

SCAC Meeting
October 19, 2007
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Update on Complex Case issue for 10/19 SCAC meeting

I attended the first meeting of the State Bar's Court Administration Task Force on October 1, co-chaired by Martha Dickie and Judge Ken Wise of the 152nd DC in Harris County.

- In addition to the co-chairs, there are 42 task force members: prominent lawyers, judges, law professors, and several public members.
- ~~I am not a member of that Committee,~~ but there are six SCAC members who are: *members of the Task Force*

Professor Albright (recorder),

Jeff Boyd,

Alistair Dawson,

Lamont Jefferson,

Judge Tom Lawrence,

Tom Riney

Also, several members of Court family: Justice O'Neill, Lisa Hobbs, Carl Reynolds of OCA.

Chief Justice Settelson gave introduction - his concern about losing cases

The Task Force used SB 1204 as both a starting point and an organizational point: divided into 3 sub-groups based on sections of SB 1204.

Group 1 is Court Administration, Articles 1-4 +7;

Group 2: Articles 5-6 different types of courts: county, district, JP/small claims

Group 3: Articles 8-10 deals with complex case issue. See attached minutes for details

Next meeting on Nov 9

Legislative Mandates Subcommittee met by phone yesterday:

- Jeff has gathered a large bibliography of articles and surveys that examine what other states are doing on complex case and related issues, such as specialized courts; Angie has posted it to SCAC website, has lots of hyperlinks.
- Legislative Mandates Subcommittee still in process of digesting that information; Jeff says it has given him a much better sense of the big picture, where Texas is in relation to other states and a broader range of perspectives.
- Since SBOT Court Administration Task Force group 3 is addressing complex case issues, the challenge is be an independent source of study and deliberation while at the same time coordinating with them and avoiding needless duplication.

- Regional PT
Article 1-4, D Court Administration + Gattis arbitration bill

Chair Tom Cunningham

Dan Bishop *Austin trial lawyer, both sides*

Tony Canales

David Chamberlain *- former TADC, worked on issues in session*

Lloyd Garland *- retired neurosurgeon, Lubbock; public member*

Lisa Hobbs

Judge Martha Jamison *- Admin judge Harris City*

Lamont Jefferson

Steve McConnico

Justice Patrick Pirtle

Tom Riney *- Amarillo*

Pat Weaver *- D lawyer, Midland*

Justice Linda Yanez

Larry York *civil trial lawyer, early tort reformer*

Articles 5 and 6 County Courts/District Courts and JP/Small Claims

Chair Dickie Hile

Judge Charles Alfonso *CCL judge - Longview; concurrent job w/ dist cts generally*

Rep. Dan Gattis

Latrelle Joy *- family lawyer Lubbock*

Justice of the Peace Tom Lawrence

David McClure

Lilly Plummer *- Odessa*

Gerald Powell *- Taylor Law prof*

Judge Rose Reyna *- Hidalgo City, 9 yrs; general job trial judge; Rita MDL case*

Eduardo Rodriguez

Scott Rozzell

Craig Smith *- civil trial judge Dallas, recently elected*

Dan Worthington *- south Texas TADC VP*

Mickey Redwine *- public member; SBOT Bd of Directors*

Hal Talton *- Rep. Gattis' Chief of Staff*

Articles 8, 9 10

Chair Carl Reynolds

Alex Albright (recorder)

Jeff Boyd

Alistair Dawson

Sen. Robert Duncan

Judge David Evans *civil trial judge, Ft Worth*

Dicky Grigg - ~~civil trial judge, Ft Worth~~ - trial lawyer; president-elect of ~~ABA~~

Jay Harvey - president JTILA

ABA?

Deborah Hankinson

Judge Julie Kocurek

Justice Harriet O'Neill

Jay Old - TADC

Stephen Suttle

Richard Tribulsi - president of FLR

- board of trial attorneys

Lamar Jefferson

more consensus
early, active involvement by TC is
helpful

less consensus:
① what is the problem
② how to solve

Research Group on Complex Litigation & Court Resources

Meeting of October 1, 2007

Chair: Carl Reynolds

Reporter: Alex Albright

WBJ: ~~action~~ getting cases back into
court system:

1. What is the problem that we are trying to fix?

- The problem is no longer that litigants can't get to trial quickly. The dockets of civil courts in most counties are such that cases can get to trial in a timely manner if the litigants want to get to trial
 - OCA data shows all civil court filings down, and disposition time down, but not broken down into types of cases
- Arbitration is no longer seen as the panacea that it was a few years ago. The AIA form no longer requires the arbitration provision
- Many judges hearing complex cases are not the best qualified to hear those cases
- Some judges do not timely decide dispositive motions (e.g. summary judgment and Daubert motions)
 - No data available to confirm this
 - Change of culture required, which is difficult with elected judiciary
 - Additional resources should help some judges with these dispositive motions

Summary: There was general consensus that all judges should decide dispositive motions filed in complex cases in a timely manner to expedite resolution of those cases. There was general consensus (with one member strongly disagreeing) that Texas judges generally are able to handle complex cases if they were given adequate resources, and that specialized judges are not needed to decide complex cases.

2. Timely determination of dispositive motions:

- Time limits on deciding dispositive motions
- Interlocutory appeal of dispositive motions
 - Get appellate review before try the case
 - Concern that interlocutory appeal merely increases delay and expense
- Allow judge (without agreement of parties) to request interlocutory appeal of dispositive motion
- Additional resources

Summary: There was no consensus reached on how to solve this issue. These issues were merely presented for future discussion.

3. Complex courts

- Purpose: Need competent, experienced, decisive judge deciding complex cases
 - No consensus that judges generally are not handling complex cases appropriately
 - Does specialized judge system result in more error-free trials?
 - Does specialized judge system result in quicker trials?
- Concern about either side gaming the system: offending the judge when you file a motion to send to a complex court; concern for malpractice if don't ask for complex court and lose in assigned court

- How would a complex court judge be selected?
 - Concern for local control expressed
 - Alternatives:
 - Elected complex judge for each administrative region, tried in county where properly filed
 - Statewide panel names judge for particular case
 - Local system of special assignment
 - Travis and Bexar Counties, where parties request assigned judge in complex cases. Assigned judge would have managerial expertise and resources for complex cases (this may be done in Travis County to some degree; Bexar County randomly assigns complex cases to all judges)
 - Presiding judge in some districts may take expertise into account when assigning judge after voluntary recusals
 - Allow parties a judicial strike (like Texas system for visiting judges)—California system
- Concern that creating specialized courts creates judges captive to that docket, so no incentive to quickly dispose of the cases
- What is a “complex case”
 - Only business cases?
 - MDL cases are primarily multi-party personal injury suits

Summary: There was not consensus that separate complex courts were needed to solve any identified problem. However, if Texas were to adopt some complex courts system, the group seemed to be moving towards consensus around a local system of special assignment as opposed to a system of specially elected or appointed complex court judges.

4. Differential Case Management

- Court management of particular cases with clear deadlines

Summary: This was not discussed in detail, but met with some favor because it appears to allow parties and/or the judge to identify particular cases that require additional judicial control and resources, and adapt procedures to the particular case. This could be used as part of any kind of complex litigation system.

5. Stand-alone resources solution

- Some constituencies may not support resources solution without some structural change to the system

Summary: there was general consensus that courts handling complex cases need additional resources

6. Needed Research:

- Would any of these solutions really attract cases back into public judicial system?
 - Data from other states?
 - Interview GC/CEO’s to find out if they would change practices



The Supreme Court of Texas

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Chambers of
Justice Nathan L. Hecht

February 5, 2007

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Rules Advisory Committee
Jackson Walker L.L.P.
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Referral of Proposed Changes to Rules of Appellate Procedure
via e-mail

Dear Chip:

The Court requests the Advisory Committee's recommendations on several potential changes to the Rules of Appellate Procedure, in addition to Justice Bland's proposal regarding oral-argument statements that was recently referred to the Committee. These additional potential amendments are summarized in the attached appendix. The first concerns whether the Appellate Rules should include a provision that requires parties in parental-rights-termination cases to identify minor children only by their initials, and that would allow courts to strike any appendices or exhibits containing minors' names. The second issue concerns the timing of filing a petition for review when a motion for rehearing or en banc reconsideration remains pending before the court of appeals. The third involves whether the rules should permit a longer page limit for mandamus replies filed in the court of appeals than in the Supreme Court (the default limit for both is eight pages).

The Court greatly appreciates the Committee's thoughtful consideration of these issues, for its dedication to the rules process, and for your continued leadership on the Committee. I look forward to seeing you all on February 16th.

Sincerely,

A handwritten signature in black ink that reads "Nathan L. Hecht".

Nathan L. Hecht
Justice

Rule: none

Current text: none

Summary of Issue:

It has been suggested that the Appellate Rules be amended to require litigants in parental-rights termination cases to refer to minor children only by their initials, for the protection of minors' privacy. Family Code §109.002(d) allows the appellate court, in an opinion in a SAPCR appeal, to identify the parties by their initials or by a fictitious name, but it appears to be discretionary and applies only to courts, not to parties. ("On the motion of the parties or on the court's own motion, the appellate court in its opinion may identify the parties by fictitious names or by their initials only."). If the Committee believes such a requirement is advisable, the Court would request that it also consider whether other changes are necessary to prohibit the inclusion of materials in exhibits or appendices identifying minors; and, if so, how to accommodate judgments, orders, and similar items that are required to be included with appellate briefs but may contain the names of minors. *See, e.g.*, Tex. R. App. P. 53.2(k)(1)(A) (requiring inclusion, in appendix to petition for review, of trial-court judgment); *id.* R. 38.1(j)(1)(A) (same requirement in appendix to appellant's brief in court of appeals).

Rule: Tex. R. App. P. 53.7(b)**Current text:**

Premature filing. A party may not file a motion for rehearing in the court of appeals after that party has filed a petition for review in the Supreme Court unless the court of appeals modifies its opinion or judgment after the petition for review is filed. The filing of a petition for review does not preclude another party from filing a motion for rehearing or the court of appeals from ruling on the motion. If a motion for rehearing is timely filed after a petition for review is filed, the petitioner must immediately notify the Supreme Court clerk of the filing of the motion, and must notify the clerk when the last timely filed motion is overruled by the court of appeals. A petition filed before the last ruling on all timely filed motions for rehearing is treated as having been filed on the date of, but after, the last ruling on any such motion.

Summary of Issue:

On at least several occasions in recent memory, a petition for review has been filed while the same party's motion for rehearing was still pending in the court of appeals. Unless the clerk of the supreme court is notified that the motion remains pending below, this could lead to a situation in which the Court denies the petition before the court of appeals has ruled on the motion for rehearing.

The existing Appellate Rules address the simultaneous jurisdiction problem in several places. In addition to Rule 53.7(b) shown above, Rule 19.2 provides:

Plenary Power Continues After Petition Filed. In a civil case, the court of appeals retains plenary power to vacate or modify its judgment during the periods prescribed in 19.1 even if a party has filed a petition for review in the Supreme Court.

While Rule 53.7(a) requires the petition to be filed within 45 days after the court of appeals either renders judgment or overrules the last of all timely motions for rehearing, it is perhaps not immediately clear that the rule prohibits a party from filing a petition before the court of appeals has ruled on all timely filed rehearing motions. A petition filed after a motion for rehearing is filed but while the motion for rehearing is still pending, while likely premature in the legal sense pursuant to Rule 53.7(a), is clearly premature in the practical sense that the supreme court presumably will prefer to delay ruling on the petition until after the court of appeals rules on the motion for rehearing. However, Rule 53.7(b) only prohibits a party from filing a motion for rehearing after filing a petition; it does not prohibit filing a petition while a rehearing motion remains pending. Also, while the rest of 53.7(b) likewise addresses the situation where a motion for rehearing is filed after the filing of the petition for review, the last sentence also applies to a petition filed after the motion for rehearing is filed but before the motion is ruled on, treating the petition as having been filed on the date of (but after) the motion for rehearing is ruled on.

Existing Rule 53.7(b) requires the petitioner to notify the Supreme Court of a pending motion for rehearing, but only when the petition was filed before the motion for rehearing was filed.

Although a petitioner in the petition-filed-while-motion for rehearing-pending situation might elect, on his own initiative, to keep the Court updated, Rule 53.7(b) doesn't require it as it does for petitions filed before rehearing motions. Thus, the last sentence of 53.7(b) creates the potential for a situation where a petition is denied before the date it is considered filed.

There appear to be at least two (and probably more) potential solutions to this problem:

- 1) Prohibit premature petition filing more clearly. Amend 53.7(a) to more clearly provide that, once a party has filed a motion for rehearing or en banc motion, it may not file a petition until after the court of appeals has disposed of the motion; or
- 2) Require Notice to Clerk's Office. Amend 53.7(b) to address the situation where the petition is filed while the motion for rehearing is pending by requiring such parties to notify the Court of the pending motion for rehearing when the petition is filed and of the court of appeals' subsequent ruling thereon.

Rule: 52.6**Current text:**

Length of Petition, Response, and Reply. Excluding those pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service, and the appendix, the petition and response must not exceed 50 pages each if filed in the court of appeals, or 15 pages each if filed in the Supreme Court. A reply may be no longer than 8 pages, exclusive of the items stated above. The court may, on motion, permit a longer petition, response, or reply.

Summary of Issue:

Some practitioners have complained that the default page limit for a reply to a response to a mandamus petition filed in the court of appeals is too short, and that 8 pages, while commensurate with the 15-page default limit for a mandamus response in the Supreme Court, is too short for mandamus replies in the courts of appeals, where the default limit for both petitions and responses is 50 pages. One practitioner has suggested a 25-page limit for mandamus replies in the court of appeals, corresponding to the 25-page limit for replies in merits briefs under Rule 38.4, which also sets a 50-page default limit for opening briefs and responses.

MEMORANDUM

TO: SCAC Members

October 12, 2007

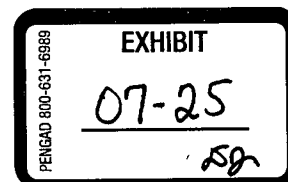
FROM: Jody Hughes

RE: TRAP Amendments to Require Redaction of Minors' Names

Below is a second revised version of proposed TRAP 9.8 based on the discussion and votes taken at the August SCAC meeting. This version returns to the narrower scope of the original draft, limiting application of the rule to appeals of parental-rights termination cases. *See* Aug. 25, 2007 SCAC Tr. at 16481 (13-12 vote against including Family Code Titles 2-5 in scope of rule). Like the first revised draft, which the SCAC discussed in August, the current draft rule shown below allows use of either initials (single or multiple) or pseudonyms, and applies to parties' briefs and court opinions but not to appellate judgments. Based on the results of two additional polls taken at the August meeting, I deleted the prior provisions contained in the first revised draft specifically granting judicial discretion (1) to order substitution in other cases as appropriate, *see id.* at 16483 (13-11 vote), and (2) to issue sanctions for willful or persistent rule violations, *see id.* (20-3 vote). I also reorganized the rule slightly, edited the heading and subheadings for greater clarity, and substituted "seeking" for "involving" in the phrase "in an appeal of a suit involving the termination of parental rights." The purpose of the latter change was to bring within the scope of the rule those cases where the proceedings did not result in a judgment of termination.

At the August meeting, the Committee also discussed, but did not clearly decide, whether the rule should include a provision giving an appellate court the discretion to redact parents' names in its opinions, or to require parties to redact parents' names, to protect a minor child's identity. A brief summary:

- Judge Yelenosky suggested such a provision is needed to protect the identity of minor children when the last name of a parent is unusual and shared with a minor child; otherwise the goal of protecting the minor child's identity will effectively be defeated by the publication of the parent's unredacted name. Aug. 25, 2007 SCAC Tr. at 16460-62.
- Justice Gaultney agreed that a discretionary provision would be appropriate. *Id.* at 16462.
- Sarah Duncan pointed out that the Fourth Court once redacted the name of a police officer convicted of child abuse, on the defendant's motion, to protect him in prison from retaliation by persons the officer had previously arrested. *Id.* at 16464.
- Frank Gilstrap was concerned that a grant of broad discretion might be subject to abuse, *i.e.*, to shield high-standing members of a community from embarrassment rather than solely to protect the identity of their minor children. *Id.* at 16464-5.



- Chip Babcock agreed about the potential for abuse and cited the public's right to know the outcomes of public judicial proceedings. *Id.* at 16465.
- Judge Christopher noted that requiring redaction in the parties' briefs and motions might hinder the appellate court's ability to identify potential bases for recusal. *Id.* at 16469.
- Judge Christopher and Judge Yelenosky respectively suggested that the recusal problem could be addressed through the "sensitive data" sheet the SCAC has recommended for adoption as part of the Rules of Judicial Administration, or through a similar document separately filed pursuant to a court's local rules or internal operating procedures. *Id.*
- Justice Gaultney suggested that the provision authorizing the court to redact a parent's name should expressly state that its purpose the minor children involved. *Id.* at 16470.
- Frank Gilstrap stated that parents generally are not entitled to anonymity in parental-rights termination cases, and that the public has the right to know what happens in termination cases, such as when the parents have been convicted of child abuse. *Id.* at 16472.

In sum, there appears to be a consensus that children's identities should be protected; that it is appropriate to redact a parent's name whenever necessary to accomplish that goal; and that when the State has sued to terminate the parent-child relationship, the subject parent otherwise may not be entitled to have his or her own identity disguised in legal media publications. However, redacting a parent's name to protect his or her child's identity will also protect the parent's identity as well.

Making redaction of parents' names discretionary creates the potential for redaction for improper purposes, *i.e.*, protecting the identity of parents instead of the children, and could lead to inconsistent policies among appellate courts. But the courts are arguably in the best position to decide when substitution is needed to protect minors' privacy. Presumably for that reason, the Legislature gave appellate courts discretion with respect to minors' names in judicial opinions. *See* Tex. Fam. Code §109.002(d) ("On the motion of the parties or on the court's own motion, the appellate court in its opinion may identify the parties by fictitious names or by their initials only.") (applicable to appeals of suits affecting the parent-child relationship).

