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Liberalizing the Mansfield Rule in Missouri: Making Sense of the Extraneous Evidence Exception after *Travis v. Stone*

*Williams v. Daus*¹

I. INTRODUCTION

Traditionally, courts have been very reluctant to allow jurors to impeach their own verdicts. Untrusting of jurors who would testify about their own misconduct, Lord Mansfield was the first to set forth a strict rule rendering such evidence inadmissible.² Since its exportation to the United States, the “Mansfield Rule” has been divorced from its original policy underpinnings and subjected to various liberalizing exceptions recognized by state and federal courts seeking to avoid the harshness of the rule.³ As a result, the law governing the admissibility of juror testimony has been unclear and often inconsistent.

Since the advent of Federal Rule of Evidence 606(b), many state courts have admitted juror testimony regarding the alleged gathering of extrajudicial evidence by jurors.⁴ It is currently unclear whether Missouri recognizes the “extraneous evidence” exception as an independent exception to the Mansfield Rule or whether Missouri only recognizes such an exception when the opposing party fails to object to the admissibility of the juror testimony.

In Missouri, to obtain a new trial based on juror misconduct, a two step process must be used.⁵ First, admissible evidence of misconduct must be presented, and second, the evidence of misconduct must be sufficient to convince the trial court that the misconduct prejudiced a party.⁶ This Note examines the current status of Missouri law governing the first prong of this analysis: the admissibility of juror testimony offered to establish juror misconduct involving the gathering of extra-judicial evidence.

1. 114 S.W.3d 351 (Mo. Ct. App. 2003) (transfer to the Missouri Supreme Court denied on Sept. 30, 2003).

2. *Vaise v. Delaval*, 99 Eng. Rep. 944 (K.B. 1785).

3. See generally Susan Crump, *Jury Misconduct, Jury Interviews, and the Federal Rules of Evidence: Is the Broad Exclusionary Principle of Rule 606(b) Justified?*, 66 N.C. L. REV. 509 (1988).

4. See, e.g., *Travis v. Stone*, 66 S.W.3d 1 (Mo. 2002) (en banc); *Stotts v. Meyer*, 822 S.W.2d 887 (Mo. Ct. App. 1991); see also *infra* notes 50-51 and accompanying text.

5. *Neighbors v. Wolfson*, 926 S.W.2d 35, 38 (Mo. Ct. App. 1996) (noting that once juror testimony is held competent, the moving party has the burden of proving prejudice to the verdict).

6. *Id.*

II. FACTS AND HOLDING

Dissatisfied with a prior physician's inability to treat her chronic back pain, Madonna Williams ("Williams") sought medical treatment from Dr. Arthur Daus ("Daus") who diagnosed her with nerve root compression and recommended surgery to treat the condition.⁷ Complications from the first surgery required a second,⁸ which resulted in worse pain and disability than Williams had suffered before Daus recommended surgical intervention.⁹ Prior to Daus's diagnosis, several other physicians had diagnosed Williams with a lumbosacral strain, a condition which usually heals over time without surgery.¹⁰ Expert testimony revealed that Daus had misdiagnosed Williams and performed unnecessary surgery.¹¹

Williams brought a medical malpractice suit against Daus seeking damages for her worsened post-operative condition.¹² The jury returned a verdict against Daus and awarded Williams a total of \$1 million in damages, compensating Williams for economic, medical, and non-economic injuries.¹³ Daus filed a series of post-trial motions,¹⁴ including a motion for new trial based on the alleged misconduct of a juror in acquiring and relating to the jury extra-judicial evidence relevant to the case.¹⁵

Daus presented the affidavit of one of the jurors, Ms. Messer ("Messer"), along with the testimony of three other jurors in support of his motion for new trial.¹⁶ These four jurors consistently testified that during deliberations, Juror No. 2 said she had visited Daus's hospital.¹⁷ Collectively, the jurors testified that Juror No. 2 had told the jury that Daus had other lawsuits pending against him, was in danger of losing his malpractice insurance, and would probably lose his license to practice medicine if he lost this case.¹⁸ Williams objected to the testimony and made repeated motions to strike on the basis of hearsay, but "[t]he trial court overruled these objections and re-

7. Williams v. Daus, 114 S.W.3d 351, 357-58 (Mo. Ct. App. 2003) (transfer to the Missouri Supreme Court denied on Sept. 30, 2003).

8. *Id.* at 358.

9. *Id.* at 361.

10. *Id.* at 359-60.

11. *Id.* at 360.

12. *Id.* at 357.

13. *Id.* at 358. The jury awarded "\$200,000 for past economic and medical damages; \$200,000 for past non-economic damages; \$200,000 for future medical damages; \$200,000 for future non-medical economic damages; and \$200,000 for future non-economic damages." *Id.*

14. *Id.* Williams filed motions for judgment notwithstanding the verdict, remittitur, and new trial. *Id.*

15. *Id.* at 364.

16. *Id.* at 367.

17. *Id.* at 368 n.7.

18. *Id.*

ceived evidence of juror misconduct.”¹⁹ Despite receiving this evidence and without setting forth the reasons for its conclusion, the trial court denied Daus’s motion for new trial and entered judgment for Williams.²⁰

Among Daus’s several points on appeal²¹ was his contention that the trial court erred in not granting his motion for new trial based on juror misconduct.²² Daus argued that the testimony of the four jurors was admissible despite the general rule that juror testimony about misconduct affecting deliberations may not be used to impeach the jury’s verdict.²³ The general rule prohibits admitting the testimony if it is introduced to show that jurors acted on improper reasoning, beliefs, motives, or mental operations.²⁴ Daus contended that the testimony was admissible under an exception to this general rule because the jurors’ testimony alleged that extrinsic evidentiary facts had been interjected into the deliberations rather than that the jurors had merely acted on improper reasoning, beliefs, motives, or mental operations.²⁵ Williams responded by arguing that her timely objection to admission of the jurors’ testimony served as an absolute bar to its admissibility.²⁶ The court chose not to rule on this basis and instead held that the jurors’ testimony was inadmissible hearsay.²⁷ In the alternative, the court inferred that the trial court had found that Juror No. 2 never actually visited the hospital even though she had told the other jurors she visited it.²⁸ As a result, the court held that such remarks would be matters “inherent in the verdict,” rendering them inadmissible.²⁹ Therefore, the court concluded that the trial court did not abuse its discretion in denying Daus’s motion for new trial. The court held that the jurors’ testimony was inadmissible hearsay and, in the alternative, that Juror No. 2’s statements were not evidence of extra-judicial misconduct because Juror No. 2 had not actually gathered extra-judicial evidence.³⁰

19. *Id.* at 367-68.

