DOES THE WAY WE COMMUNICATE THE ORDINARY CARE STANDARD TO JURORS IN NEGLIGENCE CASES REALLY AFFECT THEIR DECISIONS? A CALL FOR ADDITIONAL EMPIRICAL RESEARCH INTO THE EFFECT OF SCHEMAS ON JUROR DECISION MAKING

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I. INTRODUCTION

Being sued for negligence is a major concern for businesses today, particularly small businesses. In 2020, the U.S. Chamber Institute for Legal Reform estimated the cost of commercial tort liability in the United States at approximately $343 billion.[1] Slightly over half of that amount is incurred by businesses reporting less than $10 million in annual revenue.[2] The smallest of small businesses—those reporting annual revenues of less than $1 million—bear even more of the impact of commercial tort liability, collectively absorbing 39% of the burden.[3]

Regardless of the ultimate outcome of a negligence case, the process is plagued with risks and expenses including the opportunity costs incurred while embroiled in lengthy litigation, negative publicity and damage to business reputation and goodwill, reduced employee morale, and many others. Insurance can mitigate some of these costs, but the litigants pay a price nonetheless. And, as the figures above indicate, that price can be staggering.

There are countless approaches to managing litigation costs, risks, and processes, but one aspect of the litigation management calculus that is easy to overlook, at least in the context of negligence claims, is this: Can a business be confident that a jury will comprehend and properly apply negligence concepts in a trial?

In an earlier paper, Judd Leach and Kyle Post suggested that providing more explicit and clear jury instructions would assist jurors in properly applying the law of negligence.[4] The results of our research in the present paper caution against putting too much faith in the average jury's ability to do so. Our research provides empirical support for the assertion that jurors are either unable or unwilling to properly analyze negligence cases. While the subject matter used to test

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[1] U.S. CHAMBER INST. FOR LEGAL REFORM, TORT LIABILITY COSTS FOR SMALL BUSINESSES 12 (2020).
[2] *Id.*at 12-13.
[3] *Id*.
[4] Judd L. Leach & Kyle C. Post, *Guns Are Dangerous, But Don't Tell the Jury: An Argument for "Enhanced" Language Jury Instructions in Firearm Negligence Cases*, XXVIII S. L.J., 117 (2018).

this theory is unconventional for a business article, the results of the study are relevant to any businessperson or lawyer whose job is to determine how best to proceed with a pending negligence case.

II. NEGLIGENCE

Negligence is a tort defined as "the failure to exercise the standard of care that a reasonably prudent person would have exercised in the same situation."[5] In turn, the standard of care expected of the reasonably prudent person is "ordinary care" under the circumstances in which she finds herself.[6] When a person fails to act with ordinary care and her behavior causes an injury to another, she is negligent and is liable for the resulting damages.[7]

In a jury trial, jurors are tasked with deciding questions of fact relevant to the case.[8] Jurors play that same role in negligence cases, too, but they don't stop there; in addition to deciding questions of fact, they must determine qualitatively whether a defendant has acted with ordinary care based on those facts.[9] While this may sound simple enough, it actually requires quite a bit of mental agility. Determining whether a person has acted with ordinary care under the circumstances in which he has found himself is not a binary proposition, but is instead circumstantial and elastic.[10] A person's behavior under one set of circumstances might be perfectly reasonable, while identical behavior under a different set of circumstances is not.[11] Deciding whether a person's behavior satisfies the standard of ordinary care requires jurors to consider on a case-by-case basis whether the quantum of care exercised by the defendant was commensurate with the risk of harm associated with the defendant's behavior under the circumstances.[12] Figure 1 depicts this relationship.

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[5] BLACK'S LAW DICTIONARY 1191 (11th ed. 2019).

[6] RESTATEMENT (SECOND) OF TORTS § 283 (1979); *see also* Prather v. Brandt, 981 S.W.2d 801, 810-11 (Tex.App. 1998); Duran v. City of Maywood, 221 F.3d 1127 (9th Cir. 2001), Souleyrette v. Conaway, 8 F.Supp.2d 554 (W.D. Virginia 1998), Martin v. Central Ohio Transit Auth., 70 Ohio App.3d 83 (Ohio Ct. App. 10th Dist., 1990), Hendricks v. Broderick, 284 N.W.2d 209 (Iowa 1979), Edgar v. Brandvold, 515 P.2d 991 (Wash. App. 1973), Pundt v. McNeill, 500 S.W.2d 559 (Tex. App.—Corpus Christi 1973), Jones v. Redford, 449 P.2d 890 (Okla. 1969), Underwood v. U.S., 356 F.2d 92 (5th Cir. 1966), Mehall v. Baggett, 231 F.Supp. 462 (W.D. Ark. 1964), Tucker v. Lombardo, 47 Cal.2d 457 (Cal. 1956), Goodrich v. Morgan, 40 Tenn.App. 342 (Tenn. Ct. App. 1956).

[7] RESTATEMENT (SECOND) OF TORTS § 281 (1979).

[8] *See* Patrick J. Kelley & Laurel A. Wendt, *What Judges Tell Juries about Negligence: A Review of Pattern Jury Instructions*, 77 CHI.-KENT L. REV. 587, 595-97 (2002).

[9] *See id.* at 590

[10] *See* Wendell v. Central Power & Light Co., 677 S.W.2d 610, 620 (Tex. App. 1984) (meaning of ordinary care is elastic); Anderson v. Mkt. St. Developers, Ltd., 944 S.W.2d 776, 779 n. 1 (Tex. App. 1997) (ordinary care is elastic enough to meet all emergencies, and amount of care varies depending on circumstances).

[11] W. Tex. Utils. v. Renner, 53 S.W.2d 451, 453, 454 (Tex. Comm'n App.1932) ("[T]he meaning of the common-law rule of ordinary care is elastic enough to meet all emergencies; the amount of care depends upon the exigency confronted. It may require one thing to be done at one place, and something else at another place; the degree of care must be such as a person of ordinary prudence would exercise under like circumstances.").

[12] Hendricks v. Broderick, 284 N.W.2d 209, 214 (Iowa 1979) ("[In] common-law negligence…the jury must not only find the objective facts as to conduct but must also decide whether that conduct amounts to want of ordinary care."); Edgar v. Brandvold, 515 P.2d 991, 994 (Wash. Ct. App. 1973) (The reasonable care standard "allows the fact finder to determine that some factual circumstances reasonably require greater or lesser diligence than do other circumstances….").

Figure 1
Graphic Representation of the Risk of Harm—Quantum of Care Relationship

Jurors do not make these determinations unassisted. The court instructs jurors on the applicable legal standard for the case.[13] Jury instructions are sometimes crafted by the lawyers in the case, subject to the judge's approval.[14] More commonly, however, the form a jury instruction takes is dictated by pattern instructions mandated by statute or promulgated by a state bar association or a commission created for that purpose.[15]

In 2018, Judd Leach and Kyle Post examined the different ways courts nationwide instruct juries on the "ordinary care" standard in firearm negligence cases.[16] The authors categorized and ranked these instructions based upon the following criteria: First, did the instruction explicitly address the correlation between the risk of harm associated with firearms and the quantum of care necessary to reduce that risk? Second, did the instruction provide explicitly that firearms are dangerous instrumentalities?[17] Leach and Post identified three categories of instructions based on these criteria.[18]

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[13] Deutscher Tennis Bund v ATP Tour, Inc., 610 F.3d 820, 833 (3rd Cir. 2010); *see, also* Kelly & Wendt, *supra* note 8, at 587-88.
[14] Nancy S. Marder, *Bringing Jury Instructions Into the Twenty-First Century*, 81 Notre Dame L. Rev. 449, 458-59 (2006).
[15] *See e.g.* Pattern Jury Instructions (Civil Cases) Prepared by the Committee on Civil Pattern Jury Instructions, District Judges Association, Fifth Circuit (2020). *See also* Peter Meijes Tiersma, *Reforming the Language of Jury Instructions*, 22 HOFSTRA L. REV., 38, 59-60 (1993).
[16] Leach & Post, *supra* note 4.
[17] *Id.* at 121.
[18] *Id.* at 121-24.

The first category was what Leach and Post called "traditional" instructions.[19] Traditional instructions on ordinary care are the most common type of instruction in negligence cases.[20] A common example of a traditional instruction reads: "'Ordinary care' means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances."[21] Traditional instructions address neither of the criteria Leach and Post identified.