Pursuant to this statute, most appellate courts in Texas substitute initials or pseudonyms for the names of minor children in termination cases. *See, e.g., In re T.J.R.*, 2007 WL 614085 (Tex. App.—Fort Worth 2007, no pet.) (using initials for child only). Some, but not all, substitute for parents' names as well, often using only a parent's first name or initial. *See, e.g., In re J.R.*, 222 S.W.3d 817 (Tex. App.—Houston [14thDist.] 2007, pet. denied). The Texas Supreme Court follows the latter practice, or at least has done so in recent years. *See In re J.B.P.*, 180 S.W.3d 570 (Tex. 2005); *see also Doe v. Delaware*, 450 U.S. 382, 382 n.1 (1981) (Brennan, J., dissenting to dismissal, for want of federal question, of parents' appeal of state judgment terminating parental rights) (noting that Supreme Court had previously granted motion to seal record and had substituted pseudonyms for parties' names). The Texas Supreme Court also has substituted initials for the names of both a

daughter and her parents in a divorce appeal to protect the daughter's identity, even though she was an adult at the time suit was filed. *See S.V. v. R.V.*, 933 S.W.2d 1, 3 (Tex. 1996) (using initials for all parties where daughter intervened in parents' divorce to claim that father sexually abused her as a minor, and citing the "sensitive nature" of daughter's allegations).

Proposed rule 9.8 would affect only appeals of termination cases. There is some Texas case law addressing the protection of minors' anonymity in cases involving trial records sealed under Tex. R. Civ. P. 76a. *See Fox v. Anonymous*, 869 S.W.2d 499, 507 (Tex. App.—San Antonio 1993, writ denied) (although identities of minor and his parents and terms of settlement were properly sealed in minor's suit to implement settlement of tort claims against health care facility arising from sexual assault by facility's employee, there was no need to seal trustee's name, person signing on trustee's behalf, amount awarded to victim's parents, or amount of attorney fees); *Fox v. Doe*, 869 S.W.2d 507 (Tex. App.—San Antonio 1993, writ denied) (companion case holding that redacting of names of settling defendant corporation or insurance company was unnecessary to protect minor's privacy). However, Rule 76a's definition of "court records" excludes "documents filed in an action originally arising under the Family Code." Tex. R. Civ. P. 76a(2)(a)(3). Accordingly, in such cases, the record can be sealed without following Rule 76a's specific procedures, and Rule 76a's presumption of openness does not apply. *See id.*; *In re Bain*, 144 S.W.3d 236, 241 (Tex. App.—Tyler 2004, orig. proceeding). Appellate courts also may order records (excluding orders and judgments) sealed in termination appeals. *See, e.g., In re R.D.*, 955 S.W.2d 364, 366 (Tex. App.—San Antonio 1997, pet. denied) (ordering record of termination trial sealed except for orders and judgments, and using in opinion only facts voluntarily disclosed in parties' briefs).

The draft below, which requires both parties and appellate courts to shield the identities of minor children in parental-rights termination cases and authorizes courts to redact parents' names if necessary or appropriate to protect a minor child's identity, offers the best approach. Requiring the court or the parties to redact parents' names in cases where redaction is not needed to protect a child's identity gives parents too much anonymity; not giving the court discretion to redact parents' names and require parties to do the same will allow parents' names to appear in briefs and opinions available to the public in print and online, thereby making the parents' minor children easily identifiable and defeating the purpose of camouflaging the minors' identities. This discretionary provision is also consistent with Family Code §109.002(d)'s discretionary approach.

I believe the draft rule also sufficiently addresses the concern about an appellate court's ability to determine the need for recusal. "[U]pon perfecting the appeal in a civil case," the appellant is required to file a docketing statement containing the names of all parties, their lead counsel, and the trial judge. Tex. R. App. P. 32.1. Because the notice of appeal and the docketing statement are filed before any briefs are submitted, the docketing statement should give the appellate court the information it needs to make preliminary recusal determinations even if the court later orders the parties to redact parents' names as well in their briefs. And because the notice of appeal and the docketing statement are not published online through Westlaw or Lexis, the identifying information contained therein can be provided to the court without being broadcast over the Internet.

Rule 9. Papers Generally**9.8 Protection of Minor Child's Identity in Parental-Rights Termination Appeals.**

(a) Redaction of Minors' Names Generally Required in Appellate Briefing and Opinions. In an appeal of a suit seeking the termination of parental rights, a minor child shall be identified only by one or more initial letters of the minor's name or by a pseudonym in any party's brief, petition, motion, or other submission to an appellate court, or in any opinion issued by an appellate court, unless the court orders otherwise.

(b) Redaction of Parents' Names at Court's Discretion. In an appeal of a suit seeking the termination of parental rights, an appellate court may substitute in an opinion, and may order parties to substitute in their briefs, petitions, motions, or other court submissions, one or more initial letters or pseudonyms for the names of parents of minor children if the court determines that such substitution would be necessary or appropriate to protect the identity of a minor child.

(c) Redaction of Children's or Parents' Names In Copies of Appendix Items. In an appeal of a suit seeking the termination of parental rights, for any necessary or optional appendix items to be included with a party's brief, petition, or motion, copies of any appendix items containing the name of a minor child shall be redacted so that the minor is identified only by one or more initial letters of the minor's name or by a pseudonym. An appellate court also may order parties to substitute initials or pseudonyms for the names of parents of minor children in any necessary or optional appendix items to be included with a party's brief, petition, or motion in an appeal of a suit seeking the termination of parental rights, if such substitution is necessary or appropriate to prevent a parent's name from being used to identify a minor child whose parent or parents are the subject of the termination proceedings. Nothing in this rule authorizes alteration of the original appellate record except as specifically authorized by court order.

At the close of the discussion of this rule proposal at the August 2007 SCAC meeting, Justice Gaultney suggested, without opposition, that TRAP 38.1(a) (Identity of Parties and Counsel) be amended to cross-reference new TRAP 9.8. Aug. 25, 2007 SCAC Tr. at 16484. Perhaps like this:

38.1 Appellant's Brief. The appellant's brief must, under appropriate headings and in the order here indicated, contain the following:

- (a) ***Identity of parties and counsel.*** The brief must give a complete list of all parties to the trial court's judgment or order appealed from, and the names and addresses of all trial and appellate counsel. As required by Rule 9.8, in an appeal of a suit seeking the termination of parental rights a minor child shall be identified only by only by one or more initial letters of the minor's name or by a pseudonym in any party's brief, petition, motion, or other submission to an appellate court. If an appellate court orders the parties to substitute initials or pseudonyms for the name of a parent of a minor child involved in a termination appeal to protect the identity of a minor child, the parties should identify the parent in a manner consistent with the court's order.



The Supreme Court of
Texas

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Chambers of
Justice Nathan L. Hecht

September 25, 2007

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Rules Advisory Committee
Jackson Walker L.L.P.
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Referral of Rules Issues

Via e-mail

Dear Chip:

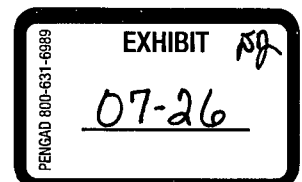
The Court requests the Advisory Committee's recommendations on several potential changes to the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Uniform Format Manual for Texas Court Reporters. These proposals are summarized in the attached appendix A. A copy of the SBOT Rules Committee proposal to amend Tex. R. Civ. P. 301 and Tex. R. App. P. 26.1(a) is separately attached in electronic format.

The Court greatly appreciates the Committee's thoughtful consideration of these issues, for its dedication to the rules process, and for your continued leadership on the Committee. I look forward to seeing you all on October 19th.

Sincerely,

Nathan L. Hecht
Justice

A handwritten signature in black ink, appearing to read "Nathan L. Hecht".



RULES OF CIVIL PROCEDURE

Rule: 301

Current Text:

Rule 301 Judgments. The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. Provided, that upon motion and reasonable notice the court may render judgment non obstante veredicto if a directed verdict would have been proper, and provided further that the court may, upon like motion and notice, disregard any jury finding on a question that has no support in the evidence. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors.

Summary of Issue:

The State Bar of Texas (SBOT) Rules Committee recently submitted to the Court a proposal to amend Rule 301 to provide a clear post-judgment deadline for filing a motion for judgment non obstante veredicto (JNOV). *See Gomez v. Tex. Dep't of Criminal Justice*, 896 S.W.2d 176, 176-77 (Tex. 1995) (per curiam) (holding that "bill of review" filed within 30 days of judgment extended time to perfect appeal under former Appellate Rule 41(a)(1) because it "assailed the trial court's judgment"); *Kirschberg v. Lowe*, 974 S.W.2d 844, 847-48 (Tex. App. CSan Antonio 1998, no pet.) (noting that Tex. R. Civ. P. 301 provides no explicit time limit to file JNOV motion, but concluding that, under *Gomez*, JNOV motion filed within time for filing motion for new trial extends appellate timetable). The Advisory Committee is asked to consider the SBOT Rules Committee's proposed revisions to Rule 301, which are set forth below, as well as its corresponding proposal to amend Appellate Rule 26.1(a), shown on page 3.

Proposed Revised Text:

Rule 301 Judgments.

1. The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the parties all the relief to which each may be entitled either in law or equity.
2. After the verdict has been entered under Rule 293, upon motion and reasonable notice the court may render judgment notwithstanding the verdict if a directed verdict would have been proper. The court may, upon like motion and notice, set aside any jury finding on a question that has no support in the evidence. Such motions and any amended motions shall be filed not later than the time for filing a motion for new trial under Rule 329b. Any timely filed motion or amended motion shall extend the trial court's plenary power to grant a judgment notwithstanding the verdict, set aside any jury finding, grant a new trial or to vacate, modify, correct, or reform the judgment or appealable order for the same period as would a timely filed motion for new trial under Rule 329b. In the event an original or amended motion under this rule is not determined by written order signed within seventy-five days after the judgment was signed, it shall be considered overruled by operation of law on the expiration of that period.
3. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors.

RULES OF APPELLATE PROCEDURE

Rule: 26.1(a)

Current Text (with proposed changes shown):

26.1 Civil Cases. The notice of appeal must be filed within 30 days after the judgment is signed, except as follows:

(a) the notice of appeal must be filed within 90 days after the judgment is signed if any party timely files:

(1) a motion for new trial;

(2) a motion to modify the judgment;

(3) a motion to reinstate under Texas Rule of Civil Procedure 165a; or

(4) a motion for judgment notwithstanding the verdict or to disregard jury findings under Texas Rule of Civil Procedure 301; or

(45) a request for findings of fact and conclusions of law if findings and conclusions either are required by the Rules of Civil Procedure or, if not required, could properly be considered by the appellate court;

Summary of Issue:

The SBOT Rules Committee proposes amending Tex. R. App. P. 26.1(a) as shown in conjunction with its proposal, summarized above on pages 2-3, to amend Tex. R. Civ. P. 301. The Court requests the Advisory Committee's analysis of this proposal.

Rule: 53.7(a)

Current Text:

53.7 Time and Place of Filing.

(a) *Petition.* The petition must be filed with the Supreme Court clerk within 45 days after the following:

(1) the date the court of appeals rendered judgment, if no motion for rehearing is timely filed; or

(2) the date of the court of appeals' last ruling on all timely filed motions for rehearing.

Summary of Issue:

Appellate Rule 4.3(a) provides that if the trial-court judgment is modified in any respect while the trial court has plenary power, any period that runs from the signing of the judgment is extended to run from the date the modified judgment is signed. But Rule 53.7(a), which governs the time period for filing a petition for review, does not contain any provision extending the time to file if the court of appeals alters its judgment or opinion during its plenary power. Unless the modification is made in conjunction with the court of appeals' ruling on a timely filed motion for rehearing, in which case the ruling on the motion extends the time to file under Rule 53.7(a)(2). The Committee is asked to consider whether Rule 53.7(a) or another Appellate Rule should be amended to address this issue.

UNIFORM FORMAT MANUAL FOR TEXAS COURT REPORTERS

Provision: Section 16.16

Current text:

16.16 Audio/Video Recordings. Generally, audio/video recordings played in court are entered as an exhibit in the proceedings. When the exhibits are played in court, a contemporaneous record of the proceedings will not be made unless the Court so orders.

Summary of Issue:

At the 2007 State Bar Advanced Civil Appellate Practice Course, Stephen Tipps noted that the above provision appears to conflict with Appellate Rule 13.1, which requires the official court reporter or court recorder to, “unless excused by agreement of the parties, attend court sessions and make a full record of the proceedings.” Tex. R. App. P. 13.1(a). Mr. Tipps notes that when videotape deposition excerpts or other audio or audiovisual recordings are played for the jury, court reporters sometimes rely on Uniform Format Manual ' 16.16 and do not transcribe the recording being played. Although this may not be problematic if a prior transcription of the recording is offered in evidence, in other casesCwhere either no transcription exists, or an existing transcription is never admitted in evidenceCthe trial reporter's failure to transcribe may result in no transcription of the material presented appearing in the appellate record, potentially frustrating appellate review. The Committee is asked to consider the relationship between the TRAP and UFM provisions governing transcription and recommend whether either set of rules should be amended to address the issue.

Jody Hughes

From: Watson, Charles "Skip" [cwatson@lockelord.com]
Sent: Thursday, October 18, 2007 6:41 PM
To: Sarah Duncan; Hatchell, Mike; Frank Gilstrap; Kathryn F. Green; Lamont Jefferson; Ralph Duggins; Stephen Tipps
Cc: Jody Hughes
Subject: RE:

Sarah, I've only had time for one trip through this and it was a fast one. But, I'm initially struck by 2 things, one general and one specific:

First, I didn't know that Rule 301 was broken. Why are we fixing it?

Second, subpart (a)(2) of both 301 b and c strip the judge of his inherent power to declare and enter judgment on the controlling law by turning every charge conference into a JNOV hearing - needlessly. This is not codifying Allen, which should only apply when the evidence that supports the charge given without objection does not support the charge that should have been given. This means that a judge who should have granted summary judgment because a claim or defense is not recognized under Texas law cannot wait to see what the jury does before rendering judgment post-verdict if that objection was not preserved at the charge conference. That has never been the law and never should be. Juries will wait for days rather than hours in a complex multi-party case if every legal objection saying we shouldn't be submitting this because you can't enter judgment on it regardless of the finding (even if it is submitting an immaterial question), has to be "preserved", and inevitably argued, at the charge conference.

Hope I'm wrong --

I'm giving a Supreme Court Update presentation at 9:00 tomorrow an hour away but will get to the meeting as fast as I can.

Skip

From: Sarah Duncan [mailto:sarahbduncan@yahoo.com]
Sent: Thursday, October 18, 2007 9:20 AM
To: Watson, Charles "Skip"; Hatchell, Mike; Frank Gilstrap; Kathryn F. Green; Lamont Jefferson; Ralph Duggins; Stephen Tipps
Subject:

In line with my earlier e-mail, attached is Jody's memo in MS Word format. (I think!) Let me know if you have a problem with it.

MEMORANDUM

TO: Sarah Duncan October 5, 2007

FROM: Jody Hughes

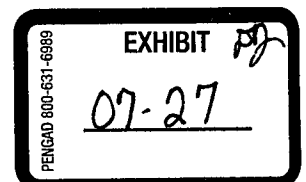
RE: Revised Version of SBOT Rules Committee Proposals on TRCP 301, TRAP 26.1

The draft below reflects my attempt to re-tool the substance of the State Bar Rules Committee proposal on TRCP 301 and TRAP 26.1 (attached) using the modernized concepts and language from the Recodification draft. Bill has reviewed this draft and we discussed his suggested edits, and with those included he is comfortable with the draft. He mentioned your work on the Recodification drafting and thought would also be interested in this issue, which I believe will be referred to your SCAC subcommittee if Chip has not done so already. I had asked Bill to review this draft initially with the thought that your subcommittee could use it as a starting point if you want.

The most significant changes are to Rule 301, particularly the addition of new rules 301a-c, which mostly are taken verbatim (except for the rule numbering) from the Recodification provisions. I inserted Recodification rule references in brackets for tracking the origins of particular rule provisions. I also eliminated references to motions to correct and reform in Rule 329b, and have tried to make changes to other rules (300, 306a) as required by the changes to Rules 301 and 329b, and minor style edits. Other than TRAP 38.2(b) below, I don't think these changes would require any amendments to the existing TRAPs, as Rule 26.1 refers only to motions to modify the judgment.

Bill and I discussed whether a motion to vacate the judgment should be added as a separate subspecies of motion to modify under Rule 301c, or instead simply subsumed within the motion to modify as motions to correct or reform are in the current draft. I had observed that the modify/vacate dichotomy appears in the TRAPs, both with respect to trial-court judgments, *see, e.g.*, TRAP 27.3 ("If Appealed Order Modified or Vacated"), and appellate-court judgments, *see* TRAP 19.2 (court of appeals retains plenary power to vacate or modify its judgment during periods prescribed in Rule 19.1 even after PFR filed in supreme court). However, Bill noted Judge Guittard's view that the rules should not provide for a party to file a motion to vacate, although a trial court would have the power to vacate its own judgments. Accordingly, I have left rule 301c as drafted, with no separate provision for a motion to vacate the judgment.

We also discussed whether Rule 316's language that refers to correcting the *record* of a judgment should be revised to match TRAP 4.3(b), which refers to the nunc pro tunc action under Rule 316 simply as correcting or reforming the judgment. This discrepancy caused me some confusion in light of existing Rule 329b(g), which refers to both substantive motions to correct or reform the judgments as well as nunc pro tunc motions under Rule 316. TRCP 329b(g) ("motion to modify, correct, or reform a judgment (as distinguished from [a] motion to correct the record of a judgment under Rule 316...."). However, as Bill and I discussed today, the Recodification language used below largely solves this problem by collapsing substantive (non-316) motions to correct or reform into the motion to modify under new Rule 301c. Existing Rule 329b(f) clearly provides that the trial court can make nunc pro tunc corrections to the record "at any time," so I don't think that eliminating the other "correct or reform" references elsewhere in 329b will cause any substantive changes.



Rule 300. Court to Render Judgment

Where a special verdict is rendered, or the conclusions of fact found by the judge are separately stated the court shall render judgment thereon unless the court renders judgment as a matter of law, grants a motion to disregard a jury finding, or grants a new trial set aside or a new trial is granted, or judgment is rendered notwithstanding verdict or jury finding under these rules.