20. *Id.* at 358. The trial judge denied Daus’s other post-trial motions as well. *Id.*

21. Daus raised five points on appeal; points I, II, III, and V are not relevant to the jury misconduct issue and beyond the scope of this Note.

22. *Williams*, 114 S.W.3d at 364.

23. *Id.*

24. *Id.* These are also referred to as “matters inherent in the verdict.”

25. *Id.*

26. *Id.* at 366.

27. *Id.* at 367.

28. *Id.* at 369.

29. *Id.* at 367 (citing *Neighbors v. Wolfson*, 926 S.W.2d 35, 37 (Mo. Ct. App. 1996); *Williams Carver Co. v. Poos Bros.*, 778 S.W.2d 684, 688 (Mo. Ct. App. 1989)).

30. *Id.* at 369.

III. LEGAL BACKGROUND

A. *Historical Development*

Before 1785, courts would cautiously receive jurors' testimony regarding their own misconduct.³¹ In that year, everything changed when Lord Mansfield, in the English case of *Vaise v. Delaval*,³² set forth a new standard upholding the sanctity of the jury room and protecting jury verdicts from impeachment by the jurors who render them.³³ The "Mansfield Rule," adopted in most U.S. jurisdictions, prohibits parties from using affidavits or testimony of jurors to impeach verdicts.³⁴ Although the rule was initially accepted without qualification in the United States, two general exceptions to the rule gained popularity in the mid-nineteenth century and continue to shape modern jurisprudence.³⁵

In *Wright v. Illinois & Mississippi Telegraph Co.*,³⁶ the Iowa Supreme Court held that "affidavits of jurors may be received for the purpose of avoiding a verdict, to show any matter occurring during the trial or in the jury room, which does not essentially *inhere* in the verdict."³⁷ Under this rule of broad admissibility, a juror could not "testify that he misunderstood the charge or had reservations about the verdict," because proof of such matters rested "within the conscience of that juror alone."³⁸ A prominent case decided by the Supreme Court of Kansas in 1874, *Perry v. Bailey*,³⁹ cited the "Iowa Rule" from *Wright* with approval and held that matters inherent in the verdict included a juror's ignorance of the law or facts in the case and his statements that other jurors had improperly influenced his decision.⁴⁰

31. See *McDonald v. Pless*, 238 U.S. 264, 268 (1915).

32. 99 Eng. Rep. 944 (K.B. 1785); see also *Shearin v. Fletcher/Mayo/Assocs., Inc.*, 687 S.W.2d 198, 205-06 (Mo. Ct. App. 1984) (discussing the origin of the Mansfield Rule).

33. *Vaise*, 99 Eng. Rep. at 944 ("The Court cannot receive such an affidavit from any of the jurymen themselves, in all of whom such conduct is a very high misdemeanor: but in every such case the Court must derive their knowledge from some other source: such as from some person having seen the transaction through a window, or by some such other means.") (footnote omitted).

34. *Stotts v. Meyer*, 822 S.W.2d 887, 888-89 (Mo. Ct. App. 1991). This rule generally applies whether the alleged misconduct occurs inside or outside the jury room and whether it occurs before or after the jury is discharged. *Id.*

35. *Crump*, *supra* note 3, at 514.

36. 20 Iowa 195 (1866).

37. *Id.* at 209 (emphasis added). Note that Missouri has adopted *Wright's* definition of "matters inherent in the verdict." See *Baumle v. Smith*, 420 S.W.2d 341, 348 (Mo. 1967).

38. *Crump*, *supra* note 3, at 515.

39. 12 Kan. 539 (1874).

40. *Id.* at 544.

The second general exception to the Mansfield Rule, first recognized by the Massachusetts Supreme Court in *Woodward v. Leavitt*,⁴¹ allowed a juror to testify as to the existence of extraneous influences but not as to the *effect* those influences had upon a juror's thought process.⁴² Under this test, jurors could testify in *support* of their verdict that no extraneous influences had prejudiced their decision, but could not testify as to their motives or mental operations which operated to produce the verdict.⁴³

In the federal arena, the U.S. Supreme Court initially cited the *Perry* and *Woodward* exceptions with approval in *Mattox v. United States*,⁴⁴ but later strayed from this analysis by applying general public policy considerations not originally accounted for by the Mansfield jurisprudence.⁴⁵ After Mansfield was divorced from its original justification, the federal courts began applying inconsistent tests that achieved contradictory results until the drafters of the Federal Rules of Evidence promulgated Rule 606(b).⁴⁶

41. 107 Mass. 453 (1871).

42. *Id.* at 466.

43. *State v. Babb*, 680 S.W.2d 150, 152 (Mo. 1984) (en banc) (excluding juror testimony by applying the doctrine elaborately considered and declared in *Woodward*).

44. 146 U.S. 140, 148-49 (1892) (deeming competent juror affidavits which alleged that the bailiff had informed the jury of extraneous evidence and that newspapers accounts of the trial were brought into deliberations).

45. Crump, *supra* note 3, at 519 (discussing the U.S. Supreme Court's opinion in *McDonald v. Pless*, 238 U.S. 264 (1915), which did not apply *Perry* or *Woodward* and excluded juror testimony based on public policy considerations of juror harassment, free and frank discussions in the jury room, and litigants' tampering with jury verdicts to prevent finality of litigation). The Mansfield Rule had originally been "concerned solely with the untrustworthy nature of juror affidavits" and not the policy considerations relied upon by the Court in *McDonald*. *Id.* The U.S. Supreme Court still premises its discussion of the Mansfield non-impeachment rule on "finality of verdicts and encourages frank and free jury deliberation, while discouraging harassment of jurors by losing parties." See 1 MCCORMICK ON EVIDENCE § 68 (John William Strong ed., 4th ed. 1992); see also *Tanner v. United States*, 483 U.S. 107, 119-20 (1987).