Leach and Post called the second category "embellished" instructions.[22] The following pattern instruction from Utah exemplifies this category:

> The amount of care that is considered "reasonable" depends on the situation. Some situations require more caution because a person of ordinary prudence would understand that more danger is involved. In other situations, less care is expected, such as when the risk of danger is lower or when the situation happens so suddenly that a person of ordinary prudence would not appreciate the danger.[23]

While embellished instructions do a better job of addressing the risk of harm/quantum of care correlation criterion than traditional instructions, they are equally silent with respect to acknowledging that firearms are dangerous instrumentalities.

Leach and Post called the final category "enhanced" instructions.[24] These instructions addressed both of the criteria the authors identified in their paper and remedied what they considered to be deficiencies present in the other categories of instructions. Consider the following example of an enhanced instruction used in a Pennsylvania court:

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[19] *Id.* at 122.

[20] Kelly & Wendt, *supra* note 8, at 595-97; *see also* Underwood v. United States, 356 F.2d 92, 99 (5th Cir. 1966) ("The law generally as to the handling of firearms requires reasonable or ordinary care, or a degree of care commensurate with the danger."); Duran v. City of Maywood, 221 F.3d 1127, 1132 (9th Cir. 2000) ("The standard of care for an individual handling a firearm is the same as it is for other negligence actions—ordinary care under the circumstances.") (internal quotations omitted); Harden v. U.S., 485 F.Supp. 380, 389 (S.D. Ga. 1980) ("In Georgia, negligence is defined generally as the absence of the exercise of ordinary diligence."); Mikula v. Duliba, 94 A.D.2d 503, 506 (NY 1983) (holding that the appropriate standard of care in a hunting negligence case is "that degree of care which a reasonable man of ordinary prudence would exercise under the circumstances, commensurate with the apparent risk involved."); Hendricks v. Broderick, 284 N.W.2d 209, 214 (Iowa 1979) ("The standard [in negligence cases] is always the care which an ordinarily prudent person would use under the circumstances."); Martin v. Central Ohio Transit Auth., 590 N.E.2d 411, 418 (Ohio Ct. App. 1965) ("[T]he degree of care required in the lawful handling of firearms is ordinary care commensurate with the gravity of the danger."); Jones v. Redford, 449 P.2d 890, 894 (Okla. 1969) ("[T]he law imposes upon persons handling dangerous instruments, or deadly weapons, the duty of exercising ordinary care, or such care as an ordinarily prudent and cautions person would exercise under similar circumstances."); Pundt v. McNeill, 500 S.W.2d 559, 563 (Tex. App. 1973) ("Reasonable or ordinary care commensurate with the danger is required in the handling or use of firearms."); Souleyrette v. Conaway, 8 F.Supp.2d 554, 558 (W.D. Va. 1998) ("[O]rdinary or reasonable care is that degree of care which an ordinarily prudent person would exercise under the same or similar circumstances to avoid injury to another.") (internal quotations omitted); Edgar v. Brandvold, 515 P.2d 991, 993 (Wash. Ct. App. 1973) ("The degree of care required [in a hunting negligence case is] the care a reasonably prudent person would exercise under the circumstances and commensurate with the risks involved.").

[21] Prather v. Brandt, 981 S.W.2d 801, 810 (Tex. App. 1998).

[22] Leach & Post, *supra* note 4, at 123.

[23] Utah M.U.J.I. Civ. 3.6 (1993).

[24] Leach & Post, *supra* note 4, at 124.

> [N]egligence is the absence or want of that due care which a reasonable man would exercise under the circumstances…When dealing with any dangerous agency, a higher degree of care is required than in the ordinary affairs of life or business. Every reasonable precaution suggested by experience and the known danger ought to be taken. Any loaded firearm...is a highly dangerous instrumentality and, since its possession or use is attended by extraordinary danger, any person having it in possession or using it is bound to exercise extraordinary care. A person handling or carrying a loaded firearm in the immediate vicinity of others is liable for its discharge, even though the discharge is accidental or unintentional, provided it is not unavoidable.[25]

Leach and Post advocated for enhanced instructions, hypothesizing that such instructions would "orient jurors toward the uppermost reaches of the ordinary care spectrum when deciding the quantum of care required of the defendant to act reasonably under the circumstances."[26] This hypothesis was based on their belief that enhanced instructions simply do a better job of communicating the essence of ordinary care to jurors than traditional or embellished instructions. And if Leach and Post's hypothesis was correct, then enhanced instructions would help jurors better understand and apply the concept of ordinary care in firearm negligence cases.

Both common sense and experience dictate that clear communication is preferable to murky communication, especially when one is explaining complex legal concepts to a jury composed of laypersons. But despite Leach and Post's advocacy for enhanced instructions and the common sense that supports their advocacy, the question remains: does the way we communicate the ordinary care standard to jurors in negligence cases really affect their decisions? This paper attempts to answer that question empirically.

Empirical legal scholarship has become more common over the last few decades, but it still pales in comparison to the doctrinal scholarship produced by the legal academy.[27] The reasons for this disparity are many, but the arguments in favor of increased empirical scholarship are compelling.[28] Put simply, we cannot know the actual effect our legal theories, doctrines, and hypotheses will yield unless we test empirically the assumptions upon which they are based.[29]

Part II of this paper is an executive summary of our study. Details regarding the study methodology and analyses are found in the Appendix A to this paper. Part III describes the results of the study. Part IV contains our observations regarding the results and identifies areas of additional research.

III. THE STUDY

We utilized a mixed-method study to determine whether the three types of jury instructions identified by Leach and Post[30] impacted verdicts in a hypothetical firearm negligence case, and what factors, if any, influenced those verdicts. We followed a modified version of the 13-step

[25] Everett v. City of New Kensington, 396 A.2d 467, 473 (Pa. Super. Ct. 1978).
[26] Leach & Post, *supra* note 4, at 126.
[27] *See generally* Tracey E. George, *An Empirical Study of Empirical Legal Scholarship: The Top Law Schools*, 81 IND. L.J. 141 (2006).
[28] Carl E. Schneider & Lee E. Teitelbaum*, Life's Golden Tree: Empirical Scholarship and American Law*, Utah. L. Rev. 53, 56-60, no. 1 (2006); s*ee generally* Peter H. Schuck, *Why Don't Law Professors Do More Empirical Research?*, 39 J. LEGAL EDUC. 323, Sept. 1989.
[29] See Schneider & Teitelbaum, *supra* note 28, at 62-66.
[30] *See generally* Leach & Post, *supra* note 4.

process identified by Collins, Onwuegbuzie, and Sutton to frame the mixed model study.[31] We developed the survey instrument found in Appendix B to this paper and administered it online to adult participants. We randomly assigned participants to one of three conditions: (a) control with traditional jury instructions, (b) treatment with embellished jury instructions, and (c) treatment with enhanced jury instructions. We provided participants a written scenario with the randomly assigned jury instruction for which they were asked to provide a determination of negligent or not negligent (quantitative) and respond to open-ended (qualitative) and demographic items (quantitative or qualitative). The experimental design offered a rigorous frame for the study, from which one would expect internally and externally valid results.[32] We used qualitative data embedded within the larger design to further explain the quantitative findings.

We recognized that identifying the participants' verdicts alone would be insufficient to determine the factors that influenced their verdicts. Instead, both verdict information (quantitative) and the reasoning that led to the verdicts (qualitative) would be needed to fully understand why participants arrived at their verdicts. The study was mixed at the data collection, analysis, and interpretation stages.

The survey instrument presented a fact scenario to each participant in which a hunter, Mr. X, fired his gun at a deer as it jumped the fence separating his property from that of his neighbor, Mr. Y. Mr. X's shot hit Mr. Y who was obscured from Mr. X's view.[33] Each participant then received a randomly assigned traditional, embellished, or enhanced[34] jury instruction. We asked participants to determine whether Mr. X was negligent or not negligent based on the jury instruction provided to them and to describe why they made the decision they did. We also asked participants several demographic questions, including whether they owned a gun (and if so, for what purpose), their general attitude toward guns, their age, and their primary ethnicity or race.