Comment to 2007 change: Consistent with the contemporaneous amendments to Rule 301, the reference in former Rule 300 to judgment notwithstanding the verdict is replaced with the motion for judgment as a matter of law, described in new Rule 301b.

Rule 301. Judgments

The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. ~~Provided, that upon motion and reasonable notice the court may render judgment non obstante verdicto if a directed verdict would have been proper, and provided further that the court may, upon like motion and notice, disregard any jury finding on a question that has no support in the evidence.~~ Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors.

Comment to 2007 change: the former rule's provisions for seeking judgment non obstante verdicto, also known as judgment NOV or judgment notwithstanding the verdict, are deleted and replaced with the motion for judgment as a matter of law in new Rule 301b and the motion to modify the judgment under new Rule 301c. No substantive change is intended; the terminology is revised to eliminate confusion resulting from the interplay between Rule 301 and Rule 329b. Under former rule 301, a JNOV motion could be filed either post-verdict and pre-judgment or post-judgment, but only a post-judgment JNOV motion could constitute a motion to modify the judgment that extended a trial court's plenary power and the time to perfect appeal under Rule 329b. Under the amended rules, what was formerly styled a JNOV motion is now, if filed pre-judgment, a motion for judgment as a matter of law under new Rule 301b; any post-judgment motion that seeks to modify the judgment (other than a motion to correct a clerical mistake under Rule 316), including what was formerly a post-judgment JNOV motion, is now a motion to modify the judgment under Rule 301c. Similarly, a request to disregard jury findings can be included in a motion for judgment as a matter of law under Rule 301b, if the request is made prior to the entry of judgment, or, if the request is made post-judgment, in a motion to modify the judgment under Rule 301c.

Rule 301a. Motion for Judgment on the Jury Verdict

(a) A motion for judgment on the jury verdict may be presented at any time before a final judgment has been signed. A motion for judgment on the jury verdict is overruled by operation of law when a final judgment is signed that does not grant the motion. [Recod R. 101(b)]

(b) A motion for judgment can be made without waiving objections to the verdict if the movant's objections are clearly stated in a motion for judgment as a matter of law or otherwise brought to the trial court's attention in a timely and proper manner. [Roger Hughes proposal]

Comment to 2007 change: this is a new rule adopted in conjunction with the contemporaneous amendments to Rule 301, as discussed in the comment following that rule.

Rule 301b. Motion for Judgment as a Matter of Law

(a) A party may move for judgment as a matter of law, and include a request to disregard a jury finding as a matter of law, on a claim or defense:

- (1) if the evidence, after the adverse party rests its evidence, or at the close of all the evidence, or after the verdict in a jury case and before judgment,
 - (i) is legally insufficient for a reasonable jury to find against the movant on a particular issue of fact or if the evidence conclusively establishes the issue in the movant's favor, and
 - (ii), if, under the controlling law, a judgment cannot properly be rendered against the movant on that claim or defense without a finding adverse to the movant on an issue that has been disregarded, and a judgment as a matter of law should be rendered for the movant as to that claim or defense; or
- (2) if the application of controlling law to a claim or defense otherwise determines a claim or defense as a matter of law, unless the movant waived application of controlling law by failing to preserve a complaint that the court's charge affirmatively misstates controlling law. [Recod R. 101(b)]

(b) A motion for judgment as a matter of law may be presented after the adverse party rests its evidence, or at the close of all the evidence, or after the verdict in a jury trial and before judgment, and shall not be considered waived if not presented earlier. A motion for judgment as a matter of law shall not be presented after a final judgment has been signed. A ground in a motion for judgment as a matter of law is overruled as a matter of law when a final judgment is signed that does not grant that ground. [Recod R. 104(b)]

(c) A party moving for judgment as a matter of law may move in the alternative, in the same or a separate pleading, for judgment on the jury verdict without waiving objections to the verdict if the movant's objections are clearly stated in the motion for judgment as a matter of law or otherwise brought to the trial court's attention in a timely and proper manner. [Roger Hughes proposal]

Comment to 2007 change: this is a new rule adopted in conjunction with the contemporaneous amendments to Rule 301, as discussed in the comment following that rule.

Rule 301c. Motion to Modify Judgment

(a) A party may move to modify a judgment as a matter of law, including a request to disregard a jury finding as a matter of law, after a judgment has been rendered:

- (1) if the evidence is legally insufficient for a reasonable jury to find against the movant on a particular issue of fact or if the evidence conclusively establishes the issue in the movant's favor;
- (2) if the application of controlling law to a claim or defense otherwise determines a claim or defense as a matter of law, unless the movant waived application of controlling law by failing to preserve a complaint that the court's charge

- affirmatively misstates controlling law; or
(3) if the judgment should be vacated, modified, reformed, or corrected in any respect for any reason. [Recod. R. 101(c)]

(b) A motion to modify a judgment must be in writing, must be signed by the filing party or attorney, and must specify the respects in which the judgment should be modified. The time periods for a party to file, and for a trial court to rule on, a motion to modify a judgment are stated in Rule 329b. A motion for judgment as a matter of law is not a prerequisite to a motion to modify a judgment. [source: first sentence is derived from existing R. 329b(g); the second sentence is new; and the third sentence is the last sentence of Recod. R. 101(c)]

Comment to 2007 change: this is a new rule adopted in conjunction with the contemporaneous amendments to Rule 301, as discussed in the comment following that rule. Although the time periods for a party to file, and for the court to rule on, a motion to modify the judgment remain the same under Rule 329b(g), new Rule 301c more clearly delineates the reasons for filing a motion to modify.

Rule 306a. Periods to Run from Signing of Judgment

1. **Beginning of Periods.** The date of judgment or the date an order is signed as shown of record shall determines the beginning of the periods prescribed by these rules for the court's plenary power to grant a new trial or to vacate; or modify; ~~correct or reform~~ a judgment or order and for filing in the trial court the various documents that these rules authorize a party to file within such periods including, but not limited to, motions for new trial, motions to modify judgment, motions to reinstate a case dismissed for want of prosecution, motions to vacate judgment and requests for findings of fact and conclusions of law; but this rule shall not determine what constitutes rendition of a judgment or order for any other purpose.

Comment to 2007 change: rule 306a is amended consistent with the contemporaneous amendments to Rule 329b, which eliminates motions to correct or reform judgments; any request to alter a judgment (other than a motion to correct the record under Rule 316) should now be made as a motion to modify the judgment under new Rule 301c. Other non-substantive changes are made.

Rule 324. Prerequisites of Appeal

- (c) **Judgment ~~Notwithstanding Findings as a Matter of Law~~; Cross-Points.** When judgment is rendered ~~non-obstante verdicto~~ or notwithstanding the findings of a jury as a matter of law under Rule 301b on one or more questions, the appellee may bring forward by cross-point contained in his brief filed in the Court of Appeals any ground which would have vitiated the verdict or would have prevented an affirmance of the judgment had one been rendered by the trial court in harmony with the verdict, including although not limited to the ground that one or more of the jury's findings have insufficient support in the evidence or are against the overwhelming preponderance of the evidence as a matter of fact, and the ground that the verdict and judgment based thereon should be set aside because of improper argument of counsel.

To: SCAC
From: Alex Albright
Date: October 11, 2007
Re: PJC Admonitory Instructions Plain Language Rewrite

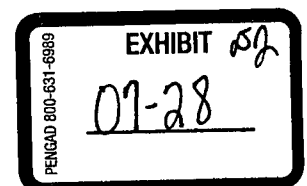
As promised, here is a list of issues for consideration when we address Rule 226a admonitory instructions. The report on the testing of plain language vs. existing PJC charge on mock jurors has been posted on the SCAC website.

A Word document with the proposed plain language rewrite has been posted. The proposed revisions to Rule 226a and other rules are first, followed by revisions to PJC sections that are not part of the Rules. A side by side version was posted in August (to the extent it is possible to create a version that compares the old and new language side by side). If you want to submit changes for consideration, please be sure that you send a redline version to me showing where you are making the changes. Also send proposed additional language for other issues you would like included.

Email your comments to me before the meeting at aalbright@law.utexas.edu. Or you can fax to me at 512-471-6988.

Particular issues for discussion at the October 19 meeting:

1. Describing "bias and prejudice." Rule 226a(I)
2. Contempt instruction. Rule 226a(I), (III)
3. Cell phones and electronic devices. Rule 226a(II)
4. "Preponderance of the evidence" no change recommended. Rule 226a(III)
5. Presiding juror instructions. Rule 226a(III) (including that presiding juror reads the charge vs. each getting a copy of written charge)
6. "Unanimous" explanation. Rule 226a(III)(exemplary damages)
7. Certificates when mixed unanimous/non-unanimous questions.
8. Proposed instruction on juror notetaking. Rule 226a(III)
9. Proposed instruction on language interpreters. Rule 226a(III)
10. Proposed Rule 226 & 236 on juror oaths

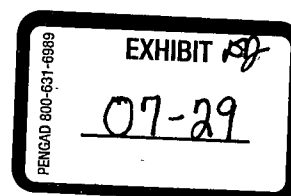


Admonitory Instruction Subcommittee
PJC Oversight Committee

Report to Supreme Court Advisory Committee
On Plain Language Rewrite of Admonitory Instructions

Draft of June 28, 2007

For discussion at SCAC at October 18, 2007 meeting



Proposed Texas Rule of Civil Procedure 226a(I) (PJC 100.1)
Instructions to the panel before jury selection

Members of the Jury Panel [*or Ladies and Gentlemen*]: We are about to begin selecting a jury. Right now, you are members of what we call a panel. After the lawyers ask you some questions, 12 of you will be chosen for the jury. But before we start asking questions and choosing jurors, I will give you some information and then go over the instructions.

First of all, we thank you for being here. Even if you are not chosen for the jury, you are performing a valuable service that is your right and duty as a citizen of a free country.

Now I will give you some background about this case. This is a civil trial, which means it is a lawsuit that is not a criminal case. The parties are as follows: The plaintiff is _____, and the defendant is _____.

[description of the current case]

Jurors sometimes ask what it means when I say we want jurors who do not have any bias or prejudice. The word “prejudice” comes from “pre-judge” or judging something before you have all the information. We want jurors who will not pre-judge the case and who will decide the case based only on the evidence presented in court and the law that I explain.

If you are chosen for the jury, you will listen to the evidence and decide the facts of the case. I, as the judge, will manage the process and make sure the law is applied correctly. I assure you we will handle this case as fast as we can, but we cannot rush things. We have to do it fairly and we have to follow the law.

Every juror must obey the instructions that I am about to give you. If you do not follow these instructions, I may have to order a new trial and start this process over again. That would be a waste of time and money. It is also possible that you may be held in contempt or punished in some other way, so please listen carefully to these instructions.

These are the instructions:

1. Remember that you took an oath that you will tell the truth, so be honest when the lawyers ask you questions, and always give complete answers. Sometimes a lawyer will ask a question of the whole panel instead of just one person. If the question applies to you, raise your hand and keep it raised until you are called on.
2. Do not mingle or talk with the lawyers, the witnesses, the parties, or anyone involved in the case. You can exchange casual greetings like “hello” and “good morning.” Other than that, do not talk with them at all. They have to follow these instructions too, so they will not be offended. Also, do not accept any favors from the lawyers, the witnesses, the parties, or anyone involved in the case, and do not

do any favors for them. This includes favors such as giving rides and food. We ask you not to mingle or accept favors to avoid looking like you are friendly with one side of the case.

3. Do not discuss this case with anyone, even your spouse or friend. Do not allow anyone to discuss the case with you or in front of you. If anyone tries to discuss the case with you, tell me. We ask you not to discuss the case with others because we do not want you to be influenced by something other than the evidence presented in court.

Do you understand these instructions? If you do not, please tell me now.

The lawyers will now begin asking questions.

Proposed Texas Rule of Civil Procedure 226a(II) (PJC 100.2)
Instructions for the jury after it has been selected

Members of the Jury [*or* Ladies and Gentlemen]: You have now been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system.

[hand out the written instructions]

What you are receiving is a set of written instructions, and I am going to discuss them with you now. Some of them you have heard before, and some are new.

1. It is your duty to listen to and consider the evidence and to determine fact issues later submitted to you.
2. Please turn off all cell phones and electronic devices. Do not record or photograph any part of these court proceedings.
3. Please remember what I said about not mingling with those involved in this case, not accepting favors from those involved with this case, and not discussing the case with anyone. We ask you not to mingle or accept favors to avoid looking like you are friendly with one side of the case. We ask you not to discuss the case with others because we do not want you to be influenced by something other than the evidence presented in court.
4. Please discuss this case only with other jurors and only after I have given you the final instructions and sent you to the jury room to reach a verdict. This will be after you have heard all the evidence, all my instructions, and all the lawyers' arguments. We ask you not to discuss the case with your fellow jurors until the end of the case so that you do not form opinions about the case before you have heard everything.
5. Do not investigate this case on your own. Do not inspect places or items from this case unless they are presented as evidence in court. Do not let anyone do those things for you. This rule is very important because we cannot have a trial based on evidence not presented in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom. All the evidence must be presented in open court so the parties and their lawyers can test it and object to it. For example:
 - Do not try to get information about the case from outside this courtroom.
 - Do not go to places mentioned in the case to inspect the places for yourself.

- Do not look things up in law books, dictionaries, public records, or on the Internet.

These rules are very important. If a juror does any of these, tell that person to stop and report it to me immediately.

6. Do not tell other jurors your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another case. But keep it to yourself. Telling other jurors about it is wrong because it means the jury will be considering things that were not presented in court.
7. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.
8. Do not consider insurance or who might be covered by insurance unless I tell you to. Do not guess about who might or might not be covered by insurance.

Do you understand these instructions? If you do not, please tell me now.

After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked which side should win, so do not be concerned about that. Instead, you will need to answer the specific questions I give you.

As I have said before, if you do not follow these instructions, I may have to order a new trial and start this process over again.

Keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.

Proposed Texas Rule of Civil Procedure 226a(III) (PJC 100.3)
General Instructions to the jury before answering the questions and reaching a verdict

Members of the Jury [*or Ladies & Gentlemen*]: You are about to go to the jury room to reach a verdict. This means you will apply the law and answer the questions I will give you.

Remember: You are to make up your own minds about the facts. You are the only judges of the credibility of the witnesses and the weight to give their testimony. But on matters of the law, you must follow the instructions I have given you before and those I will give you now. Please remember what I said about not discussing the case until you are in the jury room.

In just a moment I will be giving you a set of questions. Here are the instructions for answering the questions:

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on what was presented in court and on the law I explain to you. Please remember what I have said about not sharing your own special knowledge or experiences. This case must be decided only on the facts presented in court and on the law I give you.
3. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
4. All the questions and answers are important. No one should say that any question or answer is not important.
5. A yes answer must be based on a preponderance of the evidence unless you are told otherwise.
 - The term “preponderance of the evidence” is a legal phrase that means the greater weight and degree of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a yes answer, then answer no.

Note: Testing revealed a lack of comprehension of this term, but the Committee recommends no change.

- Whenever a question requires an answer other than yes or no, your answer must be based on a preponderance of the evidence unless you are told otherwise.

6. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win.
7. Do not answer questions by drawing straws or by any method of chance.
8. Some questions might ask you for a dollar amount. Do not decide on a dollar amount by adding up each juror's amount and then figuring the average.
9. Do not trade your answers. For example, do not say "I will answer this question your way if you answer another question my way."
10. The answers to the questions must be based on the decision of at least 10 of the 12 jurors unless otherwise instructed. The same 10 jurors must agree on all the answers and then to the entire verdict. Specifically—
 - Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.
 - If all 12 jurors agree, the presiding juror, or the elected foreperson, signs the verdict certificate for the entire jury.
 - If all 12 jurors do not agree, the 10 or more jurors who agree each sign the verdict certificate.

As I have said before, if you do not follow these instructions, I may have to order a new trial and start this process over again. That would be a waste of time and money. It is also possible that you may be held in contempt or punished in some other way. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

[Definitions, questions and special instructions given to the jury will be transcribed here.]

When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

The presiding juror has these duties:

- The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

[Note: The Committee felt that this instruction was not necessary if each juror receives a copy of the charge.]

- To preside over your deliberations. This means the presiding juror will take the lead in discussions, write down the answers that 10 or more of you agree on, and see that you follow the instructions.
- To give written questions or comments to the judge. The presiding juror should give them to the bailiff, who will give them to me.
- To vote on the answers to questions, just as all jurors do.
- To sign the verdict if all 12 jurors agree or to get the signatures of all those who agree if the verdict is not by all 12.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Once you have reached a verdict, the presiding juror must notify the bailiff. Do not notify the bailiff that you have reached a verdict until—

1. you have answered all the questions,
2. the presiding juror has written down the answers, and
3. the presiding juror has signed the verdict certificate if all 12 jurors agree, or had all those who agree sign the verdict certificate if it is not signed by all 12.

**Proposed Texas Rule of Civil Procedure 226a(III)/Proposed New PJC 100.3A
Exemplary Damages**

If exemplary damages are sought against a defendant, the jury must unanimously find, with respect to that defendant, (i) liability on at least one claim for actual damages that will support an award of exemplary damages, (ii) any additional conduct, such as malice or gross negligence, required for an award of exemplary damages, and (iii) the amount of exemplary damages to be awarded. The jury's answers to questions regarding (ii) and (iii) must be conditioned on a unanimous finding regarding (i), except in an extraordinary circumstance when the conditioning instruction would be erroneous. The jury need not be unanimous in finding the amount of actual damages. Thus, if questions regarding (ii) and (iii) are submitted to the jury for defendants D1 and D2, instructions in substantially the following form must immediately precede such questions:

Preceding question (ii):

Answer Question (ii) for D1 only if all of you answered "Yes" to Question[s] (i) regarding D1. Otherwise, do not answer Question (ii) for D1. [Repeat for D2.]

You are instructed that in order to answer "Yes" to [any part of] Question (ii), you must unanimously agree (all of you) to your answer. You may answer "No" to [any part of] Question (ii) only upon a vote of 10 or more jurors. Otherwise, you must not answer [that part of] Question (ii).

