Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings

Meeting Agenda

Thursday, June 7, 2012

10:00 AM to 3:00 PM

State Courts Building * 1501 West Washington * Conference Room 119 * Phoenix, AZ

Conference call-in number: (602) 452-3193 Access code: 7002

Item no. 1	**Call to Order** **Introductory comments** **Approval of the April 6, 2012 meeting minutes**	*Justice Brutinel, Chair*
Item no. 2	**Use of social media and the internet by jurors**	*Ms. Rosalind Greene*
Item no. 3	**Jury instructions on use of social media and the internet**	*All*
	Lunch	
Item no. 4	**Policy decisions**	*All*
Item no. 5	**Revisions to Rule 122**	*All*
Item no. 6	**Call to the Public** **Adjourn**	*Justice Brutinel*

Items on this Agenda, including the Call to the Public, may be taken out of the indicated order.

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

Persons with a disability may request reasonable accommodations by contacting Julie Graber at (602) 452-3250. Please make requests as early as possible to allow time to arrange accommodations.

Please note the date of the next Committee meeting:

Thursday, August 30 2012: 10 a.m. to 3 p.m.
State Courts Building, 1501 West Washington, Conference Room 119, Phoenix AZ

ARIZONA SUPREME COURT
Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings
Draft Minutes
April 6, 2012

Members present:	Members present (cont'd):	Guests:
Hon. Robert Brutinel, Chair	Karen Arra	Jennifer Liewer
Hon. Janet Barton	David Bodney	Cindy Trimble
Hon. James Conlogue	Joe Kanefield	Theresa Barrett
Hon. Dan Dodge	Robert Lawless	Alicia Moffatt
Hon. Margaret Downie	Robin Phillips	
Hon. Michael Jeanes,	Marla Randall	
by Chris Kelly, proxy	George Riemer	Staff:
Hon. Eric Jeffery		Mark Meltzer
Hon. Scott Rash	Members not present:	Ashley Dammen
	Kathy Pollard	Julie Graber

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1. Call to Order; welcome by the Chair; introductions. The Chair called the first meeting of this Committee to order at 10:05 a.m. The Chair welcomed the members and thanked them for their participation. He noted that the Committee would review issues, including jurors' access to materials that are not in evidence and the presence of cameras in the courtroom, which are not unprecedented but that are again timely because of the development of widespread wireless internet access and ubiquitous video recording devices. The Chair then asked the members to review proposed rules for conducting Committee business.

> **Motion:** A motion was made and seconded that the proposed rules for conducting Committee business be adopted, and the motion carried unanimously. **Wireless 12-001**

The Chair provided an outline of Administrative Order 2012-22. The Chair added that the Chief Justice appreciates the members' interest in addressing the innovative subjects before this Committee. The Chair noted that the Committee is required to submit a report of its recommendations to the Arizona Judicial Council by November 30, 2012. The Chair briefly summarized his judicial service for the members, and each of the members, staff, and others in attendance introduced themselves.

2. Overview of wireless mobile technology and social media. The Chair then invited Jennifer Liewer, the Supreme Court's public information officer, to address the Committee.

Ms. Liewer emphasized the goals of achieving justice in court and protecting the integrity of the judicial process during what has been called a "social media revolution." She proceeded to play a YouTube video with that title. The video stressed a fundamental shift over the past decade in the way people communicate because of the new social media. The shift occurred with the

introduction of i-Pods (2001), Facebook (2004), YouTube (2005), Twitter (2006), i-Phones and Kindles (2007), and i-Pads (2010). This technology has allowed a number of bulky items (such as a telephone, a computer, and audio and video players) to be combined into a single, compact device. Many of these devices also have the capacity to take high quality photographs and digital videos.

The most popular social media sites are free of charge, open rather than private, and vast. Ms. Liewer noted that on Twitter, the quality of the content can be more significant than the initial number of followers, and a single tweet can result in quick and global distribution of a popular message or photograph.

Ms. Liewer outlined positive changes brought about by the new technology and social media. The new devices eliminate the need for litigants to take boxes of paper to the courthouse. Jurors can continue to stay in touch with home and work during jury service. Judges now use i-Pads to review briefs and court records. A recent attorney discipline hearing in Arizona was streamed live on-line to 14,000 viewers, and many followed live tweets of the proceeding from a reporter in the hearing room. A Pima County judge recently allowed a political action group, pursuant to Supreme Court Rule 122, to make a video of a court proceeding for posting on YouTube.

