No. _____

In The Supreme Court of the United States

CAROLYN JONES, Dean of the University of Iowa College of Law (in her official and individual capacities), and GAIL B. AGRAWAL, Dean of the University of Iowa College of Law (in her official and individual capacities),

Petitioners,

v.

TERESA R. WAGNER,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Carolyn Jones decided not to hire Teresa Wagner as a legal writing instructor at the University of Iowa College of Law, where Jones served as Dean. Wagner alleged that Jones' decision was based on Wagner's political beliefs, and she sued Jones for violation of her rights under the First Amendment. She later amended her complaint to include an Equal Protection claim and named the current Dean, Gail Agrawal, in her official capacity for prospective relief. The case was tried to a jury at the federal courthouse in Davenport, Iowa, before the Honorable Judge Robert W. Pratt. During deliberations, jurors sent several notes to the magistrate judge who was presiding over deliberations. The notes indicated that the jury had reached a verdict on the First Amendment claim, but could not agree on the Equal Protection claim. The magistrate judge mistakenly declared a mistrial on both counts and dismissed the jury without asking the jurors about each count separately. Recognizing his error, he immediately recalled the jury and accepted its unanimous verdict for Jones. On post-trial motions, the trial court ruled that it may recall a jury to correct error where the jury had remained an undispersed unit within the court's control. The Eighth Circuit, however, reversed this decision. It held that once the magistrate judge excused the jury the first time, he was no longer empowered to discover and accept the verdict the jury had reached. In doing so, the Eighth Circuit rejected

QUESTION PRESENTED – Continued

the analysis applied by every other circuit to have considered the issue. Despite the jury's verdict in Jones' favor, the case is set for retrial.

The question presented is:

> Whether a district court judge may recall a jury on discovery of its own error in the receipt or recording of a jury's verdict and, if the jury has remained an undispersed unit within the court's control since discharge, may accept its verdict.

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The district court's ruling on post-trial motions, denying Wagner's motion for a new trial, is recorded at 928 F. Supp. 2d 1084, and is reproduced at App. 17-78.

The district court's order granting summary judgment for the Defendants on the basis of qualified immunity is reproduced at App. 163.

The opinion of the court of appeals reversing the district court's granting of summary judgment and remanding the case for trial is recorded at 664 F.3d 259 and is reproduced at App. 163.

JURISDICTION

The court of appeals rendered its decision on July 15, 2014, and denied a timely petition for rehearing and rehearing en banc on August 25, 2014. App. 164. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Seventh Amendment to the United States Constitution states:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

U.S. Const. amend. VII.

STATEMENT OF THE CASE

This case arises out of an employment dispute at the University of Iowa College of Law. The College designed a new legal writing program and sought to hire writing instructors. In 2006, Wagner applied for one of these positions. Dean Carolyn Jones decided to hire candidates other than Wagner. In 2009, Wagner sued Dean Jones in her personal capacity under 42 U.S.C. § 1983, alleging that Dean Jones had made her decision because of Wagner's political views, in violation of the First Amendment. The district court had jurisdiction under 28 U.S.C. § 1331. The district court granted Jones summary judgment on the basis of qualified immunity, and the Eighth Circuit reversed and remanded for trial. Wagner then amended her complaint, adding an Equal Protection claim against Jones, and First Amendment and Equal

Protection claims against Gail Agrawal, the current Dean of the College of Law, in her official capacity under 42 U.S.C. § 1983 for prospective relief.

A. Summary Judgment and Remand

The Defendants moved for summary judgment on the First Amendment claim, asserting that Dean Jones was entitled to qualified immunity. App. 134. The district court granted summary judgment for Defendants. The Eighth Circuit reversed and remanded the case for trial. *Id.*

B. The Trial

The parties tried the case to a jury of twelve citizens of eastern Iowa over five days beginning on October 15, 2012, at the federal courthouse in Davenport, Iowa. On the afternoon of October 22, the jury retired to deliberate with United States Magistrate Judge Thomas Shields presiding. The trial judge, the Honorable Judge Robert W. Pratt, had returned to his chambers in Des Moines. The jury deliberated the entire day on October 23.