Preceding question (iii):

Answer Question (iii) for D1 only if you answered "Yes" to Question (ii) of D1. Otherwise, do not answer Question (iii) for D1. [Repeat for D2.]

You are instructed that you must unanimously agree (all of you) on the amount of any award of exemplary damages.

These examples are given by way of illustration.]

Proposed Texas Rule of Civil Procedure 226a(III)/PJC 100.3B Certificates

Certificate: Regular Verdict

We, the jury, have answered the questions as indicated and now submit them as our verdict.

If all jurors agree, the presiding juror signs here:

Presiding Juror Printed name

If all jurors do not agree, those ten who do agree on all the answers and to the entire verdict, sign here:

	Signature	Printed name
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

[Or]

Certificate: Mixed Unanimous and non-unanimous Verdict

[If some of the jury’s answers must be unanimous and others need not be, the court should prepare the required certificate in a clear and simple manner, which will depend on the nature of the charge. The court may consider using the following certificate at the end of the charge:]

We, the jury, have answered the questions as indicated and now submit them as our verdict.

The presiding juror fills out the next section:

I certify that all jurors agreed on the these questions (Answer “All” or list the answers):

Presiding Juror

Printed name

If all of you did not agree on the answers to some questions, the jurors who did agree to those answers must certify as follows:

We agree to the answers to the following questions:

List the questions: _____

Signature

Printed name

[Insert the appropriate number of lines—11 or 5—for signatures and for printed names.]

[The court may also decide that a clearer way of obtaining the required certificate is to segregate the questions to which the jury’s answers must be unanimous and request a certificate for each part of the charge.]

[Or]

Certificate: Second Part of Two-Part Trial with Unanimous Verdict

We, the jury, have answered the questions as indicated and now submit them as our verdict.

The presiding juror fills out the next section:

I certify that all jurors agreed on the these questions (Answer "All" or list the answers):

Presiding Juror

Printed name

Proposed Texas Rule of Civil Procedure 226a(IV) (PJC 100.5)
Instructions after a verdict

Thank you for your verdict.

I now release you from jury duty. I have told you that the only time you can discuss the case is with the other jurors in the jury room. Now you can discuss the case with anyone. But you can choose not to discuss the case; that is your right.

After you are released from jury duty, the lawyers and others can ask you questions to see if the jury followed the instructions, and they can ask you to give a sworn statement. You are free to discuss the case with them and to give a sworn statement if you want. But you may choose not to discuss the case and not to give a sworn statement; that is your right.

Proposed New 226a(V) /PJC 100.11
Optional Instructions on Jurors' Note-Taking

During the trial, if taking notes will help focus your attention on the evidence, you may take notes. If taking notes will distract your attention from the evidence, you should not take notes. Any notes you take are for your own personal use and may be taken back into the jury room and consulted during deliberations. Do not take your notes out of the courtroom. Do not share your notes with other jurors. Do not rely on another juror's notes.

**Proposed New 226a(VI)/PJC 100.13 Instruction
Instructions to the jury on language interpreters**

Note: The Committee decided not to include an instruction that requires a juror to inform the judge if the juror disagrees with the official interpretation.

During this trial, one or more witnesses or documents may be introduced in another language and interpreted into English. The interpreter has been certified by the State of Texas and has sworn to truly and wholly interpret into English the evidence given in this case.

You may have special knowledge of the language being interpreted. But do not rely on your special knowledge and do not tell any other jurors any of your special knowledge.

The official testimony of the witness or document is the English interpretation, and you must rely on the official interpretation personally and in your discussions with other jurors. Do not tell any of the other jurors if your own interpretation differs from the official interpretation.

Proposed Rule 226
Jury panel's oath

Before the parties or their lawyers begin asking questions of those on the jury panel, the judge, or someone acting under the judge's direction, must swear in the panel members in substance as follows:

Do you swear or affirm that you will truthfully answer all questions asked of you concerning your qualifications as a juror, so help you God?

Proposed Texas Rule of Civil Procedure 236
Juror's oath

The judge, or someone acting under the judge's direction, must swear in the jurors in substance as follows:

Do you swear or affirm that you will render a true verdict, according to the law and the evidence, so help you God?

Proposed PJC 100.4
Additional instruction for a two-part trial

Members of the Jury [*or* Ladies and Gentlemen]:

In addition to these instructions, you must continue to follow all the other instructions I have given you.

[Additional definitions, questions, and special instructions given to the jury will be transcribed here.]

JUDGE PRESIDING

Proposed PJC 100.6
Instructions if permitted to separate

During this trial, you will be allowed to separate from each other in the evening.

I remind you of the rule I explained before: Do not discuss this case with anyone, even your spouse or friend. Do not allow anyone to discuss the case with you or in front of you. If anyone tries to discuss the case with you, tell me.

Proposed PJC 100.7
Instructions if jurors disagree about testimony

You have asked to hear testimony from the trial.

If you disagree about the testimony of a witness, please write down the exact point you disagree about, and I will have the court reporter search the record and read you the testimony of the witness. It will take some time for the court reporter to find this testimony and prepare to read it to you, so please be patient.

Proposed PJC 100.8
Direct and indirect evidence

During this trial, you may have heard two kinds of evidence. They are direct evidence and indirect evidence.

Direct evidence means a fact was proved by a document, by an item, or by testimony from a witness who heard or saw the fact directly.

Indirect evidence means the circumstances reasonably suggest the fact. Indirect evidence means that based on the evidence, you can conclude the fact is true. Indirect evidence is also called "circumstantial evidence."

For example, suppose a witness was outside and saw that it was raining. The witness could testify that it was raining, and this would be direct evidence. Now suppose the witness was inside a building and the witness testified that people walked into the building with wet umbrellas. This could prove by indirect evidence that it was raining outside.

A fact may be proved by direct evidence or by indirect evidence or by both.

Proposed PJC 100.10
Instructions for a jury that cannot reach a verdict

You have told me you cannot reach a verdict.

If, in the interest of justice, you can end this case by reaching a verdict, you should.

But none of you should give in on what you believe is right or what you believe is the truth unless you are convinced to change your mind.

Continue to discuss the case carefully, listen to each other, and try your best to reach a verdict. Keep your minds open to every reasonable argument the other jurors present. Perhaps you will change your mind. That way, you can reach a verdict that is fair, and you can feel good about it because you did not give in on what you believe.

Do not assume your opinion is the only right one. You should be willing to consider other opinions. Do not be hasty in forming and expressing your opinions. But as I said, none of you should give in on what you believe is right or what you believe is the truth unless you are convinced to change your mind.

If you cannot reach a verdict, I may have to order a new trial. That means we would have to do this over again and our time and money spent on this trial would be a waste. So please do your best to reach a verdict.

Please return to the jury room and continue your discussions.

Proposed PJC 100.12

Instruct as if someone exercises a privilege other than 5th Amendment privilege

You can. assume anything from [*name of party*]'s claim of [*privilege asserted*]
privilege.

CASE IDENTIFICATION:

*State Bar of Texas Juror
Comprehension Field Testing of
Pattern Jury Charges*

JURY SIMULATION REPORT

EXECUTIVE SUMMARY

The State Bar of Texas commissioned Jason Bloom and Courtroom Sciences, Inc. to field-test juror comprehension of Pattern Jury Charges and Admonitory Instructions. Trial simulations using a fictitious case fact pattern were conducted on April 25-26, 2006 at Courtroom Sciences' mock courtroom facilities in Irving, TX.

The first simulation (Project A) used existing PJC's (Version A) and the second simulation (Project B) used a modified version (Version B). The modified version was an attempt by the committee to plain language the existing version. The research team and committee were interested in determining juror comprehension of existing PJC's as well as whether the comprehension levels would increase if a modified, or plain language, version was used instead. Surveys were used to measure the correct response rate of True/False/Don't Know questions based on the PJC's and jury instructions. Additionally, a trailer question was added after each survey item to reveal why a research participant chose an answer, or essentially, how the information was learned (i.e. hearing it from the Judge, guessing, or common sense).

The protocol for each project can be found on the Schedule on pp. 3-4 to this report. A copy of Version A and B of the PJC's, Admonitory Instructions and Charge to the Court (PJC 1.3/1.8 and Verdict Form with Instructions) can be found in the Appendix to this report. The surveys administered after each can be found in the Appendix as well. The raw data gathered from the simulations can be found in Tables 1-10 of the Data Section to this report.

The field-testing research indicates that Version B was rated significantly higher with regards to the following criteria:

- Understandability - PJC 1.1 and PJC 1.3;
- Clarity - PJC 1.3;
- Easiness to Follow - PJC 1.1;
- Makes Sense – PJC 1.1.

Based on examining levels of comprehension using correct-response rates to True/False survey items, the field-testing research reveals the following:

- Version B revealed higher correct response rates and thus was better at instructing the following concepts:
 - Civil action;
 - Number of jurors selected;
 - Secret evidence;
 - Discussion of the case by jurors;
-

- Unanimous;
- A finding is based on multiple elements (e.g. fraud).
- Within both Version A and Version B, there is a need for improved definitions of the following concepts:
 - Unanimous;
 - Preponderance of the evidence;
 - Role of the presiding juror;
 - Distinction between preponderance of the evidence and beyond a reasonable doubt;
 - Proximate cause;
 - Instances where a finding is based on multiple elements being met (e.g. fraud);
 - Instructions for the certificates at the end of the jury charge.
- For both Version A and Version B, mock jurors who chose incorrect responses attribute their answers to hearing the instructions read by the Judge regarding the following concepts:
 - Sympathy;
 - Unanimous;
 - Circumstantial evidence;
 - Purpose of deliberations;
 - Trading answers in deliberations;
 - Level of allowable interaction with lawyers, witnesses or parties during trial;
 - Preponderance of the Evidence.

Specific results and data can be found in the Data and Analysis sections to this report.

Recommendations:

Based on the results of this study, the following improvements are suggested:

- Separate verdict form and jury instructions documents, with a copy of the instructions given to each juror to use during deliberations, and only one copy of the verdict form given to the panel;
 - The use of “...;and” after each element in the jury instructions when a verdict interrogatory requires that all elements be met in order to find for the party with the burden of proof;
-

- The use of language that such as: “All of the following elements must be met in order to find for the plaintiff” to precede the list of elements in the jury instructions;
 - Instructions that specifically talk about the number of votes in terms of “a required number” such as 10-2 and 12-0, rather than using “unanimous” and instructions regarding making an attempt to get to the required number of votes and what to do if it is not reached (i.e. when to quit or give up);
 - One certificate at the end of the verdict form with a blank for each juror to sign it to simply acknowledge agreement with the answers to the interrogatories;
 - Improved instructions on disregarding attorney’s fees and insurance from damage awards. The public is aware of these factors and must be discouraged from instilling them into deliberations;
 - Improved instructions pertaining to the resolution of damages to dissuade jurors from using a quotient verdict. The instruction should include language detailing that agreement by the jury is more significant than averages, which would be disregarded by the Court;
 - A definition of “preponderance of the evidence” that distinguishes the burden of proof in a civil action from one in a criminal action, so as to illustrate that multiple standards do exist.
-

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RESEARCH PROTOCOL

CSI's field testing research consisted of 2 trial simulations on April 25 and April 26, 2006, designed to test juror comprehension of Pattern Jury Charges and in particular, the Admonitory Instructions in 226a

Particular care was conducted to assure that juror demographics for the jury simulations were congruent with a Dallas jury panel. Relevant demographic domains researched by CSI staff include:

- Geographical Location
- Educational Background
- County Population
- City Population
- Cultural Facilities
- Employment Rate
- Manufacturing Analysis
- Ethnic Distribution
- Median Family Income
- Political Affiliation
- Religious Affiliation
- Labor Analysis
- Organized Labor Analysis
- Retail, Wholesale and Trade Analysis

Additional qualitative and quantitative analysis of the Dallas jury pool identified common psychological denominators that assured similar moral, social and political tenets for the particular jurors chosen to participate in this jury simulation.

The mock jurors completed a CSI Demographic Questionnaire, signed a confidentiality statement, and were screened for conflicts prior to being seated. The jurors were presided over by CSI staff, who reviewed juror responsibility, confidentiality, and role functions that were carried out during the jury simulation. A CSI staff facilitator, acting as Judge, presented the Admonitory Instructions to the mock jurors.

Upon completion of each Admonitory Instruction, mock jurors were asked to complete a filler task and then a survey testing comprehension of the instructions previously recited by the Judge.

Following the attorney presentations and Admonitory Instructions, the mock jurors were divided into four separate juries to deliberate over designated questions in a modified jury charge.

Jurors deliberated for approximately 45 minutes. Following deliberations, jurors were merged for a focus group discussion to further elicit and clarify their opinions and thought processes pertaining to the Admonitory Instructions, and instructions used to deliberate the case.

PROJECT INFORMATION

The Project Information part of the Jury Simulation Report includes the following:

- Schedule
- Demographics

Jury Simulation Schedule – Project A

State Bar of Texas Juror Comprehension Field Testing of Pattern Jury Charges

April 25, 2006

		hr:min
11:00 AM	Jurors Arrive/Orientation	2:00
1:00 PM	Call to order - Judge Reads PJC1.1	0:05
1:05 PM	BREAK (Filler Task)	0:05
1:10 PM	PJC 1.1 Juror Comprehension Questionnaire (orange)	0:10
1:20 PM	Mock Voir Dire conducted by Attorneys	0:10
1:30 PM	Judge reads PJC 1.2	0:10
1:40 PM	BREAK (Filler Task)	0:05
1:45 PM	PJC 1.2 Juror Comprehension Questionnaire (pink)	0:10
1:55 PM	Stipulated Facts	0:05
2:00 PM	Plaintiff: Summary Presentation of Evidence	0:30
2:30 PM	BREAK	0:20
2:50 PM	Defendant: Summary Presentation of Evidence	0:30
3:20 PM	Judge Reads PJC 1.3	0:25
3:45 PM	BREAK (Filler Task)	0:05
3:50 PM	PJC 1.3 Juror Comprehension Questionnaire (purple)	0:10
4:00 PM	Deliberations	0:45
4:45 PM	Verdict Form Comprehension Questionnaire	0:15
5:00 PM	Jury Instruction Confusion Study	0:15
5:15 PM	Focus Group	0:30
5:45 PM	DISMISS	

Jury Simulation Schedule – Project B

State Bar of Texas Juror Comprehension Field Testing of Pattern Jury Charges

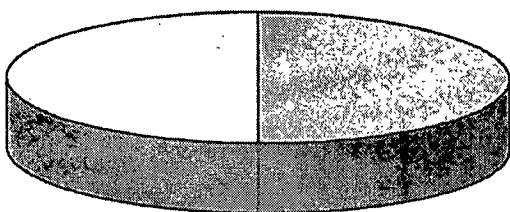
April 26, 2006

		hr:min
7:00 AM	Jurors Arrive/Orientation	2:00
9:00 AM	Call to Order - Judge Reads PJC 1.1	0:05
9:05 AM	BREAK (Filler Task)	0:05
9:10 AM	PJC 1.1 Juror Comprehension Questionnaire (orange)	0:10
9:20 AM	Mock Voir Dire conducted by Attorneys	0:10
9:30 AM	Judge Reads PJC 1.2	0:10
9:40 AM	BREAK (Filler Task)	0:05
9:45 AM	PJC 1.2 Juror Comprehension Questionnaire (pink)	0:10
9:55 AM	Stipulated Facts	0:05
10:00 AM	Plaintiff: Summary Presentation of Evidence	0:30
10:30 AM	BREAK	0:15
10:45 AM	Defendant: Summary Presentation of Evidence	0:30
11:15 AM	LUNCH	0:45
12:00 PM	Judge Reads PJC 1.3	0:25
12:25 PM	BREAK (Filler Task)	0:05
12:30 PM	PJC 1.3 Juror Comprehension Questionnaire (purple)	0:10
12:40 PM	Deliberations	0:45
1:25 PM	Verdict Form Comprehension Questionnaire	0:15
1:40 PM	Jury Instruction Confusion Study	0:15
1:55 PM	Focus Group	0:30
2:25 PM	DISMISS	

Demographics - Project A

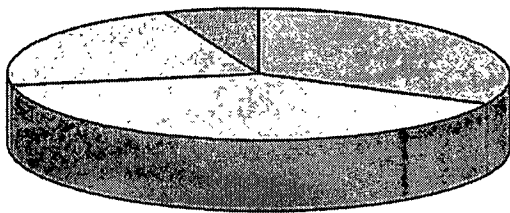
Fifty (50) mock jurors were selected to participate in this jury simulation. The jurors were categorized along the following demographic dimensions:

Sex



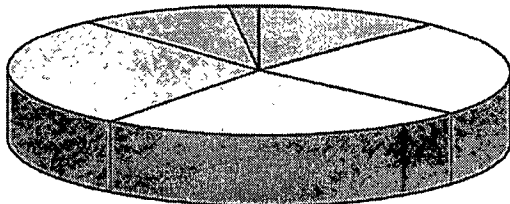
Male	50%
Female	50%

Race



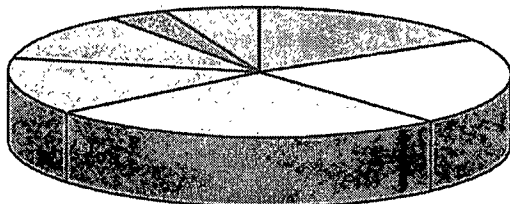
African American	32%
Asian	0%
Caucasian	40%
Hispanic	22%
Native American	0%
Other	6%

Age



18 to 25	12%
26 to 35	24%
36 to 45	24%
46 to 55	28%
56 to 69	10%
70+	2%

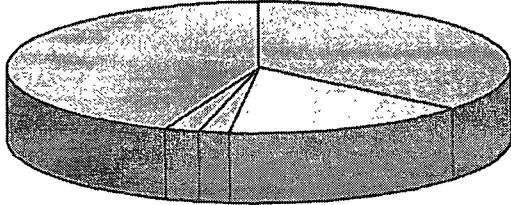
Income (Total Family Income Per Year)



Under \$15,000	16%
\$15,001 to \$25,000	22%
\$25,001 to \$35,000	26%
\$35,001 to \$55,000	14%
\$55,001 to \$75,000	12%
\$75,001 to \$100,000	4%
Over \$100,000	6%

