

PREDICTING JUROR DECISIONS: THE IMPACT OF JUDICIAL ADMONITIONS  
AND MORAL REASONING

by

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## Abstract

Ninety-five university students and members of the community completed Gibbs' Sociomoral Reflection Measure (SRM), which is designed both to assess moral reasoning levels and to distinguish between autonomous and heteronomous reasoners, then viewed and made judgments about a criminal trial concerning doctor-assisted suicide.

Autonomous jurors were more likely than heteronomous jurors to find the defendant not guilty. Autonomous jurors given nullification instructions were more likely than autonomous jurors given standard instructions to advocate acquittal. Heteronomous jurors rarely advocated acquittal, regardless of the type of instructions they received. Higher stage reasoners advocated acquittal more frequently than lower stage reasoners did. The linear combination of autonomy/heteronomy, type of instruction, and moral reasoning level served as the best predictor of juror verdicts. Qualitative data gleaned from jury deliberations revealed that autonomous jurors tended to evoke all three types of autonomous judgment--balancing, fundamental valuing, and conscience--to argue for acquittal. These results partially support the hypothesized relationship between moral thought and jury nullification.

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## Introduction

"How could they let him go free?" is a question I frequently field after raising the O.J. Simpson criminal trial in class discussions. This result seems especially untenable given the fact that he was later found liable in the civil trial. My response to their confusion centers around the legal pillars of "proof beyond a reasonable doubt" and "innocent until proven guilty." Yet beneath these explanations, I understand my students' confusion about the decision made in this case.

One of the reasons the rationale behind jury decisions may be obscure is because jurors are given a difficult task. In addition to their limited understanding of legal terminology (Hans & Vidmar, 1986), jurors are given roles that sometimes conflict (Law Reform Commission of Canada, 1980). On the one hand, they are required to judge the defendant(s) based solely on the evidence and the general application of the law as given them by the presiding judge. On the other hand, they are assumed to bring the wishes and conscience of the community to bear on the legal proceeding as hand (Becker, 1980; Kalven & Zeisel, 1966).

### The History of Jury Nullification

The contradictory nature of the juror's role has a long history. Contrary to popular belief, the purpose of the British jury was not to make the administration of the law more consistent with community sentiment, but, rather, it was to make the administration of law appear more just in the eyes of the masses (Hans & Vidmar, 1986). The traditional jury in pre-industrial Britain was forced to decide cases in the manner dictated by the

Crown. In fact, jurors at that time were selected according to the degree to which they were sympathetic to the Crown (Hans & Vidmar, 1986). As one would expect, jurors almost always supported the prosecution. Yet, in some early cases, juries chose to oppose the Crown. In these cases, the Crown used (abused) its authority to punish jurors for deciding the cases "incorrectly". In *the Queen v. Penn and Mead* (1670), for example, the jury was punished four times for arriving at the "incorrect" verdict (not guilty of unlawful assembly). And even after the Crown finally accepted their verdict, the jurors were fined 40 marks each and were imprisoned until the fine was paid (Hans & Vidmar, 1986).

In the United States, the jury took on a new purpose. Prior to the American Revolution, the imported British governors actively prosecuted colonists who were critical of Britain's role in the new colony. During this period, the jury came to symbolize the rights of the people to stand against the injustices of those in power. In Judging the Jury (1986), Hans and Vidmar cite the trial of Peter Zenger (1735) as a pivotal turning point in the role of the American jury. It is also a good starting point for the present discussion of jury nullification.

In 1732, the colony of New York received a new governor from Britain by the name of William Cosby. Upon arrival, Cosby engaged in various actions (such as dismissing the Chief Justice of the Supreme Court) that served to alienate him from the colonists. Those who opposed Cosby launched a newspaper, The New York Weekly Journal, as a forum to criticize the governor. The political forum of the journal eventually led to charges being laid against Peter Zenger, the paper's publisher.

The trial was constructed in a manner such that, by the legal standards of that day, the conviction of Zenger was ensured. Zenger's lawyer, Andrew Hamilton, thus chose to argue the case around the "law of the future" rather than the law of the present. At that time, the jury was granted only limited discretion in deciding the outcomes of cases. Hamilton argued that such limitations ran contrary to the function of the jury. In addition, he argued that the laws of England may be good for England, but they may not be appropriate for the colonies where there was greater equality between the populace and those in power. Hamilton's third argument was that in the colonies, people should be free to criticize those who govern them. Last, and central to the purpose of the present study, Hamilton argued that the primary function of those in positions of authority is to protect the civil liberties of the citizens that they govern and, when they fail to do so, citizens should be free to disobey these authorities. Although the presiding judge opposed Hamilton's arguments, the jury did not--returning a verdict of not guilty after a short deliberation. Hamilton's words set the stage for the modern concept of jury nullification, "Jurymen are to see with their own eyes, to hear with their own ears, and to make use of their own consciences and understandings, in judging the lives, liberties and estates of their fellow subjects" (as cited in Hans and Vidmar, 1986, p. 35). A century after the trial of Zenger, the jury had come to symbolize the right of the people to stand against unjust or unpopular laws, or against the tyranny of those in political power:

It is not only the right and duty of the juries to judge what are the facts, what is the law, and what was the moral intent of the accused; but that it is also their right, and their primary and paramount duty, to judge of the justice of the law, and to

hold all laws invalid, that are, in their opinion, unjust or oppressive, and all persons guiltless in violating, or resisting the execution of, such laws (Spooner, 1852).

### The Modern Concept of Jury Nullification

In most criminal matters, the two roles of jurors--administrators of the law and representatives of the community--are congruent inasmuch as the law strives to maintain order in society and to protect the civil liberties of individuals within that society (Law Reform Commission of Canada, 1980). Take, for example, the case of child molestation. The laws against child molestation are consistent with societal disgust of such abhorrent acts. Thus, if child molestation is proved in a court of law, the conscience of the community and the dictates of the law are likely to coincide, resulting in the conviction of the accused.

There are situations, however, where the two roles of the jury conflict. As in *Zenger*, the law may serve as a mechanism for legalizing the oppression of the disenfranchised masses (Hans & Vidmar, 1986). Laws may also become outdated and may fail to represent the collective conscience and wishes of the majority (Hans & Vidmar, 1986). In some cases, people may perceive a particular law as inapplicable to a case in question and may therefore disregard the law (Kalven & Zeisel, 1966). And, finally, although jury members may desire to apply a given law, they may be apprehensive because they may feel the legal penalty for that crime would produce an unjust outcome (Hans & Vidmar, 1986; Kalven & Zeisel, 1966). In cases where jurors'

moral sentiments conflict with the strict application of the law, jurors may make one of two choices--to apply law and decide in a manner that is contrary to their personal beliefs or to invoke their personal beliefs, and decide in a manner that is contrary to the law.

Jury nullification is the term used to describe the latter choice (Schefflin, 1972; Schefflin & Van Dyke, 1980).

### The Power to Nullify the Law

Do juries have the power to nullify the law? Like the dual role of the jury, the answer to this question is equivocal. The true answer is "yes"--Jurors have the power to nullify because their discussions are secret and the method and rationale for making their decisions are confidential. Yet, although given the power to decide cases on any basis they wish, jurors are instructed that they must follow the interpretation of the law given them by the presiding judge and must apply the law without question. In short, juries have the opportunity to nullify, but are not informed of this power. Proponents of this "legal" position argue that telling juries that they have the power to nullify would be equivalent to condoning inconsistency and anarchy in legal decision-making (Simpson, 1976).

Although British common law allows jurors to be given nullification instructions if warranted (Schlefflin & Van Dyke, 1980), countries with legal roots in English common law have dealt with the issue of jury nullification in divergent ways. In the United States, providing nullification instruction is a matter decided at the state level. Although historically, jury nullification instructions were permitted via precedence, currently, only

the states of Maryland and Indiana allow judges to inform juries of their power to nullify (Hans & Vidmar, 1986).

In Canada, the law prohibits jurors from being informed of their power to nullify the law (Hans & Vidmar, 1986). Juries, however, still nullify on occasion. The most notable Canadian examples of jury nullification come from the trials of Dr. Henry Morgentaller. Since 1967, Canadian law has allowed for legal abortions in cases where the continued pregnancy would pose a risk to the mother's life. Morgentaller opposed this abortion law on the grounds that it was ineffective in allowing women to exercise what he believed to be their freedom of choice. Morgentaller opened abortion clinics in Montreal, Toronto, and Winnipeg, in open violation of Canadian law. He was brought to trial four times and, in each case, his sole defense was that it was justifiable to provide this service because any woman seeking an abortion is in desperate straits. On each occasion, the jury acquitted him, in open violation of the law (Morton, 1992).

The highly publicized case of Jane Stafford is another Canadian case where the jury chose to nullify the law. Jane Stafford shot and killed her common-law husband on March 11, 1982, after more than five years of physical and sexual abuse. He had beaten and abused two previous wives and numerous children, and had a history of violent confrontations with the RCMP. Yet, on the evening of March 11, 1982, he was shot while drunk and asleep in the cab of his pick-up truck. Stafford admitted the act, and stood charged with first-degree murder. Her defense lawyer argued that under the circumstances, a finding of manslaughter would be more appropriate than a finding of murder. The jury, however, nullified the law, and found Jane Stafford not guilty (Steed,

February 4, 1983). It seems the jury took the position that she had a right to kill her husband after all he had done to her, and that the law against murder would not provide a “just” solution, in this case.

It is clear from these two examples that even when not instructed of their nullification powers, Canadian juries still sometimes nullify the law. Two questions, central to the study presented here, arise from these cases. First, given that juries sometimes nullify even when not instructed of this privilege, would the provision of nullification instructions increase the incidence of jury nullification? Second, are people who nullify the law different from people who strictly administer the law in cases where their moral sentiments conflict with the administration of the law? The present study is designed to examine these two questions. Past research addressing each questions will be discussed, in turn, below.

### The Potential Impact of Nullification Instructions

Contrary to the fear legal professionals have about providing nullification instructions to jurors, there is little evidence that, under ordinary circumstances, nullification instructions would undermine the legal system. In a study on the effect of nullification instructions on jury decision-making, Horowitz (1985) provided six-person juries with audiotaped criminal cases involving either a mercy killing, a murder, or a drunk-driving case resulting in a pedestrian’s death. In each case, the evidence clearly suggested the accused was guilty. Jurors were given either standard pattern instructions, regular Maryland-type nullification instructions, or radical nullification instructions, as outlined below:

Although they are publicly bound to give respectful attention to the laws, they have the final authority to decide whether or not to apply a given law to the acts of the defendant on trial before them; that they represent the community and that it is appropriate to bring into their deliberations the feelings of the community and their own feelings based on conscience; and that despite their respect for the law, nothing would bar them from acquitting the defendant if they feel that the law, as applied to the fact situation before them, would produce an inequitable or unjust result. (p. 30-31)

Radical nullification instructions had an effect on both the mercy killing and the drunk driving trials--in the mercy killing trial, the instructions resulted in a greater number of acquittals, but in the drunk driving trial, the radical instructions resulted in a greater number of convictions. Juries given Maryland nullification instructions were no more likely to nullify than juries given standard pattern instructions.

Two main conclusions can be drawn from Horowitz' study. First, nullification instructions can have various effects depending on the trial being considered. When members of society view a given law as unjust or invalid (as in the case of euthanasia), they may react against the law and nullify in the direction of being lenient to the defendant. In contrast, if members of society view a given law as too lenient and unfair to the victim (as in the case of drunk driving) they may react against the law and nullify in the direction of being more punitive to the defendant. Second, the wording of nullification instructions (using radical nullification instructions versus using standard Maryland nullification instructions) has a significant impact on jury decision-making. For nullification instructions to impact jury decisions, such instruction must clearly



explain the role of the jury and the power the jury has to nullify the law. The instruction must also explain to the jury that nullification is more than a privilege, it is a duty--If the strict application of the law is contrary to community sentiment, the jury, as representatives of the community, have a duty to nullify the law.

Other research on jury nullification has found that providing nullification instructions affects jury decisions even when the instruction comes from a legal professional other than the judge. Consistent with his 1985 findings, Horowitz (1988) found that jurors given radical nullification instructions judged defendants charged with euthanasia more leniently, and defendants charged with drunk-driving more punitively, than jurors given standard pattern instructions. Interestingly, this research showed that nullification information provided by the defense lawyer netted the same effect as nullification instructions provided by the judge.

In the present study, jurors were given either standard instructions or radical nullification instructions. Based on the findings of Horowitz (1985, 1988), jurors given radical nullification instructions were expected to be more likely than jurors given standard instructions to nullify the law by judging a legally guilty defendant charged with committing what most would consider to be a moral act, not guilty.

### The Impact of Juror Personality on Jury Nullification

It is evident that juries sometimes nullify the law, and that nullification instructions can impact jury decision-making, if worded clearly to the jury. But, are all jurors affected

equally by the instructions they receive from members of the court? And, are different types of jurors differentially prone to nullify the law?

Only one study has investigated the impact juror personality characteristics have on jury nullification. Kerwin and Shaffer (1991) investigated the effects of jury dogmatism on jurors' reactions to nullification instructions. Jury members completed Troidahl and Powell's (1965) dogmatism scale, then read a euthanasia trial in which they received either standard instructions or nullification instructions (patterned after Horowitz' radial nullification instructions). Confirming their primary hypothesis, Kerwin and Shaffer found that dogmatic juries showed that they were more heavily influenced by judicial instruction than nondogmatic juries by more frequently acquitting the defendant. This finding is partially consistent with past research showing that dogmatic and authoritarian jurors tended to be more conviction-prone than nondogmatic and nonauthoritarian jurors (Berg & Vidmar, 1978; Ellison & Buckhout, 1981; Mills & Bohannon, 1980b; Shaffer & Case, 1982; Shaffer, Plummer, & Hammock, 1986). These findings extend past research--showing that authoritarians are more highly influenced by judicial admonition than nonauthoritarians (Bandwehr & Novotny, 1976)--by revealing that dogmatic jurors will acquit if given nullification instructions by the presiding judicial authority.

Other researchers have investigated the relation between juror conventionality and juror judgment. Mills and Bohannon (1980a) correlated personality variables with jury behavior criteria and found that the personality variables that corresponded to the person's allegiance to conventional rules and values were the strongest predictors of jurors'

judgments. Essentially, these researchers found that the more conventional the juror, the more likely he or she was to find the defendant guilty.

On the applied side, “scientific jury selection” (SJS) is based on the premise that juror characteristics influence juror decision-making (Hans & Vidmar, 1986). Although the proper goal of the jury selection process is to enable attorneys to recognize bias or impartiality in prospective jurors that may inhibit jurors’ abilities to judge the case solely on the evidence presented (Goodman, Loftus, & Green, 1990; *McDonough Power Equipment, Inc. v. Greenwood*, 1984), lawyers often use this process to impanel a set of jurors who possess pre-dispositions that favor their clients (Frederick, 1988). Although little research has been conducted to support the use of scientific jury selection, consultants contend that they do make a difference in the ultimate decisions rendered by juries (Cutler, 1990).

Both practical and empirical evidence support the position that personality characteristics affect jury decisions. Some jurors are more conviction-prone than other jurors and some jurors are more highly influenced than other jurors by judicial instruction. The present investigation was designed to uncover whether the probability of jury nullification is affected by the type of moral reasoning to which jurors are naturally inclined.

Predicting legal decisions from moral judgments. Kohlberg theorized that moral reasoning follows a universally-structured, hierarchical, stage progression (Kohlberg, 1984). Kohlberg believed that moral development progressed through three main levels, the pre-conventional level is based on the avoidance of punishment and the desire to

please oneself, the conventional level is based on the desire to please significant others and to follow the appropriate legal or social rules, and the post-conventional or principled level is based on making moral decisions that satisfy universal ethical principles from which societal and legal conventions emerge.

One would expect Kohlberg-type moral reasoning to affect jury decision-making for the following three reasons. First, Kohlberg's test assesses the conventionality of the reasoner's moral decision-making processes. Inasmuch as past research has revealed that one's allegiance to societal conventions is an important predictor of jury decisions (Mills & Bohannon, 1980b), one would expect a measure of juror's conventionality (such as Kohlberg-defined moral reasoning) to predict jury decisions. One would expect that more conventional moral reasoners should be more conviction-prone than less conventional moral reasoners. Second, Kohlbergian moral reasoning has been characterized as justice-based reasoning (Gilligan, 1982)--the same type of reasoning upon which legal decisions are supposed to be based. Gilligan has argued that Kohlberg's test undervalues "care-based" reasoning employed by women and overvalues "justice-based" reasoning employed by men. Whereas justice-based reasoning is objective and rational, care-based reasoning is subjective and is based on the interconnectedness between the reasoner and those with whom the reasoner shares an emotional bond. The law is intended to be objective in order to produce a "just" outcome. Thus, Kohlberg-type tests of moral reasoning are ideally suited for legally relevant decisions.