On October 24, 2012, the jury continued deliberations. At approximately 9:00 in the morning, the jury sent two notes asking, "Can we have a copy of the 14th Amendment, equal protection?" and "What happens if we cannot come to an agreement?" App. 89. (The actual juror notes are part of the court's file, but are under seal.) These questions together, as the jury

sent them, make clear that the jury was having trouble reaching agreement on the Equal Protection claim, not the First Amendment claim. After consulting with the attorneys, Magistrate Judge Shields advised the jury to continue its deliberations in an attempt to arrive at a unanimous verdict. App. 91. Two hours after submitting the two notes together, the jury sent the magistrate judge another note. This note, signed by all twelve jurors, stated, "We are unable to come to a unanimous verdict for either the Plaintiff, Teresa Wagner, nor the Defendant, Carolyn Jones." App. 93. Subsequently, the district court held a telephone conference with the magistrate judge and the attorneys, discussing how to proceed. During this discussion, the district court recognized that "we don't know if [the note] pertains to one of the submitted counts or both of the submitted counts." App. 93.

A little after 1:00 p.m., the magistrate judge convened the jury in open court and read them an *Allen* charge, *Allen v. United States*, 164 U.S. 492 (1896), directing the jury to continue to try to reach a verdict. App. 99-101. The magistrate judge also noted that he had received a question from a juror asking for permission to use a cellphone during the lunch break, because that juror had a sick child. App. 100. The magistrate judge granted this request and filed the juror's note.

A short time after 4:00 p.m., the jury sent the court another note indicating that the jury could not reach a unanimous verdict. App. 101-102. After receiving this note, the magistrate judge again convened

the jury in open court without counsel present. The magistrate judge questioned the jury about the note, and each juror confirmed that the note reflected his or her individual view as to the state of deliberations. App. 102-103. The magistrate judge then declared a mistrial without asking the jurors about each count. The magistrate judge told the jury "you are excused," and the members retired from the courtroom at 4:35 p.m. according to the Clerk of Court's minutes. App. 113.

As soon as the jury was excused, the magistrate judge realized that he had neglected to ask the jury about each count separately. He asked the jury to return to the courtroom. According to the trial judge familiar with the layout of the Davenport courthouse and the second-floor restored courtroom in which the trial had been held, the jury was still within the secure area next to the courtroom and had not yet dispersed. The jurors had been inaccessible to the public, the press, and all other outside influences. App. 43. The jury was fully reassembled in the courtroom, and the magistrate judge addressed the jurors on the record at 4:37 p.m. App. 43, 113. At most, two minutes had passed since the jurors had left their places in the jury box.

The magistrate judge's failure to ask about each count separately turned out to have dramatic consequences, because the jury actually had reached a verdict for Dean Jones on the First Amendment claim. As the jury's earlier questions indicated, it was only on the Equal Protection claim – since abandoned

by Wagner – that the jury had been unable to reach consensus. The magistrate judge discovered the error as he engaged in the following discussion with the jury forewoman.

> Judge Shields: What I failed to ask you for on the record was there were two counts in the Complaint filed by Ms. Wagner against the Defendants and the indication of the jury was that you were unable to reach an agreement. Was that as to both Counts 1 and 2?
>
> Ms. Carol Lynn Tracy: The one that we were unable to reach was on form two.
>
> Judge Shields: I'm sorry?
>
> Ms. Carol Lynn Tracy: Form two.
>
> Judge Shields: The – as to form one?
>
> Ms. Carol Lynn Tracy: We were able to reach a verdict for the Defendant, Carolyn Jones. Do you need me to read what it was?
>
> Judge Shields: I will need to – is that form signed?
>
> Ms. Carol Lynn Tracy: No.
>
> Judge Shields: We will – I will ask you to sign that and we will file that; but, ladies and gentlemen, then not to belabor this, it is a crazy week for all of us, I want to ask each of you, Mr. Weston, is that your verdict as to form one?
>
> Mr. Michael Patrick Weston: Yes.

Judge Shields: Okay. Ms. Scott, was that your verdict?

Ms. Marilyn Rhea Scott: Yes.

Judge Shields: All right. Mr. Braun, was that your verdict?

Mr. Kurtis Paul Braun: Yes.

Judge Shields: Ms. Chapman, was that your verdict?

Ms. Brenda Kay Chapman: Yes.

Judge Shields: Ms. Willits, was that your verdict?

Ms. Susan Marie Willits: Yes.

Judge Shields: Ms. McCluskey, was that your verdict?

Ms. Michelle Renee McCluskey: Yes.

Judge Shields: Mr. Mayes, was that your verdict?

Mr. Don Webster Mayes: Yes.