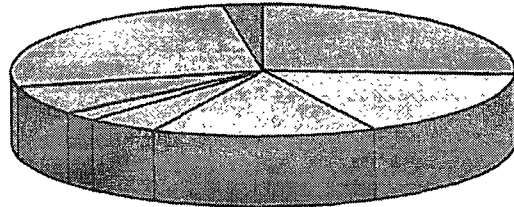
Demographics – Project A, continued

Marital Status



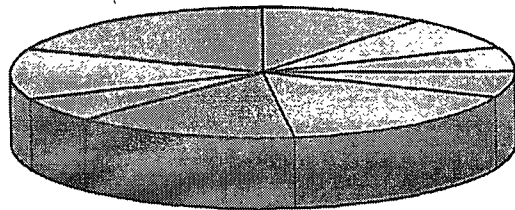
Married	36%
Divorced	16%
Separated	2%
Widowed	2%
Never Married	44%

Employment Status (Current)



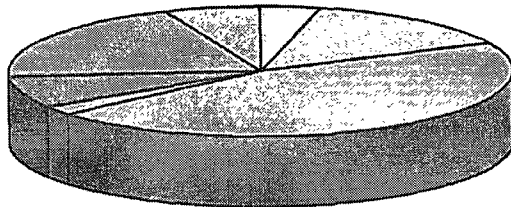
Full-time	22%
Part-time	14%
Self-employed	12%
Homemaker	4%
Disability/worker's comp/welfare	2%
Student	0%
Retired	6%
Unemployed	22%
Other	2%

Occupation (Current/Prior)



General Labor	10%
Clerical/administrative	8%
Helping professions	6%
Service industries	6%
Sales/marketing	16%
Professional	14%
Technical	6%
Managerial	12%
Agricultural/ranching	0%
Other	18%

Education

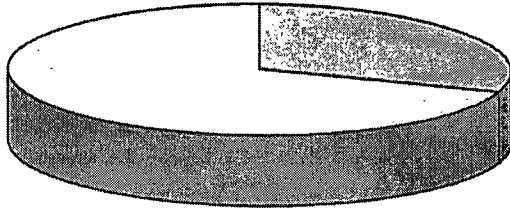


Less than high school diploma	0%
GED	4%
High school diploma	14%
Some college	46%
Trade/vocational school	2%
Associate degree (2 yr degree)	8%
B.A./B.S. (4 yr degree)	20%
Master degree	6%
Doctoral degree	0%

Demographics - Project B

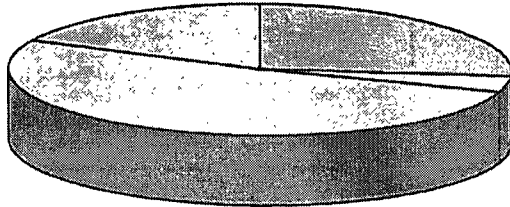
Fifty (50) mock jurors were selected to participate in this jury simulation. The jurors were categorized along the following demographic dimensions:

Sex



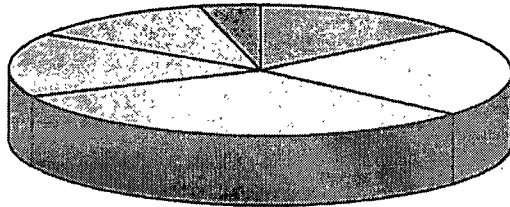
Male	30%
Female	70%

Race



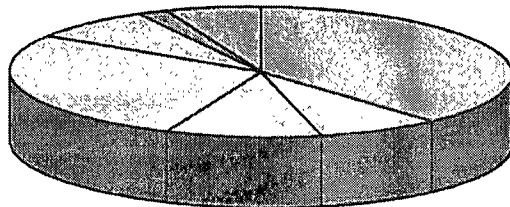
African American	26%
Asian	4%
Caucasian	52%
Hispanic	18%
Native American	0%
Other	0%

Age



18 to 25	14%
26 to 35	22%
36 to 45	32%
46 to 55	16%
56 to 69	12%
70+	4%

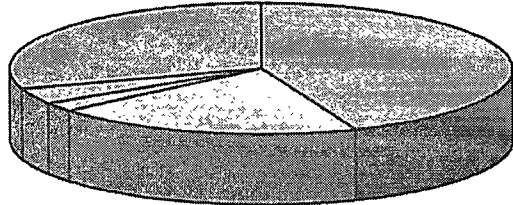
Income (Total Family Income Per Year)



Under \$15,000	38%
\$15,001 to \$25,000	8%
\$25,001 to \$35,000	10%
\$35,001 to \$55,000	28%
\$55,001 to \$75,000	8%
\$75,001 to \$100,000	2%
Over \$100,000	6%

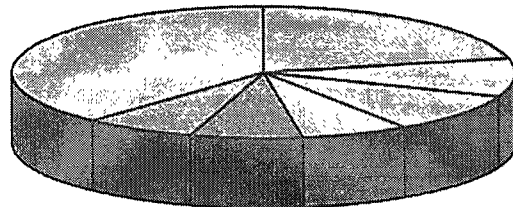
Demographics – Project B, continued

Marital Status



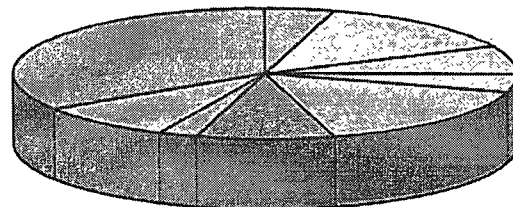
☐ Married	44%
☐ Divorced	20%
☐ Separated	2%
☐ Widowed	4%
☐ Never Married	30%

Employment Status (Current)



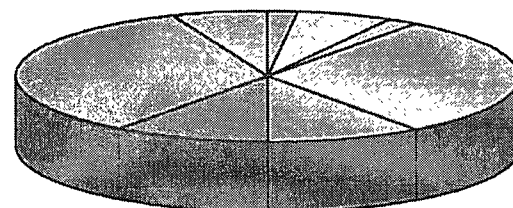
☐ Full-time	18%
☐ Part-time	8%
☐ Self-employed	8%
☐ Homemaker	6%
☐ Disability/worker's comp/welfare	0%
☐ Student	6%
☐ Retired	6%
☐ Unemployed	32%
☐ Other	0%

Occupation (Current/Prior)



☐ General Labor	4%
☐ Clerical/administrative	12%
☐ Helping professions	6%
☐ Service industries	4%
☐ Sales/marketing	14%
☐ Professional	8%
☐ Technical	2%
☐ Managerial	8%
☐ Agricultural/ranching	0%
☐ Other	30%

Education



☐ Less than high school diploma	2%
☐ GED	6%
☐ High school diploma	2%
☐ Some college	30%
☐ Trade/vocational school	10%
☐ Associate degree (2 yr degree)	10%
☐ B.A./B.S. (4 yr degree)	34%
☐ Master degree	6%
☐ Doctoral degree	0%

DATA

One Word Association (From Focus Group)- Project A

Preponderance of the evidence is defined as

Juror #	Response:
#01	"Greater amount"
#02	"Weight of the evidence is more than 50%"
#03	"One side has to equal the other"
#04	"How much evidence there is"
#05	"Don't know"
#06	"More than 50%"
#07	"Evidence is greater"
#08	"Evidence is greater"
#09	"More evidence than none"
#10	"50/50"
#11	"Majority of the evidence"
#12	"More evidence"
#13	"The scale is tipped"
#14	"More evidence"
#15	"It has to be more than 51%"
#16	"It has to be more than 51%"
#17	"More than the other side"
#18	"More than the other side"
#19	"More than the other side"
#20	"The weight"
#21	"Greater than 50%"
#22	"Weight of the evidence"

Juror #	Response:
#26	"Greater than 50%"
#27	"Greater than 50%"
#28	"Greater than 50%"
#29	"Greater than 50%"
#30	"I don't know"
#31	"Majority"
#32	"The greater amount"
#33	"Majority"
#34	"The weight of the evidence"
#35	"Majority"
#36	"Majority"
#37	"I don't know"
#38	"Majority"
#39	"One side has more evidence than the other side"
#40	"Weight"
#41	"Weight"
#42	"Majority"
#43	"Majority"
#44	"Majority"
#45	"Enough to really convince me so it has to be more than 50%"
#46	"The greater amount"
#47	"The weight"

#23	"Where you don't have to proof without reasonably doubt"
#24	"Majority of evidence leaves you without a doubt"
#25	"Majority of evidence leaves you without a doubt"

#48	"Majority"
#49	"One side has more evidence than the other side"
#50	"The amount or weight"

One Word Association – Project A (Continued)

Preponderance of the evidence is equal to what amount?

Juror #	Response:
#01	"60%"
#02	"51%"
#03	"50%"
#04	"80%"
#05	"51%"
#06	"50%"
#07	"75%"
#08	"80%"
#09	"82%"
#10	"51%"
#11	"51%"
#12	"60%"
#13	"80%"
#14	"51%"
#15	"51%"
#16	"51%"
#17	"80%"
#18	"80%"
#19	"81%"
#20	"81%"
#21	"80%"
#22	"80%"
#23	"51%"
#24	"80%"
#25	"100%"

Juror #	Response:
#26	"51%"
#27	"65%"
#28	"81%"
#29	"51%"
#30	"51%"
#31	"80%"
#32	"75%"
#33	"51%"
#34	"80%"
#35	"81%"
#36	"81%"
#37	"60%"
#38	"81%"
#39	"90%"
#40	"51%"
#41	"51%"
#42	"51%"
#43	"80%"
#44	"51%"
#45	"75%"
#46	"51%"
#47	"70%"
#48	"51%"
#49	"61%"
#50	"100%"

One Word Association – Project B

Preponderance of the evidence is defined as

Juror #	Response:
#01	"Don't know"
#02	"Not clear"
#03	"Don't know"
#04	"I don't remember"
#05	"All the information"
#06	"No exact evidence"
#07	"One way or another"
#08	"Most of the evidence was shown to be true"
#09	"N/A"
#10	"N/A"
#11	"Collaboration of the evidence"
#12	"N/A"
#13	"More so or not"
#14	"More so or not"
#15	"More likely than not"
#16	"More"
#17	"More than half"
#18	"More than 81%"
#19	"N/A"
#20	"Large amount"
#21	"Majority"
#22	"More likely than not"
#23	"Majority"
#24	"N/A"
#25	"Most of the evidence"

Juror #	Response:
#26	"I don't know"
#27	"Most of the evidence"
#28	"Most of the evidence"
#29	"N/A"
#30	"Larger of the two"
#31	"More likely than not"
#32	"Greater percentage"
#33	"N/A"
#34	"N/A"
#35	"More evidence"
#36	"N/A"
#37	"More than half"
#38	"Most"
#39	"Most"
#40	"N/A"
#41	"Majority"
#42	"Biggest share"
#43	"N/A"
#44	"N/A"
#45	"N/A"
#46	"More than half"
#47	"Most"
#48	"N/A"
#49	"N/A"
#50	"N/A"

One Word Associations, - Project B (continued)

Preponderance of the evidence is equal to what amount?

Juror #	Response:
#01	"51%"
#02	"Over 50%"
#03	"51%"
#04	"51%"
#05	"51%"
#06	"0%"
#07	"51%"
#08	"51%"
#09	"N/A"
#10	"N/A"
#11	"51%"
#12	"N/A"
#13	"51%"
#14	"More than half"
#15	"51%"
#16	"75%"
#17	"More than 50%"
#18	"75%"
#19	"N/A"
#20	"50% and above"
#21	"51%"
#22	"51%"
#23	"60%"
#24	"N/A"
#25	"70%"

Juror #	Response:
#26	"51%"
#27	"51%"
#28	"51%"
#29	"N/A"
#30	"80%"
#31	"80%"
#32	"51%"
#33	"N/A"
#34	"N/A"
#35	"51%"
#36	"N/A"
#37	"51%"
#38	"75%"
#39	"81%"
#40	"75%"
#41	"51%"
#42	"80%"
#43	"N/A"
#44	"N/A"
#45	"N/A"
#46	"75%"
#47	"51%"
#48	"N/A"
#49	"N/A"
#50	"N/A"

Table 1

Mean Responses on comprehension questionnaires from group A and group B.

Criteria	Questionnaire Version							
	PJC 1.1		PJC 1.2		PJC1.3		Verdict Form	
	A	B	A	B	A	B	A	B
Understandable	5.40	5.86*	5.82	5.90	5.24	5.66*	5.38	5.44
Clear	5.36	5.86*	5.74	5.90	5.26	5.64*	5.22	5.34
Easy to follow	5.26	5.84*	5.80	5.84	5.16	5.48	5.26	5.22
Simple	5.30	5.66	5.64	5.82	4.94	5.20	5.02	5.06
Makes Sense	5.32	5.90*	5.70	5.90	5.20	5.54	5.26	5.24
Necessary	5.44	5.74	5.80	5.80	5.60	5.76	5.56	5.44
Informative	5.30	5.62	5.80	5.74	5.40	5.64	5.30	5.28
Direct	5.60	5.84	5.76	5.90	5.52	5.70	5.24	5.26

* Denotes statistically significantly different from Group A at $p < .05$.

Table 2

Percentage of correct responses to PJC 1.1 Questionnaire.

Question	A	B	Difference	Percent Change
The case presented before you is a civil action and not a criminal action.	84%	100%	16%*	19%
Twelve people will be chosen as jurors in this case.	34%	92%	58%*	171%
If a juror breaks the rules, the Judge may have to order a new trial.	86%	96%	10%	12%
As a juror, you are allowed to withhold information from attorneys during jury selection.	84%	84%	0%	0%
As a juror, you are not allowed to mingle with the lawyers, the witness, the parties, or anyone involved in the case.	94%	100%	6%	6%
As a juror, you may say "hello" to the lawyers, witnesses, parties, and others involved in the case.	78%	84%	6%	8%
You are allowed to discuss this case with your spouse.	100%	94%	-6%	-7%
To be impartial means to be open and honest.	24%	32%	8%	33%
To be "free from bias and prejudice" means you have not prejudged the case before hearing the evidence.	92%	98%	6%	7%

* Denotes statistically significant difference in accuracy between group A and B at $p < .05$.

Table 3

Percentage of correct responses to PJC 1.2 Questionnaire.

Question	A	B	Difference	Percent Change
As a juror, you are allowed to investigate the case on your own (i.e. internet searches).	100%	100%	0%	0%
As a juror, you can discuss the case with each other while on breaks.	100%	90%	-10%*	-11%
As a juror, you should consider attorney's fees when awarding damages.	90%	98%	8%	9%
As a juror, you should not consider insurance when awarding damages.	68%	76%	8%	12%
As a juror, your role is to decide which side should win.	58%	60%	2%	3%
As a juror, your conclusions on the case can only be based on what is presented during the trial.	96%	100%	4%	4%
Secret evidence is evidence found by private investigation by a juror.	60%	40%	-20%*	-33%

* Denotes statistically significant difference in accuracy between group A and B at $p < .05$.

Table 4
Percentage of correct responses to PJC 1.3 Questionnaire.

Question	A	B	Difference	Percent Change
As a juror, you can't let sympathy influence your verdict.	92%	98%	6%	7%
During your deliberations, you may take an average of damage amounts and use that as your answer.	78%	92%	14%	18%
As jurors, you must be unanimous in all of your answers.	40%	78%	38%*	95%
As jurors, you may trade answers and exchange votes.	94%	98%	4%	4%
The presiding juror has the final say in the verdict.	76%	58%	-18%	-31%
You cannot use circumstantial evidence in deciding your verdict.	54%	66%	12%	22%
Preponderance of the evidence means beyond a shadow of a doubt.	38%	54%	16%	42%
Circumstantial evidence is indirect proof.	86%	86%	0%	0%
Deliberations are the instructions the Judge reads to you as jurors.	74%	70%	-4%	-6%

* Denotes statistically significant difference in accuracy between group A and B at $p < .05$.

Table 5

Percentage of correct responses to Verdict Form Questionnaire.

Question	A	B	Difference	Percent Change
In a civil trial, the jury has to be convinced beyond a reasonable doubt that the Plaintiff's claims are correct.	30%	38%	8%	27%
In order to be a "proximate cause" for an event, the result does not necessarily have to be foreseeable.	24%	34%	10%	42%
One of the criteria of fraud is that a party (the Plaintiff) suffers by relying on a false statement of fact from another party (the Defendant).	86%	90%	4%	5%
"Proximate cause" means the Plaintiff was injured as a result of the Defendant's act or omission.	50%	58%	8%	16%
One of the criteria of fraud is that a party (the Defendant) makes a false statement with the intention that it should be acted on by another party (the Plaintiff).	74%	80%	6%	8%
You cannot have more than one proximate cause.	62%	62%	0%	0%
In order to find that the Defendant committed fraud, the Plaintiff only has to prove that one of the four criteria of fraud has been met.	20%	68%	48%*	240%

* Denotes statistically significant difference in accuracy between group A and B at $p < .05$.

Table 6

Responses to questions regarding Verdict Form.

Question	Response Option			
	Yes		No	
	A	B	A	B
Did your jury spend any time during its deliberations discussing any of the instructions that the judge gave you?	44%	68%	56%	32%
The judge's reading of the instructions was so clear that we didn't need to discuss them.	66%	42%	34%	58%
The instructions the Judge read were too long.	24%	32%	76%	68%
The instructions the Judge read were too difficult to understand.	4%	6%	96%	94%
We didn't know how to use the instructions to help to reach a verdict.	22%	16%	78%	84%
You didn't need instructions to decide a case like this.	34%	30%	66%	70%

Table 7

Percentage of responses to trailer question ("I chose that answer because") from PJC 1.1, 1.2, 1.3.