46. Crump, *supra* note 3, at 519-20.

B. Federal Rule of Evidence 606(b)

Federal Rule of Evidence 606(b),⁴⁷ though rooted in the original Mansfield Rule,⁴⁸ was the product of a delicate political balance struck between the two competing policy considerations of promoting justice through verdicts rendered by impartial juries and promoting the stability and finality of the jury decision-making process.⁴⁹ Rule 606(b) has been adopted in substantial form by, or has influenced the rule used by, many state jurisdictions and has been said to conceal the accommodation “between an accurate process for seeking truth and a stable jury system.”⁵⁰ Favoring exclusion of juror testimony impeaching the verdict, “[Rule] 606(b) bars juror testimony or [affidavits] to prove any matter occurring or statement made during deliberations unless it [falls under] either of two exceptions.”⁵¹

The first exception recognized in Rule 606(b) allows verdicts to be impeached by juror testimony that alleges “the jury improperly received ‘extraneous prejudicial information’ during deliberations.”⁵² Federal courts have struggled to define the subject matter that is included within this vague categorical exception.⁵³ This exception has been interpreted to allow proof that one or more jurors conducted an unauthorized experiment, a private investigation into the parties or controversy during deliberations, or an unauthorized visit to the premises involved in the controversy.⁵⁴ The distinction between irregularities occurring inside and outside of the jury room was rejected by the Advisory Committee in favor of a rule drawing the line instead between

47. Federal Rule of Evidence 606(b) states in relevant part:

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury’s deliberations or to the effect of anything upon that or any other juror’s mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror’s mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury’s attention or whether any outside influence was improperly brought to bear upon any juror.

FED. R. EVID. 606(b). The Revised Uniform Rule of Evidence 606(b) is substantially the same. UNIF. R. EVID. 606(b) (1974); MCCORMICK ON EVIDENCE, *supra* note 45, § 68, at 260 n.20.

48. The advisory committee to Rule 606(b) labeled Lord Mansfield’s rubric a “gross oversimplification.” FED. R. EVID. 606(b) advisory committee’s note.

49. *See id.*

50. Crump, *supra* note 3, at 525.

51. CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, EVIDENCE: PRACTICE UNDER THE RULES § 6.11, at 654 (2d ed. 1999).

52. *Id.* § 6.12, at 661.

53. Crump, *supra* note 3, at 522.

54. MUELLER & KIRKPATRICK, *supra* note 51, § 6.12 (considering various federal cases where courts admitted juror evidence of extraneous prejudicial information).

testimony about mental processes and testimony about conditions calculated to improperly influence the verdict, without regard to whether these occurred inside or outside the jury room.⁵⁵ However, Rule 606(b), preserving the distinction first recognized by *Woodward*,⁵⁶ renders juror testimony admissible to prove the existence of extraneous information, but renders juror testimony inadmissible to prove the “*effect* such information had on any juror.”⁵⁷

The second exception recognized in Rule 606(b) allows “impeachment of verdicts by evidence of an ‘outside influence’ improperly brought to bear on a juror.”⁵⁸ Courts have recognized such improper influences under Rule 606(b) when blatant attempts were made to bribe jurors, threaten jurors or their families, or otherwise influence jurors.⁵⁹

The Advisory Committee’s Note identifies an important, but often overlooked, distinction between two separate issues.⁶⁰ First, Rule 606(b) and comparable state rules involve only the issue of *competency*.⁶¹ Second, the separate question arises as to what kinds of activities or influences, notwithstanding the evidence used to establish them, will be sufficient to justify a new trial.⁶² The first issue is a “rules-of-evidence question,” while the second is an issue of “judicial discretion to grant new trials.”⁶³ Courts’ repeated confusion of these two issues, along with courts’ failure to consider the proper policy underpinnings of the competency rules, may account for the unharmonious and confusing jurisprudence which often plagues this area of law.⁶⁴

55. H.R. REP. NO. 93-650, at 9 (1973), *reprinted in* 1974 U.S.C.C.A.N. 7075, 7083 (“The Advisory Committee note in the 1971 draft stated that ‘. . . the door of the jury room is not a satisfactory dividing point, and the Supreme Court has refused to accept it.’”).

56. *See supra* notes 41-43.

57. MUELLER & KIRKPATRICK, *supra* note 51, § 6.12 (emphasis added) (citing *United States v. Green*, 523 F.2d 229, 235 (2d. Cir. 1975)).

58. *Id.* § 6.13.

59. *Id.*; *see also* *Krause v. Rhodes*, 570 F.2d 563, 566-67 (6th Cir. 1977); *Stimack v. Texas*, 548 F.2d 588, 588-89 (5th Cir. 1977).

60. EMERGING PROBLEMS UNDER THE FEDERAL RULES OF EVIDENCE 139 (David A. Schlueter ed., 3d ed. 1998) [hereinafter EMERGING PROBLEMS]; *see also* FED. R. EVID. 606(b) advisory committee’s note (“This rule does not purport to specify the substantive grounds for setting aside verdicts for irregularity; it deals only with the competency of jurors to testify concerning those grounds.”).

61. EMERGING PROBLEMS, *supra* note 60, at 139.

62. *Id.*

63. *Id.*

64. *Id.*; *see also* Mark Cammack, *The Jurisprudence of Jury Trials: The No Impeachment Rule and the Conditions for Legitimate Legal Decisionmaking*, 64 U. COLO. L. REV. 57, 92-93 (1993) (speaking of “a glaring inconsistency between the application of the rule and the reasons ordinarily recited to justify its existence”); Crump, *supra* note 3, at 525.

C. *Mansfield in Missouri and Travis v. Stone*

Missouri courts originally adopted a qualified form of the Mansfield Rule. In cases where life and liberty were at stake, they would receive jurors' affidavits to explain extrinsic evidence showing juror misconduct.⁶⁵ However, this qualification was soon eliminated in favor of a strict application of the Mansfield Rule, prohibiting jurors from impeaching their verdict.⁶⁶ This remained the prevailing interpretation of Missouri law, with limited exception, for over a century.⁶⁷

The Missouri Supreme Court began to retreat from the harshness of the Mansfield rule when, in dictum, it stated that a juror might impeach the jury's verdict based upon the misconduct of a juror, provided that the opposing party failed to make a timely and proper objection.⁶⁸ Though this exception was initially questioned,⁶⁹ Missouri courts now consistently hold that juror testimony impeaching the verdict is admissible in the absence of a timely and proper objection by the opposing party.⁷⁰ But, it is currently unclear whether

65. *Pratte v. Coffman*, 33 Mo. 71, 78 (1862); see also *Shearin v. Fletcher/Mayo/Assocs., Inc.*, 687 S.W.2d 198, 205 (Mo. Ct. App. 1984) (Dixon, J., concurring) (discussing Missouri's adoption of the Mansfield Rule in *Pratte*).