The survey yielded a sample size of 153 participants who were representative in composition of the population that might be selected for a jury in the area. Participants' median age was 22 years. Most of the participants (76%) identified themselves as White, not of Hispanic, Latino, or Spanish background. Fourteen percent of the participants identified themselves as White of Hispanic background. Seven percent of the participants identified themselves as Black or African American.[35]

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[31] *See generally* Kathleen M. T. Collins et al, *A Model Incorporating the Rationale and Purpose for Conducting Mixed-Methods Research in Special Education and Beyond*, 4 LEARNING DISABILITIES: A CONTEMPORARY JOURNAL 67 (2006) (discussing generally the development and use of mixed-method research studies).

[32] *See generally* DONALD T. CAMPBELL & JULIAN C. STANLEY, EXPERIMENTAL AND QUASI-EXPERIMENTAL DESIGNS FOR RESEARCH (1966) (outlining various social science research designs that control for variables and other threats to design validity)

[33] *See infra* Appendix B.

[34] *See generally* Leach & Post, *supra* note 4.

[35] The Texas Secretary of State provides each county with a list of individuals within the county who have registered to vote, or who hold a Texas driver's license or a Texas identification card. Counties randomly select individuals from these lists to summon for jury service. *See* https://www.txcourts.gov/about-texas-courts/juror-information/jury-service-in-texas/.

General qualifications for jury service are established by law and were addressed in the survey instrument provided to study participants. *See Texas Gov't Code* 62.102.

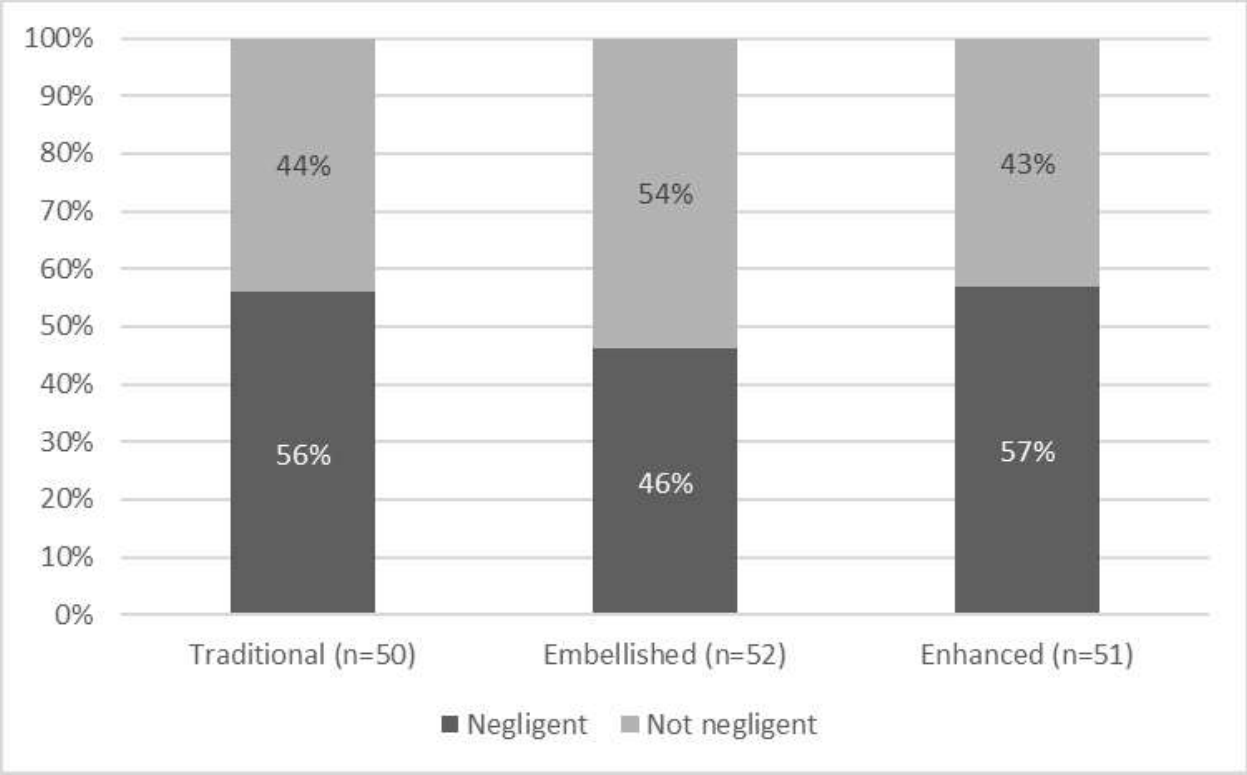
For a comparison of participants' self-reported race and ethnicity to the population of the county in which the study was conducted, see *infra*, Appendix A.

IV. RESULTS

The type of instruction our participants received did not appear to affect their determination of whether the behavior in the fact scenario they received was negligent or not negligent. We obtained approximately the same number of negligent verdicts from participants as non-negligent verdicts, regardless of instruction type, as illustrated in Figure 2 below. This contradicts Leach and Post's previous hypothesis regarding the reasons jurors fail to properly apply the law of negligence.[36]

Figure 2

*Frequency of Participants' Verdicts by Jury Instruction Type (*N*=153)*

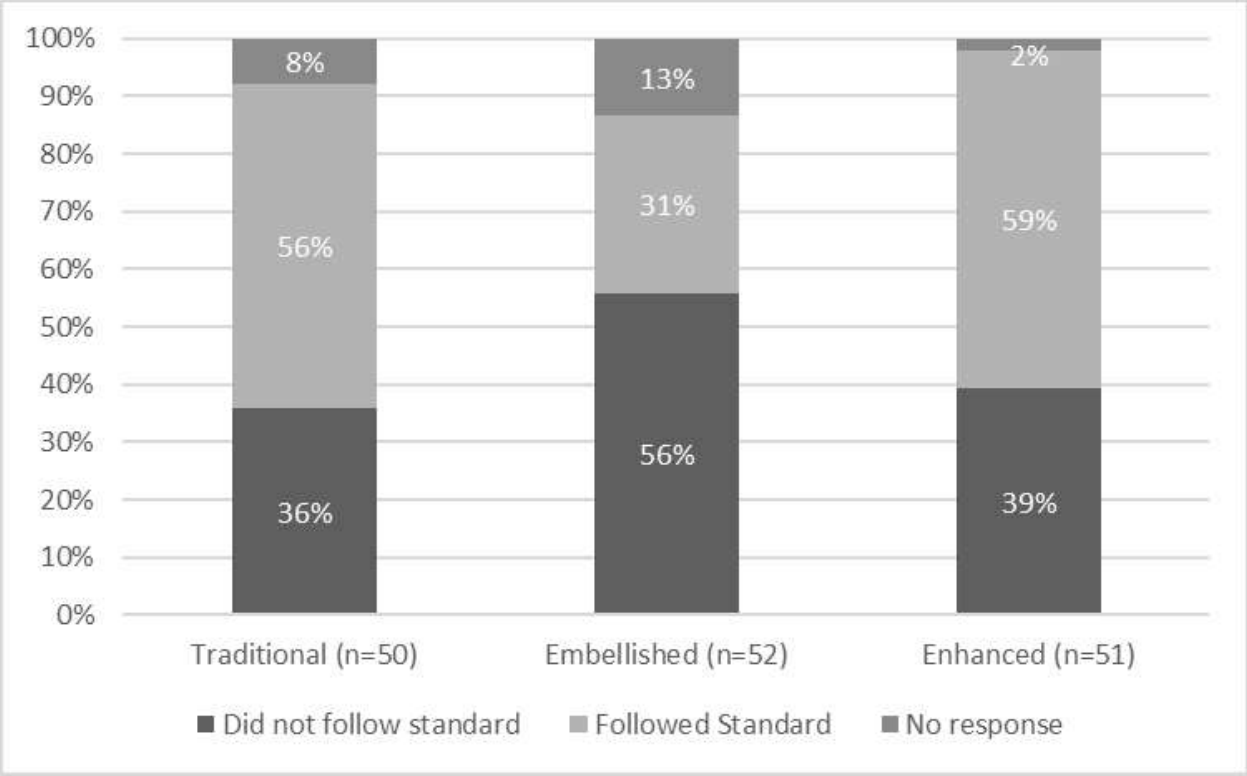


Similarly, the type of instruction our participants received did not appear to substantially affect their ability to correctly apply the ordinary care standard, although participants who received either traditional or enhanced jury instructions were slightly more likely to correctly apply the ordinary care standard than those who received the embellished instruction. (See Figure 3).

