror misconduct, it is important to distinguish between different forms of this behavior and their potential impacts on trial integrity. While juror discussions and use of technology both represent deviations from court instructions, they differ significantly in their implications for the justice process.

The Potential Impact of Discussions v Use of Technology

Discussing the case with fellow jurors prior to deliberations simulates an iterative process and may help jurors make good decisions (Hannaford-Agor et al., 2002). Using technology for independent internet research, however, is a different and potentially less benign activity. It seldom provides the same sounding board as discussions and can lead to echo chambers that intensify jurors' biases while providing misinformation or information that has been excluded by motions in limine.

That jurors want to supplement the information they have been given in the courtroom by discussions with others or by using technology, seems like a reasonable and even noble undertaking. However, why would jurors conclude that the court has not provided them with all the information they need to make a fair decision? Based upon jury research and post-trial juror interviews conducted by Vinson & Company, jurors often believe there is something they are not being told and that the untold "something" is important for them. Thus, there is perhaps another level to jurors' motivation: **distrust**. If jurors do not trust the source, the court, or the judicial process, they may conclude they are justified in using technology to find additional resources online.

Examining the Trends

1) Internet Usage Pre and Post 2000.

According to Fox and Rainie (2014), internet usage for all age groups remained limited prior to 2000. For example, when AOL was introduced in 1995, only 14% of the US used the internet. It wasn't until 1999 that major broadband emerged and made possible the first Web-enabled phones, but even then, no social media platforms existed. In 2000, the average proportion of people, for all ages, using the internet was less than half (46%).⁴

By 2024, however, the usage landscape had changed dramatically. The percentage of adults under 65 who said they used internet media was close to 100%, and over 80% for those 65 and over (Pew Research Center, 2024). Regardless of the veracity of internet content, today's usage has become consistent, frequent and arguably, habitual. Frequency, beyond simple "usage," is another key variable in gauging saturation of the internet in daily life; In 2018 Vinson & Company asked random samples⁵ of US citizens how often they used social media, one aspect of internet media. In 2018,

⁴ Email, social media sites, websites, and Internet-based radio and television are examples of internet media. Today, social media, internet, or internet media are often used interchangeably.

⁵ 2018 n=100, 2024 n=105. National random samples of adult citizens.



49% of respondents said they used social media “several times a day” but by 2024, 71% reported social media use several times a day.⁶

2) Trust in the US Justice System

The second prong of the three-pronged hypothesis is that there has been a change in the degree to which people trust the US justice system. Until recently, of the three branches of government, the judicial branch has consistently generated more positive ratings than the executive or legislative branches. Trust in the judicial branch of US government trended higher than trust in the other branches for almost four decades, reaching a high of 80% in 1999 and significantly higher than the other two branches of government (57% for legislative and 64% for executive branches, respectively) (Jones, 2022).

According to Jones (2022), however, public “trust and confidence” in the judicial branch of government has declined markedly since 2020. Although the public continues to place more trust and confidence in the judicial branch than the other branches of government, that trust has dwindled over the years. The judicial branch was at an all-time low after 2020 and continued its downturn into 2024. In fact, 2022 was the first time trust in the judicial branch dropped below 50% (Vigers & Saad, 2024; Patterson, et al., 2024).

The justice system favors the wealthy and political beliefs influence justices’ decisions.

A common criticism fueling a distrust of the justice system has been that the courts favor the wealthy (Gonchar, 2013). Annenberg Public Policy Center (2024) tracked Americans’ confidence in its courts and reported an even more troubling form of distrust of the courts: “a majority of Americans believe that . . . **judges don’t set aside their personal political beliefs when making rulings.**” This distrust suggests a belief beyond favoring the wealthy and appears to also extend to distrust of the Supreme Court with only 18% of Americans saying the justices are doing an “excellent” or “good” job of keeping their political views out of their decision-making (Cohen, 2020; Copeland, 2024).

US citizens’ trust in US courts compared to foreign citizens’ trust in its countries’ courts.