There are also negative implications arising from the use of new technology. Citizen journalists in the courtroom may not accurately report the proceeding. Although Ms. Liewer noted studies have indicated jurors will follow applicable rules when given proper instructions, access by jurors to outside sources of information or opinions may continue to interfere with case outcomes. In response to a question, Ms. Liewer stated that rather than being overwhelming, the variety of new media allows her to better manage time and to stay more engaged with others, and that her use of the new media has become second nature.

Ms. Liewer concluded by noting a risk of inaction. She said that social media is here to stay, and courts must consider and manage its impact on judicial proceedings.

3. Roundtable discussion of member experiences with new technology. Ms. Arra, the Public Information Officer for the Maricopa County Superior Court, stated that the new technology has allowed her to provide increased amounts of information about judicial rulings and court activity to large numbers of media and citizens who are not physically present in the courthouse. She provides breaking news in high profile cases on Twitter, and detailed information on programs such as specialty courts on Facebook. Ms. Arra said that the public now has an expectation that she will cover more rather than just a few courtrooms, and provide even more public relations information. Providing content will continue to take more of her time because individual judges do not post or tweet on the court's social media sites, but instead route public information through her office.

One trial judge said that reporters may tweet from her courtroom, and that she has experienced very few problems with the professional media. She noted that the press has an interest in following court rules because they will repeatedly return to the courthouse. Individuals, on the

other hand, usually are in the courthouse concerning a single case and are less interested in abiding by the rules. Her court deputy has made her aware that some court visitors have taken photographs in court, and she has requested that a visitor delete a photo on at least one occasion. She is concerned about clandestine audio recording of court proceedings, which may be difficult to detect. She shared an experience about a juror who brought a dictionary into the courtroom so she could correctly spell technical terms in her notes of trial testimony. She requests court visitors to turn off their cell phones in the courtroom, but this is to avoid disruption rather than to prevent messaging.

Another judge mentioned that in a case involving gang violence, she ordered that a friend of the defendant stop taking photos of prospective jurors, and the defendant later claimed on appeal that this order caused jurors to be biased. Another member related that a family member took a photograph of a defendant in a jail uniform; a judge ordered deletion of this photo. It is challenging to determine if members of the public are taking photographs in courtrooms where there may be less security, or in any crowded courtroom.

On the subject of social media, a judge mentioned a post-trial motion that contended a juror was untruthful during voir dire based on information counsel later observed on Facebook. Another judge mentioned that he spends considerable time during voir dire on the subject of internet use by jurors; he has excused jurors who have stated that they would prefer on-line information over evidence presented in court, or who have acknowledged that they are so accustomed to internet use that they would not refrain from doing on-line research during trial. A judge raised a question about how frequently he must monitor social media and other websites to assure that his name is not used inappropriately on-line.

None of the members advocated that jurors or other court visitors surrender their electronic devices at the courthouse. Not only would it deprive jurors of the ability to contact work and family; it would also be logistically complex for court staff to maintain and to return hundreds of devices daily. Moreover, separating jurors from their devices in court would not affect the ability of jurors to do internet research on a case once they left the courthouse. The members preferred that judges give jurors instructions that are more meaningful. One judge noted that jurors may do internet research because they might not receive the assistance they request from the court. For example, if a jury asks the court to define a word, a judge's instruction that the jury should give the word its "ordinary and common meaning" may not be particularly helpful.

A number of courts have electronic recording systems, including "FTR" ["for the record"]. FTR recordings requested by members of the public have been subsequently posted on YouTube. The public can edit FTR videos of court proceedings and the on-line versions of these videos can therefore be misleading. In some courts, judges also utilize a court reporter in the event portions of the FTR are inaudible, and both the transcript and FTR are official records. Other courts use the recording only to assist the clerk, and it is not an official record. In municipal courts, parties have requested to record a witness' testimony or a court ruling on an i-Phone, and some but not all judges permit this. Judges universally enforce other rules, particularly the rule about not recording images of jurors.

Parties often present evidence in protective order proceedings of harassment or threats posted on social media sites or received on a smart phone, and parties occasionally want to present video evidence of an accident scene recorded on an electronic device. Certain court websites provide instructions to parties to transfer electronic evidence to a disc or other medium so the court does not need to take the device into evidence.