[36] *See infra* text accompanying note 43.

Figure 3

*Frequency of Participants' Verdict Reasoning Accuracy by Jury Instruction Type (*N*=153)*



One very troubling result of our study is that only about 50% of participants appeared to apply the ordinary care standard at all, regardless of the type of instruction they received. The remainder of participants applied standards appearing to have little to nothing to do with ordinary care. (See Figure 4).

Figure 4

*Frequency of Participants' Verdict Reasoning Following Standard (*N*=153)*

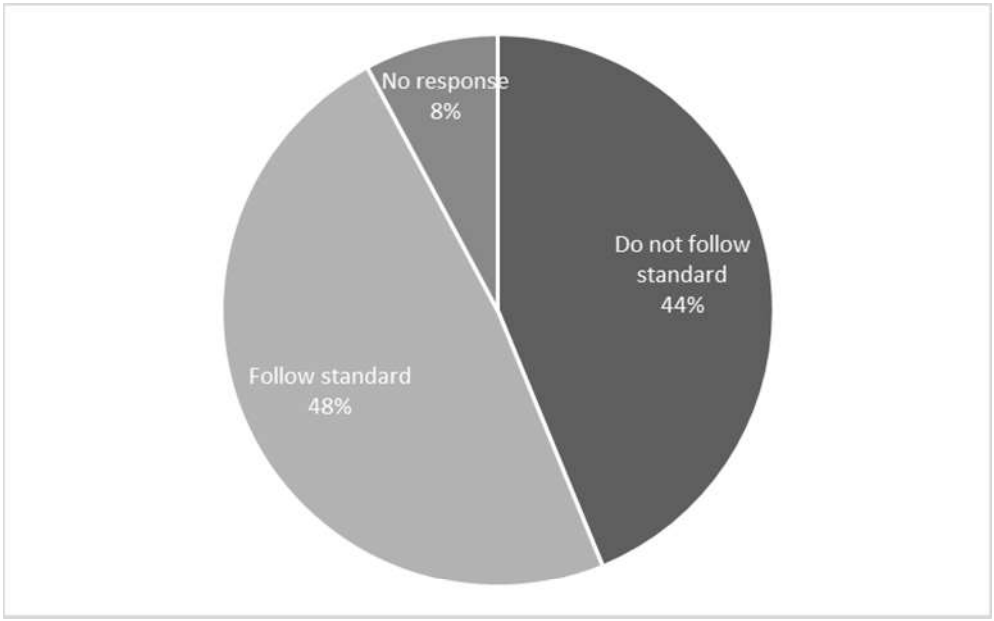


Table 1 presents categories of participants' reasoning for their verdicts (whether negligent or not negligent) ranked from most frequent to least frequent and oftentimes relating to multiple categories. The reasoning employed by participants, as illustrated by fairly representative quotes for each category, varies widely. Interestingly, a substantial number of participants who failed to apply the ordinary care standard applied a standard associated with torts other than negligence.

Table 1

*Participants' Reasoning for Verdicts Ranked from Most Frequent to Least Frequent Independent of the Participants' Verdicts (*N=*67)*

Verdict Reasoning	Count	Illustrative Quote
Did not know of risk	24 (36%)	Because he didn't know that Mr. Y was near where he was shooting
Property lines	19 (28%)	The bullet went off of his property.
Considered accident/intent	18 (27%)	Mr. X was not inteding [sic] to hurt his victim.
Blame the victim	16 (24%)	He was on his own property that uses [sic] specifically to hunt and blind was in open view so Mr. Y should be more careful when walking around on his property.
No foreseeable risk (could not know about risk)	9 (13%)	He wasn't able to see mr. Y [sic] with the obstacles in his way
Gun safety prior knowledge	9 (13%)	As a hunter, Mr. X should have known to take into consideration what lies behind the deer. That's one of the first rules of Hunter [sic] safety, know what is behind your target, or at least have a good idea of what's behind.
Strict liability	8 (12%)	The bullet went off of his property.
Bad shot	6 (9%)	Mr. X had no evidence to conclude that Mr. Y was around. Hunting is hunting and a missed shot is a missed shot.
Lack of care	5 (7%)	He did not inform Mr. Y that he was hunting in his yard, which was very close to Mr. Y's property.
Exercised ordinary care/acted reasonably	4 (6%)	The definition of negligent [sic] led me to determine that an experienced hunter such as Mr. X would have behaved and responded as responsibly as his knowledge would allow.
Unclear jury reasoning	4 (6%)	From my understanding of the judge's instructions and the description of the events, Mr. X's actions were not neglegent [sic].
Reasoning inconsistent with verdict	4 (6%)	I think Mr. X is negligent because Mr. Y should have been wearing an orange vest or something bright to be setting up the deer blind. Mr. Y's deer blind shouldn't be right there.

Note. Participant responses could include more than one category, so percentages add to greater than 100% as a result.

Tort law has three branches, all of which approach the question of liability differently.[37] One branch is negligence–the focus both here and in the Leach and Post paper–which imposes liability when a person's unreasonable or careless behavior results in injury.[38] Another branch consists of a variety of intentional torts like assault, battery, trespass, and defamation.[39] As the name of this branch suggests, intentional torts all require a showing of intent on behalf of the person accused of the tort for liability to arise.[40] The final branch on the tree of torts is strict liability.[41] This branch of torts is less common than the other branches and imposes liability without regard to fault.[42] In other words, a person may be held liable simply for engaging in certain types of behavior that result in injury, regardless of his intent or the quantum of care he used to avoid injury.[43] The applicability of strict liability varies by jurisdiction, but it is typically limited to injuries resulting from animals, abnormally dangerous activities, and defective products.[44]

Intent, or the lack of it, played a substantial role for many participants. Approximately 27% of participants (n=67) based their verdicts on the fact that Mr. X did not intend to shoot Mr. Y. While Mr. X's lack of intent is factually consistent with the scenario the participants analyzed, it is not a relevant consideration in this case because intent is not an element of negligence and was not included in the instructions provided to participants. Table 2 demonstrates the intent-based reasoning used by participants, which is often expressed through the colloquial use of the word "accident."

[37] *See* Kenneth J. Vandevelde, *A History of Prima Facie Tort: The Origins of a General Theory of Intentional Tort*, 19 Hofstra L. Rev. 447, 457-59).
[38] *Id.* at 458-59.
[39] *Id.* at *457, n. 77.*
[40] *Id.* at 458-62.
[41] *Id.* at 457.
[42] *Id.*
[43] *Id.*
[44] Not all states have adopted section 519 of the RESTATEMENT (SECOND) OF TORTS which provides that "[o]ne who carries on an abnormally dangerous activity is subject to liability for harm [caused by such activity, even if] he has exercised the utmost care to prevent the harm. For example, Texas courts have rejected the doctrine of strict liability based on the abnormally dangerous nature of an activity. *See, e.g.* Robertson v. Grogan Investment Co., 710 S.W.2d 678 (COA Texas, Dallas 1986) (rejecting strict liability for sale of handgun later used to commit suicide); Turner v. Big Lake Oil Co., 128 Tex. 155 (Tex. Sup. Ct. 1936) (rejecting strict liability for salt water contamination from oil well operation that killed neighboring vegetation and polluted livestock watering holes). However, Texas has recognized strict liability as it relates to injuries resulting from vicious or wild animals, see Marshall v. Ranne, 511 S.W.2d 255 (Tex. 1974) (applying strict liability for injuries resulting from defendant's vicious boar hog), and cases involving dangerously defective products, see Firestone Steel Products Co. v. Barajas, 927 S.W.2d 608 (Tex. 1996) (analyzing strict liability of tire manufacturer for injuries resulting from tire explosion).