Question		Response Option							
		Group A				Group B			
		1	2	3	4	1	2	3	4
The case presented before you is a civil action and not a criminal action.	Correct	95%	5%	0%	0%	98%	0%	0%	2%
	Incorrect	13%	13%	13%	61%	0%	0%	0%	0%
Twelve people will be chosen as jurors in this case.	Correct	58%	24%	18%	0%	96%	2%	2%	0%
	Incorrect	27%	22%	6%	45%	50%	0%	50%	0%
If a juror breaks the rules, the Judge may have to order a new trial.	Correct	93%	5%	2%	0%	98%	2%	0%	0%
	Incorrect	43%	29%	14%	14%	50%	0%	0%	50%
As a juror, you are allowed to withhold information from attorneys during jury selection.	Correct	76%	17%	5%	2%	90%	7%	3%	0%
	Incorrect	50%	13%	13%	24%	38%	25%	25%	12%
As a juror, you are not allowed to mingle with the lawyers, the witness, the parties, or anyone involved in the case.	Correct	100%	0%	0%	0%	100%	0%	0%	0%
	Incorrect	100%	0%	0%	0%	0%	0%	0%	0%
As a juror, you may say "hello" to the lawyers, witnesses, parties, and others involved in the case.	Correct	100%	0%	0%	0%	100%	0%	0%	0%
	Incorrect	73%	18%	9%	0%	63%	25%	0%	12%

Response Options: (1) I heard the Judge read it (2) I didn't hear the Judge read it, but it makes sense. (3) I'm guessing. (4) I don't know.

Question		Response Option							
		Group A				Group B			
		1	2	3	4	1	2	3	4
You are allowed to discuss this case with your spouse.	Correct	96%	2%	0%	2%	96%	0%	0%	2%
	Incorrect	0%	0%	0%	0%	67%	33%	0%	0%
To be impartial means to be open and honest.	Correct	17%	75%	8%	0%	31%	38%	25%	6%
	Incorrect	42%	47%	8%	3%	80%	8%	6%	6%
To be "free from bias and prejudice" means you have not prejudged the case before hearing the evidence.	Correct	37%	54%	7%	2%	94%	6%	0%	0%
	Incorrect	25%	0%	0%	75%	0%	0%	0%	100%
As a juror, you are allowed to investigate the case on your own (i.e. internet searches).	Correct	96%	4%	0%	0%	100%	0%	0%	0%
	Incorrect	0%	0%	0%	0%	0%	0%	0%	0%
As a juror, you can discuss the case with each other while on breaks.	Correct	98%	2%	0%	0%	93%	7%	0%	0%
	Incorrect	0%	0%	0%	0%	100%	0%	0%	0%
As a juror, you should consider attorney's fees when awarding damages.	Correct	93%	7%	0%	0%	100%	0%	0%	0%
	Incorrect	40%	0%	20%	40%	100%	0%	0%	0%
As a juror, you should not consider insurance when awarding damages.	Correct	82%	15%	3%	0%	100%	0%	0%	0%
	Incorrect	44%	6%	19%	31%	92%	0%	0%	8%

Response Options: (1) I heard the Judge read it. (2) I didn't hear the Judge read it, but it makes sense. (3) I'm guessing. (4) I don't know.

Question		Response Option							
		Group A				Group B			
		1	2	3	4	1	2	3	4
As a juror, your role is to decide which side should win.	Correct	90%	10%	0%	0%	90%	10%	0%	0%
	Incorrect	43%	43%	4%	10%	70%	25%	0%	5%
As a juror, your conclusions on the case can only be based on what is presented during the trial.	Correct	92%	8%	0%	0%	98%	2%	0%	0%
	Incorrect	100%	0%	0%	0%	0%	0%	0%	0%
Secret evidence is evidence found by private investigation by a juror.	Correct	87%	13%	0%	0%	70%	20%	10%	0%
	Incorrect	35%	35%	20%	10%	20%	23%	30%	27%
As a juror, you can't let sympathy influence your verdict.	Correct	80%	17%	3%	0%	86%	14%	0%	0%
	Incorrect	75%	0%	0%	25%	100%	0%	0%	0%
During your deliberations, you may take an average of damage amounts and use that as your answer.	Correct	90%	10%	0%	0%	94%	4%	0%	2%
	Incorrect	35%	10%	10%	45%	50%	50%	0%	0%
As jurors, you must be unanimous in all of your answers.	Correct	90%	5%	5%	0%	92%	5%	3%	0%
	Incorrect	84%	3%	10%	3%	64%	18%	18%	0%
As jurors, you may trade answers and exchange votes.	Correct	94%	4%	2%	0%	94%	4%	2%	0%
	Incorrect	100%	0%	0%	0%	100%	0%	0%	0%

Response Options: (1) I heard the Judge read it. (2) I didn't hear the Judge read it, but it makes sense. (3) I'm guessing. (4) I don't know.

Question		Response Option							
		Group A				Group B			
		1	2	3	4	1	2	3	4
The presiding juror has the final say in the verdict.	Correct	66%	32%	0%	2%	80%	17%	3%	0%
	Incorrect	66%	17%	0%	17%	75%	5%	10%	10%
You cannot use circumstantial evidence in deciding your verdict.	Correct	70%	23%	7%	0%	85%	12%	3%	0%
	Incorrect	74%	22%	4%	0%	70%	24%	6%	0%
Preponderance of the evidence means beyond a shadow of a doubt.	Correct	43%	47%	10%	0%	55%	30%	15%	0%
	Incorrect	61%	6%	13%	20%	74%	9%	4%	13%
Circumstantial evidence is indirect proof.	Correct	55%	33%	10%	2%	88%	8%	2%	2%
	Incorrect	0%	43%	0%	57%	72%	0%	14%	14%
Deliberations are the instructions the Judge reads to you as jurors.	Correct	43%	49%	5%	3%	63%	20%	11%	6%
	Incorrect	84%	8%	0%	8%	73%	13%	7%	7%

Response Options: (1) I heard the Judge read it. (2) I didn't hear the Judge read it, but it makes sense. (3) I'm guessing. (4) I don't know.

Table 8

Percentage of responses to trailer question ("I chose that answer because") from verdict form.

Question		Response Option									
		Group A					Group B				
		1	2	3	4	5	1	2	3	4	5
In a civil trial, the jury has to be convinced beyond a reasonable doubt that the Plaintiff's claims are correct.	Correct	40%	53%	0%	0%	7%	58%	26%	0%	11%	5%
	Incorrect	37%	34%	11%	11%	7%	45%	23%	16%	3%	13%
In order to be a "proximate cause" for an event, the result does not necessarily have to be foreseeable.	Correct	50%	25%	8%	0%	17%	47%	29%	12%	0%	12%
	Incorrect	32%	29%	13%	21%	5%	27%	21%	18%	0%	27%
One of the criteria of fraud is that a party (the Plaintiff) suffers by relying on a false statement of fact from another party (the Defendant).	Correct	65%	16%	0%	0%	19%	69%	18%	4%	2%	7%
	Incorrect	14%	14%	43%	0%	29%	50%	25%	8%	0%	17%
"Proximate cause" means the Plaintiff was injured as a result of the Defendant's act or omission.	Correct	56%	20%	0%	4%	20%	67%	21%	6%	0%	6%
	Incorrect	12%	20%	24%	36%	8%	9%	9%	29%	48%	5%
One of the criteria of fraud is that a party (the Defendant) makes a false statement with the intention that it should be acted on by another party (the Plaintiff).	Correct	65%	14%	2%	0%	19%	65%	10%	10%	0%	15%
	Incorrect	17%	22%	22%	17%	22%	20%	30%	20%	20%	10%

Response Options: (1) I heard the Judge read it. (2) I didn't hear the Judge read it, but it makes sense. (3) I'm guessing. (4) I don't know.

(5) I learned it during deliberations.



Question		Response Option									
		Group A					Group B				
		1	2	3	4	5	1	2	3	4	5
You cannot have more than one proximate cause.	Correct	55%	32%	10%	0%	3%	55%	13%	19%	0%	13%
	Incorrect	11%	0%	20%	58%	11%	0%	11%	21%	68%	0%
In order to find that the Defendant committed fraud, the Plaintiff only has to prove that one of the four criteria of fraud has been met.	Correct	70%	10%	0%	10%	10%	65%	9%	6%	0%	20%
	Incorrect	43%	17%	13%	10%	17%	31%	13%	13%	25%	18%

Response Options: (1) I heard the Judge read it. (2) I didn't hear the Judge read it, but it makes sense. (3) I'm guessing. (4) I don't know. (5) I learned it during deliberations.



Table 9 Preponderance of the Evidence Survey.

The following written question was given to 75 research participants who were not part of this project, but hired to be mock jurors in other Texas Mock Trials conducted by Courtroom Sciences in March and April 2006. The percentage of responses were grouped and are listed below.

You may or may not be familiar with the term "preponderance of the evidence" with respect to lawsuits and jury trials. It is the standard of proof used in many types of civil cases.

Typically, the Plaintiff in a lawsuit has to prove its case by a preponderance of the evidence in order to succeed.

*According to Texas law, the term "preponderance of the evidence" is defined as **the greater weight and degree of credibility of the evidence** admitted in the case.*

In your opinion, what is the numerical value for "preponderance of the evidence"? (Please answer with a number between 0%-100%)

Numerical Value	Percentage of participants who assigned a value in this range
0% – 50%	9%
51% – 60%	9%
61% – 80%	33%
81% – 100%	49%

n = 75

Table 10

Number of participants confused by terms or phrases in the jury charge.

Term or phrase	Group A	Group B
Deliberations	1 (2%)	0
Bias	1 (2%)	0
"You must not decide who you think should win"	1 (2%)	0
Quotient	1 (2%)	0
"You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors."	2 (4%)	0
"Those jurors who agree to all findings shall each sign the verdict form."	2 (4%)	0
Preponderance	4 (8%)	7 (14%)
"The same 10 jurors must agree on all the answers and then to the entire verdict."	0	1 (2%)
"If all 12 jurors do not agree, the 10 or more jurors who agree each sign the verdict certificate."	0	2 (4%)
"The greater weight and degree of credible evidence presented in this case." I	0	5 (10%)
"A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved."	2 (4%)	0
Indirect evidence means the circumstances reasonably suggest the fact. Indirect evidence means that based on the evidence, you can conclude the fact is true. Indirect evidence is also called "circumstantial evidence."	0	1 (2%)
"A fact may be proved by direct evidence or by indirect evidence or by both."	0	1 (2%)
"The presiding juror has the duty to sign the verdict if all 12 jurors agree or to get the signatures of all those who agree if the verdict is not by all 12."	0	1 (2%)

Term or phrase	Group A	Group B
“You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room.”	1 (2%)	0
“In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of the instructions in or your answers to any other question about damages. Do not speculate about what any party’s ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.”	2 (4%)	0
Joint venture	0	2 (4%)
“A joint venture must be based on an agreement, and the agreement must have all these elements.”	0	3 (6%)
Under joint venture, “a community of interest in the venture.”	1 (2%)	0%
Fiduciary	17 (34%)	9 (18%)
Under fiduciary duty, “The transaction was fair to the Plaintiff; and the Defendant made reasonable use of the confidence that the Plaintiff placed in it; and the Defendant acted in the utmost good faith.”	0	1 (2%)
Proximate cause	2 (4%)	1 (2%)
Fraud	0	1 (2%)
Material misrepresentation	3 (6%)	1 (2%)
“Misrepresentation means a false statement of fact or a promise of future performance made with an intent, at the time the promise was made, not to perform as promised.”	2 (4%)	1 (2%)
“The party makes the misrepresentation as a positive assertion knowing it is false or makes the representation recklessly without knowing if it is true or false.”	0	1 (2%)
“The party makes the misrepresentation and intends that the other party should act on it.”	0	1 (2%)

Term or phrase	Group A	Group B
"The other party relies on the misrepresentation and suffers injury from relying on it."	0	1 (2%)
Negligent misrepresentation	1 (2%)	0
Pecuniary	10 (20%)	0
"The party making the representation did not exercise reasonable care or competence in obtaining or communicating the information."	1 (2%)	0
Exemplary damages	2 (4%)	0
Punitive damages	0	1 (2%)
"What sum of money."	0	1 (2%)
"The character of the conduct involved."	1 (2%)	0
"Degree of culpability"	5 (10%)	0
"To be signed by those rendering the verdict if not by all 12."	0	1 (2%)

ANALYSIS

Rating of Instructions from Judge

The data in Table 1 demonstrates the research participants' reactions to the delivery and content of the Admonitory Instructions. They were asked to rate the certain criteria pertaining to the PJC's using a 1-6 Likert scale with 1 being "Not at All" and 6 being "Very much." The mean responses as portrayed in Table 1 reflect that research participants in Project B rated the following criteria significantly higher than the research participants in Project A.

Understandable - PJC 1.1 and PJC 1.3;

Clear - PJC 1.3;

Easy to Follow - PJC 1.1;

Makes Sense – PJC 1.1.

A statistically significant difference was measured using $p < .05$.

Comprehension of Instructions from Judge

The data in Tables 2-6 indicate that the comprehension levels of Version A are low but sometimes do improve using Version B. A correct response rate is considered low when less than 80% of research participants answer the True/False/Don't Know statement correctly. A "Don't Know" answer is considered incorrect.

PJC 1.1 – Instructions before Jury Selection

The survey data indicates correct response rates below 80% for the following items in the existing PJC's (Version A). Correct response rates are indicated in parentheses:

Twelve people will be chosen as jurors in this case (34%);

[34% of the Project A research participants answered this True/False/Don't Know survey item correctly]

As a juror, you may say "hello" to the lawyers, witnesses, parties, and others involved in the case (78%);

To be impartial means to be open and honest (24%).

In Version B, survey data indicates correct response rates below 80% for the following items:

To be impartial means to be open and honest (32%).

A statistically significant difference was found in the correct response rate levels between Version A and Version B of the following items:

The case presented before you is a civil action and not a criminal action;

Twelve people will be chosen as jurors in this case.

PJC 1.2 – Instructions after Jury is Selected

The survey data indicates correct response rates below 80% for the following items in existing PJC's (Version A). Correct response rates are indicated in parentheses:

As a juror, you should not consider insurance when awarding damages (68%);

As a juror, your role is to decide which side should win (58%);

Secret evidence is evidence found by private investigation by a juror (60%).

In Version B, survey data indicates correct response rates below 80% for the following items:

As a juror, you should not consider insurance when awarding damages (76%);

As a juror, your role is to decide which side should win (60%);

Secret evidence is evidence found by private investigation by a juror (40%).

A statistically significant difference was found in the correct response rate levels between Version A and Version B of the following items:

As a juror, you can discuss the case with each other while on breaks;

Secret evidence is evidence found by private investigation by a juror.

However, it should be noted that in PJC 1.2, the correct response rate to the above survey items was statistically better in Version A than Version B.

PJC 1.3/1.8 and Charge to the Court – Instructions before Jury Deliberations

The survey data indicates correct response rates below 80% for the following items in existing PJC's (Version A). Correct response rates are indicated in parentheses:

During your deliberations, you may take an average of damage amounts and use that as your answer (78%);

As jurors, you must be unanimous in all of your answers (40%);

The presiding jurors have the final say in the verdict (76%);

You cannot use circumstantial evidence in deciding your verdict (54%);

Preponderance of the evidence means beyond a shadow of a doubt (38%);

Deliberations are the instructions the Judge reads to you as jurors (74%).

In Version B, survey data indicates correct response rates below 80% for the following items:

As jurors, you must be unanimous in all of your answers (78%);

The presiding jurors have the final say in the verdict (58%);

You cannot use circumstantial evidence in deciding your verdict (66%);

Preponderance of the evidence means beyond a shadow of a doubt (54%);

Deliberations are the instructions the Judge reads to you as jurors (70%).

A statistically significant difference was found in the correct response rate levels between Version A and Version B of the following items:

As jurors, you must be unanimous in all of your answers.

Verdict Form

The survey data indicates correct response rates below 80% for the following items in existing PJs (Version A). Correct response rates are indicated in parentheses:

In a civil trial, the jury has to be convinced beyond a reasonable doubt that the Plaintiff's claims are correct (30%);

In order to be a "proximate cause" for an event, the result does not necessarily have to be foreseeable (24%);

"Proximate cause" means the Plaintiff was injured as a result of the Defendant's act or omission (50%).

One of the criteria of fraud is that a party (the Defendant) makes a false statement with the intention that it should be acted on by another party (the Plaintiff) (74%);

You cannot have more than one proximate cause (62%);

In order to find that the Defendant committed fraud, the Plaintiff only has to prove that one of the four criteria of fraud has been met (20%).

In Version B, survey data indicates correct response rates below 80% for the following items:

In a civil trial, the jury has to be convinced beyond a reasonable doubt that the Plaintiff's claims are correct (38%);

In order to be a "proximate cause" for an event, the result does not necessarily have to be foreseeable (34%);

"Proximate cause" means the Plaintiff was injured as a result of the Defendant's act or omission (58%);

One of the criteria of fraud is that a party (the Defendant) makes a false statement with the intention that it should be acted on by another party (the Plaintiff) (80%);

You cannot have more than one proximate cause (62%);

In order to find that the Defendant committed fraud, the Plaintiff only has to prove that one of the four criteria of fraud has been met (68%).

A statistically significant difference was found in the correct response rate levels between Version A and Version B of the following items:

In order to find that the Defendant committed fraud, the Plaintiff only has to prove that one of the four criteria of fraud has been met.

Source of Information and Opinion

When examining the reasons for selection of their answer response to the True/False survey items, it is interesting to discover those research participants why they answered the True/False /Don't Know incorrectly. This data is presented in Table 7-8 of the Data Section of this report. It is important to pay attention to those research participants who state that they chose an incorrect answer because either the Judge read it (answer choice 1) or because the Judge didn't read it but it makes sense (answer choice 2).