Ms. Kelly advised that the Maricopa County Superior Court Clerk receives about a thousand electronic filings daily in civil cases. Some filers mistakenly believe that a document is processed at the same instant it is filed, but processing still takes time. A few judges prefer to have paper documents in complex cases. The Clerk will be implementing an "e-file foundation" in a few months that will make electronic filing quicker, cleaner, and easier to navigate.

Mr. Kanefield discussed how i-Pads have affected his practice. He uses his i-Pad for remote tracking of client matters, documents, and other information. He can highlight, bookmark, and annotate documents, and he sends messages and documents to his office for more extensive editing. One of the State Bar's strategic initiatives this year is to familiarize attorneys with new technology and to increase its use by the legal profession.

Although he has personal preferences for handwriting and for paper, Mr. Bodney advised that the State Bar's initiative is well taken. Mr. Bodney is integrating an i-Pad into his practice, and he is using the device to receive and to transmit information, and for note taking. He added that he was recently in a federal courthouse in the Midwest that prohibited members of the public from bringing their telephones past security.

4. Issues arising from the use of new technology. The Chair identified possible legal authorities that the Committee might consider, including Supreme Court Rule 122, the Arizona Code of Judicial Administration, recommended Arizona jury instructions, the Code of Judicial Conduct, and ethical rules for attorneys. Ms. Randall mentioned a "Resource Packet for Developing Guidelines on Use of Social Media by Judicial Employees" that was prepared by the federal Judicial Conference Committee on Codes of Conduct in April 2010. The packet is available at http://www.uscourts.gov/uscourts/RulesAndPolicies/conduct/SocialMediaLayout.pdf The Chair then asked the members to identify issues involving the use of new media that the Committee might consider at future meetings.

The discussion turned to juries. If schools stop teaching cursive writing, which some have already done, will the court provide electronic devices to jurors for note taking? Who would "own" the notes in that circumstance? Would jurors be less likely to engage in robust note taking if there was a possibility that the court might not destroy their notes after trial? Will attorneys utilize data mining services to determine if jurors used social media sites to post information concerning a trial while it was in progress, and how would that impact post-verdict motions? How frequently and when should the court admonish jurors about not doing internet research, and will jurors follow the admonition? How effective are admonitions in preventing jurors from doing on-line research over the lunch hour, or at home? Should admonitions advise of potential financial (the cost of mistrial) or other consequences (contempt) if a juror fails to

observe the admonition? What rights to due process would a juror have if the court contemplates a sanction for not following an admonition? Is it more productive for courts to provide jurors with Wi-Fi access than it is to prevent internet access, and if the court provides access, what responsibility does the court have for its misuse?

The members then discussed media. Should courts have different policies for journalists' use of social media and for social media use by other stakeholders? What is the differentiation between a blogger, a citizen blogger, and a journalist, and does Rule 122 apply to all of these, or only to some? Are there significant distinctions between professional "pool" cameras and images taken by individuals using i-Phones? Do judges have the inherent authority to prohibit the use of personal cameras in the courtroom, or should this be the subject of a rule? How should the court deal with special situations, such as taking images of someone who is in a witness protection program? Can an individual courtroom require additional screening for electronic devices in this situation or under other unique circumstances? Do journalists have fundamental rights to bring electronic devices into, and to transmit from, courtrooms? Do domestic relations or other case types require special rules regarding cameras, similar to Rule 122(a)'s provision concerning juvenile proceedings? Should there be prescribed consequences for disruptive use or misuse of electronic devices in court? If most court visitors have the ability to take digital video, how should the court prevent recording in the hallways or lobbies outside the courtrooms?

The members believed that Rule 122 contemplated the use of a single, tripod-mounted camera that would function as a pool for mass transmission. Dozens of individuals attempting to record images on personal electronic devices is a wholly different situation that could be as distracting and disruptive as paparazzi in the courtroom. Although transparency is generally positive, even one camera in the courtroom can affect the way court staff and judges behave. Cameras can embolden some witnesses, and make others more inhibited. Because a trial is a search for the truth, what is the best course of action?

The members also asked whether there should be a court rule concerning tweeting. Should the court allow witnesses to tweet? Can counsel tweet a court ruling, and is Ethical Rule 3.6 instructive on this question? When does tweeting prejudice a judicial proceeding? Should courts facilitate the use of Twitter for attorneys who may need to be in multiple courts at the same time?