How do US citizens’ attitudes about its courts compare to attitudes of the citizens of other wealthy countries about their own courts? When compared to the Organisation of Economic Co-operation and Development’s (OECD)⁷ median confidence ratings, which measures confidence in courts of member countries with extensive economic infrastructures, Vigers and Saad (2024) reported that the US confidence in its courts lags behind other countries with comparable economies and is at record low in 2024. The median confidence for all OECD nations has remained stable between 50%-55% since 2006, but Americans’ confidence in its courts has precipitously declined from 60% confidence in 2006 to 35% confidence in 2024 (Vigers & Saad, 2024).

⁶ Additionally, in 2024 over half of those who use the internet indicated that they obtained their news from social media platforms, such as X and Meta, Instagram, or TikTok (Pew Research Center, 2024).

⁷ The Organisation for Economic Co-operation and Development (OECD) is a unique forum where the governments of 37 democracies with market-based economies collaborate to develop policy standards to promote sustainable economic growth. It was founded in 1961 to “stimulate economic progress and world trade.” Some member countries are, as examples, the US, France, the UK, the Netherlands, Australia, Sweden, Germany, Japan, Italy.



Trust in the state courts fares somewhat better but a lack of confidence in the fairness of the state court system still exists.

Although the federal judiciary handles less than 2% of all cases in the US, it receives more online articles and memes than state courts, which handle 98%-99% of case. State courts are, however, not immune from the same diminution of trust as the federal courts. According to the National Center for State Courts (NCSC) 2024 annual survey,⁸ there is a *lack of confidence in the fairness of the state court system*; respondents in the NCSC survey were “evenly split on whether they believe state courts provide (47%) or do not provide (47%) equal justice to all.” According to the NCSC (2024), “This divide supports findings revealed in earlier NCSC focus groups that identified ‘two systems of justice’ [based on socio-economic factors] as a concern of many participants” mirroring some of the same criticism aimed at the federal courts and the US Supreme Court.

3) Use of online media during trial.

The NCSC’s extensive archival study of jurors’ inappropriate use of technology during trial can help address the final prong in the three-pronged hypothesis about juror misconduct. The researchers examined 260 written case opinions alleging juror misconduct using internet media as well as surveying the experiences and opinions of 867 judges and attorneys regarding inappropriate internet usage by jurors. Their review concluded that noncompliance occurred rarely and, when it did, they found that most judges conducted an investigatory hearing to determine the extent, if any, that the misconduct may have had on the outcome of the trial. They concluded that the impact on the case was most often minimal. There was, however, a difference between judges’ and lawyers’ firsthand **experience** with juror misconduct versus judges’ and lawyers’ **beliefs** that jurors will use technology inappropriately. Namely, while 25% of respondents (judges and lawyers) had firsthand experience with juror misconduct using technology, 41% believed that in any given trial jurors will use new media [technology] inappropriately (Hannaford-Agor et al., 2021). This suggests that documented effects on trial outcome may be only a subset of all trials that have been affected.

Jurors want the rest of the story.

Although this paper has discussed three trends that may be related, correlation does not prove causation. However, the three-pronged hypothesis does suggest that when jurors fail to follow a court’s instructions, it may reflect a growing lack of confidence in the equity of the judicial process and a belief that there is more to the story that needs to be uncovered.

That jurors suspect there is more to the story than presented during the evidentiary phase of the trial is verified in jury research as well as post-trial juror interviews. This motivation for forbidden research was also confirmed by the NCSC study⁹ which analyzed written case opinions and experiences of judges and attorneys. The study found that one common characteristic associated with an increased risk of juror misconduct was when “jurors believe they may find information to assist their decision making...” (Hannaford-Agor et al., 2021, p. 7)

⁸ The state of the state courts’ survey questionnaire was developed by GBAO Strategies, in consultation with a steering committee of court leaders and NCSC staff. The 2024 online poll surveyed 1,000 registered voters between December 9 and 12.

⁹ This 2020 NCSC study was reported by Hannaford-Agor, P. et al. (2021).



Another perspective—what would potential jurors do?

The research cited above has captured the experiences and beliefs of lawyers and judges but what do potential jurors (i.e. laypersons) believe about their own ability to adhere to a judge's instructions and has it changed over time? To examine this issue, Vinson & Company asked the question to random samples of citizens, once in 2018 and again in 2024: Could you follow the court's instructions?

Tracking Changes in Juror Misconduct Over Time

What would you do: 2018 versus 2024?