Judge Shields: Ms. Campbell, was that your verdict?

Ms. Teiah Elize Campbell: Yes.

Judge Shields: Mr. Laing, was that your verdict?

Mr. Brian John Laing: Yes.

The Court: Ms. Pilkington, was that your verdict?

Ms. Stella Marie Pilkington: Yes.

The Court: Ms. Tracy, was that your verdict?

Ms. Carol Lynn Tracy: Yes.

Judge Shields: Ms. Hoogheem, was that your verdict?

Ms. Pamela Sue Hoogheem: Yes.

Judge Shields: And, ladies and gentlemen, as we discussed before, as to form two, there was no ability to reach a unanimous decision on form two?

Ms. Carol Lynn Tracy: There was not.

Judge Shields: Then I am amending my Order only to the extent that the mistrial that I have ordered is as to form two or Count 2 and not Count 1, so again, I think your work has not been for naught because that verdict stands, but the mistrial as to Count 2 or form two leaves that part of the case still open in my opinion. Okay. Good.

App. 105-108.

This record of the conversation between the magistrate judge and the forewoman clearly indicates that the jury had reached the verdict on Count 1 and recorded it in writing before being excused at 4:35 p.m. App. 108, 113. The court simply had not asked for it.

The court then entered judgment for Dean Jones on the First Amendment count and declared a mistrial as to the Equal Protection count. App. 108.

The jury was finally excused at 4:40 p.m. App. 109, 113.

C. Post-Trial Proceedings

Both parties filed post-trial motions. Defendants requested judgment as a matter of law on the Equal Protection claim, which the district court granted, and Wagner abandoned her appeal of that ruling. Wagner challenged the court's acceptance of the jury verdict on the First Amendment claim by moving to alter the judgment under Rule 59(e), moving for relief from the judgment under Rule 60(b)(4), and moving for a new trial under Rule 59(a). The district court upheld the jury's verdict. App. 40, 48.

The district court held that the validity of any action taken after a jury is discharged must be determined "on a case-by-case basis." App. 40-41. In a case like this, where the jury remains a unit within the control of the court, it may be reconvened and a verdict accepted. *Id.* The court then considered the particular facts of this case: the "exceedingly short" amount of time that the jury was outside of the jury box; the layout of the Davenport courthouse, which includes the restricted access area outside the second-floor courtroom where the jurors stood briefly from 4:35 to 4:37 p.m.; and a record devoid of any *ex parte* communication by the magistrate judge or other communications with the jurors during their brief time in the restricted access space. On the basis of these facts, the district court concluded that the jury

had remained an undispersed unit within the control of the court from 4:35 to 4:37 p.m. Therefore, the district court reasoned, the magistrate judge could recall the jury to correct his error and to accept its verdict, the product of several days of difficult deliberation.

The district court relied on a Sixth Circuit case that held that a jury may be reconvened after it is excused to correct error, if that action would be justified by the particular facts presented. *Ross v. Petro*, 515 F.3d 653 (6th Cir. 2008). The First, Second, Third, Fourth, and Seventh Circuits also decide whether a jury may be reconvened on a case-by-case basis, relying on trial judges present in the living courtroom to determine whether a jury has been subjected to outside influences. *Putnam Res. v. Pateman*, 958 F.2d 448, 457 (1st Cir. 1992) (plaintiff waived objection to error in verdict because jury could still be recalled after being excused); *United States v. Rojas*, 617 F.3d 669, 677 (2d Cir. 2010) (court could reassemble jury to correct mistake in accepting verdict); *United States v. Figueroa*, 683 F.3d 69 (3d Cir. 2012) (same); *Summers v. United States*, 11 F.2d 583 (4th Cir. 1926) (same); *United States v. Marinari*, 32 F.3d 1209, 1214 (7th Cir. 1994) (same). According to all these cases, where a jury remains within the control of the court, it may be recalled to correct error. Each case must be decided on its own facts, as the trial court did in the instant case.

Wagner filed a timely appeal with the U.S. Court of Appeals for the Eighth Circuit. App. 6. Describing the question as an issue of first impression, the

Eighth Circuit acknowledged that federal precedent supported the view that a jury "may remain undischarged and retain its functions, though discharge may have been spoken by the court, if, after such announcement, it remains an undispersed unit, within control of the court, with no opportunity to mingle with or discuss the case with others." App. 8, 10. Nevertheless, the Eighth Circuit departed from the precedent of its sister circuits and imposed a new rigid rule that deprives trial judges of any ability to correct errors in the receipt or recording of verdicts. "Today, we hold, in a case such as the present one, where a court declares a mistrial and discharges the jury which then disperses from the confines of the courtroom, the jury can no longer render, reconsider, amend, or clarify a verdict on the mistried counts." App. 10.