Ms. Liewer advised the members that she had taken a photograph of the Committee earlier in the day, which she posted on her Facebook page and displayed for the members. No one in the meeting room knew that she had taken the photograph. What could therefore prevent members of the public from taking photos of judges or other participants in the courtroom? What measures are available to detect clandestine audio or video recordings during court proceedings? Will attempts be made to impeach official records of proceedings by introducing surreptitious recordings?

The members also discussed ethical issues involving attorneys as well as judicial officers. If there is no specific ethical constraint against an attorney looking up potential jurors on Facebook or Google, is it nevertheless unprofessional conduct? While the members have not seen potential

jurors use these sites to find background information on trial attorneys, there have been instances of jurors using these sites to research criminal defendants, and that is problematic. Does E.R. 3.5 cover situations where an attorney's use of social media may be tantamount to an ex parte communication with a judge? Some judges in Arizona are elected; is the use of social media proper in election campaigns? While some judges adopt bright line policies that no one who is a friend on Facebook can appear in their court, some judges have active Facebook pages at the time they take office; following such a bright line policy, especially in a small community, might be challenging.

5. Next steps. The Chair requested staff to organize the issues raised today for further discussion at the next meeting. The members then agreed to schedule the next meetings of this Committee for June 7, August 30, and September 28, 2012.

6. Call to the Public; Adjourn. There was no response to a call to the public. The meeting adjourned at 2:20 p.m.

The next meeting date is **Thursday, June 7, 2012.**

DRAFT

Use of portable electronic devices: Policy decisions
Wireless: June 7, 2012

Definition: A *"portable electronic device"* is a mobile device capable of storing, accessing, or transmitting information. The term encompasses among other things, a transportable computer of any size, a smart phone, any still camera or audio or video recording device, and a personal digital assistant (PDA); and it includes but is not limited to an i-Phone, i-Pod, i-Pad, Droid, Blackberry, tablet, notebook, laptop, or similar device. By way of example, a *"portable electronic device"* has the capability of use for one or more of the following functions: phone, e-mail, internet access, web browsing, mobile network connectivity, text messaging, access to social media, recording audio, recording video, or taking photographs, playing audio or visual media, or global positioning. *"Portable electronic devices"* may have screens, displays, speakers, keyboards, batteries, or ports for attachments, but any or all of these are not required.

Issues: May particular stakeholders use portable electronic devices at specified locations in the courthouse for various functions? If so, are there any exceptions to use?

Location: **Courthouse: everywhere except a courtroom while court is in session**		Stakeholder: **Everyone**
Use of device to:	May use? (Yes/No)	Exceptions
Make or receive phone call	Yes	
Camera: take still photo or video	No	
Access or add stored information	Yes	
Access internet	Yes	
Receive text message/information	Yes	
Send text message/information	Yes	

Location: **Courtroom: in session**		Stakeholder: **Attorney/Party**
Use of device to:	May use? (Yes/No)	Exceptions
Make or receive phone call	No	
Camera: take still photo or video	No	
Access or add stored information	Yes*	
Access internet	Yes*	
Receive text message/information	Yes*	
Send text message/information	Yes*	

Location: **Courtroom: in session**		Stakeholder: **Witness**
Use of device to:	May use? (Yes/No)	Exceptions
Make or receive phone call	No	
Camera: take still photo or video	No	
Access or add stored information	No, except	With judge's permission: X-ref Evidence R. 612
Access internet	No	
Receive text message/information	No	
Send text message/information	No	

Location: **Courtroom: in session**		Stakeholder: **Media**
Use of device to:	May use? (Yes/No)	Exceptions
Make or receive phone call	No	
Camera: take still photo or video	Yes	Pursuant to Rule 122
Access or add stored information	Yes*	
Access internet	Yes*	
Receive text message/information	Yes*	
Send text message/information	Yes*	

Location: **Courtroom: in session**		Stakeholder: **Member of the Public**
Use of device to:	May use? (Yes/No)	Exceptions
Make or receive phone call	No	
Camera: take still photo or video	No, except	With the judge's permission
Access or add stored information	Yes*	
Access internet	Yes*	
Receive text message/information	Yes*	
Send text message/information	Yes*	

Location: **Courtroom: in session** **Jury deliberation room**		Stakeholder: **Juror**
Use of device to:	May use? (Yes/No)	Exceptions/Note: Should jurors surrender devices to court staff during deliberations?
Make or receive phone call	No	
Camera: take still photo or video	No	
Access or add stored information	No	
Access internet	No	
Receive text message/information	No	
Send text message/information	No	

*Any permitted use is subject to the judge's authority to terminate activity that may be disruptive or distracting.