Table 2

*Participants' Verdict Reasoning Related to Lack of Intent Independent of Verdict (*N=*16)*

- It was an accident[.]
- Mr. X was not inteding [sic] to hurt the victim.
- He never intended to hurt anyone. He was simply trying to shoot a deer on his property.
- …This was an accident, but not negligence.
- …he missed the deer on accident.
- Mr. Y wad [sic] not in the line of sight of Mr. X, him getting shot was an accident.
- …The incident was merely an unfortunate accident.
- … It is very unfortunate that [Mr. Y] was struck by the bullet, but it was purely an accident.
- He [Mr. X] never intended to hurt anyone. He was simply trying to shoot a deer on his property.
- Mr. X aimed his rifle carefully without intent to hit Mr. Y with the bullet.
- Mr. X didn't miss the deer on purpose, and had no idea Mr. Y was in the exact range of fire.
- It was not an act of intention and should not be charged.
- This was clearly an accident as Mr. X was unaware that Mr. Y was there.
- I believe it was just a freak accident.
- …Mr. X did not intentionally shoot his neigbor [sic] so he is not negligent.
- …The incident was merely an unfortunate accident.

Similarly, many participants believed that Mr. X was responsible for Mr. Y's injury simply because Mr. X's bullet caused it. Approximately 12% of participants (*n*=67) based their verdicts solely on the fact that the bullet from Mr. X's gun entered Mr. Y's property. Once again, this conclusion is factually consistent with the scenario the participants analyzed, but the mere fact that Mr. X's bullet entered into Mr. Y's property does not necessarily make Mr. X negligent. To suggest that it does indicates that these participants were holding Mr. X strictly liable for his behavior instead of measuring whether he acted with ordinary care as they were instructed. Table 3 demonstrates the strict liability-based reasoning used by participants.

Table 3

*Participants' Verdict Reasoning Related to Strict Liability Independent of Verdict (*N=*8)*

- Mr. X's bullet went off of his property and shot Mr. Y in the leg on Mr Y's property.
- I believe he was negligent because, he [sic] is responsible for the bullet discharged from his gun.
- The firing power of the rifle X owned had a firing power of 700 ft so he should have built the blind where no matter where he fired the gun it wouldn't have a chance of continuing on to Y's yard
- Mr. X is negligent because he is responsible for anything that happens after he shoots the gun even if he doesn't know someone was inline [sic] with him.
- He didn't make absolutely certain an event like this could occur, as unlikely as it was. Therefore, he at least is negligible to a degree.
- Even though Mr.X could not see Mr. Y, Mr. X is still responsible for the bullet he shot. A gun cannot shoot its self [sic] for whoever pulls the trigger is liable whether or not he was meaning to hit some one [sic] or something.
- He was still facing mr y property [sic]
- If Mr X did not have a clear view of 700 yards away, he should not shoot.
- Mr. X is responsible for the bullet, and should be aware of both his intended target, and what lies beyond it. If he was unsure, he should not have fired. He either knew and didn't care, or did not know and should have. Mr. X is at very least negligent.

These results certainly appear to discredit Leach and Post's hypothesis that the way we communicate the ordinary care standard to jurors meaningfully affects their decisions, at least within the context in which that hypothesis was tested. That is not necessarily the end of the story though, as these results have yielded additional research considerations and questions worth pursuing.

V. OBSERVATIONS

The data demonstrates that the language used to instruct participants on the ordinary care standard did not substantially impact their decisions or understanding of the standard; what the data doesn't explain is why. Leach and Post's hypothesis was built around the assumption that jurors' failure to adequately comprehend jury instructions was the root cause of their failure to understand and apply the nuances of the ordinary care standard in negligence cases. That assumption is widely shared in the legal community, as both lawyers and judges have long believed

that jurors struggle to understand jury instructions.[45] That belief may be well founded, but the results of our study suggest that more than simple miscomprehension is at play when a juror is asked to make a decision in a case. We believe the data at least suggests that some jurors in negligence cases may be predisposed to analyze cases using standards from other branches of torts, regardless of what instructions they receive.

Juror comprehension of jury instructions has been a topic of considerable scholarly interest for decades, and research in the area has identified a number of factors that contribute to the problem. The primary contributing factor appears to be the stubborn insistence that legal precision in instructions is paramount to all things, including a juror's ability to comprehend the instructions.[46] As a result, many judges are reluctant to risk reversal by straying from well-worn, "appellate-proof" instructions in favor of instructions that a jury might reasonably understand.[47] Fortunately, some courts and commissions tasked with creating pattern jury instructions are receptive to reform and have required jury instructions to be drafted in a way that is comprehensible to the average juror.[48] Psycholinguistic research has been a catalyst for this change.[49]

Psycholinguistics is the study of how psychological processes impact language comprehension.[50] Empirical studies applying psycholinguistic principles to jury instructions emerged in the 1970s and focused on how "plain-language" modifications to instructions—addressing syntax, vocabulary, and the like—improved comprehension.[51] The instructions utilized in this study were not modified using plain-language principles, although the results of psycholinguistic research suggests such modifications may have somewhat improved participants' comprehension.[52] Still, plain-language instructions are not perfect, and there is a developing line of research that suggests plain-language instructions alone will not substantially improve juror comprehension.[53]

Plain-language instructions are not a panacea for improving juror comprehension because jurors are not empty vessels who will follow instructions by rote. Consider, for example, a fan of American baseball witnessing his first cricket match. The history, traditions, and scoring metrics of the game of cricket are foreign to him, but he possesses some understanding of the dynamics and strategy of sports that utilize a bat and a ball, and he also has experience with how a crowd of

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[45] "Time and money and lives are consumed in debating the precise words with which the judge may address to the jury, although everyone who stops to see and think knows that these words might as well be spoken in a foreign language--that, indeed, for all the jury's understanding of them, they are spoken in a foreign language." Judge Jerome Frank, Law and the Modern Mind 195 (6th prtg. 1970); *See also* Tiersma, *supra* note 15, at 40-41.

[46] *See e.g.* California Jury Instructions-Civil-Book of Approved Jury Instructions 44 (4th rev. ed. 1956) ("[T]he one thing an instruction must do above all else is to correctly state the law. This is true regardless of who is capable of understanding it.)".

[47] *See* Tiersma, *supra* note 15, at 52-53.

[48] See *Id.* at 53-59.

[49] Sara Gordon, *Through the Eyes of Jurors: The Use of Schemas in the Application of "Plain Language" Jury Instructions*, 64 HASTINGS L.J. 643, 645.

[50] Robert P. Charrow & Veda R. Charrow, *Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions*, 79 COLUM L. REV. 1306, 1308 (1979); Joel D. Lieberman & Bruce D. Sales, *What Social Science Teaches Us About the Jury Instruction Process*, 3 PSYCHOL. PUB. POL'Y & L. 589, 623–27 (1997).

[51] *See generally* Charrow, *supra* note 50 (discussing the results of a study that indicate jury instructions are often confusingly written and misunderstood by jurors); Phoebe Cl Ellsworth & Alan Reifman, *Juror Comprehension and Public Policy: Perceived Problems and Proposed Solutions*, 6 PSHYCOL. PUB. POL'Y & L., 788 (2000) (discussing a study that showed jurors are confused by jury instructions).

[52] *Id.*

[53] Gordon, *supra* note 49, at 662-65.

fans will react if their team performs well or poorly. So, while the cricket experience is new to him, his baseball-related schemas allow him to more quickly and efficiently analyze and understand the new information he is receiving. Jurors are no different.

Each juror brings to the jury box her own cognitive framework that allows her to understand, organize, and interpret the information she is given.[54] These cognitive frameworks, or "schemas," are developed through personal experiences and allow us to shortcut the learning curve associated with new experiences by applying lessons and expectations learned from our old experiences.[55] When faced with new information in a trial setting, jurors will rely on their schemas to analyze that information.[56] Research shows, however, that the schemas jurors use are often not only inconsistent with the law they are asked to apply but are stubbornly persistent even in the face of the most clearly drafted instructions.[57]

The good news is that we do not need to abandon the plain-language approach to jury instructions altogether.[58] We do, however, need to supplement that approach by identifying and correcting improper juror schemas in order to improve the efficacy of plain-language instructions.[59] To this end, we believe our study may have uncovered a tendency of jurors to apply incorrect legal standards in negligence cases regardless of how they are instructed. In other words, we believe some jurors may be "schema-bound" to prefer intent-based and strict liability concepts over negligence concepts.