The third reason why Kohlbergian moral reasoning was expected to predict juror decision making is that moral reasoning is related to level of cognitive development (Walker, 1980). Graziano, Panter, and Tanaka (1990) theorized that understanding cognitive processing is central to understanding the decisions jurors make. On the basis of the relation between moral reasoning and cognitive ability, it is conceivable that a measure of moral reasoning that assesses not only the issues, but also the reasons behind moral judgments, may be predictive of the types of legal decisions such reasoners will tend to make.

One study (Lupfer, Cohen, Bernard, & Brown, 1987) looked at the influence people's levels of moral reasoning had on their jury decisions. The researchers employed Rest's Defining Issues Test to determine whether principled (post-conventional) moral reasoners were more likely than conventional moral reasoners to acquit a defendant. The researchers found that, when the evidence was weighted equally between the prosecution and the defense, juries comprised of more principled moral thinkers (higher stage moral reasoners) tended to acquit more frequently than juries comprised of less principled moral thinkers (lower stage moral reasoners). This research indicates that moral reasoning level may influence legal judgment. A major problem with this study, however, is its use of the Defining Issues Test which is a multiple choice, rather than an open-ended, assessment of moral reasoning level.

Although many tests have been devised to tap Kohlbergian stages of moral development, the most commonly employed measure of moral reasoning is Kohlberg's Moral Judgment Interview (Colby & Kohlberg, 1987; Kohlberg, 1976, 1984). The

advantage of this test over Rest's DIT is that it employs an open-ended response format. In this manner, the reasoning processes underlying one's moral (deontic) choices can be scrutinized more closely than by using the DIT. By employing such a method, the MJJ may be more predictive of juror decision-making than the DIT because it taps the cognitive processes underlying the individual's decision rather than the decision itself.

Kohlberg's test, however, is not without its flaws. Although useful as a theoretical tool, the usefulness of Kohlberg's test as an applied tool is limited for the following reasons. First, research has shown that people tend to score lower when they make judgments about real-life moral dilemmas than when they make judgments about Kohlbergian hypothetical dilemmas (Bartek, Krebs & Taylor, 1993; Carpendale & Krebs, 1992; Krebs & Denton, 1991). Second, research has revealed that people rarely make principled moral judgments and even more rarely attain global stage scores at principled moral stages on real-life moral dilemmas (Gibbs, Basinger, & Fuller, 1992), rendering principled stage scoring ungeneralizable to real-life moral decision-making. Third, Kohlberg's use of unusual moral dilemmas has been criticized for forcing people to make moral decisions about dilemmas that they would rarely, if ever, encounter. Fourth, Kohlberg's test of moral judgment has been criticized for being biased against women (Gilligan, 1977, 1982)--although this final criticism has not received substantial empirical support (see Walker, 1984). These problems inherent in employing Kohlberg's test in applied settings make the test less than ideal for the purposes of jury decision-making research.

To attend to the problems inherent in employing Kohlberg's test of moral judgment, Gibbs developed an alternate test of moral judgment (see Gibbs et al., 1992). His test deals with many of the problems inherent in Kohlberg's test. First, Gibbs' test assesses only pre-conventional and conventional moral reasoning (stages 1 to 4)--making his scoring method more generalizable to the types of reasoning the majority of people use in real-life settings. Second, Gibbs abandoned the hypothetical moral dilemma format in favor of a question-and-answer format. Although derived from Kohlberg's test, these questions are representative of the types of moral issues people frequently encounter (see APPENDIX A for the actual questions), making the scoring of his test more generalizable to scoring real-life moral dilemmas. Third, the SRM does not investigate moral decision-making of predominantly male protagonists and has not, therefore, been criticized for being sex-biased.

In the present study, Gibbs' sociomoral reflection measure (SRM) was employed instead of Kohlberg's MJI for two main reasons. First, as mentioned above, it has superior external validity and practical usefulness. And second, it incorporates an assessment of moral type as well as moral reasoning level, the importance of which is discussed below.

Moral type as a predictor of jury nullification. According to Kohlberg, people at different stages of moral development can make the same moral decisions for very different reasons, and people at the same level of moral maturity can invoke similar cognitive structures for making opposing deontic choices (Colby & Kohlberg, 1987). Kohlberg's test is designed primarily to elucidate the structure of people's moral

judgment (how they arrive at a moral decision) not the content of people's moral choices (what decision they make). Although important theoretically, moral structures are pragmatically significant only if they have an impact on the reasoner's deontic choices. Most important for the present study, the reasons underlying jury decisions are less significant than the decisions themselves. In fact, members of a jury may reach a unanimous decision for entirely different evidentiary reasons. (This fact has sparked controversy over the meaning of a "unanimous verdict"; Gelowitz, 1987.) Because divergent moral choices can be rationalized at any moral stage, assessing only stage of moral reasoning may be less than ideal for predicting jury decisions.

A more promising avenue for exploring the relationship between moral reasoning and legal judgment comes from Kohlberg's work on moral typologies. Kohlberg's initial interest in studying morality was in distinguishing Piagetian types of (1965) autonomous moral reasoners from Piagetian types of heteronomous moral reasoners, but he abandoned this pursuit in favor of developing a hierarchical, stage-related sequence of moral development. Shortly before his death, however, Kohlberg began to more fully explore the relation between moral personality and moral decision-making. Schrader, Tappan, Kohlberg, and Armon (1987) have differentiated moral type (relating to enduring personality traits) from moral stage (relating to the development of moral maturity) as follows,

Moral types differ from structural moral stages in that moral stages meet the strict Piagetian criteria for stages such as structured wholeness and invariant sequence that



moral types do not meet. Rather, moral types represent the presence of the content *and* structure of ideal autonomous moral reasoning at various stages of reasoning. (p. 909)

As this quote shows, attending to moral type means the stage-related rationale for moral judgment become less important than the presence or absence of autonomous moral thought. Kohlberg identified two types of moral judgment--Type A and Type B. Type B moral decisions reflect autonomous moral thought. Type A decisions reflect an absence of autonomous moral thought.

Table 1 outlines the characteristics of both the Type A and Type B reasoner as provided by Schrader et al. (1987). Schrader et al. (1987) define moral autonomy as, “an independent and self-legislative stance taken in making moral judgments in the domain of justice” (p. 315). Moral heteronomy (the absence of moral autonomy), therefore, can be conceived of as a dependent and other-legislated stance taken in making moral judgments in the domain of justice. The morally autonomous reasoner makes deontic choices according to his or her internal convictions and the morally heteronomous reasoner makes deontic choices according to the dictates of external factors (i.e., other people, external reward, social influences, etc.). The last row of Table 1 outlines the differences between the heteronomous and autonomous reasoners’ views of the law. Whereas the heteronomous reasoner views the law as being “inflexible” and emphasizes “the letter of the law”, the autonomous reasoner views the law as “flexible” and emphasizes the “spirit of the law”. Based on these divergent views of the law, one would expect this moral typology to be predictive of jury decisions. In the present study, autonomous reasoners were expected to invoke internally-regulated standards to make legal decisions, to be

flexible in applying the law, and to emphasize the spirit of the law. In contrast, heteronomous reasoners were expected to invoke societal standards to make legal decisions, to be inflexible in applying the law, and to emphasize the letter of the law. Thus, autonomous reasoners were expected to nullify the law more frequently than heteronomous reasoners. Even though a heteronomous reasoner may feel “morally” that he or she should nullify the law, he or she was expected to adhere to the law.

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Insert Table 1 about here

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Scoring moral type from Kohlberg's moral judgment questionnaire is an extremely cumbersome process (see Shrader et al., 1987). In addition, there is no evidence that the system is reliable or valid. Another advantage of employing Gibbs' SRM is that it can be employed to assess moral type, as well as moral reasoning level. The reasoner's moral judgments are matched to criterion judgments of specified content and structure. (Gibbs et al. (1992) specify which judgments are reflective of autonomous moral thought.) Reasoners who supply a pre-specified number of Type B judgments are classified as autonomous moral reasoners. In this way, the scoring of Type B reasoning is relatively objective and is much less cumbersome than scoring moral type from the MJJ.

Exploring possible gender effects on juror verdicts. Gilligan's (1977, 1982) work on gender differences in moral reasoning necessitates the exploration of the possible mediating impact of gender on juror verdicts. Gilligan argued that whereas males tend to employ a justice-based mode of reasoning about moral issues, females tend to utilize

care-based reasoning. Extending her findings into the realm of the present investigation, one could extrapolate that whereas standard legal instruction may be more consistent with the masculine mode of moral reasoning (justice-based reasoning) and may thus be more persuasive to males than to females, nullification instruction may be more consistent with the feminine mode of moral reasoning (care-based reasoning) and may thus be more persuasive to females than to males.

## Hypotheses

In this study, the defendant engages in what the majority of the population considers to be a moral, but illegal, act. Thus, jurors are expected to sympathize with the defendant.

In the present study, the following six hypotheses are proposed:

1. Based on Horowitz' (1985, 1988) findings, jurors given radical nullification instructions were expected to nullify more often than jurors given standard instructions. More specifically, when given radical nullification instructions, jurors would less frequently find the defendant guilty, would advocate less severe sentences, and would judge the defendant's behavior to be more moral than when given standard instructions;
2. Based on the theoretical characterizations of autonomous and heteronomous reasoners (Shrader et al., 1987), autonomous jurors were expected to judge the defendant to be not guilty (either as a result of nullification, or greater perspective taking) more frequently than heteronomous jurors. In addition, autonomous (Type B) jurors were expected to favor acquittal, to give less severe sentences, and to judge the defendant's behavior to be more moral than heteronomous (Type A) jurors;
3. Based on Gilligan's work on gender differences in moral reasoning, men were expected to be more persuaded by legal instructions than women and women were expected to be more persuaded by nullification instructions than males. Specifically, I expected that, when given legal instructions, men would find the defendant guilty more frequently than women, and, when given nullification instructions, women will advocate acquittal more frequently than men;

4. Based on the findings of Lupfer, Cohen, Bernard, and Brown (1987), high stage moral reasoners were expected to advocate acquittal more frequently than low stage moral reasoners;
5. Based on the characterizations of the autonomous moral reasoner, nullification instruction was expected to be more consistent with autonomous thought than with heteronomous thought and, thus, nullification instructions were expected to be more persuasive to autonomous jurors than to heteronomous. Therefore, the most not guilty determinations were expected among Type B reasoners given nullification instructions and the least not guilty determinations among Type A reasoners are given legal instructions.
6. Nullification was expected to be reflected in the not guilty verdicts of jurors. Yet, it is possible that jurors would decide the defendant is not guilty for, what they consider to be, legal reasons. In these cases, the decisions of the juror cannot be classified as nullification. I expected that jurors who truly nullify the law would be less likely than jurors who fail to nullify the law to report that they relied on the judicial instructions to make their legal decision.

### Pilot Study 1

Jury decision-making studies are time-consuming and costly. A major portion of this investment comes from the filming of the stimulus trial. To ensure that the stimulus trial would be effective for the purposes of the present study, the trial transcripts were first piloted on 80 undergraduate students in written form.

As mentioned previously, the impact of jury nullification is relevant only to trials where the morality of a defendant's actions are inconsistent with the legality of that act (Horowitz, 1985, 1988). Kohlberg's scenarios are intended to elicit the reasoner's moral reasoning competence through the collision of competing moral issues within the moral structure of the reasoner (Colby & Kohlberg, 1987). One of the moral issues Kohlberg employs for this purpose is that of law. Kohlberg's moral dilemmas, in which law is a moral issue, are ideally suited for the investigation of jury nullification. In Kohlberg's Heinz dilemma the issue of law is opposed by the issue of life, and in Kohlberg's Dr. Jefferson dilemma the issue of law is opposed by the issue of personal choice. Kohlberg's Heinz dilemma involves a man stealing a drug to save his dying wife's life. Kohlberg's Dr. Jefferson dilemma involves a doctor giving a dose of morphine sufficient to kill his terminally ill patient. In pilot study 1, these two dilemmas were written into trial transcripts and presented to jurors in order to determine which dilemma would be most suitable for investigating jury nullification.

In addition to asking participants about the guilt or innocence of the defendant, questions designed to tap the rationale for participants' decisions were included in the pilot study. In addition, to understand whether jurors judged the culpability of the

defendant differently when given different instructions or when of a different moral type, a set of five questions, adopted from Laird and Krebs (under review), assessing the perceived culpability of the defendant were included in the pilot study. Participants were asked about their views of the legal system and the extent to which the legal system should apply in these cases. It was expected that these dependent measures would serve to tap the reasoning underlying the juror's decisions.

In general, the results of Pilot Study 1 provided little support for the main hypotheses. Only 34% of participants found the defendant not guilty. Neither moral type nor judicial instruction yielded a statistically significant effect on juror decisions. Some interesting results, however, did emerge. Participants felt our legal system would be more likely to produce a just outcome in the Breaking and Entering (Heinz) trial than in the Euthanasia (Dr. Jefferson) trial. This finding may be a function of the divergent sentences the defendants could receive if convicted. The defendant charged with murder faces the prospect of a relatively lengthy sentence if found guilty; whereas the defendant charged with breaking and entering would likely receive a lenient sentence if found guilty. The more lenient sentence likely to be handed down in the breaking and entering case may produce more consonance between the competing moral choices--life versus law--that they must balance. In this case, the jurors could find the defendant guilty and still feel justice would be done (he would receive a lenient sentence as a first time offender found guilty of Breaking and Entering) because they also believe the act he committed was moral.

Past research has revealed that most people (79%) in the geographical region where the present study was conducted feel that doctor assisted suicide, by lethal injection, should be legally acceptable (Achille & Ogloff, in press). The prospect of a morally acting doctor receiving a lengthy sentence may thus produce a great deal of dissonance between the competing moral options--the right to choose versus upholding the law--that jurors must balance. In this case, if the jurors found the defendant guilty, they may believe justice would not be done because the defendant would be harshly punished for committing what they consider to be a moral act.

Following the pilot study, a sample of jurors was questioned about the trial they had read. When asked if anything could be done to make the trials more believable, jurors suggested that some autopsy evidence should have been included in the Dr. Jefferson-type trial and that fingerprint evidence should have been included in the Heinz-type trial. In addition, jurors suggested that more extensive cross-examination of witnesses and more exploration of the defendants' ambiguous answers would have increased the believability of the stimuli. These suggestions were incorporated into the script used in the trial videos for the final study (see APPENDIX B). Jurors also commented on the culpability questions employed at the end of the juror questionnaire. Some jurors believed that the culpability questions gave clues as to whether the defendant was or was not, in fact, guilty. These jurors stated that the wording of the culpability questions pointed to the guilt of the defendant. The usefulness of the culpability questions in the present study was, thus, re-assessed.



Six major changes resulted from this pilot study. Due to the time and monetary investment in creating and administering two videotaped trials, only one stimulus trial was employed in this study. The euthanasia trial was chosen for the following reasons. First, it is most reflective of the types of trial researchers have employed in past investigations of jury nullification (Horowitz, 1985, 1988; Kerwin & Shaffer, 1991). Employing the euthanasia trial was expected to make the present research more comparable to past research on this topic. Second, whereas a substantial number of Canadian trials have involved euthanasia (*N.B. v. Hotel-Dieu de Quebec*, 1992; *Rodriguez v. British Columbia*, 1993; *R. v. Latimer*, 1995), no significant trials have involved stealing a drug to save a dying family member. Thus, the euthanasia trial was deemed more externally valid than the breaking and entering trial. Third, as explained from the results of the pilot study, in the breaking and entering trial, the prospect that conviction would lead to a minor sentence may diffuse the collision of the life/law deontic choices. One could speculate that this factor would result in fewer acquittals on moral grounds--less jury nullification--in the breaking and entering trial than in the euthanasia trial.

The second change from this first pilot study was that the transcript was altered to include autopsy evidence. Rather than establishing another witness to provide the autopsy evidence (which would have added substantially to the length of the video), the evidence was provided by the main witness for the prosecution, Dr. Smith. Under defense examination, Dr. Smith testified that the autopsy showed high levels of morphine

in Mrs. Williams' (the victim) bloodstream. On cross-examination, Dr. Smith conceded, however, that the cause of death was cited as cancer rather than a morphine overdose.

The third change was that the culpability questions were omitted. Only the general question regarding the morality of the defendant's actions was retained as this question did not ask directly about the defendant's culpability. Responses to this question correlated highly with the culpability questions.

The fourth change was that other dependent measures were added to the juror questionnaire. Past research on the effects of jury instructions have asked jurors about the effects the instructions had on their decisions (Ogloff, 1991; Ogloff & Vidmar, 1994; Polvi, Jack, Lyon, Laird, & Ogloff, 1996). Inasmuch as one of the main hypotheses of the present research related to the impact jury instructions would have on juror verdicts, two questions regarding the effects of the judicial instruction were included: (a) How helpful (from 1-10) were the judge's instructions in helping you reach your verdict?, and (b) To what extent (from 1-10) did you rely on the judge's instructions in reaching your verdict?. Participants were also asked to write out the legal standard of guilt.