Comments filed in R-07-0016: petition to amend Supreme Court Rule 122:

Excerpt of comment filed by Jan Kearney, Presiding Judge, Pima County Superior Court, on May 16, 2008:

> *The rule assumes definitions that will soon be outdated, if they aren't already. The rise of Internet journalism, including blogs, podcasts and other innovations, and the introduction of high-quality and affordable camcorders makes the determination of what constitutes 'media coverage' far more complex than the rule anticipates. The increasing number of people without traditional journalism credentials who wish to provide combined video-text coverage will further complicate press access issues, and would make the proposed 'overriding harm' standard even more difficult to apply. As illustrated by the existence of more than one clip of Pima County coverage on YouTube, the future portends issues considerably more subtle and difficult than determining the effect of a story on the evening TV news. Consideration of the potential effect of the proposed changes in the Internet Age - where many more people participate and coverage can be played indefinitely - is an essential part of any discussion of a rule change like that proposed in the pending petition.* [Comment at page 5]

Excerpt of comment filed by Dee Dee Samet, President of the Pima County Bar Association, on May 14, 2008

> *There are concerns in this electronic age of how to determine who is the media. There are bloggers, internet news, web sites, neighborhood news letters and other types of 'media.' The definition of what is considered a news organization is an important consideration.* [Comment at page 2]

Excerpt of comment filed by Wallace Hoggatt, Presiding Judge, Cochise County Superior Court, on May 19, 2008:

> *The judicial system was not created to ensure a continuing supply of video content for local news programs, cable news networks, reality television shows, or YouTube.*

Excerpt of comment filed by Judge Carmine Cornelio, Judge of the Pima County Superior Court, on May 20, 2008:

> *The Petition cites as critical support to creating a presumption in favor of cameras, a study in New York conducted in 1987. Moreover, that study was, obviously, conducted prior to the explosive growth in the Internet. This new form of information sharing, has created the more modern issue of whom, exactly, are 'broadcast journalists.' The Petition of KPNX and proposed Rule change fails to begin considering the new issues that may be associated with Internet journalism, blogs, podcasts, You Tube postings, and streaming video. Does a 'camera' of Cousin Joe (who has a family blog) have a presumption and procedural safeguard when he wants to broadcast the family divorce?*
>
> *…*

> *This opposition and comment to the pending Rule change is not about nor in support of barring the public or the press. Nor does it suggest a ban of cameras. However, in the age of paparazzi, sensationalistic journalism, and viral Internet postings, control and discretion of if, when, where, and how cameras are allowed needs to be firmly in the hands of trial judges.*

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Arizona Supreme Court: Rule 122

Audio and visual recording and broadcasting of court proceedings

a. Purpose: The public interest is served when people understand court proceedings as fully as possible. To further this objective, this rule allows journalists to make audio and visual recordings and broadcasts of certain court proceedings, subject to specified limitations and subject to the trial judge's approval.

b. Definitions: The following definitions apply in this rule:

1. "Recording" is a way to store sounds and images for future listening or viewing. "Recording" includes visual recording by still photography or by a video camera, as well as audio recording by any device. An event may be recorded without being broadcast.

2. "Broadcasting" is a broad distribution of the sounds or images of a news event to the general public by electronic means. An event may be broadcast without being recorded.

3. "Coverage" includes either recording or broadcasting, or both. Coverage does not include recording an event by use of a keyboard or by writing, and it does not include distribution of news about an event by text, either in paper or in electronic formats.

4. "Journalism" is both "legacy media" and "new media." "Legacy media" refers to traditional news distribution, and it includes radio and television. "New media" refers to internet-based news distribution, and it includes social media and websites such as Facebook and YouTube.

5. "Journalist" is a person who is engaged in journalism, or who is employed by or affiliated with an organization that distributes news by legacy media or by new media. A "journalist" includes organizations as well as individuals.

6. "News" is media reporting of any matter of public interest, including court proceedings.