In 2018, Vinson & Company asked a random national sample of one hundred people if, serving on a jury, they could abide by judges' instructions not to conduct internet searches related to the trial during their jury service. In 2018, 11% said 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.

In December of 2024, Vinson & Company asked a different national sample (n=105) the same question. The percentages doubled for those who felt they would not be able to completely abide by the court's instructions with 23% indicating such.¹⁰

If you were a juror on a trial and the judge instructed you to refrain from internet research regarding the trial, what would you do? Follow the court's instructions or not?
<u>2018</u>
11% said, "I would not be able to completely abide by the instructions and I would conduct internet searches."
89% said, "I would completely abide by the instructions and I would refrain from internet searches."
<u>2024</u>
23% said, "I would not be able to completely abide by the instructions and I would conduct internet searches."
77% said, "I would completely abide by the instructions and I would refrain from internet searches."

These 2024 findings indicate that in a jury of twelve, approximately three jurors would not be able to adhere to the court's instruction.¹¹ Of course, anything less than 100% compliance with the court's instruction is concerning since the information would likely be disseminated among the other jurors in one form or another. The shared information then becomes an unknown witness with unknown information who cannot be cross-examined.

What would others do?

¹⁰ The difference is statistically significant; $p < .02$

¹¹ Assuming *ceteris paribus*, other things being equal, that these prospective jurors do survive voir dire. A commitment from jurors to abide by instructions regarding the use of technology is seldom addressed by the court or the parties during voir dire. It is generally assumed by the court and the parties, because it has admonished jurors, they will adhere to the court's instructions.

One survey method that was used in the NCSC survey as well as in the Vinson & Company surveys is an indirect question method of asking respondents what they believe “others” would do (Tourangeau et al., 2000). This method is used when the researcher is asking respondents about potentially sensitive issues and it reduces the effects of social desirability bias and self-censorship. This technique is often used to more accurately measure the incidence of socially unacceptable behaviors—in this case, disobeying a court’s instructions.

The NCSC survey asked what judges and attorneys believed that jurors would do (and not what the judges and attorneys themselves would do). The NCSC found that 41% of judges and lawyers, overall, believed that jurors would use new internet media inappropriately—a percentage that was 16% higher than the percent actually documented in the NCSC survey of case reports or direct experience in trial.

However, when judges’ estimates were examined separately and compared with attorneys’ estimates and laypersons’ estimates, the difference was significant in that judges were more conservative than both laypersons and attorneys when speculating about jurors’ misbehaviors. Specifically, only 25% of judges opined that jurors would disregard the court’s instructions while 60% of lawyers did. Lawyers’ estimates of juror misconduct were consistent with laypersons’ estimates of “others” behavior collected by Vinson & Company.

<u>2020 NCSC (n=867)</u>
60% of lawyers ¹² said that Jurors would use the new media [technology] inappropriately .
25% of judges said that Jurors would use the new media [technology] inappropriately .
<u>2024 Vinson & Company (n=105)</u>
<u>59% said, “Others [jurors] would not be able to completely abide by the instructions and they would conduct internet searches.”</u>

Why the difference between judges’ beliefs compared to beliefs of lawyers and laypersons?

Judges, by virtue of their authority role, may have a “**judicial overconfidence**” bias—believing that their courtroom control and instructions have more sway than they actually do. Guthrie et al. (2001) examined 167 federal magistrate judges’ susceptibility to five common cognitive illusions: anchoring, framing, hindsight bias, the representative heuristic, and egocentric biases. The authors concluded that the judges were somewhat less susceptible than laypersons to two cognitive illusions—framing effects and the representativeness heuristic—but that the judges’ decisions were significantly impacted by the other three. Importantly for the current analysis, the judges’ decisions were influenced by the egocentric bias. The report did not specifically address a judge’s beliefs about how their instructions would be followed by jurors, but instead how likely the judge believed their rulings would be reversed on appeal, as well as where the judges saw themselves relative to other magistrate judges. Nevertheless, the basic trait is similar: judges may be overly confident in their abilities to control jurors’ behaviors through their authority and instructions (and it seems more confident in their own abilities than lawyers were). The researchers concluded that judges are not immune to certain cognitive illusions and these illusions can produce systematic errors in judgement.

Voir dire as a possible remedy for jurors’ noncompliance regarding internet searches.