Past research has asked jurors about the believability of the witnesses testimony in arriving at their decisions (Ogloff, 1991; Ogloff & Vidmar, 1994; Polvi, et al., 1996). Given that jurors tend to construct a story for the events presented to them in trials (Hastie, & Pennington, 1983) one would assume that those who believe the defendant is not guilty will construct a story to support that belief. In such cases, the defendant's testimony would likely be consistent with that story and jurors would thus tend to rate the defendant as more believable than those who decide the defendant is guilty. The reverse

may also be true: Jurors who believe the defendant is guilty may tend to rate the prosecution witness as more believable than those who decide the defendant is not guilty.

The last changes resulting from the pilot study were cosmetic. First, some jurors in the pilot study were suspected of altering their verdicts after reading the juror questionnaire. To deal with this problem, verdicts were provided on a separate form and were collected before the jurors were given the juror decision-making questionnaire. Second, because there are three possible charges in the euthanasia trial (guilty of first degree murder, guilty of second degree murder, and not guilty), questions regarding the guilt and appropriate sentence for the defendant were divided into cases where the defendant is found guilty of first degree murder and where the defendant is found guilty of second degree murder.

### Pilot Study 2

Before launching the final project, the stimulus videos were piloted on 46 undergraduate Psychology students arranged in six juries. This pilot study of the stimulus video yielded three not guilty verdicts and three hung juries. Of the 46 participants, 36 found the defendant not guilty, eight found the defendant guilty and two could not decide. These results showed a dramatic shift from the results yielded in the first pilot study--from mainly guilty verdicts to mainly not guilty verdicts. Jurors were polled about the reasons for their decision. The most important reason for finding the defendant not guilty was that the autopsy evidence concluded that the cause of death for

the victim was cancer rather than a morphine overdose. Jurors made the argument, “how can he be guilty of murder when the evidence did not point to him as the cause of death?”

This issue presented a substantial hurdle for the present study. For jury nullification to occur, the evidence must point strongly to the guilt of the defendant. The stimulus trial was thus revised to have the autopsy conclude that the cause of death was a morphine overdose rather than cancer. Given the weight jurors were placing on the autopsy evidence, this small, but significant, change was deemed necessary to point the jurors in the direction of a guilty verdict.

## Method

### Participants

Eighty-three psychology students (39 males and 56 females)--given course credit or participating voluntarily--and 12 people selected from a randomly derived list of Lower Mainland residents (5 males and 7 females) participated in the study. Participants ranged in age from 18 to 52 years ( $M = 23.76$ ;  $SD = 8.66$ ) and in years of postsecondary education from 1 to 5 years ( $M = 2.47$ ;  $SD = 1.10$ ). Ninety per cent of participants were unmarried and 33% of participants were first generation Canadians--of these, most (63%) were of Asian descent, reflecting the ethnic mix of the Greater Vancouver area. Two participants provided incomplete data. The data they supplied were used where possible.

### Procedure

Participants first completed Gibbs' 11-question Sociomoral reflection measure (see Dependent Measures section below). Participants then made judgments about the Dr. Jefferson-derived trial, which they viewed on a television screen. Half the participants viewed a trial in which the judge provided the following standard instructions,

You are **not allowed** to decide this case on the basis of what you think the law is or what you think it should be. You see, if I am wrong about the law, justice can still be done. The Court of Appeal can always correct me because my remarks are recorded by the court reporter. But justice will not be done if you wrongly apply the law. This is because your discussions are secret. No one keeps a record of your discussions for

the Court of Appeal to review. Therefore, it is very important that you apply the law, as I have given it to you, without question (from Ferguson & Bouck, 1989).

The other half viewed a trial in which the judge provided the following nullification instructions,

You must give respectful attention to the law as I have given it to you; however, **you** do have the **final authority** to decide whether or not to apply a given law in this case. You represent the community, and if you see fit, you may decide the case on the basis of the wishes and conscience of the community as well as on your own conscience. Although you should give reverence to the law as I present it to you, nothing should prohibit you from acquitting the accused if you feel that would be the **most just and equitable decision** according to the facts you have heard in this case (adapted from the radical nullification instructions employed by Horowitz, 1985).

With the exception of these two paragraphs, read by the judge, the videos were identical.

After participants made individual judgments about the stimulus trial, they were assigned to juries to deliberate about the case in a group setting. The deliberations were videotaped for qualitative analysis.

### Stimulus Material

Video. The trial transcript is provided in APPENDIX B. Jurors made judgments about one of two videotaped trials. The trials were identical except for the difference in Judge's instructions as noted above. Each video was 38 minutes in length. The actors in the videos were three professors and one graduate student from Simon Fraser University, and three friends of the author, not otherwise associated with the University. The content

of the video was patterned after Kohlberg's Dr. Jefferson Dilemma. The names of the actors, however, were altered to prevent a subject bias for participants familiar with the Dr. Jefferson dilemma. Although patterned after the Dr. Jefferson dilemma, substantial additions were made to add to the perceived authenticity of the video. The final product bore only a small resemblance to the Dr. Jefferson dilemma. Prior to taping, the transcripts were proof-read by an ex-federal prosecutor to ensure the transcripts were as realistic as possible, given the truncated length of the video. The actors were given some freedom to deviate from the script as long as their deviation did not affect the substance of the trial. Other than the difference in instructions provided to the jurors, the videos were identical.

### Dependent Measures

The Sociomoral Reflection Measure-Short Form. The sociomoral reflection measure is a reliable and valid measure of moral reasoning (Basinger & Gibbs, 1987). Scoring the SRM-SF involves attending to two components of moral judgment. First, participant stage of moral reasoning is assessed according to the guidelines set out in Gibbs et al. (1992). To score moral stage, each response to the 11 questions (see APPENDIX A) on the SRM-SF is matched to the criterion judgments provided by Gibbs et al. (1992). Each criterion judgment represents a moral judgment of specified content and is representative of a particular stage or substage of moral reasoning. After all responses are scored, they are averaged (providing 7/11 are scorable) to derive the participant's sociomoral reflection measure score (SRMS) (for more detail on scoring the SRM-SF, see Gibbs et al., 1992).

The second measure derived from the SRM-SF is the participant's moral type. Gibbs et al. (1992) provide instruction for scoring moral types A and B. Scoring moral type involves attending to the protocol responses that represent autonomous (Type B) moral reasoning. Each 11 question protocol can yield a number of each of three general categories of Type B judgments--Balancing, Fundamental Valuing, and Conscience. Participants who provide at least two of the three Type B categories are classified as Type B (autonomous) reasoners. If fewer than two Type B categories are present, then the reasoner is classified as a Type A (heteronomous) reasoner.

The SRM-SF protocols were scored by the author. Twenty-five percent of the protocols were randomly selected to be scored for interrater reliability by a trained Kohlbergian scorer who was blind to the purpose of the study,  $r(24) = .85$ . Ninety-two percent of the protocols were scored within .25 points (one of the protocols was deemed unscorable by the second rater and not by the first rater). For type A/B judgments, 84% were exact matches,  $k = .79$ , and 88% were of the same Moral type,  $k = .76$ . The scores provided by the first rater were used in all subsequent analyses.

Legal and moral judgments (see APPENDIX C). After viewing the trial video, participants first judged the guilt of the defendant (guilty of first degree murder, guilty of second degree murder, not guilty). This dependent measure was regarded as the main measure for the purposes of the present study. Participants then made three rating-scale judgments about the guilt and morality of the defendant (on 10-pt likert scales): (a) How likely do you believe it is that Dr. Peterson is guilty of first degree murder? (b) How



likely do you believe it is that Dr. Peterson is guilty of second degree murder? and (c) To what extent do you think the defendant's behavior was moral?

Participants were asked the following series of questions about the appropriate sentence for Dr. Peterson, if found guilty: (a) First degree murder carries a penalty of life (25 years) in prison. Do you think this penalty should apply to Dr. Peterson if he is found guilty of first degree murder? Why or why not? (b) According to the Criminal Code, the maximum sentence for second degree murder is 25 years and the minimum sentence is 10 years. How long of a sentence do you think Dr. Peterson should receive if he is found guilty of second degree murder?

Participants then responded to a number of judgments designed to elucidate the process underlying their legal decision: (a) How believable was the testimony of Dr. Smith who testified first? (b) How believable was the testimony of the defendant, Dr. Peterson who testified second? (c) Please do your best to write out the legal standard of guilt below (what must be proved to find the defendant guilty)? (d) How helpful (from 1-10) were the judge's instructions in helping you reach your verdict? and (e) To what extent (from 1-10) did you rely on the judge's instructions in reaching your verdict?

Deliberation process. Jurors deliberated about the trial in randomly assigned juries of 4-6 persons for up to 30 minutes. Juries were given the following written instructions:

Your job is to reflect on the legal instructions I have given to you and the evidence you have heard in this trial. You should first select a jury foreperson--he or she is

responsible for writing the jury's decision. You should discuss the evidence together. Any decision you render to me must be unanimous--all people must agree on the verdict. If one, or more, person does not agree with the majority, the jury is hung. Please mark an X in front of the decision you support below. If your decision is unanimous, each member must write his or her juror number below the decision he or she supports. If you cannot reach a unanimous verdict, mark an X in front of the hung jury space and each juror must write his or her juror number under the decision he or she agrees with. You have 30 minutes to deliberate. I will notify you when you have 5 minutes remaining so you can reach a conclusion.

The jury deliberations were videotaped for qualitative analysis.

## Results

The results are presented in seven main sections pertaining to (a) derivation of composite scores, (b) derivation of moral judgment groups, (c) building a model to explain differences in juror verdicts, (d) exploring the causes of differences in legal decisions rendered by Type A and Type B jurors, (e) investigating the impact of judicial instructions on Type A and Type B jurors, (f) group differences in juror's judgments about the defendant and about the trial, and (g) group differences in jury decision-making.

### Derivation of Composite Scores

Only one subset of questions attained a sufficient level of inter-item reliability to be combined--degree to which the judge's instructions helped the jurors in making their decisions and the degree to which jurors relied on the judicial instructions,  $\alpha = .83$ . I averaged the participants' responses to these two questions and labeled the composite 'importance of judge's instructions'.

### Derivation of Moral Types A and B and High Medium and Low Moral Reasoners

As defined by Gibbs et al. (1992), moral types A and B were derived from the number of moral judgments matched to Type B criterion judgments on the SRM. Participants whose responses represented two or more of the Type B judgment categories were deemed to be autonomous jurors (23 males and 31 females;  $N = 54$ ) and participants whose responses represented fewer than two Type B judgment categories were deemed to be heteronomous jurors (16 males and 25 females;  $N = 41$ ).

Participants' SRM scores ranged from 2.69 (stage 3[2]) to 3.95 (stage 4). Participants were placed into three groups based on the stage of moral reasoning they exhibited. Participants scoring under 3.00 were classified as stage 3(2) reasoners (3 males; 7.7% and 6 females; 10.7%). Participants scoring between 3.00 and 3.50 were classified as stage 3/3(4) reasoners (20 males; 51.3% and 33 females; 58.9%). And, participants scoring over 3.50 were classified as stage 4(3)/4 reasoners (16 males; 41.0% and 17 females; 30.4%). In subsequent analyses, moral reasoning level will refer to these stage-related divisions.

#### Group Differences in Juror Verdicts

In the trial employed in the present study, jurors were first required to decide an appropriate verdict for the defendant. Of the 95 participants in the study, only a relatively small number, 11 (12%) (7 men; 18% and 4 women; 7%), found the defendant guilty of first degree murder; 39 (41%) (14 men; 36% and 25 women; 45%) found the defendant guilty of second degree murder; and 45 (47%) (18 men; 46% and 27 women; 48%) found the defendant not guilty. When verdicts were dichotomized into guilty (of either first or second degree murder) versus not guilty (of either charge) decisions, 54% of males found the defendant guilty (of either charge) and 52% of females found the defendant guilty (of either charge). In the following analyses, "juror verdict" will refer to this dichotomy (guilty/not guilty verdicts).

### Building a Model to Explain Juror Verdicts

In this section, the steps involved in building a model to explain differences in juror verdicts will be outlined. The steps described here are based on those outlined by Hosmer and Lemeshow (1989) for building a regression model to predict dichotomous dependent variables. This model building process will follow three main steps: (a) determination of univariate predictors, (b) building the multivariate model, and (c) assessing the fit of the multivariate model.

Step 1 (determination of univariate predictors). Four chi-square analyses--on gender, moral stage, moral type, and type of instruction--were employed to assess the importance of these four univariate predictors. Moral type,  $\chi^2(1, 95) = 12.21, p < .001$ , moral stage,  $\chi^2(2, 95) = 3.76, p < .15$ , and type of instruction,  $\chi^2(1, 95) = 1.74, p < .19$  met the preliminary criterion ( $p < .25$ ) for inclusion in the multivariate model. The effect for gender did not meet this preliminary criterion,  $\chi^2(1, 95) = .04, p < .84$ . Tables 2, 3, and 4 show the effects moral type, moral stage and type of instruction had on juror verdicts.

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Insert Tables 2, 3, and 4 about here

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Step 2 (building the multivariate model). Moral type, moral stage, type of instruction and those interactions thought to have externally relevant importance (all two way interactions involving type of instruction) were included in the initial multivariate logistic regression analysis. Moral stage was re-coded into two "dummy" variables to maintain a dichotomous format. The two resultant variables were coded (1,0) to

represent participants who did and did not score above 3.00 and (1,0) to represent participants who did and did not score above 3.50. The variables included in this analysis were "good" at predicting juror's verdict,  $\chi^2(7, 95) = 23.38, p < .002$ . Table 5 shows the output for the resultant logistic regression.

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Insert Table 5 about here

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Consistent with the model-building strategy suggested by Hosmer and Lemeshow (1989), items that failed to maintain the minimum standard for inclusion in the model were systematically dropped from the model until each remaining covariate comprising the multivariate model sustained a probability level less than .25. Following the deletion of each individual item, a new model was constructed. Table 5 displays the initial model with all variables included and Table 6 displays the final model. None of the intermediate models are displayed here. The resultant model consisted of moral type, type of instruction, and scoring above 3.50 on the SRM. None of the interactions were included in the final model. The slope (b) values in column 2 of Table 6 point to the relationships between the predictor variables and the criterion variable (verdict). Jurors who received nullification instructions, who were Type B reasoners, and who scored above 3.50 on the SRM were most likely to vote not guilty. Jurors who received legal instructions, who were Type A reasoners, and who scored below 3.50 on the SRM were most likely to vote guilty.

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Insert Table 6 about here

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Step 3 (assessing the fit of the model). The chi-square analysis for the resultant model showed that the model yielded a good fit to the data,  $\chi^2(3, 95) = 17.33, p < .0007$ . Table 7 shows the summary contingency table for the final model. The model correctly predicted the verdicts of 71.58 % of participants (see Table 7). Guilty verdicts (80 % accurate) were predicted with greater accuracy than not guilty verdicts were (62.2 % accurate).

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Insert Table 7 about here

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Descriptive data provided further evidence for the predictive utility of the multivariate model. Of the 10 autonomous jurors who scored above 3.50 on the SRM and received nullification instructions, 9 (90%) found the defendant not guilty. In contrast, of the 14 heteronomous jurors who scored below 3.50 on the SRM and who received legal instructions, 11 (78.6%) found the defendant guilty.

Moral type was the strongest predictor of jury decisions. A perusal of Table 2 shows that 30/41 (73.2%) Type A jurors voted guilty and 34/54 (63.0%) Type B jurors voted not guilty. Thus, moral type alone predicted 67.37% of juror decision. Comparing this result to Table 7, it is apparent that the addition of high stage moral reasoning and type of judicial instruction increases the predictive utility of the multivariate model by 4 people,

such that 71.58% of verdicts are correctly predicted. This increase may seem small, but consider that with each correctly classified individual, the probability of achieving the result by chance decreases dramatically, especially as we move closer to absolute predictability. For example, whereas the odds/ratio for moral type alone was 4.64, the odds/ratio for the three-item model was 6.59. Thus, the odds/ratio between correct predictions (based on this study's hypotheses) and incorrect predictions is nearly 2 times greater for the three item logistic regression model than for moral type alone.

#### Exploring the Causes of Differences in Verdicts Rendered by Type A and Type B Jurors

Moral type was clearly the best single predictor of juror decisions. In order to explore the possible causes of the different verdicts rendered by type A and type B jurors, the predictive utility of the sub-components of autonomous moral thought—balancing, fundamental valuing, and conscience—was evaluated. In each of the following regression analyses, the covariates were dichotomized such that a score of one reflected that the jurors made one or more of a given type of autonomous judgment and a score of zero reflected an absence of that type of autonomous judgment in the juror's SRM.

Whether or not participants made one or more balancing judgments was a strong predictor of whether or not jurors decided the defendant was guilty of first or second degree murder,  $\chi^2(1) = 15.82, p < .0001$ . Whether or not participants made one or more fundamental valuing judgments did not predict whether or not jurors decided the defendant was guilty of first or second degree murder,  $\chi^2(1) = .012$ . And, whether or not participants made one or more conscience judgments was a significant predictor of whether or not jurors decided the defendant was guilty of first or second degree murder,



$\chi^2(1) = 4.42, p < .05$ . Of the three sub-components of autonomous moral thought, balancing was clearly the best predictor of juror verdicts in this study.