7. "Court proceedings" are events conducted in courtrooms. Court proceedings do not include events conducted in judicial chambers, anterooms, rooms where jurors assemble or deliberate, or in other areas of the courthouse.

c. Request to record or broadcast: A journalist may provide coverage of a court proceeding only with the prior approval of the assigned judge. A journalist who wishes to cover a court proceeding must file a written request asking the judge assigned to a case to approve the journalist's recording or broadcasting of a designated court proceeding. A journalist must file the request as far in advance of the proceeding date as possible to allow the judge to consider the request in a timely manner, and a judge may summarily deny an untimely request. Unless the court schedules a proceeding with less than three days notice, a journalist who wishes to record

or to broadcast a judicial proceeding must file the request at least two days in advance of the proceeding. The court will provide notice of the request to all parties and, if known and feasible, to witnesses who may testify at the proceeding specified in the request for coverage. If the assigned judge intends to deny the request or a portion of the request, or if there is any objection to a request for coverage by a party or by a witness, the judge will promptly notice and hold a hearing.

d. Time for objection to a request: A party must object to coverage in writing or on the record no later than the conclusion of a hearing under paragraph (c) or the commencement of the covered proceeding, whichever occurs first. A non-party witness may object to coverage of his or her appearance or testimony at any time before or during the witness' testimony. If a party or a witness does not timely object to coverage, the objection is waived.

e. Factors in considering a request: In deciding whether to approve a request for coverage of a court proceeding, the assigned judge must consider the following factors:

(1) The impact of coverage upon the right of any party to a fair trial

(2) The impact of coverage upon the right of privacy of any party or witness, or on the appearance or testimony of the party or witness

(3) The impact of coverage upon the safety and well-being of any party, witness or juror

(4) Whether coverage would distract participants or would detract from the dignity of the proceedings

(5) The adequacy of the physical facilities of the court for coverage

(6) The timeliness of the request pursuant to subsection (c) of this Rule

(7) Any other factor affecting the fair administration of justice

[Note: Suggest adding "age of the party or witness" as a factor for the judge to consider]

f. Findings when coverage is limited or prohibited: The assigned judge may limit or prohibit coverage only after making specific on-the-record findings that there is a likelihood of harm arising from one or more of these factors, and that the harm outweighs the benefit of coverage to the public. A judge may prohibit coverage of the appearance or testimony of a particular witness upon a determination that such coverage would have a greater adverse impact upon the witness or his or her testimony than other traditional methods of news reporting. A judge's decision to limit or prohibit coverage is reviewable only by special action.

g. General manner of coverage: The assigned judge will preserve the dignity of a proceeding by designating the placement of equipment and personnel for coverage of that proceeding, and all equipment and personnel will be restricted to the designated area. Whenever possible, media

equipment and personnel must be outside the courtroom, and videotape-recording equipment that is not a component part of a television camera must be placed outside the courtroom. Wiring must be hidden as much as possible and must not be obtrusive or cause an inconvenience or a hazard. Journalists may not install, move or take equipment from the courtroom while court is in session, and photographers or camera operators cannot move about the courtroom during court proceedings. All journalists and affiliated persons engaged in the coverage must avoid conduct or dress which may detract from the dignity of the proceedings.

h. Media equipment: Journalists must connect media equipment to existing courtroom sound systems if possible. Journalists may not bring flash bulbs, strobe lights or other artificial lights of any kind into the courtroom. If a journalist wishes to use additional standard light fixtures, higher wattage light bulbs, additional microphones, or other modifications or improvements concerning lighting or sound, the journalist must make a request to the presiding judge of the Superior Court, who may direct modifications or improvements if necessary. Public funds may not be used to make or to maintain any such modifications or improvements.

Cameras and microphones used for traditional media coverage must meet the "state of the art." A camera or microphone meets the "state of the art" when it is equal in unobtrusiveness, technical quality and sensitivity to equipment in general usage by the major broadcast stations in the community in which the courtroom is located. Television or still cameras that produce distracting sounds are not permitted. The presiding judge may approve coverage with a non-digital still camera if the camera uses a device that effectively muffles camera sounds. Any questions concerning whether particular equipment complies with this rule will be resolved by the presiding judge of the Superior Court or a designee.

i. Pool camera: No more than one video camera and one still camera mounted on a tripod, each with a single camera operator, will be permitted in the courtroom for coverage at any time while court is in session. If a judge approves requests by more than one journalist to cover a court proceeding, the journalists must select a representative to arrange the pooling of media resources, but the judge will not participate in the pooling agreement. Journalists have the responsibility to settle their own disputes, to facilitate pooling where necessary, and to implement procedures that meet the approval of the assigned judge prior to any coverage and without disruption to the court. If necessary, journalists may elect a spokesperson to confer with the court.

j. Recording not admissible as evidence: A media recording of a judicial proceeding is not admissible as evidence in that proceeding or in any retrial or appeal of that proceeding.

k. Circumstances where coverage is specifically prohibited: Coverage is not permitted in the following circumstances.