Incorrect Answer, but "I Heard the Judge Read It":

In examining this data, it is apparent that these research participants did not hear the Judge correctly or simply misperceived what was read by the Judge. This is evident by the looking at the reasons cited for why research participants chose an incorrect answer. In many instances, they chose answer choice 1, "I heard the Judge read it." At least 50% of the research participants who answered the following True/False/Don't Know items incorrectly and attributed their answers to hearing it from the Judge (answer choice 1). The percentage is in parentheses after the survey item below and the version is indicated:

Twelve people will be chosen as jurors in this case (50% - B);

[During Project B, 50% of research participants who chose an incorrect answer to this True/False/Don't Know survey item claimed they heard this instruction from the Judge]

If a juror breaks the rules, the Judge may have to order a new trial (50% - B);

As a juror, you are allowed to withhold information from attorneys during jury selection (50% - A);

As a juror, you are not allowed to mingle with the lawyers, the witness, the parties, or anyone involved in the case (100%-A);

As a juror, you may say "hello" to the lawyers, witnesses, parties, and others involved in the case (73% - A, 63% - B);

You are allowed to discuss this case with your spouse (67% - B);

To be impartial means to be open and honest (80% - B);

As a juror, you can discuss the case with each other while on breaks (100% - B);

As a juror, you should consider attorney's fees when awarding damages (100% - B);

As a juror, you should not consider insurance when awarding damages (92% - B);

As a juror, your role is to decide which side should win (70% - B);

As a juror, your conclusions on the case can only be based on what is presented during the trial (100% - A);

As a juror, you can't let sympathy influence your verdict (75% - A, 100% - B);

During your deliberations, you may take an average of damage amounts and use that as your answer (50% - B);

As jurors, you must be unanimous in all of your answers (84% - A; 64% - B);

As jurors, you may trade answers and exchange votes (100% - A, 100% - B);

The presiding juror has the final say in the verdict (66% - A, 75% - B);

You cannot use circumstantial evidence in deciding your verdict (74% - A, 70% - B);

Preponderance of the evidence means beyond a shadow of a doubt (61% - A, 74% - B);

Circumstantial evidence is indirect proof (72% - B);

Deliberations are the instructions the Judge reads to you as jurors (84% - A, 73% - B);

One of the criteria of fraud is that a party (the Plaintiff) suffers by relying on a false statement of fact from another party (the Defendant) (50% - B);

Incorrect Answer, and "I Didn't Hear it from the Judge, but it Makes Sense":

When incorrect answers are chosen due to research participants not hearing it, but thinking it made sense is another area of concern (answer choice 2). At least 50% of the research participants cited that logic for an incorrect answer to the following items, and this demonstrates that jurors are substituting their own common sense for what the law prescribes.

During your deliberations, you may take an average of damage amounts and use that as your answer (50% - B);

Incorrect Answer, but "I was Guessing":

It is also interesting to note from Table 7-8 that some research participants answered incorrectly and stated they were guessing (answer choice 3). At least 50% of the research participants cited this reason for an incorrect answer to the following items:

Twelve people will be chosen as jurors in this case (50% - B);

Incorrect Answer, and "I Don't Know" Why I Chose It:

It is also interesting to note from Table 7-8 that some research participants answered incorrectly and stated they did not know why they chose that answer (answer choice 4). At least 50% of the research participants cited this reason for an incorrect answer to the following items:

The case presented before you is a civil action and not a criminal action (61% - A);

If a juror breaks the rules, the Judge may have to order a new trial (50% - B);

To be "free from bias and prejudice" means you have not prejudged the case before hearing the evidence (75% - A, 100% - B);

Circumstantial evidence is indirect proof (57% - A);

You cannot have more than one proximate cause (58% - A, 68% - B).

Incorrect Answer, but "I Learned it during Deliberations":

With regards to the Verdict Form Questionnaire, the trailer question included a fifth response option to indicate the basis of their answer to the preceding question. That additional response option was "I learned it during deliberations." As a side note that is of interest, for incorrect answers to the following items, at least 15% of the research participants cited that reason:

In order to be a "proximate cause" for an event, the result does not necessarily have to be foreseeable (27% - B);

One of the criteria of fraud is that a party (the Plaintiff) suffers by relying on a false statement of fact from another party (the Defendant) (29% - A; 17% - B);

One of the criteria of fraud is that a party (the Defendant) makes a false statement with the intention that it should be acted on by another party (the Plaintiff) (22% - A);

In order to find that the Defendant committed fraud, the Plaintiff only has to prove that one of the four criteria of fraud has been met (17% - A, 18% - B).

Preponderance of the Evidence

The data in Table 9 reveals a common sense numerical assignment to "preponderance of the evidence" as defined by the Judge in PJC 1.3. A survey was given to 75 research participants recruited for private Mock Trials in Texas venues between February and May 2006.

The data suggests that 49% of those surveyed assigned a numerical value between 81%-100% of the evidence while only 9% assigned a number between 51%-60% of the evidence.

Also, this question was asked as part of the PJC 1.3/1.8 survey. Only 38% of the research participants answered it correctly (51%-60% was considered correct) in Version A and 54% in Version B. Furthermore, 61% in Version A and 74% in Version B attributed the incorrect answer to hearing it from the Judge.

Lastly, data on the preponderance of the evidence is presented as One-Word Associations in the Data section to this report. The research participants were asked in the focus group session to give a definition as well as a numerical value. Those responses are illustrated in that section.

Jury Confusion Study

The data in Table 10 illustrates the results from the Jury Confusion Study, whereby the research participants were asked to review the Charge to the Court (which included PJC 1.3, 1.8 and the Verdict Form with Jury Instructions), and to highlight the language that was confusing. Both the frequency and percentage are reported.

APPENDIX

- Appendix I – Project A PJC 1.1
- Appendix II – Project B PJC 1.1
- Appendix III – Project A PJC 1.2
- Appendix IV – Project B PJC 1.2
- Appendix V - Project A PJC 1.3/1.8 and Jury Charge
- Appendix VI - Project B PJC 1.3/1.8 Jury Charge
- Appendix VII – PJC 1.1 Questionnaire
- Appendix VIII - PJC 1.2 Questionnaire
- Appendix VIII - PJC 1.3/1.8 Questionnaire
- Appendix X – Verdict Form Comprehension Questionnaire

Appendix I – Project A PJC 1.1

LADIES AND GENTLEMEN OF THE JURY PANEL:

The case that is now on trial is *Paul Payne vs. Don Davis*. This is a civil action which will be tried before a jury. Your duty as jurors will be to decide the disputed facts. It is the duty of the judge to see that the case is tried in accordance with the rules of law. In this case, as in all cases, the actions of the judge, parties, witnesses, attorneys and jurors must be according to law. The Texas law permits proof of any violation of the rules of proper jury conduct. By this I mean that jurors and others may be called upon to testify in open court about acts of jury misconduct. I instruct you, therefore, to follow carefully all instructions which I am now going to give you, as well as others which you will receive while this case is on trial. If you do not obey the instructions I am about to give you, it may become necessary for another jury to re-try this case with all of the attendant waste of your time here and the expense to the litigants and the taxpayers of this county for another trial. These instructions are as follows:

1. Do not mingle with nor talk to the lawyers, the witnesses, the parties, or any other person who might be connected with or interested in this case, except for casual greetings. They have to follow these same instructions and you will understand it when they do.
2. Do not accept from, nor give to, any of those persons any favors however slight, such as rides, food or refreshments.
3. Do not discuss anything about this case, or even mention it to anyone whomsoever, including your wife or husband, nor permit anyone to mention it in your hearing until you are discharged as jurors or excused from this case. If anyone attempts to discuss the case, report it to me at once.
4. The parties through their attorneys have the right to direct questions to each of you concerning your qualifications, background, experiences and attitudes. In questioning you, they are not meddling in your personal affairs, but are trying to select fair and impartial jurors who are free from any bias or prejudice in this particular case.
 - a. Do not conceal information or give answers which are not true. Listen to the questions and give full and complete answers.
 - b. If the attorneys ask some questions directed to you as a group which require an answer on your part individually, hold up your hand until you have answered the questions.

Do you understand these instructions? If not, please let me know now.

Whether you are selected as a juror for this case or not, you are performing a significant service which only free people can perform. We shall try the case as fast as possible consistent with justice, which requires a careful and correct trial. If selected on the jury, unless I instruct you differently, you will be permitted to separate at recesses and for meals, and at night.

The attorneys will now proceed with their examination.

Appendix II – Project B PJC 1.1

Ladies and Gentlemen: We are about to begin selecting a jury. Right now, you are members of what we call a panel. After the lawyers ask you some questions, 12 of you will be chosen for the jury. But before we start asking questions and choosing jurors, I will give you some information and then go over the instructions.

First of all, we thank you for being here. Even if you are not chosen for the jury, you are performing a valuable service that is your right and duty as a citizen of a free country.

Now I will give you some background about this case. This is a civil trial. A civil trial is a lawsuit that is not a criminal case. This means no one has been accused of a crime and no one will be going to jail.

The parties are as follows: The plaintiff is Petris, and the defendant is SPC.

The parties have the right to have their lawyers ask you questions about your background, experiences, and attitudes. They are not trying to meddle in your affairs. They are just being thorough and trying to choose fair jurors who do not have any bias or prejudice about this case.

Jurors sometimes ask what it means when I say we want jurors who do not have any bias or prejudice. The word “prejudice” means judging something before you have all the information. It also means making a decision that ignores facts presented in court and the law that I explain. But we want jurors who will not pre-judge the case and who will decide the case based only on the evidence presented in court and the law that I explain.

If you are chosen for the jury, you will listen to the evidence and decide the facts of the case. I, as the judge, will manage the process and make sure the law is applied correctly. I assure you we will handle this case as fast as we can, but we cannot rush things. We have to do it fairly and we have to follow the law.

Everyone must obey the instructions that I am about to give you: the lawyers, the witnesses, the jurors, and the parties.

If you do not follow these instructions, I may have to order a new trial and start this process over again. That would be a waste of time and money, so please listen carefully to these instructions.

These are the instructions:

1. Remember that you took an oath that you will tell the truth, so be honest when the lawyers ask you questions, and always give complete answers. Sometimes a lawyer will ask a question of the whole panel instead of just one person. If the question applies to you, raise your hand and keep it raised until you are called on.
2. Do not mingle or talk with the lawyers, the witnesses, the parties, or anyone involved in the case. You can exchange casual greetings like “hello” and “good morning.” Other than that, do not talk with them at all. They have to follow these instructions too, so they will not be offended. Also, do not accept any favors from the lawyers, the witnesses, the parties, or anyone involved in the case, and do not do any favors for them. This includes favors such as giving rides and food. We ask you not to mingle or accept favors to avoid looking like you are friendly with one side of the case.

3. Do not discuss this case with anyone, even your spouse or friend. Do not allow anyone to discuss the case with you or in front of you. If anyone tries to discuss the case with you, tell me. We ask you not to discuss the case with others because we do not want you to be influenced by something other than the evidence presented in court.

Do you understand these instructions? If you do not, please tell me now.

The lawyers will now begin asking questions.

Appendix III – Project A PJC 1.2

LADIES AND GENTLEMEN:

By the oath which you take as jurors, you become officials of this court and active participants in the public administration of justice. I now give you further instructions which you must obey throughout this trial.

It is your duty to listen to and consider the evidence and to determine fact issues later submitted to you, but I, as judge, will decide matters of the law. You will now receive written instructions which you will observe during this trial, together with such other instructions as I may hereafter give, or as heretofore I have given to you.

[A copy of the written instructions set out below shall thereupon be handed to each juror.]

As you examine the instructions which have just been handed to you, we will go over them briefly together. The first three instructions have previously been stated, and you will continue to observe them throughout the trial. These and the other instructions just handed to you are as follows:

[The written instructions set out below shall thereupon be read by the court to the jury.]

Counsel, you may proceed.

[Written Instructions]

1. Do not mingle with nor talk to the lawyers, the witnesses, the parties, or any other person who might be connected with or interested in this case, except for casual greetings. They have to follow these same instructions and you will understand it when they do.
2. Do not accept from, nor give to, any of those persons any favors however slight, such as rides, food or refreshments.
3. Do not discuss anything about this case, or even mention it to anyone whomsoever, including your wife or husband nor permit anyone to mention it in your hearing until you are discharged as jurors or excused from this case. If anyone attempts to discuss the case, report it to me at once.
4. Do not even discuss this case among yourselves until after you have heard all of the evidence, the court's charge, the attorneys' arguments and until I have sent you to the jury room to consider your verdict.
5. Do not make any investigation about the facts of this case. Occasionally we have a juror who privately seeks out information about a case on trial. This is improper. All evidence must be presented in open court so that each side may question the witnesses and make proper objection. This avoids a trial based upon secret evidence. These rules apply to jurors the same as they apply to the parties and to me. If you know of, or learn anything about, this case except from the evidence admitted during the course of this trial, you should tell me about it at once. You have just taken an oath that you will render a verdict on the evidence submitted to you under my rulings.
6. Do not make personal inspections, observations, investigations, or experiments nor personally view premises, things or articles not produced in court. Do not let anyone else do any of these things for you.

7. Do not tell other jurors your own personal experiences nor those of other persons, nor relate any special information. A juror may have special knowledge of matters such as business, technical or professional matters or he may have expert knowledge or opinions, or he may know what happened in this or some other lawsuit. To tell the other jurors any of this information is a violation of these instructions.

8. Do not discuss or consider attorney's fees unless evidence about attorney's fees is admitted.

9. Do not consider, discuss, nor speculate whether or not any party is or is not protected in whole or in part by insurance of any kind.

10. Do not seek information contained in law books, dictionaries, public or private records or elsewhere, which is not admitted in evidence.

At the conclusion of all the evidence, I may submit to you a written charge asking you some specific questions. You will not be asked, and you should not consider, whether one party or the other should win. Since you will need to consider all of the evidence admitted by me, it is important that you pay close attention to the evidence as it is presented.

The Texas law permits proof of any violation of the rules of proper jury conduct. By this I mean that jurors and others may be called upon to testify in open court about acts of jury misconduct. I instruct you, therefore, to follow carefully all instructions which I have given you, as well as others which you later receive while this case is on trial.

You may keep these instructions and review them as the case proceeds. A violation of these instructions should be reported to me.

Appendix IV – Project B PJC 1.2

Ladies and Gentlemen: You have now been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system.

What you are receiving is a set of written instructions, and I am going to discuss them with you now. Some of them you have heard before, and some are new.

1. Please remember what I said about not mingling with those involved in this case, not accepting favors from those involved with this case, and not discussing the case with anyone.
2. Please discuss this case only with other jurors and only after I have given you the final instructions and sent you to the jury room to reach a verdict. This will be after you have heard all the evidence, all my instructions, and all the lawyers' arguments.
3. Do not investigate this case on your own. Do not view or inspect places or items from this case unless they are presented as evidence in court. Do not let anyone do those things for you. This rule is very important because we cannot have a trial based on evidence not presented in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom. All the evidence must be presented in open court so the parties and their lawyers can test it and object to it. For example:
 - Sometimes we have jurors who go on their own and try to get information about a case from outside this courtroom.
 - Sometimes we have jurors who go to places mentioned in the case to see the places for themselves.
 - And sometimes we have jurors who go look things up in law books, dictionaries, public records, or on the Internet.

Please do not do any of these. Consider only the evidence presented in this courtroom.

4. Do not tell other jurors your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another case. But keep it to yourself. Telling other jurors about it is wrong because it means the jury will be considering things that were not presented in court.
5. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.
6. Do not consider insurance or who might be covered by insurance unless I tell you to. Do not guess about who might or might not be covered by insurance.

Do you understand these instructions? If you do not, please tell me now.

After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions will have questions for you to answer. You will not be asked which side should win, so do not answer that question. Instead, you will need to answer the specific questions I give you.

As I have said before, if you do not follow these instructions, I may have to order a new trial and start this process over again.

Appendix V – Project A PJC 1.3/1.8 Jury Charge

Petris	§	IN THE DISTRICT COURT OF
	§	
VS.	§	TEXAS
	§	
SPC	§	
	§	JUDICIAL DISTRICT

CHARGE OF THE COURT

Members of the Jury:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice, or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by this charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.
5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.
6. You may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire

jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

These instructions are given to you because your conduct is subject to review the same as that of the witnesses, parties, attorneys, and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in this case. Whenever a question requires other than a "Yes" or "No" answer, your answer must be based on a preponderance of the evidence.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to oversee the review of the Court's charge, and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror--

1. to preside during your deliberations;
2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge;
3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge;
4. to vote on the questions;
5. to write your answers to the questions in the spaces provided; and
6. to certify to your verdict in the space provided for the presiding juror's signature, or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform me of this fact.

When you have answered all the questions you are required to answer under the instructions of the Court, and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into the courtroom with your verdict.

District Judge

QUESTION #1

Did SPC fail to comply with the agreement between Petris Technology, Inc. and SPC?

Answer: _____

If your answer to Question #1 is "Yes," then answer the following question. Otherwise, do not answer the following question.

QUESTION #2

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that resulted from such failure to comply?

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of the instructions in or your answers to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any, that—

were sustained in the past;

Answer: _____

in reasonable probability will
be sustained in the future.

Answer: _____

QUESTION #3

Did a "joint venture" exist between SPC and Pettris?

Answer: _____

Definitions/Instructions: A "joint venture" is an association of two or more persons to carry on a business for profit. A joint venture must be based on an agreement that has all the following elements:

1. a community of interest in the venture,
2. an agreement to share profits,
3. an express agreement to share losses, and
4. a mutual right of control or management of the venture.

If you answered "Yes" to Question #3, then answer Questions #4. If you answered "No" to Question #3 then skip to Question #6.

QUESTION #4

Did SPC comply with its fiduciary duty to Petris Technology, Inc.?

Because they were joint venturers, SPC owed Petris Technology, Inc. a fiduciary duty. To prove SPC complied with its duty, SPC must show:

- a. The transaction in question was fair and equitable to Petris;
- b. SPC made reasonable use of the confidence that Petris placed in it;
- c. SPC acted in the utmost good faith and exercised the most scrupulous honesty toward Petris;
- d. SPC placed the interests of Petris before its own, did not use the advantage of its position to gain any benefit for itself at the expense of Petris, and did not place itself in any position where its self-interest might conflict with its obligations as a fiduciary; and
- e. SPC fully and fairly disclosed all important information to Petris concerning the transaction.

Answer: _____

If your answer to Question #4 is "No," then answer the following question. Otherwise, do not answer the following question.

QUESTION #5

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that were proximately caused by such conduct?

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Do not add any amount for interest on damages, if any.

Answer: \$ _____

QUESTION #6

Did SPC commit fraud against Petris Technology, Inc.?

Fraud occurs when—

- a. a party makes a material misrepresentation,
- b. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion,
- c. the misrepresentation is made with the intention that it should be acted on by the other party, and
- d. the other party relies on the misrepresentation and thereby suffers injury.