#### Investigating the Impact of Judicial Instructions on Different Types of Moral Reasoner

The fifth hypothesis of the present study was that nullification instructions would be more consistent with autonomous moral thought and would thus be more persuasive for autonomous jurors than for heteronomous jurors, and that legal instructions would be more consistent with heteronomous moral thought and would thus be more persuasive for heteronomous jurors than for autonomous jurors. To investigate this hypothesis, the percentages of not guilty decisions rendered by Type A and Type B jurors who received legal versus nullification instructions were compared. Table 8 shows the contingency table for this comparison. As expected, autonomous jurors who received nullification instructions were more likely than autonomous jurors who received legal instructions to judge the defendant to be not guilty (76% compared to 51.7%). Contrary to expectation, heteronomous jurors who received legal instructions were only marginally less likely than heteronomous jurors who received nullification instructions to judge the defendant to be not guilty (25% compared to 28.6 %).

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Insert Table 8 about here

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Although hypothesized at the outset of this study, the finding that autonomous jurors nullify more frequently when given nullification instructions than when given legal instructions is somewhat paradoxical. If autonomous jurors are truly autonomous

reasoners, then the type of instruction provided by an external judicial authority should have little or no bearing on the autonomous reasoners' legal decisions. To investigate the cause of this apparent paradox, autonomous jurors who received legal instructions were subdivided into a group that scored above 3.50 on the SRM and a group that scored below 3.50 on the SRM. I expected that, in the absence of high stage moral judgment, autonomous jurors would be highly influenced by judicial admonition, but that high stage autonomous jurors would be more resistant to the external influences of a judicial authority. Table 9 shows the contingency table for the verdicts decided by autonomous jurors given legal instructions distinguished by their moral reasoning levels. As expected, high stage autonomous reasoners found the defendant not guilty much more frequently (69.2% of the time) than lower stage autonomous reasoners (37.5% of the time),  $\chi^2(1, 29) = 2.89, p < .10$  (one-tailed).

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Insert Table 9 about here

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### Group Differences in Juror's Judgments about the Defendant and the Elements of the Trial

The rating-scale judgments about the defendant and about the elements of the trial were entered into a 2 (Instruction--legal versus nullification) x 2 (Moral type--A versus B) x 2 (Moral Reasoning Level--low [below 3.50] versus high [above 3.50]) x 2 (Gender--male versus female) MANOVA. Only the overall main effect for Moral type,  $F(6,73) =$

3.75,  $p < .005$  and one overall interaction, between Moral type and Gender,  $F(6,73) = 3.21$ ,  $p < .01$ , reached conventionally accepted levels of statistical significance

Univariate analyses revealed that: (a) autonomous jurors tended to view the defendant's behaviour as more moral ( $M = 8.24$ ) than heteronomous jurors viewed the defendant's behavior ( $M = 7.13$ ),  $F(1,78) = 3.83$ ,  $p < .055$ ; (b) autonomous jurors tended to perceive the defendant to be guilty of second degree murder less frequently ( $M = 4.72$ ) than heteronomous jurors perceived the defendant ( $M = 7.28$ ),  $F(1,78) = 11.07$ ,  $p < .001^1$ ; and (c) autonomous jurors tended to find the defendant more believable ( $M = 7.77$ ) than heteronomous jurors found the defendant ( $M = 6.23$ ),  $F(1,78) = 10.43$ ,  $p < .003$ .

Univariate analyses yielded one Moral type by Gender interaction on the perceived likelihood that the defendant committed first degree murder,  $F(1,78) = 6.76$ ,  $p < .02$ .

This Gender by Moral type interaction is shown in Figure 1. Whereas heteronomous jurors ( $M = 4.32$ ) and autonomous males ( $M = 4.7$ ) tended to provide moderate judgments of the perceived likelihood that the defendant committed first degree murder, autonomous females ( $M = 2.61$ ) rarely believed the defendant committed first degree murder. Although it appears that the anomalous result in this interaction effect is the mean rating made by autonomous females, the finding that runs contrary to prediction is the mean rating made by autonomous males. Autonomous jurors were expected to nullify the law more frequently than heteronomous jurors, resulting in fewer harsh verdicts such as guilty of first degree murder. Consistent with hypothesis, autonomous women were less likely than heteronomous jurors to believe the defendant committed first degree murder. Autonomous men, on the contrary, judged the defendant to be more

likely to have committed first degree murder than the other three groups of jurors. To explore this finding, I looked at the original verdicts made by both A and B type men and women.

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Insert Figure 1 and Table 10 about here

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Table 10 provides the breakdown of juror verdicts by gender and moral type.

Unexpectedly, Type B men were both most likely than Type B women to find the defendant guilty of first degree murder and most likely to find the defendant not guilty of either first or second degree murder.

### Jury Decision-Making

The quantitative analyses presented above summarize the main results gleaned from the present study. In this section, a few of the decisions rendered by juries will be illustrated on a case by case basis. Only four of the 19 juries investigated in the present study will be discussed below. These cases were selected because they served to illustrate the impact of moral thought (both moral autonomy and high stage moral reasoning) on jury decision-making. Although none of the juries arrived at unanimous decisions on their first ballot, 11/19 juries eventually reached consensus. Four jury decisions, two from juries given standard pattern instruction and two from juries given nullification instruction will be presented below.

Juries provided with standard instructions. Jury #28 illustrates the persuasiveness of autonomous moral thought. Originally, the members of jury #28 were split 3:2 (not

guilty:guilty). Four of the five jury members were autonomous moral reasoners. Of those advocating not guilty verdicts, all were autonomous moral reasoners. Two jurors scored high on the SRM (stages 4[3] or 4) and three jurors scored moderately on the SRM (stages 3 or 3[4]). Interestingly, the juror who scored lowest on the SRM (#353) was chosen to be the foreperson, and he did relatively little speaking throughout the deliberation. Juror 349 (B,4[3]), an older woman with the highest Type B score in the jury, quickly took control of the jury. Her arguments focused on the altruistic behavior of the doctor, her own feelings of conscience, and her personal experiences with death:

Why should a decent doctor, who's caring and compassionate go to jail for even one year for doing what I hope a doctor would do for me...She asked for it several times and he hadn't done it. I believe that the circumstances must have been such that you'd have to be a pretty hard person [not to have done what Dr. Peterson did].

This juror soon acknowledges that Dr. Peterson may have been guilty, but she justifies her not guilty decision in the following way:

...it was one of those opportunities that presented itself. He went to give the injection to the gentleman [who had died earlier] and the light goes on ...here is the opportunity, she needs the medication. And, maybe, technically, it does still fall under second degree murder, but I choose, from the judge's remarks...I think that would be a total waste of our judicial system to incarcerate someone for something like that.

By this time, the jurors who originally voted guilty, are beginning to waver in their decision, and juror 349 (B, 4[3]) finally persuades them by using her personal experiences with euthanasia:

I feel so strongly about this issue. I have seen three members of my family die of cancer and having been in the palliative care unit and having people looking and say it's so sad I have to die like this. You wish you had the courage to do something, but you have kids and you can't put yourself in a precarious position...my own father was dying and he was in such distress, that I remember calling the nurses on palliative care and saying, "I insist that you give him something else." And they did! And he died five or six hours later. I don't think the morphine killed him, maybe it did. But are you going to leave someone in excruciating pain for the last few hours of their life?

Juror 354 (B, 3), who also thought the defendant was not guilty, then comments, "Morally, I think we all agree he did the right thing". At this point jurors 352 (B, 4[3]) and 351 (A, 3[4]), who thought the defendant was guilty acknowledge that they are now leaning toward a not guilty verdict. Juror 353 (B, 3) then presents his side:

Even if he had done it on purpose, I still wouldn't convict him because she was terminally ill and had asked for euthanasia when she was sane, and was in extreme pain. She had a terminal disease. Some people would convict on that, but I won't convict on that. That's the way I look at it.

Juror 349 (B,4[3]) then brings her feelings of conscience into the argument, "I couldn't live with myself for convicting him of second degree murder and sentencing him for an act of human kindness and compassion. That's the way I see what he did, not an act of murder."

At this point, juror 352 (B, 4[3]), the one Type B juror who voted guilty acknowledges that she has been swayed, "For me, I can't think it's black and white anymore. I mean,

maybe that happened [he murdered her], but I just don't feel good about convicting him, It's just not right." They then decide to take a final vote. Before that however, juror 349 presents a final argument, "what is served by convicting him? Nothing is served and the community loses probably a very good doctor." The final vote is unanimous—Not Guilty.

This jury decision illustrates the persuasiveness of autonomous moral arguments generated by an autonomous juror. Juror 349 (B, 4[3]) evokes each of the three modes of autonomous reasoning outlined by Gibbs et al. (1992)-- balancing perspectives, conscience, and fundamental valuing (see Tables 11-13)--to persuade the dissenting jurors. Really, juror 349 makes no persuasive arguments based on the evidence, but her mode of reasoning persuades the dissenting Type B reasoner and, once that juror is persuaded, the Type A reasoner quickly follows the majority vote.

Jury #11, which was also given legal instructions, began the deliberations in an unusual way. Rather than voting first, they decided to give their views about the case first and then to vote. Initially it appeared the jurors were all in favor of a not guilty verdict, but once they begin discussing their legal duty, only one juror actually endorsed a not guilty decision. This jury consisted of moderate to high scorers on the SRM and was equally weighted (2:2) between autonomous and heteronomous reasoners and between males and females. Interestingly, the lone juror advocating a not guilty decision was also selected as the foreperson and this juror was not an autonomous moral reasoner. The jurors quickly focus on changing the mind of juror 208 (A,3[4]) who makes her position clear from the outset:

Even though I will fully admit that there were some doubts about whether or not he realized that he would kill her by injecting the morphine and stuff like that, it's just one of those things I feel really strongly about--that there should be some right to decide to end a really painful life.

The other jurors then focus on the law and their duty as jurors to apply the law. This method of persuasion has a significant impact on juror 208 (A, 3[4]):

...that was the problem I had because according to what the law was we were supposed to decide on what the facts were or whether the facts pretty much pointed to the idea that he went against the law. But the reason that I would probably prefer a not guilty verdict would be that 10 years in prison, which would equal how many before parole, would be quite a lot for someone acting out of compassion but I would go along with second degree murder as long as he only serves ten years.

Juror 208 then toys with the idea of jury nullification:

How much power do juries have to go against the law? Do juries decide not guilty when a person should be found guilty? Because we decide in secret, we could break the law if we want and in this way we would pass a new law saying euthanasia is legal.

As with juror 349, mentioned previously, juror 208 then brings up her personal experiences with her dying father in a palliative care unit. In contrast to the autonomous reasoner (juror 349), however, the heteronomous reasoner (juror 208) uses her personal experience to dismiss her personal feelings about euthanasia as that of a biased juror. The jurors then take one final vote. The vote is unanimous--Guilty of second degree murder.



This jury illustrates the ease of persuading a heteronomous reasoner to the legal side of the moral issue at hand. Juror 208 (A,3[4]) is, at first, very strongly tied to her decision. In fact, she reveals that it is a highly emotional issue for her. But, even so, the heteronomous reasoner is quickly convinced by the legal arguments of the other jurors and strays from her "strong" opinion. The heteronomous reasoner is able to consider the issue of jury nullification, but under the pressure of external factors (the other jurors), the heteronomous juror is swayed to a position that is contrary to her moral conviction.

Juries given nullification instructions. Jury #4 provides a good example of the potential impact a "pure" Type B reasoner can have on the rest of the jury. The initial vote for Jury #4 was originally split equally (3:3). Of the three advocating a guilty verdict, two were scored as Type A (heteronomous) reasoners and one was classified as a Type B (autonomous) reasoner. All three jurors who voted not guilty were classified as autonomous reasoners. Juror 148 (B, 4[3]) had the highest SRM score in the jury and also provided the greatest number of Type B judgments. This juror volunteered to be the foreperson and dominated the deliberation. Juror 146 (A, 3) makes the case for the guilty side, "It's the law...he did intend for her to die and that's against the law." Juror 148 counters with an autonomous argument:

The minimum sentence for this is 10 years...Do we think this is just? You've got a woman who wants to die and he let her die...Are we acting in the best interests of society by locking up a doctor--who's going to help a lot more people—for bringing to death a person who wants to die.

Juror 145 (B, 3) agrees, “He’s not a criminal, he hasn’t done something where he deserves to go with all the scum.” Juror 148 (B, 4[3]) then attends to the judicial instructions to provide support for a not guilty position, “The judge also said our own conscience can come into play.” Even so, jurors 149 (B, 3[4]) and 146 (A, 3) rigidly hold to the letter of the law, “ The law is already there saying it’s second degree murder, the law isn’t right as it stands now, but the law is already there” and “there should be other laws, but, since there isn’t, you have to go with what there is.” Juror 148 (B,4[3]) then argues that the spirit of the law must be invoked in this case.

I don’t think it’s best for society to lock up a doctor, who’s going to help a lot of people, for 10 years...The question then is, if we do sentence him to 10 years, what does that do from a society point of view?...Our job is not to interpret the law. Our job is the best interests of society ultimately. And for me, that’s the issue here...I think he knew she was going to die. I think he intentionally administered the morphine to bring on her death...To me, there’s a greater obligation in this case. I don’t think we can be blinded by the strict letter of the law in this or in any other decision we make.

Up to this point, juror 148 is making a persuasive argument and is having an impact on the views of the other jurors. He then presents his personal position regarding the case, and this statement seems to disqualify his arguments in the eyes of the other jurors:

Myself, I’m not prepared to send someone to jail for assisted suicide period--regardless of the evidence. If I sit on a jury, I am not going to vote that way period. I’m not moving from that stand. I’m not prepared to make that judgment, regardless of what

the law says. If that were to have repercussions on me, I would still take that stand—

That is my stand.

The reason the above argument seems to alienate juror 148 (B,4[3]) from the rest of the jurors is that he openly says he opposes the law that they, the jury, are entrusted to rely on in making their decision. After this statement, the other jurors focus on the law. Juror 148, having played his final hand, has now become relatively quiet.

Jury 11 could not reach a unanimous decision. In fact, none of the jurors opinions changed during the deliberation. It appears that, by making the above statement, the main proponent of the not guilty side disqualified all of the arguments to be presented for that side. Although some of those on the guilty side seemed to be wavering before that statement was made, their initial judgment was solidified after juror 148 openly advocated that he intended to nullify the law. This response was viewed as being contrary to the mandate of the jury, and it evoked negative reactions from the other jurors. In contrast to jury #28, where a nullification argument seemed persuasive to the jurors, in jury #11, such an argument seemed to polarize the jurors.

In jury #21, which was also given nullification instructions, the two types of reasoners took opposing sides in the deliberation. There were four males and two females, and four Type B reasoners and two Type A reasoners. In the initial ballot, all the Type A reasoners favored a guilty verdict and all the Type B reasoners favored a not guilty verdict. This deliberation makes clear the divergent perspectives jurors using these types of reasoning adopt in deciding the outcome of a trial. Juror 310 (A, 3[4]) summarizes the position of those advocating a guilty verdict:

The laws of our land state that he's guilty of second degree murder. It's a very cold way of putting it, but I think he took advantage of a situation that arose and followed the lady's wishes. Morally, I think he was in the right, I think he was covering his butt a little. I'm afraid that the way the law is now, he's guilty. We cannot change the law. It's too late for Dr. Peterson.

The argument then focuses on the evidence and how Dr. Peterson explained the discrepancies. Juror 310 (A, 3[4]), makes a general statement, "He knew what the schedule was". As with some of the other Type B reasoners quoted above, juror 309 (B, 4[3]) then uses a personal example to argue her point:

But in palliative care a lot of times, I know this because I went through it with my uncle, they don't [always follow the schedule]. The doctor has a right not to follow the schedule if he wants. Especially if the person is near death and usually with the consultation of the family. I know they say it should be a nurse who gave it to her. The nurse would not have questioned his decision. If he had gone to the nurse to change the schedule she would have given it to him. When you see someone dying of cancer, I know, it's very hard, you feel helpless. I could see the doctor, seeing her, and giving her the morphine.

Although juror 307 (B, 4[3]) thinks that the defendant is not guilty, he argues for a not guilty verdict based on the evidence and not on the morality or immorality of the defendant's actions:

I thought to myself, My God, they want to put a man in prison in 40 minutes. If he did it, I think he should fry. If they prove it, I think he should be as guilty as sin. I just

don't think they proved it...I think morally he did something wrong, he's guilty as sin, but they didn't prove that...Who am I to interpret the law. As a collective group, we have said there should be no mercy killing in Canada; therefore, there should be no mercy killing in Canada. I don't think that's right, I think it's wrong, I think there should be mercy killing, but, I'm not here to judge the law, I'm just here to judge this guy, by the law.