> **1. Jurors:** Journalists are strictly forbidden from covering jurors in a manner that will permit recognition of individual jurors by the public. Cameras must be placed to avoid showing jurors in any manner. Journalists are prohibited from making audio recordings or broadcasts of juror interviews, statements, or conversations.

2. Attorney conferences: Audio recordings or broadcasts of conferences in the courthouse between attorneys and their clients, or between attorneys, are prohibited.

3. Other areas of the courthouse: Journalists may not record in, or broadcast from, locations in a court building where a court proceeding is not being conducted.

4. Juvenile proceedings: Coverage of juvenile court proceedings is prohibited, except that coverage may be permitted in adoption proceedings to memorialize the event and with the agreement of the court and of the parties to the proceeding.

[Note: Suggest adding domestic relations, probate, and mental health proceedings to this provision.]

l. Other governing law: The law generally applicable to inclusion or exclusion of the press or public at court proceedings or during the testimony of a particular witness applies to coverage under this rule. Nothing in this rule alters the obligation of any attorney to comply with the provisions of the Arizona Rules of Professional Conduct governing trial publicity.

m. Coverage by persons who are not journalists; signs: Recording or broadcasting of court proceedings is not permitted except as allowed by this rule. Individuals who are not journalists may not record and may not broadcast court proceedings. Every courtroom must contain signs that inform the public: "Photographing, recording, or broadcasting court proceedings without permission of the judge will be punished as contempt of court."

n. Appellate courts: For coverage of court proceedings in the Arizona Supreme Court and Court of Appeals, any reference in this rule to the "assigned judge" or to the "presiding judge of the Superior Court" means the Chief Justice of the Arizona Supreme Court or the Chief Judge of the Court of Appeals, as applicable.

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The following paragraphs of existing Rule 122 are not included in the above revision:

(i) Individual journalists may use their personal audio recorders in the courtroom, but such usage shall not be obtrusive or distracting and no changes of tape or reels shall be made during court sessions. In all other respects, news reporters or other media representatives not using cameras or electronic equipment shall not be subject to these guidelines.

(u) To facilitate implementation of this rule, the presiding judge of the Superior Court may appoint an advisory committee to make recommendations regarding improvements affecting media coverage of judicial proceedings.

miss hearing or seeing other testimony. You may use your notes during your deliberations at the end of the trial. Until then, keep your notes to yourself. During recesses in the trial, you may leave your notes on your seat. Your notes are confidential and my bailiff will guard them. No one will be allowed to read your notes. Whether you take notes or not, you should rely upon your own memory of what was said and not be overly influenced by the notes of other jurors. After you have rendered your verdict, the bailiff will collect your notes and destroy them.

Do not be influenced at all by my taking notes at times. What I write down may have nothing to do with what you will be concerned with at this trial.

SOURCE: Bench Book for Superior Court Judges; Preliminary 8, RAJI (Civil) 4th modified.

USE NOTE: Rule 18.6(d), Arizona Rules of Criminal Procedure, requires the court to "instruct the jurors that they may take notes" during the trial.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: "The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided."

Preliminary Criminal 13 – Admonition

I am now going to say a few words about your conduct as jurors. I am going to give you some dos and don'ts, mostly don'ts, which I will call "The Admonition."

Do wear your juror badge at all times in and around the courthouse so everyone will know you are on a jury.

Each of you has gained knowledge and information from the experiences you have had prior to this trial. Once this trial has begun you are to determine the facts of this case only from the evidence that is presented in this courtroom. Arizona law prohibits a juror from receiving evidence not properly admitted at trial. Therefore, do not do any research or make any investigation about the case on your own. Do not view or visit the locations where the events of the case took place. Do not consult any source such as a newspaper, a dictionary, a reference manual, television, radio or the Internet for information. If you have a question or need additional information, submit your request **in writing** and I will discuss it with the attorneys.

Do not talk to anyone about the case, or about anyone who has anything to do with it, and do not let anyone talk to you about those matters, until the trial has ended, and you have been discharged as jurors. This prohibition about not discussing the case includes using e-mail, Facebook, MySpace, Twitter, instant messaging, Blackberry messaging, I-Phones, I-Touches, Google, Yahoo, or any internet search engine, or any other form of electronic communication for any purpose whatsoever, if it relates in any way to this case. This includes, but is not limited to, blogging about the case or your experience as a juror on this case, discussing the evidence, the lawyers, the parties, the court, your deliberations, your reactions to testimony or exhibits or any aspect of the case or your courtroom experience with anyone whatsoever, until the trial has ended, and you have been discharged as jurors. Until then, you may tell people you are on a jury, and you may tell them the estimated

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schedule for the trial, but do not tell them anything else except to say that you cannot talk about the trial until it is over.