66. *State v. Branstetter*, 65 Mo. 149 (1877) (relying on *Sawyer v. Hannibal & St. Jo. R.R. Co.*, 37 Mo. 240 (1866), *State v. Coupenhaver*, 39 Mo. 430 (1867), and *State v. Underwood*, 57 Mo. 40 (1874)).

67. See *Shearin*, 687 S.W.2d at 205 (Dixon, J., concurring) ("This perception of Missouri law was reiterated in: *State v. Babb*, 680 S.W.2d 150 (Mo. 1984); *State ex rel. State Highway Comm'n v. Ballwin Plaza Corp.*, 474 S.W.2d 842, 848 (Mo. 1971); *McDaniel v. Lovelace*, 439 S.W.2d 906, 909 (Mo. 1969); *Smugala v. Campana*, 404 S.W.2d 713, 717 (Mo. 1966); *Romandel v. Kansas City Public Service Co.*, 254 S.W.2d 585, 595-96 (Mo. 1953); *Middleton v. Kansas City Public Service Co.*, 348 Mo. 107, 152 S.W.2d 154 (1941); *Reich v. Thompson*, 346 Mo. 577, 142 S.W.2d 486 (1940); *State v. Westmoreland*, 126 S.W.2d 202 (Mo. 1939); *Steffen v. Southwestern Bell Telephone Co.*, 331 Mo. 574, 56 S.W.2d 47 (1932); *Evans v. Klusmeyer*, 301 Mo. 352, 256 S.W. 1036, 1039 (1923); *State v. Shields*, 296 Mo. 389, 246 S.W. 932, 934 (1922).").

68. *Id.* (citing *Cook v. Kansas City*, 214 S.W.2d 430 (Mo. 1948) and *Mayberry v. Clarkson Constr. Co.*, 482 S.W.2d 721 (Mo. 1972)) ("[I]t is a firmly established rule in this jurisdiction that a juror may not, by his own affidavit or testimony, impeach the jury's verdict because of the misconduct of a juror (citations omitted) unless the respondents failed to timely and properly object to the juror doing so and thereby in turn waived the incompetency of the juror to impeach the verdict.") (alterations in original) (quoting *Cook*, 214 S.W.2d at 433-34).

69. See *Shearin*, 687 S.W.2d at 206-07 (Dixon, J., concurring) (arguing that the principle of waiver is inapplicable since the Mansfield Rule is not based upon privileged communications).

70. See *Stotts v. Meyer*, 822 S.W.2d 887, 890 (Mo. Ct. App. 1991); see also *Travis v. Stone*, 66 S.W.3d 1, 4 (Mo. 2002) (en banc); *Hale v. American Family Mut. Ins. Co.*, 927 S.W.2d 522, 528 n.1 (Mo. Ct. App. 1996) ("Affidavits and testimony of jurors are generally inadmissible to impeach a verdict. The inadmissibility of such

the absence of an objection is an absolute prerequisite to the admissibility of juror testimony in Missouri.⁷¹ Courts are inconsistent as to whether the absence of objection is a necessary element in establishing the admissibility of juror testimony⁷² or merely an independent exception to the Mansfield Rule.⁷³

Missouri courts have also begun to liberalize the Mansfield Rule by recognizing exceptions similar to those present in Federal Rule of Evidence 606(b).⁷⁴ In *Stotts v. Meyer*,⁷⁵ the Missouri Court of Appeals for the Eastern District, applying the “extraneous evidence” exception,⁷⁶ held a juror’s testimony admissible because it related to extra-judicial evidence the juror had gathered and related to the other jurors.⁷⁷ In *Stotts*, Juror Flippo testified that he had visited the scene of the automobile accident at issue to verify the evidence presented at trial.⁷⁸ He also stated in an affidavit that he had learned during deliberations that other jurors had visited the scene as well.⁷⁹ In a footnote, the court commented that it was only considering Flippo’s testimony as to his own visit because, in the court’s opinion, his statements about the other jurors’ visits constituted inadmissible hearsay.⁸⁰ The court held that Flippo’s testimony about his own visit was admissible because it did not fall within “the purview of ‘matters inherent in the verdict.’”⁸¹ Flippo’s testi-

evidence may, however, be waived by its receipt without objection.”) (citations omitted); *Shearin*, 687 S.W.2d at 203 (holding the juror testimony impeaching the verdict admissible since the opposing party had not objected to its admissibility).

71. The *Williams* court avoided reaching this issue after addressing the apparent conflict between *Neighbors v. Wolfson*, 926 S.W.3d 35 (Mo. Ct. App. 1996), and *State v. Stephens*, 88 S.W.3d 876 (Mo. Ct. App. 2002). See *Williams v. Daus*, 114 S.W.3d 351, 366-67 (Mo. Ct. App. 2003) (“[W]e need not consider the arguments of the parties relative to whether the hearing court could even consider evidence of juror misconduct, where a proper objection to the receipt of the evidence by the hearing court had been lodged.”).

72. See *Neighbors*, 926 S.W.2d at 37.

73. See *Stephens*, 88 S.W.3d at 882-83 (arguing that the absence of an objection is merely an alternative basis for allowing juror testimony to impeach the verdict).

74. *Stotts*, 822 S.W.2d at 889 n.4 (recognizing the extraneous evidence exception and the improper outside influence exception present in Federal Rule of Evidence 606(b), as well as the difficulty courts have interpreting these exceptions).

75. 822 S.W.2d 887 (Mo. Ct. App. 1991).

76. This exception is referred to as the “extraneous prejudicial information” exception under the discussion of Federal Rule 606(b). See Part III.B *supra*.

77. *Stotts*, 822 S.W.2d at 890.

78. *Id.* at 891.

79. *Id.* at 888.

80. *Id.* at 888 n.1.