In reaching this conclusion, the Court speculated on whether the jurors could have had "pocket-sized wireless devices" or contact with unidentified "wandering" people. The fact that a juror asked permission from the magistrate judge to use her phone to check on an ill child shows that the jurors did not have access to their mobile devices during deliberation. Instead of relying on the record regarding the specific circumstances of this case, the court of appeals presumed that mingling occurred once the magistrate judge uttered the word "excused."

The Court also improperly relied on a letter that Wagner alleged had been sent to her counsel after the trial to support its view that the jurors must have

been "confused" and "vacillating" about their verdict, liable to change their minds at any time. App. 6 n. 6, 12. The Court's speculation is belied by the actual statements of the jury forewoman and other jurors in the record, which reflects no such confusion. The record actually reflects that the jury had questions about the Equal Protection claim, but no doubt about the First Amendment claim.

The Eighth Circuit should have relied on federal precedent to affirm the district court. Alternatively, it could have remanded the case for additional factual findings on the short time frame in question. Instead, the Court snatched away the uncompromised verdict in Dean Jones' favor and ordered her to defend herself in court all over again.

The court of appeals denied a timely petition for rehearing and rehearing en banc on August 25, 2014. App. 164. This petition follows.

REASONS FOR GRANTING THE PETITION

Certiorari is warranted for four reasons. *First*, the Eighth Circuit's decision creates a conflict among the circuit courts concerning a trial judge's discretion to recall a jury to preserve its valid verdict from the trial court's own procedural error, if that jury had remained within the control of the court since discharge. *Second*, the Eighth Circuit's decision infringes on Dean Carolyn Jones' Seventh Amendment rights, discarding a verdict in her favor that the Amendment

requires the courts to preserve and protect, and creating a new rule that deprives trial judges of discretion in every future instance. *Third*, the Eighth Circuit's decision relies improperly on statements in a purported juror letter sent after the trial concluded and on an erroneous assumption about juror use of mobile devices. *Fourth*, the fundamental injustice of the Eighth Circuit's decision has substantial impact. The Court's intervention is required to restore the trial judge's discretion to evaluate the jury's integrity and to preserve its verdict whenever the facts permit.

I. The Eighth Circuit's Decision Creates a Split in Authority Among the Courts of Appeals.

The Eighth Circuit's decision conflicts with decisions from the First, Second, Third, Fourth, Sixth and Seventh Circuit Courts, which hold that where the jury remains within the control and confines of a secure federal courthouse, it may be reconvened. *Putnam Res. v. Pateman*, 958 F.2d 448, 457 (1st Cir. 1992); *United States v. Rojas*, 617 F.3d 669, 677 (2d Cir. 2010); *United States v. Figueroa*, 683 F.3d 69 (3d Cir. 2012); *Summers v. United States*, 11 F.2d 583 (4th Cir. 1926); *Ross v. Petro*, 515 F.3d 653 (6th Cir. 2008); *United States v. Marinari*, 32 F.3d 1209, 1214 (7th Cir. 1994). All other circuits that have considered this issue have rejected a "bright-line" rule in favor of a circumstantial inquiry. This conflict among the circuit courts means that a trial judge may inquire into the facts of each case and preserve a jury

verdict where an undispersed jury has remained within the court's control – except in the Eighth Circuit, where the trial judge has no such discretion and may not preserve a verdict, regardless of its validity.

Where the jury remains within the court's control as an undispersed unit, "with no opportunity to mingle with or discuss the case with others," federal appellate courts have affirmed the recall of a jury to return a verdict that was erroneously withheld or incorrectly reported. *Rojas*, 617 F.3d at 677; *Marinari*, 32 F.3d at 1214. The trial court must "evaluate the specific scenario presented" in order to determine whether recalling the jury would result in prejudice to the defendant or undermine the confidence of the court or public in the verdict. *Rojas*, 617 F.3d at 667.