As with jury #4, this jury remains hung. Like juror 349 (B, 4[3]), juror 310 (A, 3[4]) evokes her personal experiences to argue that the defendant should be found not guilty. Juror 307 (B, 4[3]) seems strongly tied to taking a legalistic stance, but it is clear that his personal viewpoint affected his view of the evidence. In clear conscience, he believes the evidence was insufficient to judge the defendant guilty, yet most jurors who judged solely on the evidence found the defendant guilty. It appears that, for the autonomous moral reasoner, personal conviction affects one's cognitive view of the world. In this case, the juror's personal conviction, that euthanasia should be legalized, impacted the way he viewed the evidence in the trial.

Summary. The qualitative data gleaned from the videotapes of the jury deliberations help elucidate the quantitative findings supplied above. Autonomous jurors see their primary role and responsibility differently from heteronomous jurors. The judgments made by autonomous jurors are listed in Tables 11, 12, and 13 and are matched to those judgments reflective of Type B reasoning in Gibbs et al. (1992). It is clear that in deciding to nullify the law, autonomous jurors evoked all three classes of Type B reasoning—Balancing, Fundamental Valuing, and Conscience.

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Insert Tables 11,12, and 13 about here

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## Discussion

This study provided strong evidence that autonomous jurors are more likely than heteronomous jurors to vote not guilty in judging a defendant, such as the one in this trial, charged with euthanasia. In addition, autonomous jurors judged the defendant's actions to be more moral, were less likely to believe the defendant was guilty of second degree murder, and found the defendant more believable than heteronomous jurors found the defendant. Consistent with the findings of Lupfer, Cohen, Bernard, and Brown (1987), this study also revealed that higher moral reasoners (those scoring at stages 4[3] or 4) are more likely than lower scoring jurors (those scoring below stage 4[3]) to vote not guilty, although this finding did not reach the conventionally-accepted level of statistical significance. Giving partial support to the findings of Horowitz (1985, 1988), the present study also showed that type of instruction was a predictor of juror decisions.

The present study did not confirm the hypothesis regarding possible gender differences in juror nullification. Females did not nullify more frequently than men. Although somewhat inconsistent with Gilligan's (1977, 1982) contention regarding gender differences in moral reasoning, this finding is consistent with more current research on gender differences in care-based and justice-based reasoning, which has shown that both males and females employ both care and justice reasoning in situations that evoke a specific mode of reasoning (see Krebs et al., 1994; Wark, & Krebs, 1996). In matters of criminal adjudication, jurors (regardless of gender) are expected to decide according to the fundamental principles of justice. In addition, jurors are expected to remain detached

and not to form relationships with parties in the trial. Thus, the juror's role likely "pulls" for justice-based, rather than care-based, reasoning regardless the juror's gender.

One gender difference, however, was observed. Type B males were more likely than type B females to judge the defendant to be guilty of first degree murder. Consistent with hypothesis, Type B females were less likely than Type A females to perceive the defendant to be guilty of first degree murder. Contrary to hypothesis, Type B males were not less likely than type A males to perceive the defendant to be guilty of first degree murder. Inasmuch as the autonomous moral reasoner is expected to invoke his or her internal convictions in making a legal decision, then the autonomous reasoner may be inclined to make a harsh judgment (that the defendant is guilty of the most extreme offense) about the defendant in cases where the autonomous juror is morally opposed to euthanasia. This result--that autonomous males are more inclined than autonomous females to make the most punitive judgment about the defendant--may reflect a gender difference, females may be more compassionate even when their moral sentiments are contrary to a defendant's behaviour. This finding, however, may simply be due to differences in the numbers of males and females in this sample that did and did not advocate euthanasia.

To elucidate whether or not this finding reflects a gender difference in the juror's judgments about the defendant, it would be necessary to identify both those jurors who advocate doctor-assisted suicide and those jurors who are opposed to doctor-assisted suicide. Because no such question was asked of jurors, I looked at the responses jurors made to question eight on the SRM--"how important is it for a person to live even if he or



she doesn't want to?"--to identify the pre-existing views of the jurors regarding doctor-assisted suicide. I believed that autonomous jurors who thought people should be allowed to end their life would tend to judge the defendant leniently (vote not guilty) and autonomous jurors who thought people should not be allowed to end their own life would tend to judge the defendant punitively (vote guilty of first degree murder), regardless of gender. A perusal of the responses made to this SRM question failed to support this explanation. It is conceivable that this question failed to yield the necessary information to explain this anomalous result because it related generally to a person's decision not to live (which includes suicide committed by people who are not ill) rather than to doctor-assisted suicide committed on a willing, terminally-ill patient, which was the focus of this study. In future investigations of this issue, jurors should be polled regarding their views about doctor assisted suicide prior to participating in the study.

#### A Model to Explain Juror Nullification

In this study, the linear combination of moral type, type of judicial instruction, and stage of moral reasoning was the best predictor of juror verdicts. Autonomous jurors who scored at stages 4(3) or 4 on the SRM and who received nullification instructions were much less likely to judge the defendant guilty than heteronomous jurors who scored below stage 4(3) on the SRM and who received legal instructions from the judge.

This result shows that juror nullification is affected by characteristics both within the individual (both type and stage of moral reasoning) and outside the individual (type of judicial instruction). Unfortunately, in the present study, jurors were not polled regarding

their personal sentiments regarding doctor-assisted suicide. Probably, the inclusion of this variable would have increased the predictive utility of the model.

In attempting to identify the correlates of juror decisions, Mills and Bohannon (1982b) found that conventionality was related to guilty determinations. Conventionality is reflected in moral judgment style (the combination of moral type A and moral stages 3 and 4[4]) evoked by the jurors. Moderate levels of moral reasoning combined with Type A moral judgment corresponds to high conventionality in that they theoretically reflect greater adherence to social rules and standards, and greater reliance on societal authority figures. In contrast, high stage moral reasoning combined with Type B moral judgment corresponds to low conventionality in that they theoretically reflect greater internal regulation of moral decision-making, and less reliance on socially/legally-dictated moral standards. As Shrader et al. (1987) point out, moral stage and moral type are not independent structures, but are highly related and in conjunction, they define the fully autonomous decision-maker. One limitation of the present study, however, is the SRM's inability to assess stage 5, postconventional, moral reasoning. The moral decisions of some jurors were likely constrained by the upper boundary, stage 4, of the SRM. Assessing postconventional reasoning may serve to further increase the predictive utility of the model.

### The Impact of Autonomous Moral Reasoning on Jury Decision-Making

The videotaped jury deliberations provided important descriptive data for elucidating how autonomous moral reasoning yields fewer guilty determinations. Gibbs et al. (1992) contend that autonomous moral thought is comprised of three main components. Each of

these components was expressed by some autonomous jurors in the present study and each can be used to understand how autonomous moral reasoning leads jurors to judge the defendant in this study to be not guilty.

The relationship between balancing judgments and juror verdicts. Balancing is a type of moral thought related to perspective-taking. Selman (1980) argued that social perspective-taking is a necessary, but not sufficient component of moral reasoning development. Gibbs' concept of balancing is similar to perspective-taking in that it is related to the reasoner's ability to understand and balance the conflicting perspectives of others. In Table 11, criterion judgments that are reflective of balancing are compared to the moral judgments made by autonomous jurors in the present study.

A perusal of Table 11 makes clear that autonomous jurors adopted the perspectives of those involved in the euthanasia trial in order to arrive at the most just decision. In the euthanasia case presented in this study, attending to both the perspectives of the victim, who wanted to be allowed to die, and the defendant, who felt compassion for his patient and thus hastened her imminent death, would propel jurors toward a not guilty decision. In support of the theorized relationship between balancing and juror decision-making, jurors who advocated balancing judgments on the SRM were much more likely than jurors who did not evoke balancing judgments to find the defendant not guilty.

The relationship between fundamental valuing judgments and juror verdicts. The second class of autonomous moral judgment detailed by Gibbs et al. (1992) is that of fundamental valuing. Using this type of judgment, the reasoner places great importance on some irreplaceable quantity, in most cases, human life or quality of life. Usually, this

valuable commodity is given preeminence over other issues, such as the right to own property, or the law.

It is clear from the examples provided in Table 12 that one of the reasons autonomous jurors tended to find the defendant not guilty is that they placed a great value on personal choice and quality of life. Autonomous jurors in the present study seemed to feel the denial of one's personal choice is a denial of that individual's autonomy. (Not coincidentally, the quality that characterizes the autonomous moral reasoner is also highly valued by such reasoners.) Autonomous jurors tended to place great value in the quality of Mrs. Williams' life. One juror even commented that her existence does not constitute life in any sense of the word (see Table 12).

Although many jurors focused on the quality of Mrs. Williams life in supporting the doctor's decision to assist in her death, other jurors focused on their belief that life, regardless of its quality, is fundamental, and can never be taken for granted. These jurors believed that the doctor had exceeded his moral mandate by hastening the imminent death of Mrs. Williams. Thus, jurors could evoke fundamental valuing judgments to support either a guilty or a not guilty determination. Reflecting the varied impact fundamental valuing issues were expected to have on juror verdicts, jurors who evoked fundamental valuing judgments on the SRM were no more or less likely than jurors who failed to evoke fundamental valuing judgments on the SRM to find the defendant not guilty.

The relationship between conscience judgments and juror verdicts. The last class of autonomous moral judgments is conscience. Conscience-dictated autonomous judgments are those where the person refrains from engaging in a certain behavior, or

from making a certain judgment because his or her conscience is encumbering such a judgment. Numerous examples of conscience-driven moral judgment supporting the jurors' decisions to find the defendant not guilty can be gleaned from the jury deliberations (see Table 13).

Extrapolating from the findings of Achille and Ogloff (in press), we can infer that the majority of jurors believed some form of euthanasia should be legalized. However, autonomous jurors tended to cite their conscience as a mechanism that prohibited them from finding Dr. Peterson guilty. Autonomous jurors frequently stated that they would be unable to live with themselves, or that their conscience would bother them, if they found Dr. Peterson guilty. Heteronomous jurors stated their views about legalizing euthanasia-- they were not dependent on their conscience in deciding the guilt or innocence of the defendant. Consistent with the theoretical characteristics of the moral types (see Table 1), whereas autonomous jurors were oriented toward following their conscience, heteronomous jurors oriented themselves to their "duties" and the "rules" they were expected to follow. Supporting this relationship, whether or not jurors evoked conscience-based judgments on the SRM was a strong predictor of the verdicts they rendered.

**Summary.** It is clear that the structure of legal argument is different for autonomous versus heteronomous moral reasoners. In the euthanasia case employed in this study, autonomous jurors tended to invoke forms of judgment that were different from those invoked by heteronomous jurors. Not surprisingly, therefore, autonomous jurors tended to make different legal decisions from those made by heteronomous jurors. This finding

is consistent with the work of Shrader et al. (1987), which specified that moral development relates to the structure underlying moral thought and moral type relates to “the presence of the content *and* structure of ideal autonomous moral reasoning at various stages of reasoning” (Shrader et al., 1987, p. 909).

### Explaining the Impact of Judicial Instructions on Autonomous Juror's Decision-Making

The fifth hypothesis presented in this study was partially confirmed. Autonomous jurors were more inclined to find the defendant not guilty when they were presented with nullification instructions than when they were presented with legal instructions.

Heteronomous jurors rarely advocated acquittal, regardless of the type of instruction they received. As explained previously, it is plausible that nullification instruction is more persuasive to autonomous jurors because it provides them with the legal freedom to exercise their moral autonomy.

That autonomous jurors might be more inclined to vote not guilty when given nullification instructions than when given legal instructions, however, is somewhat paradoxical. According to the theoretical characterization of autonomous and heteronomous reasoners, heteronomous jurors should be strongly influenced by judicial instructions because heteronomous reasoners make judgments according to the letter of the law. In contrast, autonomous reasoners should consistently evoke the spirit of the law and their underlying moral convictions, regardless of the type of judicial instruction they receive.

Two plausible explanations for this apparent paradox are advanced here. First, it is possible that the Gibbs et al. (1992) method of scoring moral type is imprecise. Second,

it is possible that autonomous reasoning is not as homogeneous as Shrader et al. (1987) and Gibbs et al. (1992) conceived it to be.

Is the SRM an imprecise measure of autonomous reasoning? It is likely that in using Gibbs' scoring method, the number of autonomous jurors was overestimated. Pure moral autonomy, according to Kohlberg (1984) is relatively rare--very few people actively confront societal or legal standards they feel are morally incorrect--yet over half of the jurors in the present study were scored as autonomous reasoners. Gibbs et al. (1992) devote a small proportion of their scoring manual to the assessment of moral type (less than one full page). In describing the assessment of moral type, Gibbs et al. (1992) neither elaborate on how the components of moral type were selected nor do they operationally define these components. It is only through reading the criterion judgments related to each component of autonomous moral thought that one understands the nature of these components. In addition, Gibbs et al. (1992) may have oversimplified the assessment of moral type, "a protocol is designated as Moral Type B if the protocol responses have yielded at least two of the three Type B components (Balancing, Fundamental Valuing, and Conscience)" (p. 56). The coding system developed by Kohlberg and his colleagues (Tapan, Kohlberg, Shrader, Higgins, Armon, & Lei, 1987) is complex and cumbersome, with many coding criteria to attend to (choice, hierarchy, intrinsicness, prescriptivity, universality, freedom, mutual respect, reversibility, and constructivism). It is possible that in creating a more "user friendly" method of scoring moral type, Gibbs et al. devised a scheme that oversimplifies the assessment of moral

type. Had Gibbs developed a more comprehensive method of scoring moral type, "true" autonomous reasoners may have been more clearly identified.

The nature of autonomous moral thought. This study suggests that moral autonomy may not be as homogeneous as Tappan et al. (1987) and Gibbs et al. (1992) conceptualize it to be. If a reasoner were truly autonomous, he or she would be unaffected by external roles, rules, and dictates whenever such external forces conflicted with his or her internal convictions. Even autonomous reasoners, however, must function in society according to its rules and standards. Thus, autonomous reasoners must seek to balance their internal convictions with the external rules by which they must live.

The relation of conventional morality to moral autonomy creates another inconsistency in Kohlberg's theory. As Colby and Kohlberg (1987) define conventional morality, it is in conflict with autonomous moral thought, "the term conventional does not mean that individuals at this level are unable to distinguish between morality and social convention but rather that morality consists of socially shared systems of moral rules, roles and norms" (p. 16). This definition suggests that morality for the conventional reasoner is purely heteronomous in nature--it is defined by external standards rather than internal convictions. In this study, the majority of autonomous reasoners were also scored at conventional stages of moral thought. This finding points to another paradox--how can a conventional reasoner make autonomous moral judgments?

It is possible the two inconsistencies alluded to in this study relate to the same issue. Both Gibbs et al. (1992), and Tappan et al. (1987) attempt to categorize moral reasoners into heteronomous and autonomous types. Yet, moral autonomy seems to be



continuous in nature. Originally, Kohlberg (1958) sought to explore the progressive increase in moral autonomy throughout moral development. In fact, Kohlberg's original thesis was entitled, "The Development of Moral Autonomy in the Years 10 to 16". Kohlberg eventually abandoned this pursuit and advanced a structural, hierarchical stage sequence of moral development. This study suggests that the development of moral autonomy is related to moral maturity, but it is not related in a linear way--people may have an orientation throughout their moral development toward moral autonomy or moral heteronomy. At immature stages of moral development, morality is entirely heteronomous, at moderate stages of development, moral autonomy develops and plays an increasingly important role in moral reasoning, and at principled stages of development (which is rarely attained) morality is entirely autonomous in nature. Moral development may increase the probability that a person will employ autonomous moral thought, but the orientation (toward or away from moral autonomy) of that person will determine where, within a particular range of moral autonomy, the individual will reason.

It is plausible that the conventional thinking autonomous moral reasoner attempts to balance his or her internal moral convictions against society's roles and expectations. When the roles and expectations of society provide an avenue for reasoning autonomously, such as when the autonomous juror is given nullification instructions, the conventional thinking autonomous reasoner may invoke his or her internal moral convictions to make the appropriate legal decision. Supporting this contention, when given nullification instructions, the number of autonomous jurors who advocated acquittal (76%--see Table 3a) approximated the number of people in the community who

advocated some form of active euthanasia (79%--see Achille & Ogloff, in press). When the roles and expectations of society fail to provide an avenue for autonomous decision-making, such as when only standard instructions are given, the conventional-thinking autonomous reasoner may choose either to invoke the conventions of society or to invoke his or her internal moral convictions. Supporting this contention, only about 50% of autonomous jurors advocated acquittal when given standard instructions. The question is, what distinguishes the autonomous jurors who advocate acquittal when given standard instructions from the autonomous jurors who advocate conviction when given standard instructions?

Consistent with the preceding elucidation of autonomous moral reasoning, this study indicated that moral development level is one factor that distinguishes the autonomous jurors who advocate acquittal when given standard instructions from the autonomous jurors who advocate conviction when given standard instructions. When given legal instructions, autonomous jurors who scored higher on Kohlberg's test (stages 4(3) and 4) tended to advocate acquittal more frequently than jurors who scored lower on Kohlberg's test (under stage 4(3)) (see Table 9). This finding suggests that moral autonomy becomes more "pure" as a reasoner advances in moral maturity--the higher stage autonomous reasoner is less affected by legal dictates than the lower stage autonomous reasoner.