81. *Id.* at 890. The court defines “matters inherent in the verdict” to include instances where

the juror did not understand the law as contained in the court’s instructions, [the juror] did not join in the verdict, [the juror] voted a certain way due to a misconception of the evidence, [the juror] misunderstood the

mony did not extend to the subjective reasoning used by the jury in reaching the verdict, but rather related to a juror's gathering of extraneous evidence, an activity denounced by Missouri courts.⁸²

In *Neighbors v. Wolfson*,⁸³ the Missouri Court of Appeals for the Western District interpreted the *Stotts* opinion narrowly. The court held that juror testimony alleging that extrinsic evidentiary facts had been interjected into deliberations could be admissible evidence, but only if the opposing party acquiesced in the competency of such evidence by failing to object.⁸⁴ Even though the jurors' testimony alleged that extrinsic evidentiary facts⁸⁵ had "infiltrated the jury's deliberation[s]," the court held the evidence inadmissible because the opposing party had properly objected to its admissibility.⁸⁶ In *Stotts*, the Eastern District had held Juror Flippo's testimony admissible on two grounds: that it related to a juror's gathering of extraneous evidence and that the opposing party failed to object.⁸⁷ In *Neighbors*, the Western District held that *both* "conditions" had to be met before juror testimony could be admitted to impeach the verdict.⁸⁸

Recently, in *Travis v. Stone*,⁸⁹ the Missouri Supreme Court appeared to accept the extraneous evidence exception recognized by *Stotts* but did not have reason to resolve the inconsistency between *Stotts* and *Neighbors*.⁹⁰ In *Travis*, Juror Zink testified at a post-trial hearing that she had visited the scene of the accident at issue in the case during a break in the testimony of an accident reconstruction expert.⁹¹ After receiving an adverse verdict, the plaintiff filed a motion for new trial on the basis of juror misconduct.⁹² The

statements of a witness, [the juror] was mistaken in his calculations, or other matters "resting alone in the juror's breast."

Id. at 889. (quoting *Baumle v. Smith*, 420 S.W.2d 341, 348 (Mo. 1967)). In *Baumle*, the Missouri Supreme Court accepted the definition of "matters inherent in the verdict" first adopted by the Iowa Supreme Court in *Wright*, discussed in Part III.A *supra*. See *Baumle*, 420 S.W.2d at 348.

82. *Stotts*, 822 S.W.2d at 890.

83. 926 S.W.2d 35 (Mo. Ct. App. 1996).

84. *Id.* at 37-38.

85. *Id.* The affidavits of four jurors indicated that during deliberations the jury had viewed and discussed a booklet containing information on the risks of Pitocin, a labor-inducing drug, which was related to a central issue in the case. *Id.*

86. *Id.* at 38.

87. *Stotts*, 822 S.W.2d at 891.

88. *Neighbors*, 926 S.W.2d at 37.

89. 66 S.W.3d 1 (Mo. 2002) (en banc).

90. *Id.* at 4. "The general rule in Missouri is that a juror's testimony about jury misconduct allegedly affecting deliberations may not be used to impeach the jury's verdict. However, it is permissible to elicit testimony about juror misconduct that occurred outside the jury room, such as the alleged gathering of extrinsic evidence at issue here." *Id.* at 4 (citations omitted).

91. *Id.* at 3.

92. *Id.* at 2.

defendants failed to object to the admissibility of Zink's testimony but argued that her visit did not prejudice the verdict.⁹³ The Missouri Supreme Court reversed the trial court's denial of a new trial, holding that Zink's testimony was admissible and had created a presumption of prejudice which defendants failed to rebut.⁹⁴ Since the defendants had failed to object to the juror testimony offered to impeach the verdict, the court did not have reason to determine whether such testimony relating to extraneous evidence would be independently admissible even in the face of objection.

In *State v. Stephens*,⁹⁵ a post-*Travis* criminal case, the Missouri Court of Appeals for the Western District held that juror testimony alleging that extraneous evidence had been gathered by a juror was admissible despite a timely and proper objection.⁹⁶ The *Stephens* court interpreted *Travis* to mean that the absence of an objection was merely an alternative basis for admissibility of the juror testimony rather than a mandatory prerequisite to admissibility.⁹⁷ In *Stephens*, the assistant prosecutor spoke with a juror after trial who told her that, prior to deliberations, an unnamed juror had visited a park where part of the alleged crime occurred.⁹⁸ The state objected to admission of this evidence, arguing that a jury's verdict could not be impeached by the testimony of a juror.⁹⁹ The defendant appealed the court's denial of his motion for new trial, arguing that *Travis* had recognized an exception to the general rule of inadmissibility where the juror testimony alleges that a juror gathered extraneous evidence.¹⁰⁰ The state interpreted *Travis* as only allowing juror testimony to impeach the verdict where the opposing party had failed to object to admissibility.¹⁰¹ Since the state had timely objected, it claimed that the juror's testimony was inadmissible. Rejecting the state's interpretation, the court held that the failure to object was merely an alternative basis for admissibility and that *Travis* had indeed recognized an independent extraneous evidence exception allowing the use of juror testimony to impeach the verdict

93. *Id.* at 4.

94. *Id.* at 6. The court relied on its prior holding in *Middleton v. Kansas City Public Service Co.*, 152 S.W.2d 154 (Mo. 1941), which held that a presumption of prejudice arises when a party has established that a juror gathered evidence extraneous to the trial. *Travis*, 66 S.W.3d at 4.

95. 88 S.W.3d 876 (Mo. Ct. App. 2002).

96. *See id.* "No rational basis appears for distinguishing between civil and criminal cases as to the issue presented." *Id.* at 882 n.3. Note, however, that commentators have suggested that the Sixth and Fourteenth Amendments may have special implications on applying the no impeachment rule to criminal cases. *See Crump, supra* note 3, at 524; *see also* Cammack, *supra* note 64, at 68-69 (citing *Parker v. Gladden*, 385 U.S. 363 (1966)).

97. *Stephens*, 88 S.W.3d at 882-83.

98. *Id.* at 879.

99. *Id.*

100. *Id.* at 881-82.

101. *Id.* at 882.

despite a timely objection.¹⁰² After holding the juror testimony admissible, the court affirmed the trial court's decision on the grounds that the misconduct had not prejudiced the defendant.¹⁰³

IV. INSTANT DECISION

A. *The Majority Opinion*

In *Williams v. Daus*,¹⁰⁴ the Missouri Court of Appeals considered, among other issues,¹⁰⁵ whether the trial court had abused its discretion in denying Daus's motion for new trial based on allegations that a juror had obtained extra-judicial evidence from a visit to Daus's hospital and then related these findings to the other jurors.¹⁰⁶ The majority began its analysis of the jury misconduct issue by stating the general rule in Missouri, that a juror's testimony about misconduct allegedly affecting deliberations could not be used to impeach the jury's verdict.¹⁰⁷ Tracing this "firmly entrenched" rule back to the Mansfield Rule, the court cited *Stotts v. Meyer*¹⁰⁸ for the proposition that a juror's testimony or affidavit could not be used to impeach the verdict based on alleged misconduct inside or outside the jury room.¹⁰⁹ But, the majority recognized the exception carved out by the Missouri Supreme Court in *Travis v. Stone*¹¹⁰ allowing impeachment of a verdict by juror testimony when such testimony alleges that "extrinsic evidentiary facts" were interjected into the jury's deliberations.¹¹¹

102. *Id.* at 882-83.