Our study was not specifically designed to identify our participants' schemas, so additional research is needed to determine why so many of our participants abandoned the ordinary care analysis central to negligence in favor of intent-based and strict liability analyses. Our current hypothesis is that many of them did so because these types of analyses are, perhaps, more intuitive than negligence concepts and therefore easier to apply. Concepts of intent-based fault and strict liability have ancient roots in the human psyche.[60] The notion that a person is responsible for injuries caused by intentional conduct is deeply rooted in law and society.[61] Similarly, the idea that a person can be held responsible even for injuries caused by "blameless" behavior dates back to the earliest written laws.[62] Negligence, by comparison, is a relative newcomer to the law and, perhaps as a result, has not imprinted itself on the human experience as indelibly as intentional torts and strict liability.[63]

Moreover, intent-based and strict liability analyses offer a binary simplicity that negligence-based analyses do not.[64] Did a person engage intentionally in behavior that resulted in injury, or did he not? Did a person engage in behavior for which fault is not a condition of liability, or did he not? But as our notions of fault have become more nuanced through the advent and

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[54] *Id.* at 662.
[55] *See generally* DOROTHY G. SINGER & TRACEY A. REVENSON, A PIAGET PRIMER: HOW A CHILD THINKS 17 (1978) (describing how the development of schema beings in children); SUSAN T. FISKE & SHELLEY E. TAYLOR, SOCIAL COGNITION 180-81 (1984) (describing a schema as "a cognitive structure that represents organized knowledge about a given concept or type of stimulus.").
[56] Martha Augoustinos & Iain Walker, SOCIAL COGNITION: AN INTEGRATED INTRODUCTION, 32-33 (1995).
[57] Gordon, *supra* note 49, at 651-60.
[58] *See id.* at 670-72.
[59] *Id.* at 668-76.
[60] *See, e.g.*, ANTHONY GRAY, THE EVOLUTION FROM STRICT LIABILITY TO FAULT IN THE LAW OF TORTS 7 (2021).
[61] *See Id.* at 7-9; Vandevelde, *supra* note 37, at 447-50.
[62] *See* GRAY, supra note 60, at 8.
[63] GRAY, supra note 60, at 23 (citing Weaver v. Ward, Hob. 134; 80 ER 284 (1616) as one of the first cases in which the concept of fault was discussed in tort cases).
[64] *See* GRAY, supra note 60, at 11.

development of the concept of negligence, the analysis demanded of jurors has become considerably more complex. Now jurors must determine qualitatively and circumstantially whether the behavior at issue was reasonable, and many jurors struggle with this challenge.[65]

We might not ever be able to identify the specific source of an individual juror's schemas (and it might be very inefficient to attempt to do so), but if we can identify widely-shared, schema-based tendencies among jurors, it may be possible to formulate new approaches to jury instructions which help jurors develop appropriate schemas—or at least ignore inappropriate schemas—for negligence cases.[66] Our future research will focus on this effort.

VI. CONCLUSION

The findings of this research can have significant impact on individuals and businesses facing negligence lawsuits. Understanding that jurors often don't understand the legal terms or concepts they are asked to interpret may encourage businesses to avoid jury trials and settle lawsuits, even if they believe the law is on their side.

Courts communicate with jurors using jury instructions, but jurors frequently fail to understand or apply them correctly. We tested a number of different instructions relating to the ordinary care standard in firearm-related negligence cases. We anticipated that instructions that more clearly described the relationship between the risk of harm and the quantum of care necessary to avoid that harm would result in more predictable jury outcomes than instructions that ignored or only partially described the relationship. This assumption was not borne by the evidence.

Generally speaking, the type of instruction given to participants did not meaningfully affect their decisions. More concerningly, we discovered that a substantial number of participants applied legal standards altogether different from the ordinary care standard as they were instructed. We hypothesize that this is because many of our participants may have been "schema-bound" to prefer and apply concepts related to intentional torts and strict liability rather than negligence.

On the surface, these results may appear unrelated to business, but they have a practical impact on litigation strategy. The very real possibility that a jury will apply inapplicable standards to a negligence case creates a variable in the risk-management calculus that must be considered carefully. Even the best laid plans to manage a negligence case could be ruined by a jury that simply does not understand its assignment. Additional research is needed to further test our hypothesis and to determine how best to help jurors form appropriate schemas for negligence cases.

[65] Gordon, *supra* note 49, at 662.
[66] *See Id.* at 670-75.

Appendix A
Study Design, Analyses, and Results

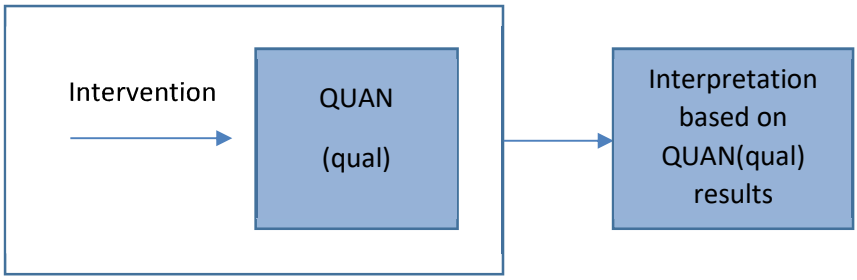
In this study we have investigated whether jury instruction types impact outcomes in negligence cases, and what factors, if any, influence those outcomes. The process is an allowed reformulation of components as the study was carried out and data were analyzed.[67] The first cluster of steps largely comprised the planning stage of the research - identifying the goal(s), research objective(s), purpose of the research as well as the rationale for mixing methods, sampling design, and research design.[68]

I. Planning Stage of Research Process

A. Research Design. We used a mixed model concurrent experimental embedded research design[69] as depicted in Figure 2. Participants were randomly assigned to one of three conditions: (a) control with traditional jury instructions, (b) treatment with embellished jury instructions, and (c) treatment with enhanced jury instructions. Participants were provided a written scenario with the randomly assigned jury instruction for which they were asked to provide a determination of negligent or not negligent (quantitative) and respond to open-ended (qualitative) and demographic items (quantitative or qualitative). The experimental design offered a rigorous frame for the study, from which one would expect internally and externally valid results.[70] Qualitative data embedded within the larger design were used to further explain the quantitative findings. The study was mixed at the data collection, analysis, and interpretation stages.

Figure A-1

Graphic Representation of the Mixed Model Concurrent Experimental Embedded Design



B. Rationale for Mixing Methods. We recognized that learning participants' verdict alone would be insufficient to determine the factors that influenced their verdict. Instead, both verdict information (quantitative) and reasoning that led to the verdicts (qualitative) would be needed to fully understand why participants arrived at their verdicts.

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[67] *See generally id.*
[68] *See generally id.*
[69] *See generally* Kathleen M. T. Collins et al, *supra* note 31.
[70] *See generally* DONALD T. CAMPBELL & JULIAN C. STANLEY, EXPERIMENTAL AND QUASI-EXPERIMENTAL DESIGNS FOR RESEARCH (1966) (outlining various social science research designs that control for variables and other threats to design validity)