¹² In addition to judges and lawyers, there were 21 unclassified courtroom respondents in the survey.



These 2024 percentages based upon research respondents' beliefs in their own inability to abide by the court's instructions were consistent with the judges and lawyers' first-hand experiences from the 2020 NCSC study, 23% and 25% respectively (Hannaford-Agor et al., 2021). The findings also suggest that some prospective jurors may have insight into their own motivations and behaviors. Providing they are willing to voice those motivations in a public forum, voir dire may be structured to identify jurors to determine whether they can be rehabilitated by the court or by the attorneys or whether they should be struck for cause. Judges have more faith in jurors to abide by the court's instructions than attorneys; As discussed previously, 60% of attorneys believed that in any given case, jurors would use internet media inappropriately compared to 25% of judges. This reflects a significantly dissimilar perception of jurors and beliefs about the sway the court exerts on jurors' behavior.

Does having prior jury service influence jurors' estimates of misconduct?

Persons who have served as jurors may have some special knowledge or insight into the likelihood that other jurors would disregard the court's instructions. Splitting the 2024 Vinson & Company sample between those who had served on a jury with those who had never served, there were no significant differences: 56% of those who had served on a jury and 60% of those who had never served said "others" would not be able to completely abide by the court's instructions. This finding, although based on a small sample size of those who had actually served on a jury, is telling; why would over half of former jurors speculate that others would use technology inappropriately if in fact they had not experienced misconduct during their own jury service?¹³

<u>2024 Vinson & Company Served on a Jury (n=16)</u>	<u>2024 Vinson & Company Never Served on a Jury (n=89)</u>
56% said, " Others would not be able to completely abide by the instructions and they would conduct internet searches."	60% said, " Others would not be able to completely abide by the instructions and they would conduct internet searches."
44% said, " Others would completely abide by the instructions and they would refrain from internet searches."	40% said, " Others would completely abide by the instructions and they would refrain from internet searches."

Providing jurors with a means for active participation may provide a remedy for misconduct.

Absent success during voir dire at identifying and removing jurors who may not be able to follow the court's instructions regarding technology, several procedures may be useful to enhance a juror's ability to have confidence in their decisions and the path they take to arrive at them: 1) allowing notetaking, 2) allowing jurors to ask questions during witness testimony, and 3) allowing each attorney to provide interim statements that summarize the witness testimony or the week's evidence. Also helpful but seldom done: 4) providing a copy of the jury instructions to each juror, 5) allowing jurors access to an electronic record of the trial proceedings, and 6) providing the jury substantive legal instructions at the beginning of the trial rather than waiting until the end. These recommendations would allow jurors to have a more active role in their decision-making. For an extensive review of these suggestions and the empirical evidence that confirms their positive effects, please refer to Diamond and Hans' (2023) article in the *Illinois Law Review* and Manhas' (2014) article from the *Michigan Law Review*.

One final recommendation is to allow pre-deliberation discussions among jurors. This procedure mirrors the iterative process that people generally use to make important decisions and while it has

¹³ A study recruiting a larger sample size of former jurors is needed to confirm this finding.



not been shown to have a positive or deleterious effect on the trial's outcome at least in 2002, it could discourage jurors from resorting to external technology for additional information in 2025¹⁴.

Bottom Line

Three trends, internet usage, juror misconduct, and lack of trust in the justice system, have increased dramatically over the past two decades. This paper has attempted to tie the three trends together without too much speculation about causation. Suggestions for providing jurors with more autonomy and control over their experience as a juror may serve to help increase trust in the process and trust in themselves as fact finders in the justice system.

¹⁴ As mentioned previously, some US states have allowed pre-deliberation juror discussions to take place. Hannaford-Agor et al.'s (2002) research, which compared trials that allowed pre-deliberation juror discussions with those that did not allow it, found no significant differences in the aggregated trial outcomes. This begs the question, why then adopt this procedure if it doesn't make a difference? While this procedure might decrease the frequency of conducting outside **online research**, there was no metric to measure whether jurors in either condition used or refrained from external internet research sources. Additionally, these results were obtained 23 years ago; the use of the internet has changed dramatically over the past two decades and it is risky to presume that the findings from 2002 would apply to trial outcomes today.



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