103. *Id.* at 883-84. The court noted that a presumption of prejudice arises when there is proof of juror misconduct in obtaining extraneous evidence; however, the court held that the presumption was rebutted because the extraneous evidence was found to be immaterial. *Id.*

104. 114 S.W.3d 351 (Mo. Ct. App. 2003) (transfer to the Missouri Supreme Court denied on Sept. 30, 2003).

105. The court first addressed whether plaintiff had established, with a reasonable degree of certainty, the portion of her present injuries attributable to defendant's conduct as opposed to her pre-existing condition. *Id.* at 358. The court then considered whether plaintiff had presented admissible evidence supporting the trial court's instruction allowing recovery for lost earnings, lost earning capacity, and future medical expenses. *Id.* at 363. Finally, after addressing the jury misconduct issue, the court addressed defendant's argument that the trial court had erred in submitting a vague verdict-directing instruction. *Id.* at 369-70.

106. *Id.* at 364.

107. *Id.* (citing *Travis v. Stone*, 66 S.W.3d 1, 4 (Mo. 2002) (en banc)).

108. 822 S.W.2d 887 (Mo. Ct. App. 1991)

109. *Williams*, 114 S.W.3d at 364.

110. 66 S.W.3d 1 (Mo. 2002) (en banc).

111. *Williams*, 114 S.W.3d at 365 ("Courts recognize an exception to this general rule, however, and allow a party to attack a verdict on the ground that juror miscon-

Before reaching the issue of whether the exception was applicable, the majority first addressed Williams' argument that the jurors' testimony was excluded solely because Williams had properly and timely objected to the testimony.¹¹² Although first referring to older precedent which held that such testimony was per se inadmissible in the face of proper objection, the court noted that the *State v. Stephens*¹¹³ court had recently interpreted *Travis* to mean that such evidence could be admissible despite proper objection.¹¹⁴ The majority chose to avoid resolving the objection issue and affirmed the trial court's denial of Daus's motion for new trial on other grounds.¹¹⁵

Though the majority recognized Missouri's adoption of the "extrinsic evidence" exception,¹¹⁶ it held that the four jurors' testimony about Juror No. 2's comments during deliberations was inadmissible hearsay evidence.¹¹⁷ In addition, the majority inferred that the trial court must have found that Juror No. 2 never actually visited Daus's hospital even though she may have told the other jurors during deliberations that she had.¹¹⁸ The majority opined that the remarks of Juror No. 2 made during deliberations constituted "matters inherent in the verdict" which could not be used to impeach the jury's verdict.¹¹⁹ The majority reasoned that if she had made up the story she told the jury, then the jurors had acted on "'improper motives, reasoning, beliefs or mental operations,'" which have been held in the past to be "matters inherent in the verdict."¹²⁰ The majority concluded that the trial court, given great deference in its factual findings, did not abuse its discretion in denying Daus's motion for new trial.¹²¹

B. *The Dissent*

Judge Montgomery's dissenting opinion, in which Judges Parrish and Garrison concurred, argued that *Travis* and *Stephens* required a holding that the jurors' testimony was properly admitted to impeach the verdict.¹²² The

duct occurred outside the courtroom, such as when a juror gathers evidence extraneous to the trial.").

112. *Id.* at 366.

113. 88 S.W.3d 876 (Mo. Ct. App. 2002).

114. *Id.* at 366-67 (citing *Stephens*, 88 S.W.3d at 882-83).

115. *Id.* at 367. The trial court received the juror affidavit and juror testimony in the post-trial hearing over Williams' repeated objections, which suggests that the trial court was following the Western District's interpretation of *Travis*. *Id.*

116. *See supra* note 111.

117. *Williams*, 114 S.W.3d at 367.

118. *Id.*

119. *Id.*

120. *Id.* (quoting *Neighbors v. Wolfson*, 926 S.W.2d 35, 37 (Mo. Ct. App. 1996)).

121. *Id.* at 369.

122. *Id.* at 376 (Montgomery, J., dissenting).

dissent noted that *Neighbors v. Wolfson*,¹²³ cited by the majority, was decided prior to the Missouri Supreme Court's decision in *Travis*,¹²⁴ which held "that juror testimony [was] permissible where the misconduct occur[red] outside the jury room."¹²⁵ The dissent also argued that under *Travis*, as interpreted by *Stephens*, a failure to object to use of juror testimony is merely an alternative basis for allowing such testimony rather than a mandatory prerequisite for admissibility of such testimony.¹²⁶ Since the testimony was properly admitted under the dissent's view, a presumption of prejudice arose which shifted the burden to Williams to show a lack of prejudice.¹²⁷ Williams had offered no evidence to rebut the presumed prejudice.¹²⁸

The dissent disagreed with the majority's conclusion that the four jurors had given hearsay testimony. The dissent argued that the testimony was excepted from the hearsay rule because the relevance of Juror No. 2's statement lay in the mere fact that she had made it to the other jurors. And in doing so, she had brought extra-judicial evidence of her alleged visit to the hospital into the jury room, regardless of whether her information was true or false.¹²⁹

While the majority had argued that a negative inference could be drawn from the lack of testimony from Juror No. 2 herself, the dissent pointed to authority holding that allowing such an inference constituted reversible error where the witness was equally available to both parties. After analyzing the factors relevant to this inquiry, the dissent concluded that no adverse inference could be drawn from Daus's failure to call Juror No. 2 as she had been equally available to both parties. The dissent disagreed with the majority's finding that Juror No. 2 had merely made up her story and concluded that it was an abuse of discretion for the trial court to deny Daus's motion for new trial.

C. *The Concurrence*

Judge Shrum filed a concurring opinion to respond to the arguments made by the dissent, especially those on the hearsay issue.¹³⁰ Shrum argued that the dissent's view would expand the scope of *Travis* and *Stephens* "beyond permissible limits" and create a new exception to the hearsay rule which

123. 926 S.W.2d 35 (Mo. Ct. App. 1996).

124. *Williams*, 114 S.W.3d at 375 (Montgomery, J., dissenting).

125. *Id.* at 376 (Montgomery, J., dissenting).

126. *Id.* (Montgomery, J., dissenting).

127. *Id.* (Montgomery, J., dissenting).

128. *Id.* (Montgomery, J., dissenting).