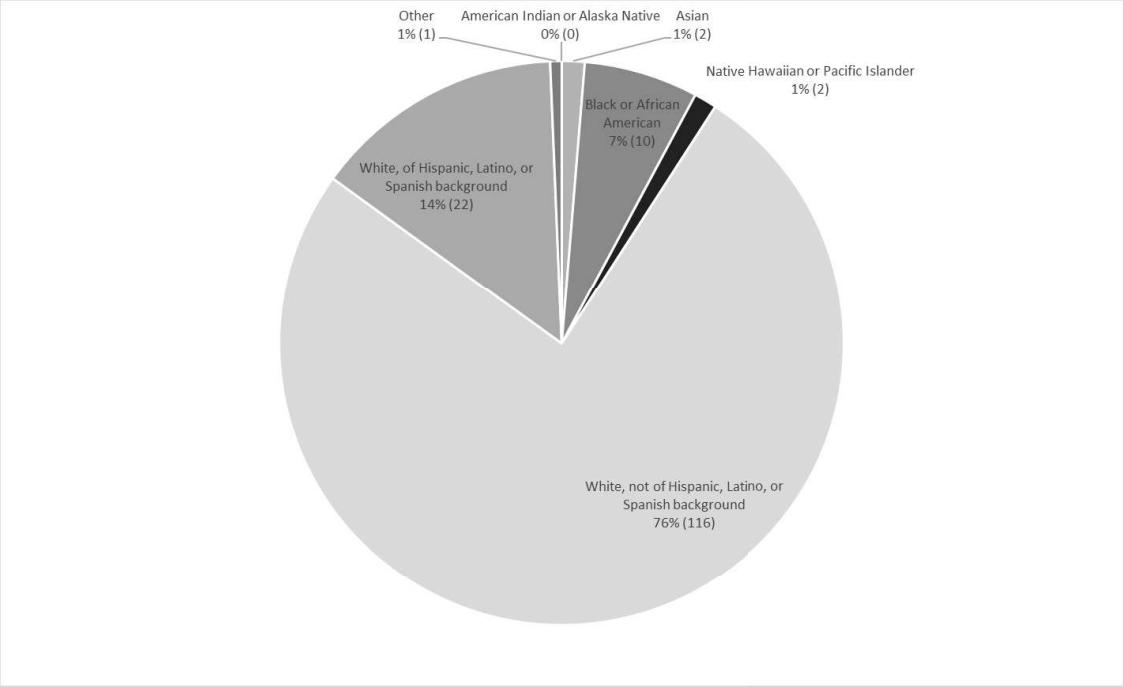
C. Sampling Design. The study was conducted at a mid-sized university in the southwestern United States. Initially, the sample was limited to undergraduate students aged 18 years or older because they offered a convenient, available pool of participants. After initial data collection, however, we realized that undergraduate students did not represent the larger population of potential jurors, and we chose to extend our sample to include all students, faculty, and staff from the university at large. Note that the sample is likely somewhat limited in its external validity, and thus generalizability, in that the university sample may not exactly match the demographics of the public at large. But given the demographics of faculty, staff, and students, it is likely close enough to provide informative results nonetheless.

D. Participants. Participants (*N*=153) comprised a sample that was similar in demographics to the town in which the sample was drawn with an estimated population of 19,561.[71] The median age of participants was 22 years as compared to the estimated median age of the town residents of 24.5 years.[72] The majority of participants (76% of *n*=153) reported their race/ethnicity as White, not of Hispanic, Latino, or Spanish background, which is similar to the 77% of town residents estimated to be of the same race/ethnicity.[73] Fourteen percent (*N*=153) of participants reported their race/ethnicity as White of Hispanic background as compared to an estimated 16.7% of the town residents.[74] Seven percent (*N*=153) of participants reported their race/ethnicity as Black or African American as compared to 3% of estimated town residents.[75] Due to the similarities in age and the distribution of race/ethnicity between the study sample and town demographics, we can be fairly confident that results will likely generalize to a jury that may be selected from the area. The generalizability of the results to juries in other areas is still tentative, however, as the demographics may vary from the participants in this study.

[71] U.S. CENSUS BUREAU, ACS DEMOGRAPHIC AND HOUSING ESTIMATES: 2019 ACS 5-YEAR ESTIMATES.
[72] U.S. CENSUS BUREAU, ACS DEMOGRAPHIC AND HOUSING ESTIMATES: 2019 ACS 5-YEAR ESTIMATES.
[73] *Id.*
[74] *Id.*
[75] *Id.*

Figure A-2

Distribution of Study Participants' Self-reported Race/ethnicities (*N*=153)



E. Instrument. We developed a survey (see Appendix B) that was administered to participants online through the Qualtrics survey platform. Participants were provided a fact scenario in which one party, Mr. X, fired his gun at a deer as it jumped the fence separating his property from that of his neighbor, Mr. Y. Mr. X's shot hit Mr. Y who was obscured from Mr. X's view. Each participant then received a randomly assigned jury instruction from one of three types: (a) traditional, (b) embellished, or (c) enhanced. Participants were asked to provide a verdict of negligent or not negligent as well as *why* they selected that particular verdict. Finally, participants were asked several demographic items including whether they own a gun and, if so, for what purpose; their general attitude toward guns; their age; and primary ethnicity/race.

II. Implementation Stage of Research Process

The next cluster of steps comprised the implementation stage of the research process and involved the collection, analysis, and validation of data; the interpretation of data and results; and the reevaluation of research questions.

A. **Data Collection.** Data were collected via an online survey (see Appendix B) over approximately one month following the sampling design previously described. Initial data (*N*=183) were then downloaded and cleaned to remove incomplete responses. Complete responses totaled *N*=153.

B. **Data Analysis.** The coding process was conducted by four members of the research team. Following our initial research questions, we coded the qualitative data regarding participants' verdict reasoning using the constant comparative method[76] using an open coding process and allowing themes to emerge throughout the process.[77] Note that 10 participants did not provide reasoning for their verdicts – five with negligence verdicts, five with verdicts of not negligent.

To establish interrater reliability among the team, we initially coded approximately 20 responses together to establish interrater reliability, 10 from participants that presented a negligent verdict and 10 with a verdict of not negligent. Codes were discussed until all team members were in agreement. Then, individual team members coded the remaining responses individually. Two members of the research team subsequently collected the individual codes and discussed them until both members agreed with a final code or set of codes for the verdict reasoning variable. Final codes, described in Table A-1, were approved by the entire research team.

[76] *See generally* BARNEY G. GLASER AND ANSELM L. STRAUSS, THE DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH (1967) (discussing generally the constant comparative method of coding).
[77] *See generally* ANSELM STRAUSS & JULIET CORBIN, BASICS OF QUALITATIVE RESEARCH: GROUNDED THEORY PROCEDURES AND TECHNIQUES (1st ed. 1990) (discussing generally the open coding process).

Table A-1
Final Codes and Subcodes Regarding Participants' Verdict Reasoning

1. Lack of care
    a. Should have known about risk
    b. Knew and ignored risk
    c. Should have informed
    d. Lack of care (unspecified)
2. Gun safety prior knowledge (gun/hunting knowledge)
3. Juror considered intent
    a. Considered it an accident
    b. Considered it purposeful
4. Strict liability
5. Reasoning inconsistent with verdict
6. Blame the victim
7. No foreseeable risk (i.e., could not know about risk)
8. Did not know of risk
9. Exercised ordinary care/acted reasonably
10. Property Lines
11. Bad shot
12. Odds of damage
13. No evidence of misuse

Note. Subcodes are listed as indented items below main codes and considered to be more specific instances of particular codes.

Following initial coding and analyses, we noted that participants' verdict reasoning was not always consistent with the negligence standard, leading to questions of whether participants understood the negligence standard when applying it. This prompted two members of the research team to complete a second round of coding to determine whether the reasoning provided by the participant for the verdict (N=143) was either consistent with the negligence standard or not. We considered any deviation from the negligence standard as inconsistent; this occurred on a continuum of completely incorrect to only slightly incorrect (i.e., mostly correct).

C. **Results.** Figure 2 presents participants' verdicts by jury instruction type. We conducted a chi-square test of independence analysis of these data and found no statistically significant differences between the proportions (χ^2 (2, 153) =1.46, p=.48). In other words, differences between the proportions were not large enough to conclude that any

one type of jury instruction had a different effect on participants' verdicts than another.

As previously explained, participants' reasoning for their verdicts was not always consistent with the negligence standard, which led the research team to question participants' understanding of the standard and the subsequent pattern of responses. As a result, we revised the purpose of the study and subsequent research questions to include the question of whether the accuracy of the application of the negligence standard was influenced by the type of jury instruction. To answer the question, we investigated the proportion of participants that demonstrated understanding of the standard in their verdict reasoning. Then, we statistically analyzed differences in the proportions of participants who demonstrated knowledge of the standard by jury instruction type.

As presented in Figure 4, roughly half of participants' verdict reasoning demonstrated understanding of the negligence standard (48% of N=153) while approximately half did not (44% of N=153). Participants' verdict reasoning that did not follow the standard included those presented in Table 1.

Results of a chi-square test of independence revealed statistically significant differences in the proportions of participants' verdict reasoning by instruction type, χ^2 (2, 153) =1.46, p=.02. From the descriptive results presented in Figure 3, it is evident that a greater proportion of participants who randomly received the embellished jury instruction (56% of n=52) did not demonstrate understanding of the negligence standard when compared to participants who received the enhanced (n=51) and traditional instructions (n=50).