#### Does Autonomous Thought Result in Nullification?

The sixth hypothesis of the present study was that the degree to which jurors relied on judicial instructions would be indicative of the degree to which they nullified the law. This hypothesis was not supported—autonomous jurors were no less likely to rely on the

judicial instructions than were heteronomous jurors. This result indicates that not all autonomous jurors actively nullified the law. Rather, some autonomous reasoners may have truly believed the defendant was not guilty according to the law.

Although the jury deliberations indicated that some autonomous jurors who voted not guilty truly believed that the defendant was actually guilty according to the law, other autonomous jurors seemed to believe the defendant was not guilty according to the legal standards they were given. If autonomous jurors are not nullifying the law more than heteronomous jurors, what accounts for the differences in their verdicts?

The evidence, in this study suggests that the difference between autonomous jurors' and heteronomous jurors' verdicts may be a consequence of differences in the degree to which they take on the perspectives of the people involved in the trial. Research on jury decision-making has found that jurors tend to develop stories explaining the events in the trial, and then they match the evidence they hear against those stories to arrive at the most plausible explanation of the events (Hastie & Pennington, 1983). The "story model" assumes that jurors are totally objective in their acceptance and evaluation of the events they hear. This study showed that one of the best predictors of juror decisions was whether or not jurors showed that they could balance, or assume the perspectives, of other people.

Possibly, autonomous, high-stage jurors are more inclined than heteronomous, low-stage jurors to balance the perspectives of those involved in the trial. In the stimulus employed in this study, balancing the perspectives of the defendant and victim would lead them to a similar conclusion--that the defendant is not guilty. In their construction

of a story and their evaluation of that story, autonomous jurors may have been more affected by the perspectives of the defendant and victim than heteronomous jurors were. This influence of other people's perspectives may alter both the way the autonomous juror views the evidence in the trial, and ultimately, the verdict the autonomous juror arrives at.

Further support for the proposition that increased juror perspective-taking among autonomous reasoners influenced them to arrive at a greater number of not guilty verdicts than heteronomous jurors is that autonomous jurors seemed to cognitively represent the trial such that their moral view was consistent with their legal view. Autonomous jurors tended to view the defendant as more believable than heteronomous jurors did and tended to view the defendant's behavior as more moral than heteronomous jurors viewed the defendant's behaviour.

This study suggests that one reason why autonomous jurors arrive at more not guilty determinations than heteronomous jurors is that they are more inclined than heteronomous jurors to disregard the law and to make their legal decisions according to their own moral convictions. This study also suggests that autonomous jurors may be more inclined to find the defendant not guilty, even when they fail to nullify the law. Autonomous jurors are more inclined than heteronomous jurors to take on the perspectives of the individuals involved in the trial. This increased perspective-taking ability may influence the way the autonomous juror understands and interprets the evidence he or she views and hears. The impact of greater perspective-taking on juror decisions may yield different effects in different types of trial. In cases where a perpetrator committed a heinous crime against

the victim, the autonomous juror may be inclined to assume the victim's perspective and make a more punitive judgment toward the defendant than a heteronomous juror who is less inclined to take on other people's perspectives.

### Conclusion

It is clear that type of moral thought impacts legal decision-making about morally controversial cases. Transcripts from the present study were consistent with the findings of Achille and Ogloff (in press)--most people think some form of euthanasia should be legalized--yet less than half of the jurors in the present study decided the defendant was not guilty of euthanasia. Of those who thought the defendant should be found not guilty, most were autonomous moral reasoners. Although autonomous moral reasoning was the best predictor of not guilty decisions, other variables such as high-level moral reasoning, and nullification instruction served to further distinguish jurors advocating not guilty verdicts from those advocating guilty verdicts.

### Limitations of the Present Study and Directions for Future Research

The results of the present study must be viewed with some caution because of the limitations inherent in this research. The first limitation concerns the generalizability of the study. Most of the participants in the present study were university students. The present sample was likely younger and more educated than typical sample of jurors would be. Although one could argue that this limitation renders the results of the present study ungeneralizable to actual jury decision-making, I argue that inasmuch as Type A and B reasoning is considered a reflection of stable personality traits (see Shrader et al.,

1987), the differences between autonomous and heteronomous jurors found in the present study should generalize to autonomous and heteronomous non-university students. The present study included a small group (N=12) of participants from the general community. The members of this group were randomly assigned to juries comprised of University students so no comparisons can be made between their judgments and the judgments of students. Future research should assess the generalizability of the present study by using a sample entirely comprised of juror eligible participants.

A second limitation of the present study is that the jurors were only given 30 minutes to deliberate about the trial. The likely result of this short deliberation period was an abundance of hung juries. Whereas close to 50% of juries in the present study remained hung, very few (1.02%) actual jury decisions are hung (see Law Reform Commission of Canada, 1980). In future research the juries should be given more time to deliberate about the trial so a greater number of juries reach consensus.

The third limitation was alluded to by some of the jurors. The range of verdict choices was restricted because manslaughter was not provided as an option. Although this omission may have decreased the external validity of the stimulus video, manslaughter was not provided as an alternative so the nullification rate would be maximized. Given the small number of participants, the choices available to participants—not guilty, or guilty of murder—were disparate to maximize the psychological tension induced by the trial. Manslaughter may have provided participants with a more moderate alternative. If participants chose manslaughter, however, it would be difficult to determine if they had nullified or not. The evidence supported a verdict of guilty of second degree murder. If a

juror found the defendant guilty of manslaughter he or she would have been contradicting the law, but would not be fully nullifying the law. I determined prior to creating the stimulus video that such an alternative would confuse the issue of jury nullification. To avoid this potential confusion, I chose to not provide jurors with the option of manslaughter.

A fourth limitation of this study relates to the stimulus video. It is likely impossible to generalize the results from the present study to actual criminal trials for a number of reasons. First, as mentioned previously, the video was created to maximize the nullification rate. In most criminal trials, the evidence is weighted in favour of the prosecution and, not surprisingly, the defendant is typically found guilty of a crime. In contrast, the stimulus video employed in this study was designed to elicit a 50/50 split in guilty/not guilty decisions. Second, the trial involved a single uncommon act. Horowitz (1985, 1988) looked at 3 different types of trial in his investigations of jury nullification. It is possible that the results of this study only apply to a small number of cases and cannot be generalized beyond that class of cases. Future research should investigate this limitation by conducting similar research with different types of trials. The last issue relating to the stimulus video is an issue inherent in the vast majority of laboratory studies of jury decision-making—the decisions made by jurors in this study were non-consequential. Jurors in the present study knew that their decisions had no bearing on a person's life or on future legal decisions. It is possible that in an actual trial, jurors would decide the case in an entirely different way. Given the limited access researchers have to

actual juries and the ethical problems inherent in manipulating the decisions of actual juries, this limitation is likely one jury researchers will be unable to overcome.

As with all research, the present study raises more questions than it provides answers. Three of these questions, to be addressed in future research, are: (a) are autonomous reasoners more likely to nullify or are they simply more sympathetic to the defense?, (b) are autonomous moral reasoners only more likely to nullify the law than heteronomous moral reasoners only in cases involving euthanasia or do they tend to nullify the law in all situations where a defendant engages in, what they consider to be, a moral, but illegal act?, and (c) following the lead of Horowitz (1988) are autonomous jurors influenced more than heteronomous jurors to nullify the law when the defense lawyer, rather than the presiding judge, persuades the jury to nullify the law?

Answering the first question, one could investigate cases where public sentiment is consistent with the prosecution's position, such as the drunk driving case employed in Horowitz (1985, 1988). If autonomous jurors are more likely to nullify the law, as was hypothesized in the present study, they should make more punitive judgments than heteronomous jurors about the defendant. If autonomous jurors are more sympathetic to the defendant, they will tend to make more lenient judgments about the defendant charged with drunk driving than will heteronomous jurors.

To answer the second question, one could revise the breaking and entering trial employed in the first pilot study to make the trial more believable and balanced between the defense and prosecution. One could then videotape the trial and present it to juries in



the manner employed in the present study. The extent to which autonomous moral thought leads to jury nullification in other, similar, cases could then be evaluated.

To answer the third question, a study could be conducted in which the person providing nullification instructions (judge or defense lawyer) is varied. In this study, the presence or absence of nullification instruction by both parties could be fully crossed in a 2 x 2 design. We could then assess the impact nullification instructions, given from more than one legal authority, have on the autonomous versus the heteronomous reasoning juror.

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## Footnotes

<sup>1</sup> The likelihood that the defendant committed second degree murder was analyzed in a separate ANOVA. The wording of this question necessitated its unique treatment. Whereas juror verdict was expected to relate in a relatively linear fashion with all other questions—jurors who voted not guilty were expected to make more lenient judgments about the defendant than jurors who voted guilty—for this particular question, the *type* of guilty verdict advocated by jurors was expected to affect their responses. Jurors who voted guilty of second degree murder were expected to strongly believe that the defendant committed second degree murder. On the contrary, those who voted guilty of first degree murder were expected to not believe the defendant committed second degree murder. Thus, a low score on this variable could have two opposing meanings—a lenient meaning, “No, I believed the defendant is not guilty”, or a punitive meaning “No, I believed the defendant committed first degree murder”. For this reason, the eleven jurors who voted guilty of first degree murder were excluded from the following ANOVA.

The ANOVA conducted on the remaining 84 jurors yielded a main effect for Moral type,  $F(1,68) = 6.68, p < .02$ . Consistent with the finding from the MANOVA, autonomous jurors ( $M = 5.13$ ) were less likely than heteronomous jurors ( $M = 7.13$ ) to believe the defendant committed second degree murder. Consistent with the preamble to this footnote, the 11 jurors excluded from the present analysis, who voted guilty of first degree murder, tended not to perceive the defendant to have committed second degree murder ( $M = 5.00$ ).



Table 1. Characteristics of Type A and Type B moral reasoners.

Quality	Type A Orientation	Type B Orientation
Construction of Moral Thought	Orientation to prescribed rules or roles of the social or moral order. The basic considerations in decision-making center on the elements of rules. May also be oriented to making decisions based on the good or bad welfare consequences of action in the situation for others and/or self.	Oriented to relations of liberty, equality, reciprocity, and contract between persons. Concerned with the ideal self. Oriented to an image of the actor as a good self, or as someone with a conscience, and to his or her motives or virtues (relatively independent from the approval of others).
Judgment Formation	Makes judgments descriptively, according to an objective standard of judgment.	Makes judgments prescriptively, in terms of what ought to be, of what is internally accepted. Is aware of rules but also their relative fairness.
Orientation	Emphasis on external factors or literal interpretations of roles, duties, or rules. Tends to be unilateral and particularistic.	Emphasis on internal factors and flexibility of rules, duties, and roles. Tends to be generalized or universal.
View of Moral Role	To impose socially acceptable standards without question or self-interpretation.	To consider socially accepted standards while interpreting the moral situation according to self-accepted standards.
View of the Law	Tends to be inflexible and places emphasis on the letter of the law.	Tends to be flexible and places emphasis on the spirit of the law.

Adapted from Tappan et al. (1987)

Table 2. Summary Table for Verdicts x Moral Type

	Verdicts		Total
Moral Type	Guilty	Not Guilty	
A (Heteronomous)	30 (73.2%)	11 (26.8%)	41 (43%)
B (Autonomous)	20 (37.0%)	34 (63.0%)	54 (57%)
Total	50 (53%)	45 (47%)	95

Table 3. Summary Table for Verdicts x Judicial Instruction

Instruction	Verdicts		Total (%)
	Guilty	Not Guilty	
Standard	29 (59.2%)	20 (40.8%)	49 (51.6%)
Nullification	21 (45.7%)	25 (54.3%)	46 (48.4%)
Total	50 (52.6%)	45 (47.4%)	95

Table 4. Summary Table for Verdicts x Stage.

Stage	Verdicts		Total (%)
	Guilty	Not Guilty	
3(2)	6 (66.7%)	3 (33.3%)	9 (9.5%)
3, 3(4)	31 (58.5%)	22 (41.5%)	53 (55.8%)
4(3), 4	13 (39.4%)	20 (60.6%)	33 (34.7%)
Total	50 (52.6%)	45 (47.4%)	95

Table 5. Logistic regression output for all variables included in the preliminary model.

Variable	b (slope)	Standard Error	F	Degrees of Freedom	Significance	r
Type of Instruction	-.49	.47	1.09	1	>.30	.00
Moral Type	.79	.25	10.23	1	>.01	.25
Moral Stage (A) – above 3.00	-.19	.47	.16	1	>.70	.00
Moral Stage (B) - above 3.50	.32	.25	1.55	1	.21	.00
Type of instruction x Moral type	-.16	.25	1.55	1	.21	.00
Type of instruction x Moral stage (A)	-.91	.47	3.80	1	.05	-.12
Type of instruction x Moral stage (B)	.34	.25	1.83	1	.18	.00

Note. In the above analysis, parameter coding differed from the internal coding of the predictors: (0,1) coding was inverted to (1,-1).

**Table 6. Logistic regression output for variables included in the final model.**

Variable	b (slope)	Standard Error	F	Degrees of Freedom	Significance	r
Type of Instruction	.40	.23	2.92	1	>.10	.08
Moral Type	.76	.24	10.53	1	>.01	.25
Moral Stage (B) - above 3.50	.35	.24	2.16	1	>.15	.03

**Note.** In the above analysis, parameter coding differed from the internal coding of the predictors: (0,1) coding was inverted to (1,-1).

Table 7. Chi-Square summary table for the “fit” of the final model to the data.

Actual Verdict Decision	Predicted Verdict Decision		Per cent accurately predicted
	Guilty	Not Guilty	
Guilty	40	10	80.00%
Not Guilty	17	28	62.22%
Total			71.58%

Table 8. Not Guilty Verdicts advocated by Type A versus Type B Jurors GivenNullification versus Legal Instructions

Moral Type	Type of Instruction		Total (%)
	Legal	Nullification	
A (Heteronomous)	25.0% (N = 5)	28.6% (N = 6)	26.8% (N = 11)
B (Autonomous)	51.7% (N = 15)	76.0% (N = 19)	63.0% (N = 34)
Total	41% (N = 20)	54% (N = 25)	47.4% (N = 45)



**Table 9. Verdicts advocated by High stage versus Low stage Type B Jurors Given Legal Instructions**

Moral Stages	Verdicts		Total (%)
	Guilty	Not Guilty	
Low—3(2),3,3(4)	62.5% (N = 10)	37.5% (N = 6)	55.2% (N = 16)
High—4(3),4	30.8% (N = 4)	69.2% (N = 9)	44.8% (N = 13)
Total	48.3% (N = 14)	51.2% (N = 15)	100% (N = 29)

Table 10. Verdicts by Moral Type and Gender

	Possible Verdicts	Males	Females
	First Degree	2 (12.5%)	4 (16%)
Type A	Second Degree	11 (68.8%)	13 (52%)
	Not Guilty	3 (18.8%)	8 (32%)
	First Degree	5 (21.7%)	0 (0%)
Type B	Second Degree	3 (13.0%)	12 (38.7%)
	Not Guilty	15 (65.2%)	19 (61.3%)

Table 11. Balancing Judgments provided by Jurors and Corresponding Criterion

Judgments from Gibbs et al. (1992).

Judgments Reflective of Balancing	Criterion Judgments
<p>I don't think it's best for society to lock up a doctor, who's going to help a lot of people, for ten years...The question then is, if we do sentence him to ten years, what does that do from a society point of view?...Our job is not to interpret the law. Our job is the best interests of society ultimately. And for me, that's the issue here...I think he knew she was going to die. I think he intentionally administered the morphine to bring on her death...To me, there's a greater obligation in this case. I don't think we can be blinded by the strict letter of the law in this or in any other decision we make.</p> <p><b>Jury #4; Juror 148</b></p>	<p>... each case is different or unique, or must be considered separately; the law cannot always apply appropriately; there cannot be set rules for all cases ... justice should be tempered with mercy or understanding; or the law or judicial system should or must be flexible or fair.</p> <p><b>Legal Justice 4:6(a)—Moral B</b></p> <p><b>Balancing</b></p>

(table continues)

(Table 11 cont'd)

<p>Why should a decent doctor, who's caring and compassionate go to jail for even one year for doing what I hope a doctor would do for me...She asked for it several times and he hadn't done it. I believe that the circumstances must have been such that you'd have to be a pretty hard person [not to have done what Dr. Peterson did].</p> <p><b>Juror #28; Juror 349</b></p>	<p>How would you feel if you were dying (and someone wouldn't help you?)...we should care about others; or you should do what you would want others to do for you.</p> <p><b>Life, 3:1(a)— Type B</b></p> <p><b>Balancing</b></p>
<p>Even if he had done it on purpose, I still wouldn't convict him because she was terminally ill and had asked for euthanasia when she was sane, and was in extreme pain. She had a terminal disease. Some people would convict on that, but I won't convict on that. That's the way I look at it.</p> <p><b>Jury #28; Juror 353</b></p>	<p>... It depends on the situation, case, or circumstances: or it depends on whether the suffering is physical or emotional, or from serious ailments</p> <p><b>Life, 3/4:2—Moral B Balancing</b></p>

Table 12. Fundamental Valuing Judgments provided by Jurors and Corresponding Criterion Judgments from Gibbs et al. (1992).