129. *Id.* (Montgomery, J., dissenting) (citing *Rodriguez v. Suzuki Motor Corp.*, 996 S.W.2d 47, 59 (Mo. 1999) (en banc)) (noting that "a statement is not hearsay if the relevance of the statement lies in the mere fact that it was made and no reliance is placed on the [veracity] of the out-of-court declarant").

130. *Id.* at 373 (Shrum, J., concurring).

had not been previously recognized.¹³¹ Based on Shrum's interpretation of the recent Missouri authority, the extrinsic evidence exception only applies if it is shown that extrinsic evidence was *actually* gathered by the offending juror.¹³² Shrum pointed to a footnote in *Stotts* which stated that a juror's testimony about statements made by other jurors during deliberations constituted inadmissible hearsay.¹³³ Thus, juror testimony about statements made by Juror No. 2 would be inadmissible to prove that Juror No. 2 had "*actually* gathered extrinsic evidence."¹³⁴ Finding no other evidence in the record showing introduction of extraneous evidence, the concurrence concluded that the trial judge "did not abuse his discretion in refusing to grant a new trial based upon alleged juror misconduct."¹³⁵

V. COMMENT

The majority opinion in *Williams v. Daus*¹³⁶ leaves Missouri law on the extraneous evidence exception to the Mansfield Rule in disarray. First, it avoids answering the question of whether timely and proper objection serves as an absolute bar to admissibility of juror testimony even when the testimony alleges gathering of extra-judicial evidence by a juror.¹³⁷ Second, the majority applies the hearsay rule in an unprecedented manner to find an independent basis for excluding the juror testimony in question.¹³⁸ The ultimate judgment of the court, however, may be defensible in its deference to the trial court's finding of a lack of prejudice.

The dissent's interpretation of *Travis v. Stone*¹³⁹ on the objection issue appears to be correct.¹⁴⁰ As the court noted in *Stephens*, the *Travis* court stated in clear and unambiguous terms that "it is permissible to elicit testimony about juror misconduct that occurred outside the jury room, such as the alleged gathering of extrinsic evidence at issue here."¹⁴¹ It would make little sense to argue that the court "cut down" this exception in the same paragraph

131. *Id.* (Shrum, J., concurring).

132. *Id.* (Shrum, J., concurring) (citing *State v. Stephens*, 88 S.W.3d 876, 883 (Mo. Ct. App. 2002)).

133. *Id.* at 373-74 (Shrum, J., concurring) (citing *Stotts v. Meyer*, 822 S.W.2d 887, 888 n.1) (Mo. Ct. App. 1991)).

134. *Id.* at 374. (Shrum, J., concurring).

135. *Id.* (Shrum, J., concurring).

136. 114 S.W.3d 351 (Mo. Ct. App. 2003) (transfer to the Missouri Supreme Court denied on Sept. 30, 2003).

137. *Id.* at 367.

138. *Id.*

139. 66 S.W.3d 1 (Mo. 2002) (en banc).

140. *See Williams*, 114 S.W.3d at 375-76 (Montgomery, J., dissenting).

141. *State v. Stephens*, 88 S.W.3d 876, 882 (Mo. Ct. App. 2002) (citing *Travis v. Stone*, 66 S.W.3d 1, 4 (Mo. 2002) (en banc)).

by later requiring the absence of an objection from the opposing party.¹⁴² As the *Williams* dissent argues, the *Travis* court was merely recognizing waiver as an alternative basis for admissibility of juror testimony.¹⁴³ The extraneous evidence exception would not be an exception at all if it only applied in the absence of objection. The *Stotts* opinion, on which *Travis*'s extraneous evidence exception is based, specifically states that the juror's testimony was "competent and admissible" because it related to the juror's gathering of extraneous evidence, a matter not inhering in the verdict.¹⁴⁴ This holding in the *Stotts* opinion was independent of that court's later consideration of the alternative ground of admissibility, the absence of objection by the opposing party.¹⁴⁵

It is difficult to find authority supporting the majority's application of the hearsay rule to the jurors' testimony in *Williams*.¹⁴⁶ The concurring opinion expands upon the majority's very brief consideration of the hearsay issue. The concurring opinion argues that the four jurors' testimony is hearsay because the jurors testified about out-of-court statements made by Juror No. 2 and relied upon the truth of the matter asserted in Juror No. 2's statements.¹⁴⁷ In other words, the majority and concurrence would require that Juror No. 2's statements be truthful before allowing the extraneous evidence exception to be triggered. This would require proof of *actual* gathering of extrinsic evidence before the four jurors' testimony could be admissible. Such reasoning collapses the two step inquiry into one step and confuses the two distinct issues of (1) competency, an evidentiary issue, and (2) prejudice, an issue of substantive law as to whether misconduct warrants a new trial.¹⁴⁸ Whether Juror No. 2 *actually* visited the defendant's hospital and obtained extrajudicial evidence about the defendant's medical competence relates to the trial court's weighing of evidence and findings of fact, an issue of substantive

142. *Id.* at 882-83.

143. *Williams*, 114 S.W.3d at 376 (Montgomery, J., dissenting) (quoting *Stephens*, 88 S.W.3d at 882-83).

144. *Stotts v. Meyer*, 822 S.W.2d 887, 890 (Mo. Ct. App. 1991).

145. *Id.* at 890-91.

146. Only two Missouri cases apply the hearsay rule to juror testimony offered to impeach the verdict. See *Buatte v Schnuck Markets, Inc.*, 98 S.W.3d 569, 574-75 (Mo. Ct. App. 2002); *Rogers v. Steuermann*, 552 S.W.2d 293, 294 (Mo. Ct. App. 1977). In *Rogers*, the jurors' affidavits were hearsay because they were unsworn, taken out of court, and taken out of the presence of the opposing party's counsel. *Rogers*, 552 S.W.2d at 294.

147. *Williams*, 114 S.W.3d at 374 (Shrum, J., concurring).

148. See EMERGING PROBLEMS, *supra* note 60, at 139 ("Failure of some courts clearly to separate these issues may account for some of the confusing opinions."); see also *Crump*, *supra* note 3, at 525 ("[C]ourts continue to confuse the issue of competency of juror testimony with the question whether the alleged misconduct merits remedial action . . .").

law distinct from the evidentiary issue of admissibility.¹⁴⁹ The dissent is correct to argue that the extraneous evidence exception is not dependent on the truthfulness of Juror No. 2's statements.¹⁵⁰ Her statements are only relevant to prove the fact that they were made, and no reliance is placed on the credibility of those statements. Therefore, the four jurors' testimony that Juror No. 2 made the statements is excepted from the hearsay rule.¹⁵¹ It is clear that applying the hearsay rule to the four jurors' testimony in this case merely circumvents application of the Mansfield Rule and the extraneous evidence exception. When juror testimony *alleges* the gathering of extrinsic evidence by jurors, it becomes admissible under *Travis's* extraneous evidence exception.¹⁵² On the question of admissibility, it seems both silly and infeasible to distinguish between a juror who has actually gathered extra-judicial evidence and one who has merely lied to his fellow jurors about gathering such evidence. A more prudent means of handling such a situation would be to admit the testimony and then allow the trial court to determine the credibility of the evidence presented in determining whether a new trial is warranted.