Appendix B

Survey Instrument

Impact of Jury Instructions on Negligence Verdicts

Q1 In this study, we will investigate the impact of specific types of jury instructions on jurors' negligence verdicts.

If you choose to participate in the study, you will be asked to complete a survey in which you will be asked to provide your verdict for several cases as a pretend juror and answer some demographic questions. The survey will take you approximately 20-35 minutes to complete.

To participate, you must meet the following criteria to serve as a juror:

- United States citizen
- At least 18 years of age
- Be adequately proficient in English
- Have no disqualifying mental or physical condition
- Not currently subject to felony charges punishable by imprisonment for 1+ years
- Never been convicted of a felony (unless your civil rights have been restored)

Potential benefits of the research will be greater knowledge about how different types of jury instructions impact verdicts in cases of alleged negligence.

Risks are minimal and no more than you might experience in everyday life, including potential breaches of privacy and confidentiality. Your written responses will remain anonymous as we do not ask for any identifying information on the survey. Your written data will be secured in a locked office, and your digital data will be secured on a password-protected electronic drive.

By completing the attached survey, you indicate your informed consent to participate in the study. Note that participation is completely voluntary, and you can withdraw from the study at any time by contacting Judd Leach (jleach@tarleton.edu; 254-968-1861). You may request a copy of this information by contacting Judd Leach (jleach@tarleton.edu; 254-968-1861).

Q2 Do you provide your informed consent to participate in the study?

- ○ Yes, I provide my informed consent to participate in the study. (1)
- ○ No, I do not provide my informed consent to participate in the study. (2)

Skip To: End of Survey If Do you provide your informed consent to participate in the study? = No, I do not provide my informed consent to participate in the study.

Do you meet the qualifications below to serve as a juror?
United States citizen
At least 18 years of age
Be adequately proficient in English
Have no disqualifying mental or physical condition
Not currently subject to felony charges punishable by imprisonment for 1+ years
Never been convicted of a felony (unless your civil rights have been restored)

- ○ Yes
- ○ No

Skip To: End of Survey If Do you meet the qualifications below to serve as a juror?United States citizen At least 18 years... = No

Q3 Place yourself in the role of a juror who must decide whether a defendant is liable or not liable for negligence. You will be asked to consider the facts of the case following the specific instructions from the judge. Please make sure to read both carefully. Note that there is no right or wrong answer.

Q4 **Facts of the case**

It is deer season in Brown County, Texas. Mr. X owns a 100 acre parcel in the country that he uses for camping and hunting.

Mr. X has a deer blind set up on his property approximately 100 yards from the wire fence that separates Mr. X's property from his neighbor Mr. Y's property. The location of the deer blind is shown on Figure 1.

At approximately 7:00 am on a Saturday morning during deer season, Mr. X is sitting in his deer blind when he spots a large deer approximately 150 yards in front of the deer blind and approximately 20 yards from the fence between his property and Mr. Y's property. The approximate location of the deer is shown on Figure 1.

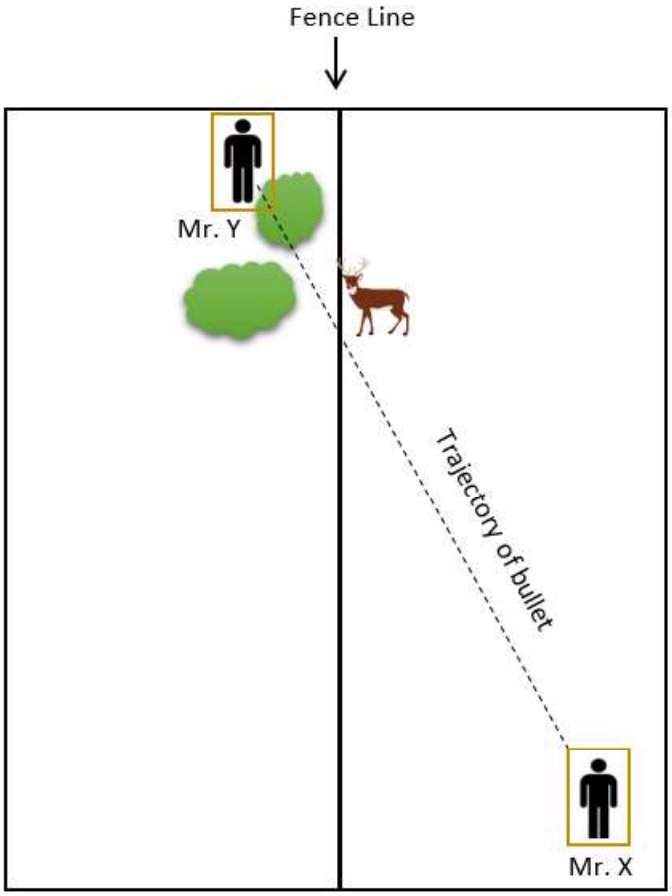
Mr. X wants to shoot the deer before it spooks and jumps the fence into Mr. Y's property. Mr. X takes careful aim at the deer and fires his gun. He misses the deer.

Unbeknownst to Mr. X, at the time he fired his gun at the deer, Mr. Y was busy setting up his own deer blind on his property directly in the line of fire of Mr. X's bullet. Mr. X couldn't see Mr. Y because Mr. Y was obscured by a grouping of trees and brush. Mr. Y's location and the trees and brush blocking Mr. X's view are shown on Figure 1.

When Mr. X's shot missed the deer, the bullet continued on its path and struck Mr. Y in the leg. The shot did not kill Mr. Y, but it did injure him enough that he had to seek medical treatment to have the bullet removed and his wound stitched up. The path of Mr. X's bullet is shown on Figure 1.

The gun Mr. X used was a Winchester 30.06. This is a commonly used hunting rifle capable of firing a bullet up to 700 yards. Mr. Y was located approximately 400 yards from Mr. X when he was shot.

Mr. Y has sued Mr. X to recover the costs of the medical care that Mr. Y needed as a result of being shot by Mr. X. Mr. Y claims that Mr. X was negligent when he shot at the deer. You must determine whether that is the case.



Randomly evenly present Q6, Q7, or Q8 below.

Start of Block: Jury instructions (traditional)

Q6

Judge's instructions to you and other jurors (jury instructions) "Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. Negligence is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

End of Block: Jury instructions (traditional)

Start of Block: Jury instructions (embellished)

Q7

Judge's instructions to you and other jurors (jury instructions) "Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. Negligence is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

The amount of care that is considered "reasonable" depends on the situation. Some situations require more caution because a person of ordinary prudence would understand that more danger is involved. In other situations, less care is expected, such as when the risk of danger is lower or when the situation happens so suddenly that a person of ordinary prudence would not appreciate the danger.

End of Block: Jury instructions (embellished)

Start of Block: Jury instructions (enhanced)

Q8

Judge's instructions to you and other jurors (jury instructions) "Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. Negligence is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

Anyone who provides, supplies, or uses an inherently dangerous instrumentality, such as the gun used by the defendant in this case, is required by law to use the highest degree of care practicable to avoid injury to everyone who may be lawfully in the area of such activity.

End of Block: Jury instructions (enhanced)

Start of Block: Follow up and Demographic Items

Q9 As a juror, what would your verdict be based on the presented facts and jury instructions?

- ○ Mr. X was negligent.
- ○ Mr. X was not negligent.

Q10 What specific reasons led you to the verdict of "${Q9/ChoiceGroup/SelectedChoices}"?

_____

_____

_____

_____

_____

Q17 Have you previously served in a jury in a **negligence** case?

- ○ Yes
- ○ No

Q11 Do you own a gun?

- ○ Yes

○ No

Display This Question:

If Do you own a gun? = Yes

Q12 For what purpose do you own a gun? (Check all that apply).

☐ Hunting

☐ Protection

☐ Use it in my job as a _____

☐ Other _____

Q13 What is your attitude toward guns?

○ Positive

○ Neutral

○ Negative

Q14 What is your age? (whole number) _____

Q15 What is your primary race/ethnicity?

○ White, not of Hispanic, Latino, or Spanish background

○ White, of Hispanic, Latino, or Spanish background

- ○ Black or African American
- ○ American Indian or Alaska Native
- ○ Asian
- ○ Native Hawaiian or Pacific Islander
- ○ Other _____

End of Block: Follow up and Demographic Items