The Eighth Circuit court of appeals disregarded all federal precedent, instead borrowing a test applied by a few state courts. App. 9-10. The court of appeals ignored the precedent in Iowa, however, where the law is clear that a court may reconvene a jury to correct an error, and where the courts recognize "the equitable right of a party to a judgment obviously in his favor." *Oxford Junction Savings Bank v. Cook*, 111 N.W. 805, 808 (Iowa 1907); *Rutledge v. Johnson*, 281 N.W.2d 111, 117 (Iowa 1979) (confirming long-recognized power of trial courts to recall a separated or discharged jury for the purpose of correcting a ministerial error, where no prejudice in the particular circumstances can be shown). Further, the state cases

the court of appeals cited were inapplicable here, since they hold that juries may not deliberate further after discharge. App. 9, citing *Nails v. S&R, Inc.*, 639 A.2d 660, 667 (Md. 1994) (further deliberation after discharge impermissible). The jury in the instant case did not deliberate further after it was discharged, and cases discussing appropriate procedure where deliberations did occur are inapplicable.

The court of appeals departed from federal precedent without any basis in the record. The record here reveals no jury deliberations between discharge and recall, nor any other errors compromising the verdict. The only error here is that of the trial court in failing to discover the jury's verdict before discharging it. No facts distinguish the trial court's error in this matter from the type of errors that were corrected and affirmed in the above-cited federal cases.

II. The Eighth Circuit's Decision Contravenes the Seventh Amendment Right to Jury Trial.

"Trial by jury is the glory of the English law." William Blackstone, *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769*, Chicago: University of Chicago Press, 1979. Blackstone described the jury trial as "the most transcendent privilege" that any citizen can enjoy and the best criterion for the "investigation of truth" ever established. *Id.*; *see also*, Darrell A.H. Miller, *Text,*

History, and Tradition: What the Seventh Amendment Can Teach Us About the Second, 122 Yale L.J. 852, 873 (2013). What Blackstone extolled in the English common law became codified in the United States Constitution through the inclusion of the Seventh Amendment in our Bill of Rights. James Madison, then a member of the new House of Representatives, drafted what has become the Bill of Rights, and argued convincingly for the inclusion of the right to civil jury trials: "In suits at common law, between man and man, **the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate**." *Proceedings on the Amendments to the Constitution in the House of Representatives*, 1 Annals of Cong. 435, June 8, 1789. The Seventh Amendment right to a jury trial in civil cases today restrains the decisions trial and appellate courts may make, by preserving the civil jury system as it existed in the English common law in 1791, when the Amendment was adopted. *United States v. Wonson*, 28 F. Cas. 745, 750 (C.C.D. Mass. 1812) (No. 16,750) (establishing the historical test later adopted by this Court and holding that there will be no new trial of issues already determined by jury); *Teamsters Local No. 391 v. Terry*, 494 U.S. 558 (1990); *Balt. & Carolina Line, Inc. v. Redman*, 295 U.S. 654, 657 (1935); *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 376 (1996) (historical analysis of right to a jury trial). Preserving the factual determinations made by the jury is one of the primary purposes of the Amendment. *See Gasoline Prods. Co. Inc. v. Champlin Ref. Co.*, 283 U.S. 494, 498 (1931) (where jury reached

verdict on one issue, no new trial of that issue even though separable issue must be tried again).

The Seventh Amendment right to a jury trial applies to § 1983 claims for legal relief. *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999). This Court reasoned that § 1983 claims for legal relief sound in tort, so that although the statutory cause of action was unknown at common law, the nature of the claim is analogous to common-law causes that were tried before juries and therefore subject to the Seventh Amendment. *Id.* at 729 (Scalia, J., concurring). Accordingly, Dean Jones enjoyed the protection of the Seventh Amendment when she was sued for political discrimination under § 1983.

Consistent with her Seventh Amendment right, Dean Jones was provided a trial on Wagner's claims, and the jury deliberated and reached a verdict – the essence of the jury trial – in her favor. *See Tennant v. Peoria & P.U. Ry. Co.*, 321 U.S. 29, 35 (1944) (jury is ultimate fact finder). Throughout the five-day trial, Judge Pratt observed the jury and the courtroom. He relied on his knowledge, observations, and the record to determine that in fact, the jury had not been compromised and had delivered a valid verdict. App. 40-46. The jury had not left the control of the court during its two-minute break from 4:35 to 4:37 p.m., nor was there any other reason that would undermine the parties' or public's confidence in the jury's verdict. App. 43. The trial judge included his observations and conclusions in his Order on post-trial motions.