“Misrepresentation” means a false statement of fact or a promise of future performance made with an intent, at the time the promise was made, not to perform as promised.

Answer: _____

If your answer to Question #6 is "Yes," then answer the following question. Otherwise, do not answer the following question.

QUESTION #7

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that resulted from such fraud?

Answer: \$ _____

QUESTION #8

Did SPC make a negligent misrepresentation on which Petris Technology, Inc. justifiably relied?

Negligent misrepresentation occurs when—

- a. a party makes a representation in the course of his business or in a transaction in which he has a pecuniary interest,
- b. the representation supplies false information for the guidance of others in their business, and
- c. the party making the representation did not exercise reasonable care or competence in obtaining or communicating the information

Answer: _____

If your answer to Question #8 is "Yes," then answer the following question. Otherwise, do not answer the following question.

QUESTION #9

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that were proximately caused by such negligent misrepresentation?

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Answer: \$ _____

Do not add any amount for interest on past damages, if any.

Certificate as to Questions 1-9

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the presiding juror if unanimous.)

Juror Presiding

(To be signed by those rendering the verdict if not unanimous.)

SIGNATURE

NAME PRINTED

1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

If you answered Question 6 "YES" and were unanimous in that answer, then answer Question 10. Otherwise, do not answer Question 10.

QUESTION #10

What sum of money, if any, if paid now in cash, should be assessed against SPC and awarded to Petris Technology, Inc. as exemplary damages if any.

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

- a. The nature of the wrong.
- b. The character of the conduct involved.
- c. The degree of culpability of SPC.
- d. The situation and sensibilities of the parties concerned.
- e. The extent to which such conduct offends a public sense of justice and propriety.
- f. The net worth of SPC.

Answer in dollars and cents, if any.

Answer: _____

Certificate as to Questions 6 and 10

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

I certify that this jury was unanimous in answering Question 6 and 10

Juror Presiding

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win.
8. Do not answer questions by drawing straws or by any method of chance.
9. Some questions might ask you for a dollar amount. Do not decide on a dollar amount by adding up each juror's amount and then figuring the average.
10. Do not trade your answers. For example, do not say "I will answer this question your way if you answer another question my way."
11. The answers to the questions must be based on the decision of at least 10 of the 12 jurors unless otherwise instructed. The same 10 jurors must agree on all the answers and then to the entire verdict. Specifically—
 - Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.
 - If all 12 jurors agree, the presiding juror, or the elected foreperson, signs the verdict certificate for the entire jury.
 - If all 12 jurors do not agree, the 10 or more jurors who agree each sign the verdict certificate.

During this trial, you may have heard two kinds of evidence. They are direct evidence and indirect evidence.

Direct evidence means a fact was proved by a document, by an item, or by testimony from a witness who heard or saw the fact directly.

Indirect evidence means the circumstances reasonably suggest the fact. Indirect evidence means that based on the evidence, you can conclude the fact is true. Indirect evidence is also called "circumstantial evidence."

For example, suppose a witness was outside and saw that it was raining. The witness could testify that it was raining, and this would be direct evidence. Now suppose the witness was inside a building, but the witness saw people walking into the building with wet umbrellas. The witness could testify that it was raining outside, and this would be indirect evidence.

A fact may be proved by direct evidence or by indirect evidence or by both.

Do you understand these instructions? If you do not, please tell me now.

When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror, to act as the foreperson of the jury.

The presiding juror has these duties:

- To preside over your deliberations. This means the presiding juror will take the lead in discussions, write down the answers that 10 or more of you agree on, and see that you follow the instructions.
- To give written questions or comments to the judge. The presiding juror should give them to the bailiff, who will give them to me.
- To vote on the answers to questions, just as all jurors do.
- To sign the verdict if all 12 jurors agree or to get the signatures of all those who agree if the verdict is not by all 12.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Once you have reached a verdict, the presiding juror should notify the bailiff. Do not notify the bailiff that you have reached a verdict until—

1. you have answered all the questions,
2. the presiding juror has written down the answers, and
3. the presiding juror has signed the verdict certificate if all 12 jurors agree, or had all those who agree sign the verdict certificate if it is not by all 12.

QUESTION #1

Did SPC fail to comply with the agreement between Petris Technology, Inc. and SPC?

Answer: _____

If your answer to Question #1 is "Yes," then answer the following question. Otherwise, do not answer the following question.

QUESTION #2

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that resulted from the failure to comply?

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of the instructions in or your answers to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any, that—

were sustained in the past;

Answer: _____

in reasonable probability will
be sustained in the future.

Answer: _____

QUESTION #3

Did a "joint venture" exist between SPC and Petris?

Answer: _____

Definitions/Instructions: A "joint venture" is an association of two or more people or businesses to carry on a business for profit. A joint venture must be based on an agreement, and the agreement must have all these elements:

1. a common interest in the venture, and
2. an agreement to share profits, and
3. an express agreement to share losses, and
4. a mutual right of control or management of the venture.

If you answered "Yes" to Question #3, then answer Questions #4. If you answered "No" to Question #3 then skip to Question #6.

QUESTION #4

Did SPC comply with its fiduciary duty to Petris Technology, Inc.?

Because they were joint venturers, SPC owed Petris a fiduciary duty. To prove SPC complied with its duty, SPC must prove all of these elements:

- a. The transaction was fair to Petris; and
- b. SPC made reasonable use of the confidence that Petris placed in it; and
- c. SPC acted in the utmost good faith and exercised the most scrupulous honesty toward Petris; and
- d. SPC placed the interests of Petris before its own interests, did not use the advantage of its position to gain any benefit for itself at the expense of Petris, and did not place itself in any position where its self-interest might conflict with its obligations to Petris; and
- e. SPC fully and fairly disclosed all important information to Petris concerning the transaction.

Answer: _____

If your answer to Question #4 is "No," then answer the following question. Otherwise, do not answer the following question.

QUESTION #5

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that were proximately caused by the conduct?

"Proximate cause" means an act or an omission (a failure to act) that, in a natural and continuous sequence, produces a result. Without that cause, the result would not have occurred. To be a proximate cause, the act or omission must be something that a person using the required degree of care would have reasonably foreseen could cause the result or something similar. There may be more than one proximate cause for a result.

Do not add any amount for interest on damages, if any.

Answer: _____

QUESTION #6

Did SPC commit fraud against Petris Technology, Inc.?

Fraud occurs when all of these elements are present—

- a. a party makes a material misrepresentation (“Misrepresentation” means a false statement of fact or a promise of future performance made with an intent, at the time the promise was made, not to perform as promised), and
- b. the party makes the misrepresentation as a positive assertion knowing it is false or makes the representation recklessly without knowing if it is true or false, and
- c. the party makes the misrepresentation and intends that the other party should act on it, and
- d. the other party relies on the misrepresentation and suffers injury from relying on it.

Answer: _____

If your answer to Question #6 is "Yes," then answer the following question. Otherwise, do not answer the following question.

QUESTION #7

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that resulted from the fraud?

Answer: _____

QUESTION #8

Did SPC make a negligent misrepresentation on which Petris Technology, Inc. justifiably relied?

Negligent misrepresentation occurs when all of these elements are present:

- a. a party makes a representation in the course of its business or in a transaction in which it has a monetary interest, and
- b. the party makes a representation that uses false information for guiding others in their businesses, and
- c. the party making the representation did not exercise reasonable care or competence in obtaining or communicating the information.

Answer: _____

If your answer to Question #8 is "Yes," then answer the following question. Otherwise, do not answer the following question.

QUESTION #9

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that were proximately caused by the negligent misrepresentation?

"Proximate cause" means an act or an omission (a failure to act) that, in a natural and continuous sequence, produces a result. Without that cause, the result would not have occurred. To be a proximate cause, the act or omission must be something that a person using the required degree of care would have reasonably foreseen could cause the result or something similar. There may be more than one proximate cause for a result.

Answer: _____

Do not add any amount for interest on past damages, if any.

Certificate as to Questions 1-9

We, the jury, have answered these questions as indicated, and now return them into court as our verdict.

(To be signed by the presiding juror if agreed by all 12 jurors)

Juror Presiding

(To be signed by those rendering the verdict if not by all 12)

SIGNATURE

NAME PRINTED

1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

If all 12 jurors answered Question 6 "Yes", then answer Question 10. Otherwise do not answer Question 10.

QUESTION #10

What sum of money, if any, if paid now in cash, should be assessed against SPC and awarded to Petris Technology, Inc. as punitive damages, if any, for the conduct found in response to Question #6?

"Punitive damages" are money you may, in your discretion, give as a penalty or punishment.

In deciding whether you will award punitive damages, think about any or all of these things:

- a. The nature of the wrong.
- b. The character of the conduct involved.
- c. The degree of blame of SPC.
- d. The situation and sensibilities of the parties concerned.
- e. The extent to which the conduct offends a sense of justice and propriety.
- f. The net worth of SPC.

Answer in dollars and cents, if any.

Answer: _____

Certificate as to Questions 6 and 10

We, the jury, have answered these questions as indicated, and now return them into court as our verdict.

I certify that all 12 jurors answered Question 6 and 10 "Yes."

Juror Presiding

Appendix VII – PJC 1.1 Questionnaire

PJC 1.1 Questionnaire

Instructions

Please complete this questionnaire on the green and white scantron sheet provided. Use a #2 pencil and mark as darkly and as legibly as you can. Select one response for each question.

Please rate the following criteria using the “1” to “6” scale provided with “1” being the lowest rating and “6” being the highest rating.

	Not at all			Very much		
1. Understandable	1	2	3	4	5	6
2. Clear	1	2	3	4	5	6
3. Easy to follow	1	2	3	4	5	6
4. Simple	1	2	3	4	5	6
5. Makes Sense	1	2	3	4	5	6
6. Necessary	1	2	3	4	5	6
7. Informative	1	2	3	4	5	6
8. Direct	1	2	3	4	5	6

9. The case presented before you is a civil action and not a criminal action.

(1)True (2)False (3)Don't Know

10. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

11. Twelve people will be chosen as jurors in this case.

(1)True (2)False (3)Don't Know

12. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

13. If a juror breaks the rules, the Judge may have to order a new trial.

- (1)True (2)False (3)Don't Know

14. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

15. As a juror, you are allowed to withhold information from the attorneys during jury selection.

- (1)True (2)False (3)Don't Know

16. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

17. As a juror, you are not allowed to mingle with the lawyers, the witness, the parties, or anyone involved in the case.

- (1)True (2)False (3)Don't Know

18. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

19. As a juror, you may say "hello" to the lawyers, witnesses, parties and others involved in the case.

- (1) True (2) False (3) Don't Know

20. I chose that answer because:

- (1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

21. You are allowed to discuss this case with your spouse.

- (1) True (2) False (3) Don't Know

22. I chose that answer because:

- (1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

23. To be impartial means to be open and honest.

- (1) True (2) False (3) Don't Know

24. I chose that answer because:

- (1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

25. To be "free from bias and prejudice" means you have not prejudged the case before hearing the evidence.

- (1) True (2) False (3) Don't Know

26. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

Appendix VIII – PJC 1.2 Questionnaire

PJC 1.2 Questionnaire

Instructions

Please complete this questionnaire on the green and white scantron sheet provided. Use a #2 pencil and mark as darkly and as legibly as you can. Select one response for each question.

Please rate the following criteria using the “1” to “6” scale provided with “1” being the lowest rating and “6” being the highest rating.

	Not at all				Very much	
1. Understandable	1	2	3	4	5	6
2. Clear	1	2	3	4	5	6
3. Easy to follow	1	2	3	4	5	6
4. Simple	1	2	3	4	5	6
5. Makes Sense	1	2	3	4	5	6
6. Necessary	1	2	3	4	5	6
7. Informative	1	2	3	4	5	6
8. Direct	1	2	3	4	5	6

9. As a juror, you are allowed to investigate the case on your own (i.e. internet searches).

(1) True (2) False (3) Don't Know

10. I chose that answer because:

- (5) I heard the Judge read it
- (6) I didn't hear the Judge read it, but it makes sense
- (7) I'm guessing
- (8) I don't know

11. As a juror, you can discuss the case with each other while on breaks.

- (1) True (2) False (3) Don't Know

12. I chose that answer because:

- (1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

13. As a juror, you should consider attorney's fees when awarding damages.

- (1) True (2) False (3) Don't Know

14. I chose that answer because:

- (1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

15. As a juror, you should not consider insurance when awarding damages.

- (1) True (2) False (3) Don't Know

16. I chose that answer because:

- (1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

17. As a juror, your role is to decide which side should win.

- (1) True (2) False (3) Don't Know

18. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

19. As a juror, your conclusions on the case can only be based on what is presented during the trial.

- (1)True (2)False (3)Don't Know

20. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

21. Secret evidence is evidence found by private investigation by a juror.

- (1)True (2)False (3)Don't Know

22. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

Appendix VIII – PJC 1.3/1.8 Questionnaire

PJC 1.3/1.8 Questionnaire Instructions

Please complete this questionnaire on the green and white scantron sheet provided. Use a #2 pencil and mark as darkly and as legibly as you can. Select one response for each question.

Please rate the following criteria using the “1” to “6” scale provided with “1” being the lowest rating and “6” being the highest rating.

	Not at all			Very much		
1. Understandable	1	2	3	4	5	6
2. Clear	1	2	3	4	5	6
3. Easy to follow	1	2	3	4	5	6
4. Simple	1	2	3	4	5	6
5. Makes Sense	1	2	3	4	5	6
6. Necessary	1	2	3	4	5	6
7. Informative	1	2	3	4	5	6
8. Direct	1	2	3	4	5	6

9. As a juror, you can't let sympathy influence you verdict.

(1) True (2) False (3) Don't Know

10. I chose that answer because:

- (9) I heard the Judge read it
- (10) I didn't hear the Judge read it, but it makes sense
- (11) I'm guessing
- (12) I don't know

11. During your deliberations, you may take an average of damage amounts and use that as your answers.

- (1)True (2)False (3)Don't Know

12. I chose that answer because:

- (1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

13. As jurors, you must be unanimous in all your answers.

- (1)True (2)False (3)Don't Know

14. I chose that answer because:

- (1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

15. As jurors, you may trade answers and exchange votes.

- (1)True (2)False (3)Don't Know

16. I chose that answer because:

- (1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

17. The presiding juror has the final say in the verdict.

- (1)True (2)False (3)Don't Know

18. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

19. You cannot use circumstantial evidence in deciding your verdict.

- (1) True
- (2) False
- (3) Don't Know

20. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

21. Preponderance of the evidence means beyond a shadow of a doubt.

- (1) True
- (2) False
- (3) Don't Know

22. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

23. Circumstantial evidence is indirect proof.

- (1) True
- (2) False
- (3) Don't Know

24. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

25. Deliberations are the instructions the Judge reads to you as jurors.

- (1) True (2) False (3) Don't Know

26. I chose that answer because:

- (1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

27. "Preponderance of the evidence" is equal to _____ % of the evidence.

- (1) 50-60% (2) 61-82% (3) 81-100%

28. I chose that answer because:

- (1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

Appendix X – Verdict Form Comprehension Questionnaire

Verdict Form Comprehension Questionnaire Instructions

Please complete this questionnaire on the green and white scantron sheet provided. Use a #2 pencil and mark as darkly and as legibly as you can. Select one response for each question.

Please rate the following criteria using the “1” to “6” scale provided with “1” being the lowest rating and “6” being the highest rating.

	Not at all			Very much		
1. Understandable	1	2	3	4	5	6
2. Clear	1	2	3	4	5	6
3. Easy to follow	1	2	3	4	5	6
4. Simple	1	2	3	4	5	6
5. Makes Sense	1	2	3	4	5	6
6. Necessary	1	2	3	4	5	6
7. Informative	1	2	3	4	5	6
8. Direct	1	2	3	4	5	6

9. How well do you feel you understood the jury instructions that the judge gave you?

- (1) Not at all.
- (2) Not very well.
- (3) Pretty well.
- (4) Completely.

10. During your deliberations, how helpful were the jury instructions the judge gave you?

- (1) Not at all helpful.
- (2) A little helpful.
- (3) Fairly helpful.
- (4) Very helpful.

11. Did your jury spend any time during its deliberations discussing any of the instructions that the judge gave you?

(1) Yes

(2) No

If your jury didn't spend much time discussing the instructions, was this because:

12. The judge's reading of the instructions was so clear that we didn't need to discuss them.

(1) Yes

(2) No

13. The instructions were too long.

(1) Yes

(2) No

14. The instructions were too difficult to understand.

(1) Yes

(2) No

15. We didn't know how to use the instructions to help to reach a verdict.

(1) Yes

(2) No

16. You didn't need instructions to decide a case like this.

(1) Yes

(2) No

17. In a civil trial, the jury has to be convinced beyond a reasonable doubt that the plaintiff's claims are correct -- if the jury does not think that the plaintiff has proved every element of his or her case beyond a reasonable doubt, the jury should find for the defendant.

(1) True

(2) False

(3) Don't Know

18. I chose that answer because:

(5) I heard the Judge read it

(6) I didn't hear the Judge read it, but it makes sense

(7) I'm guessing

(8) I don't know

19. In order to be a proximate cause for an event, the result does not necessarily have to be foreseeable.

(1) True

(2) False

(3) Don't Know

20. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

21. Fraud can occur when a party (the Plaintiff) suffers by relying on a false statement of fact from another party (the Defendant).

- (1) True (2) False (3) Don't Know

22. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

23. Proximate cause means the Plaintiff was injured as a result of the Defendant's act or omission.

- (1) True (2) False (3) Don't Know

24. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense.
- (3) I'm guessing
- (4) I don't know

25. Fraud can occur when a party (the Defendant) makes a false statement with the intention that it should be acted on by another party (the Plaintiff).

- (1) True (2) False (3) Don't Know

26. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

27. You cannot have more than one proximate cause.

- (1) True
- (2) False
- (3) Don't Know

28. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know

29. In order for the jury to find that the Defendant committed fraud, the Plaintiff only has to prove that one of the four criteria of fraud has been met.

- (1) True
- (2) False
- (3) Don't Know

30. I chose that answer because:

- (1) I heard the Judge read it
- (2) I didn't hear the Judge read it, but it makes sense
- (3) I'm guessing
- (4) I don't know