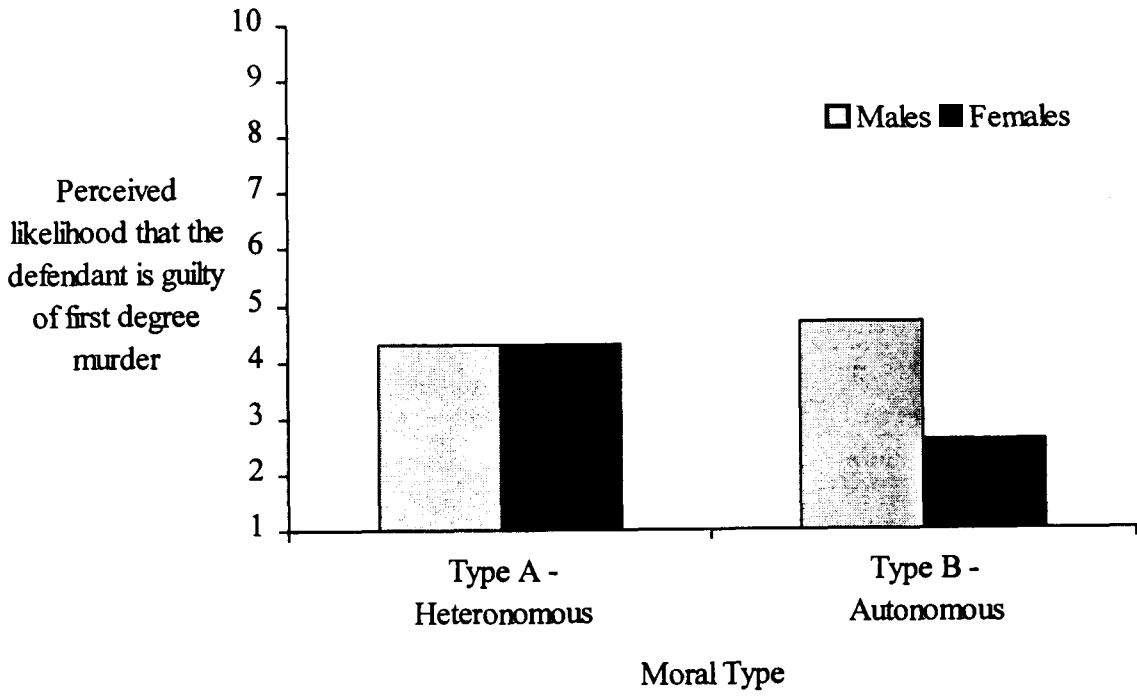
Judgments Reflective of Fundamental Valuing	Criterion Judgments
<p>I have seen 3 members of my family die of cancer and having been in the palliative care unit and having people say, it's so sad I have to die like this. You wish you had the courage to do something, but you have kids and you can't put yourself in a precarious position. ... But are you going to leave someone in excruciating pain for the last few hours of their life?</p> <p><b>Jury # 28; Juror 349</b></p>	<p>You should have compassion for a fellow human being...helping one another is the way the world should be; or we should respect or not abuse life.</p> <p><b>Life, ¼:6(a)—Type B</b></p> <p><b>Fundamental Valuing</b></p>

Table 13. Conscience-Based Judgments provided by Jurors and Corresponding Criterion Judgments from Gibbs et al. (1992).

Conscience -Based Judgments	Criterion Judgments
<p>I couldn't live with myself for convicting him of second degree murder and sentencing him for an act of human kindness and compassion. That's the way I see what he did, not an act of murder.</p> <p><b>Jury #28; Juror 349</b></p>	<p>... you would feel guilty, feel terrible, regret it, have it on your conscience, ... or not be able to live with yourself.</p> <p><b>Life 3:6—Moral B Conscience</b></p>
<p>For me, I can't think it's black and white anymore. I mean, maybe that happened [he murdered her], but I just don't feel good about convicting him, It's just not right.</p> <p><b>Jury #28; Juror 352</b></p>	<p>... you would feel rotten, terrible, ashamed, bad about yourself, or guilty...</p> <p><b>Contract &amp; Truth, 3:6—Moral B Conscience</b></p>

## Figure Caption

Figure 1. Interaction between Moral Type and Gender the perceived likelihood that the defendant is guilty of first degree murder.





## APPENDIX A

Sociomoral Reflection Measure--Short Form (SRM-SF)

## Instructions

*In this questionnaire, we want to find out about the things you think are important for people to do, and especially why you think these things (like keeping a promise) are important. Please try to help us understand your thinking by **WRITING AS MUCH AS YOU CAN TO EXPLAIN--EVEN IF YOU HAVE TO WRITE OUT YOUR EXPLANATIONS MORE THAN ONCE.** Don't just write "same as before". If you can explain better or use different words to show what you mean, that helps us even more. Please answer all the questions, especially the "why" questions. If you need to, feel free to use the space in the margins to finish writing your answers.*

1. Think about when you've made a promise to a friend of yours. How important is it for people to keep promises, if they can, to friends?
2. What about keeping promises to anyone? How important is it for people to keep promises, if they can, even to someone they hardly know?
3. How about keeping a promise to a child? How important is it for parents to keep promises, if they can, to their children?
4. In general, is it important for people to tell the truth?
5. Think about when you've helped your mother or father. How important is it for children to help their parents?

6. Let's say a friend of yours needs help and may even die, and you're the only person who can save him or her. How important is it for a person (without losing his or her own life) to save the life of a friend?
7. What about saving the life of anyone? How important is it for a person (without losing his or her own life) to save the life of a stranger?
8. How important is it for a person to live even if that person doesn't want to?
9. How important is it for people not to take things that belong to other people?
10. How important is it for people to obey the law?
11. How important is it for judges to send people who break the law to jail?

APPENDIX B

Video Transcript

Her Majesty the Queen

v.

Henry Michael Peterson

TABLE OF WITNESSES

Opening Jury Instructions

Opening Statement by Mr. Parker (Crown)

Opening Statement by Mr. Drescher (Defense Counsel)

CROWN WITNESSES

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DEFENSE WITNESSES

Dr. Henry Peterson (Accused)

Closing argument by Mr. Parker (Crown)

Closing argument by Mr. Drescher (Defense Counsel)

Final Jury Instructions

### The Arraignment

**THE SHERRIFF:** Order in the court.

**THE COURT:** Please be seated. Will the defendant please rise (wait for the defendant to rise).

**CLERK:**

Canada. Province of British Columbia, In the Supreme Court of British Columbia. Her Majesty the Queen against Henry Michael Peterson. Henry Michael Peterson stands charged that he, on or about the 7th day of March, 1994, at the city of Vancouver, Province of British Columbia, did unlawfully commit first degree murder on the person of Ellen Williams, contrary to section 235 of the Criminal Code, and did thereby commit an offense.

How do you plead.

**MR. DRESCHER:** Not guilty.

**THE COURT:** Court will commence on May 16th, 1995.

\*\* skip to the camera shot of the Provincial court logo and the name of this trial\*\*

Her Majesty the Queen

v.

Henry Michael Peterson

### **The Trial**

**THE SHERRIFF:** Order in the court.  
(Judge Enters)

**THE COURT:** Please be seated. You can now proceed.

**THE REGISTRAR:** In the Supreme Court of British Columbia, Monday this 16th day of May, 1994, Her Majesty the Queen against Henry Peterson, My Lord.

**MR. PARKER:** My Lord, my name is John Parker, and I appear for the Crown in this matter.

**MR. DRESCHER:** My Lord, my name is Mark Drescher, and I appear as Counsel for Dr. Peterson seated behind me.

#### **THE COURT: [OPENING JURY INSTRUCTIONS]**

Ladies and Gentlemen, before you hear the evidence in this case, I am going to spend a few minutes explaining some basic principles that will be important for your consideration in this case. In this system, you are the judges of the facts and I am the judge of the law. Although I will be commenting on the evidence at the end of the trial, your view of the evidence must prevail. You are the exclusive judges of the evidence.

There are two other basic principles which are fundamental to your role as jurors. They are the requirement for proof beyond a reasonable doubt and the presumption of innocence. The requirement for proof beyond a reasonable doubt means just what it says. No person accused of an offense can be found guilty unless the Crown proves each and every part or element of that offense beyond a reasonable doubt. Similarly, our system of law requires that an accused person be presumed (or considered to be) innocent. Henry Michael Peterson, the accused in this case, has no obligation to prove that he is not guilty, or to explain the evidence offered to you by the Crown. The law presumes him to be innocent (or not guilty), until you decide otherwise.

Ladies and gentlemen of the jury we will now have the opening statement by Mr. Parker who represents the Crown in this case.

**MR. PARKER:** In this trial, I expect the evidence to show that Dr. Peterson intentionally, and with forethought, administered a lethal dose of morphine into the body of Ellen Williams. you will hear from a colleague of Dr. Peterson that shortly before Mrs. Williams' death, Dr. Peterson injected a substance inter her intravenous tube, In addition, you will hear that the autopsy on Mrs. Williams found an abundance of morphine in her bloodstream, likely causing her death.

**THE COURT:** Mr. Parker?

**MR. PARKER:** The first witness, My Lord, will be Dr. Gary Smith.

**REGISTRAR:** Please place the Bible in your right hand. Do you swear to tell the truth the whole truth and nothing but the truth so help you God?

**DR. SMITH:** I Do.

**Examination in Chief by MR. PARKER**

**MR. PARKER:** What is your occupation Dr. Smith?

**DR. SMITH:** I am a physician.

**MR. PARKER:** And where are you employed?

**DR. SMITH:** I work in the palliative care unit of Vancouver General Hospital.

**MR. PARKER:** For how long have you worked in this unit?

**DR. SMITH:** 4 years.

**MR. PARKER:** Can you tell the court what “palliative care” means?

**DR. SMITH:** Well, people are placed in the palliative care unit when they are dying and we have exhausted all means of saving their lives. In this unit, the main concern of the medical staff is to make patients lives as comfortable as possible until they die.

**MR. PARKER:** And how do you do this?

**DR. SMITH:** Usually patients can be made reasonably comfortable with the use of drugs and combinations of drugs to ease their pain.

**MR. PARKER:** Please tell the court how you know Dr. Peterson?

**DR. SMITH:** Dr. Peterson works with me in the palliative care unit.

**MR. PARKER:** Can you tell the court what you observed Dr. Peterson doing on the evening of March 7th?

**DR. SMITH:** I was doing my morning rounds when I passed the room of Mrs. Ellen Williams. Dr. Peterson was in the room administering something into her intravenous tube.

**MR. PARKER:** Was that normal?

**DR. SMITH:** No, nurses are responsible for administering drugs to patients, we only prescribe the type, and dosage of the drugs to be administered.

**MR. PARKER:** So what did you do?

**DR. SMITH:** I continued walking down the hall. The significance of the action Henry was taking did not occur to me until later that evening.

**MR. PARKER:** Was an autopsy conducted on Mrs. Williams' Body?

**DR. SMITH:** Yes,

**MR. PARKER:** And what did the autopsy conclude?

**DR. SMITH:** The autopsy revealed an unusually high concentration of morphine in Mrs. Williams' bloodstream.

**MR. PARKER:** Was Mrs Williams receiving high doses of morphine to ease her pain?

**DR. SMITH:** Yes.

**MR. PARKER:** And why did the autopsy document the high concentrations of morphine in Mrs. Williams bloodstream?

**DR. SMITH:** Well, morphine is easily absorbed by the body. Thus, such high concentrations of morphine in the bloodstream indicate that the morphine must have been administered shortly before death.

**MR. PARKER:** Can you tell the court how drugs such as morphine are accessed by doctors and nurses?

**DR. SMITH:** Well, morphine is considered a class A drug. Class A drugs are those that are likely to have a high "street" value and are likely to be stolen. As a result, class A drugs are placed under lock and key and staff must sign for them. At the end of each nursing shift, the stock of class A drugs is counted and recorded.

**MR. PARKER:** Dr. Smith, do you recognize this as the March 7, 1994 drug sign-out sheet?

**DR. SMITH:** No.

**MR. PARKER:** Did the morphine count following Mrs. Williams' death on March 7th show a deficiency?

**DR. SMITH:** No.

**MR. PARKER:** Does the sign-out sheet indicate whether Dr. Peterson signed out any morphine on the evening of March 7th?

**DR. SMITH:** Yes, he signed out a single dose of morphine for patient Howard Griggs.

**MR. PARKER:** And did Mr. Griggs receive that dose of morphine?

**DR. SMITH:** I don't know.

**MR. PARKER:** What do you mean, You don't know?

**DR. SMITH:** Mr. Griggs also passed away on the evening of March 7th. Dr. Peterson signed the morphine out at 6:45PM. Mr. Griggs' time of death was 6:58PM.

**MR. PARKER:** Who was Mr. Griggs' physician?

**DR. SMITH:** Dr. Peterson.

**MR. PARKER:** Who pronounced Mr. Griggs dead and assigned his time of death?

**DR. SMITH:** Dr. Peterson.

**MR. PARKER:** How accurate are the times recorded for the drug sign-outs at the nurses desk?

**DR. SMITH:** They are accurate within a half hour or so.

**MR. PARKER:** Why is that?

**DR. SMITH:** Well, no one monitors the times to ensure they are perfectly accurate. As long as no one signs a drug out before you, it is possible to document an earlier than actual time.



**MR. PARKER:** And how accurate are the assigned times of death in your unit?

**DR. SMITH:** Because people are expected to die in a palliative care unit, we are not overly concerned about recording an accurate time of death. Often people linger on the brink of death for days. So it is possible to record a time of death that is inaccurate.

**MR. PARKER:** Those are my questions, My Lord. Thank you.

**THE COURT:** Mr. Drescher?

**MR. DRESCHER:** Thank you, My Lord.

**CROSS-EXAMINATION BY MR. DRESCHER:**

**MR. DRESCHER:** Dr. Smith, how long have you known Dr. Peterson?

**DR. SMITH:** Henry and I have worked together for five or six years.

**MR. DRESCHER:** And in that time have you had the opportunity to judge the performance of Dr. Peterson as a doctor?

**DR. SMITH:** Yes.

**MR. DRESCHER:** In your opinion, what kind of doctor is Dr. Peterson?

**DR. SMITH:** I would say Dr. Peterson is a very competent doctor.

**MR. DRESCHER:** What did you know about Mrs. Williams' state before her death?

**DR. SMITH:** I knew that she was extremely ill and in a great deal of pain.

**MR. DRESCHER:** Had you ever heard Mrs. Williams request that someone assist in her suicide?

**DR. SMITH:** Yes.

**MR. DRESCHER:** Do you think she understood the requests she was making, or were they made while she was under stress or in a great deal of pain?

**DR. SMITH:** I once heard Mrs. Williams ask to die and it was during one of her calm periods, and not at all when she was under stress.

**MR. DRESCHER:** After you saw Dr. Peterson in Mrs. Williams' room on March 7th, 1994, what did you say to him?

**DR. SMITH:** Nothing.

**MR. DRESCHER:** Did you yell at him or tell him he was wrong for what he had done?

**DR. SMITH:** No.

**MR. DRESCHER:** Why not?

**DR. SMITH:** I understood why Henry did what he did. When one works with dying people everyday, one thinks about assisted suicide frequently. I knew what Henry was going through and I identified with his dilemma.

**MR. DRESCHER:** Did you immediately come to the police with the information you had?

**DR. SMITH:** No.

**MR. DRESCHER:** Why not?

**DR. SMITH:** I had to evaluate what would be best in the situation and I thought I would wait until the autopsy was completed.

**MR. DRESCHER:** Did you ever see what was in the syringe that was in Dr. Peterson's hand that evening?

**DR. SMITH:** No.

**MR. DRESCHER:** Did the autopsy conclude that Mrs. Williams' death was caused by a morphine overdose?

**DR. SMITH:** Yes.

**MR. DRESCHER:** Those are my questions, My Lord.

**THE COURT:** Mr. Parker, do you have any re-direct?

**MR. PARKER:** No, My Lord.

**THE COURT:** Thank you, Dr. Smith, you're excused.

(WITNESS EXCUSED)

**MR. PARKER:** that is the case for the Crown.

**THE COURT:** At this time, Mr. Drescher, acting for the accused, will present the defense. Are you ready to proceed Mr. Drescher?