App. 42-43. In the appropriate exercise of his discretion, the trial judge upheld the jury's valid verdict in Dean Jones's favor. Yet, the Eighth Circuit discarded the verdict without giving any deference to the trial judge's analysis, thereby violating Dean Jones's Seventh Amendment rights.

The Eighth Circuit's decision in this case disturbs the careful balance of authority between the trial and appellate courts developed over time in the federal system. Much of this development has occurred in the course of interpreting the Seventh Amendment's Reexamination Clause. *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415 (1996). Appellate review of jury verdicts is a much later recognized and less securely constitutional development. Such review was once deemed inconsonant with the Seventh Amendment's Reexamination Clause. *Gasperini*, 518 U.S. at 434. The Eighth Circuit's decision in this case rejects the district court's observations and conclusions about the jury's integrity, which were made by the judge closest to the events. The appellate court substitutes its own analysis of the cold record instead. Moreover, the Eighth Circuit's new rule mandates that the trial judge will never recover the discretion to accept a jury's verdict, thereby substituting the appellate court's judgment in every case. The Court should grant certiorari in this case to ensure that the balance of authority between trial and appellate courts is congruous with the Reexamination Clause.

III. The Eighth Circuit's Decision Relies on Information Outside the Record.

The court of appeals relied on incompetent evidence instead of relying on the trial court judge's analysis and observations. Twice in its decision, the court of appeals referred to a letter that Wagner's counsel allegedly received from a juror weeks after the trial concluded. App. 6, n. 6, 12. The letter was unsigned, and its envelope (included in the exhibit) is stamped but bears no U.S. Postal Service mark. App. 165-168. Nevertheless, the court of appeals relied on this letter in deciding that the jurors were confused, vacillating, and unable to understand their instructions. App. 6. This reliance was in error, because Federal Rule of Evidence 606(b) precludes evidence from any juror regarding communications among jurors in deliberations, even if prompted by the jurors themselves. *Tanner v. United States*, 483 U.S. 107 (1987) (transcribed interview with jurors after the trial held inadmissible); Fed. R. Evid. 606(b). The court of appeals disregarded the jury forewoman's clear statements indicating no confusion, made in the courtroom and on the record. Instead, the Eighth Circuit relied on an unsigned letter produced by Wagner's counsel that is precluded from consideration by the Federal Rules of Evidence and precedent in this Court.

The court of appeals also supported its new rule with speculation about jurors' mobile device use. App. 10. Jurors were prohibited from using their cellphones during the trial, so the court of appeals' speculation was without basis. App. 100. One juror requested

special permission to use a phone during a break to check on a sick child at home. *Id.* This juror took her instructions very seriously, and refrained from using her phone without permission even in a crisis involving her child. The court of appeals' concern that the jurors would search for media reports on their phones immediately after leaving the courtroom is unfounded, and does not support a new "bright-line" rule against reassembling the jury.

IV. The Eighth Circuit Decision's Fundamental Injustice Has Substantial Impact.

The Eighth Circuit's flawed and unreasonable decision is fundamentally unfair to the Defendants and the University of Iowa. They must now face retrial solely because the magistrate judge mistakenly discharged an uncompromised jury. The Eighth Circuit's new "bright-line" rule, however, has implications beyond those affecting these Defendants. The rule requires the trial court to disregard a verdict *every time* a jury is dismissed and recalled, including those times when the verdict rendered is otherwise valid. For example, under the Eighth Circuit's rule, if a trial judge merely utters, "discharged," the moment before a jury forewoman – still seated in the jury box – corrects him to present a properly completed verdict form, the trial court may not accept the verdict.

The Eighth Circuit's rule removes discretion from trial judges who have observed the juries and the courtrooms. The rule is a presumption *against*

preserving the jury's verdict. This presumption systematically prevents trial judges from exercising discretion and examining the particular facts of each case in order to evaluate whether the jury's verdict should be preserved. The case-by-case factual approach adopted by all other federal courts of appeals, leaving discretion to the trial court and limiting appellate review, is what the Seventh Amendment demands. The Eighth Circuit's ruling rejects it, not only in this case, but in all future cases. The Court should consider the split among circuits created by the Eighth Circuit's decision because of its impact on the Constitutional rights of Dean Jones and future litigants within the Eighth Circuit.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for writ of certiorari.

Respectfully submitted,

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