The majority and concurring opinions' application of the hearsay rule would also only allow the testimony of the alleged offending juror or a nonjuror to be admissible. For unknown reasons, Juror No. 2 was not subpoenaed to testify in the post-trial hearing.¹⁵³ The majority concluded that her absence raised the presumption that she would have testified that she had not visited the defendant's hospital or obtained extraneous evidence.¹⁵⁴ This would have been of no consequence to the applicability of the extraneous evidence exception because her truthfulness was only relevant to the determination of the substantive issue of whether juror activity prejudiced the verdict. Of all the jurors, it makes little sense to allow only the offending juror to testify as to the gathering of extraneous evidence. The original reasoning behind Lord Mansfield's Rule was that jurors who would testify as to their own misconduct were not to be trusted.¹⁵⁵ So, if anyone's testimony should be inadmis-

149. The concurring opinion cites *Stephens* for the proposition that the issue is "whether Juror No. 2 *actually* gathered extrinsic evidence." *Williams*, 114 S.W.3d at 374 (Shrum, J., concurring) (citing *State v. Stephens*, 822 S.W.2d 876, 883 (Mo. Ct. App. 2002)). But, this language from *Stephens* is misplaced. The *Stephens* opinion was merely stating that misconduct must have *actually* occurred before the movant can be entitled to a new trial, which deals with the substantive issue of prejudice rather than the evidentiary issue of competency.

150. See *id.* at 376-77 (Montgomery, J., dissenting) (citing *Rodriguez v. Suzuki Motor Corp.*, 996 S.W.2d 47, 59 (Mo. 1999) (en banc)).

151. *Id.* (Montgomery, J., dissenting).

152. *Travis v. Stone*, 66 S.W.3d 1, 4 (Mo. 2002) (en banc) ("[I]t is permissible to elicit testimony about juror misconduct that occurred outside the jury room, such as the alleged gathering of extrinsic evidence at issue here.").

153. *Williams*, 114 S.W.3d at 368.

154. *Id.*

155. See *supra* note 45 and accompanying text.

sible, it should be that of the alleged offending juror. Missouri courts have reasoned that juror testimony about matters inherent in the verdict should be inadmissible because the proof of a juror's mental process is "locked in the breast of the juror, and is not capable of refutation or corroboration."¹⁵⁶ However, a juror's alleged visit of an accident scene or gathering of extrajudicial evidence outside the jury room is often capable of corroboration or refutation. Consequently, juror testimony about the gathering of extrajudicial evidence should be admissible because it is capable of objective proof.

Under the majority's analysis, nonjurors could still testify about a juror's gathering of extraneous evidence. However, a nonjuror would not be able to testify as to whether the extraneous evidence had been "interjected into the jury's deliberations."¹⁵⁷ The *Wright v. Illinois & Mississippi Telephone Co.*¹⁵⁸ court, which created the "Iowa Rule,"¹⁵⁹ disapproved of distinguishing nonjurors from jurors, because "jurors should be more accurate witnesses to their own misconduct than a spy."¹⁶⁰

Although the majority and concurring opinions' interpretation of the *Travis* extraneous evidence exception may have deprived it of any real meaning, the judgment may still be defensible. If the trial court in fact determined that Juror No. 2 did not gather extra-judicial evidence and no prejudice resulted to the defendant, then the trial court may have properly exercised its discretion in finding that a new trial was not warranted by Juror No. 2's statements. This step of the analysis was a foregone conclusion for the majority and concurring opinions, however, since they found the evidence inadmissible as hearsay. Though the court may have achieved the proper result, the means used to get there were questionable and arguably incompatible with the law of *Travis v. Stone*.

VI. CONCLUSION

The *Williams* opinion seems to contravene the policy espoused by Missouri precedent which views attempts by jurors to gain extra-judicial evidence as intolerable.¹⁶¹ Missouri courts have held that a juror may not independ-

156. *Baumle v. Smith*, 420 S.W.2d 341, 348 (Mo. 1967) (quoting *S. Pac. Co. v. Klinge*, 65 F.2d 85, 88 (10th Cir. 1933)) (explaining Missouri's policy behind adherence to the Mansfield Rule).

157. *Williams*, 114 S.W.3d at 365 (quoting *Neighbors v. Wolfson*, 926 S.W.2d 35, 37 (Mo. Ct. App. 1997)).

158. 20 Iowa 195, (1866).

159. See *supra* notes 36-40 and accompanying text.

160. *Crump*, *supra* note 3, at 516 n.44; see also *Wright*, 20 Iowa at 210-12.

161. *Travis v. Stone*, 66 S.W.3d 1, 4 (Mo. 2002) (en banc) ("Our trial procedures do not contemplate and cannot well tolerate such independent investigation by jurors.").

ently seek evidence,¹⁶² visit the scene of an accident,¹⁶³ or inform other jurors of his personal knowledge of the circumstances of the case.¹⁶⁴ While Missouri courts have carved out an exception to their otherwise strict application of the Mansfield Rule when jurors gather extra-judicial evidence and relate it to other jurors, inconsistencies prevent this exception from having its intended ameliorative goals.

Though Missouri courts have traditionally been hesitant to stray from strict adherence to the Mansfield Rule, recent decisions, including *Travis v. Stone*, seem to indicate a liberalizing trend. Unfortunately, courts have interpreted *Travis's* extraneous evidence exception inconsistently, leaving Missouri law governing admissibility of juror testimony unclear. A clear interpretation of *Travis* is needed to determine where the balance between finality of verdicts and fair administration of justice will ultimately lie in Missouri.

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162. *Middleton v. Kansas City Pub. Serv. Co.*, 152 S.W.2d 154 (Mo. 1941).

163. *Douglass v. Mo. Cafeteria, Inc.*, 532 S.W.2d 811 (Mo. Ct. App. 1975).

164. *Cook v. Kansas City*, 214 S.W.2d 430, 433 (Mo. 1948).