**MR. DRESCHER:** The crown presents a simple picture of this case. According to Mr. Parker, we don't even need a jury--your job is automatic. A law was broken and the person who broke the law must pay for his actions. What he failed to tell you is that the law is not always clear-cut. You will hear testimony in this trial showing that Mrs. Williams was desperately sick from cancer. In fact, she was so weak that she could not end her life of pain and misery by herself. Her pain was so great that Mrs. Williams was often delirious. When she was calm, however, she repeatedly asked Dr. Peterson to administer a dose of morphine that would end her pain and misery. Through the course of this trial, you will see that Dr. Peterson is a good and loving physician. Dr. Peterson simply eased Mrs. Williams' pain out of compassion and love for her as his patient. He thus administered a dose of morphine that was more than usual only that she would feel less pain, not to end her life. Dr. Peterson was simply doing his job--to make life as comfortable as possible for his patient until her inevitable death.

**MR. DRESCHER:** I would like to call Dr. Henry Peterson to the stand.

**REGISTRAR:** Do you swear to tell the truth the whole truth and nothing but the truth so help you God?

**DR. PETERSON:** I Do.

**EXAMINATION IN CHIEF BY MR. DRESCHER:**

**MR. DRESCHER:** Dr. Peterson, how long have you been a doctor in the palliative care unit of Vancouver General Hospital?

**DR. PETERSON:** Five years.

**MR. DRESCHER:** How many patients have you treated in this facility?

**DR. PETERSON:** I can't give you an exact figure, but definitely in the hundreds.

**MR. DRESCHER:** Would you please tell the court, in your own words, what happened on March 7th of this year?

**DR. PETERSON:** I was doing my morning rounds. I went into Mrs. William's room. She was crazy with pain. I couldn't stand to see her in that much pain. Her drug schedule stipulated that she was not due to receive another dose of morphine for two hours.

**MR. DRESCHER:** So what did you do?

**DR. PETERSON:** I stopped the pain.

**MR. DRESCHER:** What do you mean?

**DR. PETERSON:** I gave her a dose of morphine that would stop her agony.

**MR. DRESCHER:** Was it your intention to help her commit suicide?

**DR. PETERSON:** All I wanted to do was the stop the pain she was in.

**MR. DRESCHER:** What do you mean?

**DR. PETERSON:** I gave her a dose of morphine that would end her agony.

**MR. DRESCHER:** Those are my questions, My Lord.

**THE COURT:** Mr. Parker?

**MR. PARKER:** Thank-you, my lord.

### **CROSS-EXAMINATION OF MR. PARKER**

**MR. PARKER:** Dr., Smith informed the court that it is unusual for doctors to personally administer drugs to their patients. Would you agree with him, Dr. Peterson?

**DR. PETERSON:** Yes.

**MR. PARKER:** Why did you engage in this unusual practice on this occasion?

**DR. PETERSON:** I realized that I may have may an error in the level of morphine I prescribed. I concluded that she was not receiving a sufficient dose to ease her pain. .

**MR. PARKER:** Well, why didn't you revise her dosage chart and notify the nurses of the change?

**DR. PETERSON:** I really didn't think about it. I was too concerned with stopping Mrs. Williams pain at the time.

**MR. PARKER:** Before you administered more morphine to Mrs. Williams, what dosage of morphine were the nurses instructed to administer.

**DR. PETERSON:** I can't recall.

**MR. PARKER:** You mean you can't recall what dosage of morphine you prescribed for a patient?

**DR. PETERSON:** Not exactly.

**MR. PARKER:** Was a lot, or a little?

**DR. PETERSON:** I would say a lot

**MR. PARKER:** On a scale of 1 to 10, with ten being the maximum amount of morphine a doctor could safely prescribe, at what level would you say your prescription for Mrs. Williams was?

**DR. PETERSON:** A 9 or a 10.

**MR. PARKER:** So, Mrs. Williams was already receiving approximately the maximum dosage of morphine prior to your additional injection. Is that correct?

**DR. PETERSON:** Yes.

**MR. PARKER:** Is it safe to assume that the additional injection of morphine was sufficient to kill her?

**DR. PETERSON:** No, people can develop high tolerance levels for drugs such as morphine. Although the dose of morphine would surely kill you or I, it is impossible to say how much morphine would be sufficient to kill a chronic cancer patient like Mrs. Williams.

**MR. PARKER:** Was Mrs. Williams' biological functioning being monitored at all times?

**DR. PETERSON:** Yes.

**MR. PARKER:** So, what did you do when Mrs. Williams went into cardiac arrest?

**DR. PETERSON:** Nothing.

**MR. PARKER:** You didn't try to resuscitate her?

**DR. PETERSON:** No.

**MR. PARKER:** Did you call anyone to assist you?

**DR. PETERSON:** No.

**MR. PARKER:** Why didn't you do anything to save her?

**DR. PETERSON:** I knew it was no use.

**MR. PARKER:** How did you know?

**DR. PETERSON:** I just knew.

**MR. PARKER:** How?

**DR. PETERSON:** Mrs. Williams was an extremely ill woman. We expected her to die. At some point, terminally ill people should be allowed to die.

**MR. PARKER:** When you admitted Mrs. Williams into the hospital, did you make a prognosis of how long you expected her to live?

**DR. PETERSON:** Yes.

**MR. PARKER:** Can you tell the court how long you expected her to live?

**DR. PETERSON:** Six months.

**MR. PARKER:** And when did you make this prognosis?

**DR. PETERSON:** In February.

**MR. PARKER:** Isn't it true that in fact you made this prognosis less than two weeks before Mrs. Williams' death?

**DR. PETERSON:** Yes.

**MR. PARKER:** If you expected Mrs. Williams to live for another 6 months, what lead you to believe that it would be no use to try revive her.

**DR. PETERSON:** I just knew.

**MR. PARKER:** The March 7th sign out sheet shows you did not sign-out any morphine for Mrs. Williams that evening. Is that correct?

**DR. PETERSON:** Yes.

**MR. PARKER:** So how did you get the morphine for Mrs. Williams that evening?

**DR. PETERSON:** I signed out some morphine in the name of Howard Griggs, but by the time I got to his room, he had already passed away. On the way back to the nurses' station, I passes Mrs. Williams' room and saw he in intense agony. I had the morphine in hand, so I gave it to her.

**MR. PARKER:** Did you ever try to correct this error in the sign-out log?

**DR. PETERSON:** I didn't really think about it after that evening because they had both dies. It is very traumatic to loose two patients in the span of one shift.

**MR. PARKER:** Those are my questions, my Lord.

**THE COURT:** Any re-direct, Mr. Drescher.

**MR. DRESCHER:** No, My Lord.

**THE COURT:** Thank-you, you may be seated, Mr. Drescher. How shall we proceed, Mr. Drescher?

**MR. DRESCHER:** I have nothing further, My Lord.

**THE COURT:** Ladies and gentlemen of the jury, we will now have the closing argument by Mr.Drescher.

**MR. DRESCHER:** Ladies and gentlemen of the jury, you have heard evidence that Dr. Peterson had a strong emotional bond to his patients. On the evening of March 7th, Dr. Peterson heard one of his patients crying out in pain. Dr. Peterson looked at her chart and realized that her next injection was morphine was not scheduled for two hours. Out of love and compassion for Mrs. Williams, he gave her a supplementary injection of morphine to ease her pain. Dr. Peterson made the moral choice. He saw a person in great need and helped to ease the pain of that person. Moments after injecting the morphine, Mrs. Williams went into cardiac arrest. Dr. Peterson knew that because she was so ill that resuscitation would be futile. As Dr. Peterson said, when someone is as ill as Mrs.

Williams was, it is often better to let them die when their time has come. Mr. Peterson is therefore, not guilty of murder.

**THE COURT:** Ladies and gentlemen of the jury, you will now hear the closing argument by Mr. Parker.

**MR. PARKER:** Ladies and gentlemen of the jury, you have now heard all of the evidence to be presented. During the course of this trial you have heard about the events that took place in the palliative care facility at Vancouver General Hospital. The facts are as follows: The deceased, Mrs. Williams was in a great deal of pain. Her doctor and the accused in this case, Dr. Peterson, was seen injecting a substance into the intravenous tube of Mrs. Williams by Dr. Smith. Dr. Peterson admitted that the substance he injected into Mrs. Williams was morphine. Mrs. Williams died soon thereafter. The autopsy found an abnormally high level of morphine in her bloodstream. You have heard testimony that Mrs. Williams was expected to live another six months and that Dr. Peterson had prescribed the maximum dosage of morphine prior to his additional injection.

I will outline what the Crown attests happened on the evening of March 7th. Dr. Peterson wanted to assist in the death of Ellen Williams. She was in a great deal of pain and had requested his help. Dr. Peterson feared, however, that he might lose his job and suffer legal repercussions if he assisted in her death. On the evening of March 7th, Dr. Peterson entered the room of Mr. Griggs. He had passed away shortly before. Dr. Peterson delayed recording a time of death for Mr. Griggs. He then went to the nurses center and signed-out a dose of morphine in the name of Mr. Griggs at the earliest detectable time. He then proceeded to Mrs. Williams room and administered the morphine to her knowing that the additional injection of morphine would kill her. He then proceeded back to Mr. Griggs' room and pronounced him dead. He then went to Mrs. Williams room and waited for her to expire.

We all feel sorry for Dr. Peterson and Mr. Drescher says that Dr. Peterson's actions reflected compassion for his patient and that he should not be found guilty because he acted out of empathy. The cause of Dr. Peterson's actions on the morning of March 7th, however, are irrelevant to the fact that Mr. Peterson broke the law and must be held accountable for his actions. He may have felt a duty to help his patient, and he may have been guided by his conscience, but can we, as a society, allow people to break the law whenever they act in accordance with their consciences?

What if your conscience guided you to shoot an abortion doctor? or if your conscience guided you to injure a non-union worker? Whose conscience should we allow to govern the behavior of society's members. The law is the collective conscience of a just-society. And, as such, we must not allow the conscience driven legal violations of some members of society to go unpunished--regardless of the extent to which we understand of empathize with them. Ladies and gentlemen of the jury, the evidence presented in this case indicates, beyond a reasonable doubt, that Dr. Henry Peterson administered a lethal dose of morphine to Ellen Williams. In addition, Dr. Peterson's act was premeditated. It



is your duty, therefore, in accordance with the law and based on the evidence you have heard in this courtroom, to find Dr. Peterson guilty of murder in the first degree.

**COURT: [FINAL JURY INSTRUCTIONS]** Members of the jury. You have now heard all the evidence in this case and the able submissions of Mr. Parker for the crown and Mr. Drescher for the defense. Before you retire to consider your verdict, I will instruct you on the law and review the evidence for you.

When the trial started, I told you about the general procedures involved in a criminal trial and about each of our responsibilities. At that time, I mentioned you were selected as judges of the facts. I also told you that you and I are working together as a team--It is my duty to deal with all questions of law and it is your duty to deal with all questions of fact arising from the evidence. I will tell you what the law says about this case and you must accept my interpretation of the law without question. If either the Crown counsel or the defense counsel said anything different about the law from what I say, you must accept my version.

This means that when you decide what the facts of this case are, you **must** apply the rules of law I will give you. It also means you **must** apply the law as I explain it to you when you decide whether the Crown has proved the elements of the offense beyond a reasonable doubt. You are **not allowed** to decide this case on the basis of what you think the law is or what you think it should be. You see, If I am wrong about the law, justice can still be done. The Court of Appeal can always correct me because my remarks are recorded by the court reporter. But justice will not be done if you wrongly apply the law. This is because your discussions are secret. No one keeps a record of your discussions for the Court of Appeal to review. Therefore, it is very important that you apply the law, as I have given it to you, without question.

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#### Alternate Nullification Paragraph

You must give respectful attention to the law as I have given it to you, however, **you** do have the **final authority** to decide whether or not to apply a given law in this case. You represent the community, and if you see fit, you may decide the case on the basis of the wishes and conscience of the community as well as on your own conscience. Although you should give reverence to the law as I present it to you, nothing should prohibit you from acquitting the accused if you feel that would be the **most just and equitable decision** according to the facts you have heard in this case.

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You may be troubled by the difference between what is evidence and what is fact. Evidence is the body of testimony we heard. Facts are the things that you choose to believe from the evidence. The things that you choose not to accept must not be taken into account when arriving at your verdict. From the facts that you find, you may draw

inferences with respect to other facts, and you may rely upon these inferences in determining whether the accused is guilty or not guilty.

Dr. Peterson has been charged with first degree murder.

Murder occurs when a person intentionally causes the death of another person. Murder is either first degree murder or second degree murder. Murder is first degree murder when it is planned and deliberate. And all other murder is second degree murder.

For the Crown to succeed in proving that Dr. Peterson is guilty of first degree murder, it must have proved, beyond a reasonable doubt, that Dr. Peterson injected a lethal dose of morphine into the body of Ellen Williams, that Dr. Peterson's injection caused the death of Ellen Williams, and that Dr. Peterson's actions were planned and deliberate.

For your assistance, I will discuss the law and the evidence relating to each of these ingredients.

You will recall the evidence of Dr. Smith indicating that he observed the accused injecting morphine into the body of Mrs. Williams shortly before her death on the evening of March 7th, 1994. Dr. Peterson admitted giving Mrs. Williams a dose of morphine shortly before her death.

As I understand the position of Mr. Parker, the crown counsel: (a) Dr. Peterson had a **strong motive** for administering a lethal dose of morphine into Mrs. Williams-- he felt compelled to ease her misery, and she had asked on previous occasions that a lethal injection be given to her, (b) Dr. Peterson admitted giving Mrs. Williams morphine but did not sign the morphine out in her name nor did he try to correct this inaccuracy after the fact, (c) Dr. Peterson **did nothing** to help resuscitate Mrs. Williams once she went into cardiac arrest even though he had given her six months to live only weeks earlier, and (d) Dr. Peterson contended that he knew resuscitation would be futile.

Defence counsel has made the following assertions: At no point did Dr. Peterson admit giving a lethal dose of morphine to Mrs. Williams. Dr. Williams admitted giving a dose of morphine to ease Mrs. Williams' pain, not to kill her. The autopsy concluded that Mrs. Williams had high concentrations of morphine in her bloodstream, but did not cite this factor as the cause of her death. As I understand the evidence presented, this fact is not inconsistent with the testimony of either Dr. Smith or Dr. Peterson who both testified that Mrs. Williams was given a dose of morphine shortly before her death.

It is not my duty, however, to decide whether or not Mr. Peterson actually planned to kill Mrs. Williams and then deliberately went out and acted on this plan. That is a question of fact. Therefore, it is up to you to decide whether the Crown proved its case beyond a

reasonable doubt that Mr. Peterson did in fact kill Mrs. Ellen Williams in a planned and deliberate manner.

If you find that the defense proved that Dr. Peterson intentionally cause the death of Ellen Williams, but do not agree that the Crown proved that Dr. Peterson planned and premeditated the killing of Mrs. Williams, then you can find Dr. Peterson guilty of the lesser charge of murder in the **second degree**.

Remember that Dr. Peterson does not have to prove that he is innocent...the law assumes that he is. Dr. Peterson has not confessed to committing the crime either. You must not draw the assumption that his defense--focusing on his compassionate and altruistic motives--amounts to a confession. At no point in this trial has Dr. Peterson confessed to assisting in the suicide of Ellen Williams.

Members of the jury, that concludes my instructions on the law. At this point, I would like to say a few words about how you should reach your verdict. When you decide whether Dr. Peterson is guilty or not guilty of First or Second Degree Murder, as set out in the indictment, you should look at all of the evidence and consider the whole of my instructions. If you do not have a reasonable doubt that Dr. Peterson planned and premeditated the killing of Ellen Williams you must return a verdict of guilty of murder in the first degree. On the other hand if you do have a reasonable doubt about whether or not Dr. Peterson planned and premeditated the killing of Ellen Williams, but do not have a reasonable doubt that he intentionally caused her death, you must return a verdict of murder in the second degree. If you have a reasonable that Dr. Peterson intentionally caused the death of Mrs. Ellen Williams, you must return a verdict of not guilty.

## APPENDIX C

## Dependent Measures: Final Project

Please answer the following set of questions. For questions based on numerical scales please circle the number that best represents your response to the question. Please answer all questions given. For open-ended questions, please provide full and complete answers.

1. How believable was the testimony of Dr. Smith who testified first?
2. How believable was the testimony of the defendant, Dr. Peterson, who testified second?
3. How likely do you believe it is that Dr. Peterson is Guilty of First Degree Murder?
4. How likely do you believe it is that Dr. Peterson is Guilty of Second Degree Murder?
5. First degree murder carries a penalty of life (25 years) in prison. Do you think this penalty should apply to Dr. Peterson if he is found guilty of first degree murder?  
(circle yes or no) Why or Why Not?
6. According to the Criminal Code, the maximum sentence for Second Degree Murder is 25 years and the minimum sentence is 10 years. How long of a sentence do you think Dr. Peterson should receive if he is found guilty of Second Degree Murder?
7. Please do your best to write out the legal standard of guilt below (what must be proved to find the defendant guilty). Try to be as explicit as possible.
8. How helpful were to judge's instructions in helping you reach your verdict?
9. To what extent did you rely on the judge's instructions in reaching your verdict?
10. To what extent do you think the defendant's behavior was **moral**? Why did you circle the number you did in question 10?