One reason for these prohibitions is because the trial process works by each side knowing exactly what evidence is being considered by you and what law you are applying to the facts you find. As I previously told you, the only evidence you are to consider in this matter is that which is introduced in the courtroom. The law that you are to apply is the law that I give you in the final instructions. This prohibits you from consulting any outside source.

If you have cell phones, laptops or other communication devices, please turn them off and do not turn them on while in the courtroom. You may use them only during breaks, so long as you do not use them to communicate about any matter having to do with the case. You are not permitted to take notes with laptops, Blackberries, tape recorders or any other electronic device. You are only permitted to take notes on the notepad provided by the court. Devices that can take pictures are prohibited and may not be used for any purpose.

It is your duty not to speak with or permit yourselves to be addressed by any person on any subject connected with the trial. If someone should try to talk to you about the case, stop him or her or walk away. If you should overhear others talking about the case, stop them or walk away. If anything like this does happen, report it to me or any member of my staff [insert phone number] as soon as you can. To avoid even the appearance of improper conduct, do not talk to any of the parties, the lawyers, the witnesses or media representatives about anything until the case is over, even if your conversation with them has nothing to do with the case. For example, you might pass an attorney in the hall, and ask what good restaurants there are downtown, and somebody from a distance may think you are talking about the case. So, again, please avoid even the appearance of improper conduct.

The lawyers and parties have been given the same instruction about not speaking with you jurors, so do not think they are being unfriendly to you. When you go home tonight and family and friends ask what the case is about, remember you cannot speak with them about the case. All you can tell them is that you are on a jury, the estimated schedule for the trial, and that you cannot talk about the case until it is over.

In a civil case, the jurors are permitted to discuss the evidence during the trial while the trial progresses. In a criminal case such as this, however, the jurors are not permitted to discuss the evidence until all the evidence has been presented and the jurors have retired to deliberate on the verdict. You may not discuss the evidence among yourselves until you retire to deliberate on your verdict. Therefore, during breaks and recesses whether you are assembled in the jury room or not, you shall not discuss any aspect of the case with each other until the case is submitted to you for your deliberations at the end of the trial. Again, if you have a question or need additional information, submit your request in writing and I will discuss it with the attorneys.

During the trial, you are not to engage in any conduct that impairs or interferes with your ability to hear and understand the court proceedings.

Do not form final opinions about any fact or about the outcome of the case until you have heard and considered all of the evidence, the closing arguments, and the rest of the instructions I will give you on the law. Keep an open mind during the trial. Form your final opinions only after you have had an opportunity to discuss the case with each other in the jury room at the end of the trial.

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Please advise me in writing immediately if you believe that any juror has violated any provision of this admonition.

Before each recess, I will not repeat the entire Admonition I have just given you. I will probably refer to it by saying, "Please remember the Admonition," or something like that. However, even if I forget to make any reference to it, remember that the Admonition still applies at all times during the trial.

SOURCE: Bench Book for Superior Court Judges; Preliminary 9, RAJI (Civil) 4th, modified.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: "The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided."

Preliminary Criminal 14 – Media Coverage

There may or may not be news media coverage of the trial. What the news media covers is up to them. If there is media coverage, you must avoid it during the trial. If you do encounter something about this case in the news media during the trial, end your exposure to it immediately and report to me as soon as you can. If there are cameras in the courtroom during the trial, do not be concerned about them. Court rules require that the proceedings be photographed or televised in such a way that no juror can be recognized.

SOURCE: Bench Book for Superior Court Judges; Preliminary 10, RAJI (Civil) 4th.

USE NOTE: Where there is extensive media coverage about a case, the trial judge may wish to consider asking the jurors at the start of the trial each day whether any juror has seen or heard anything in the media about the case.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: "The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided."

Preliminary Criminal 15 – Questions by Jurors

If at any time during the trial you have difficulty hearing or seeing something that you should be hearing or seeing, or if you get into personal distress for any reason, raise your hand and let me know.

If you have any questions about parking, restaurants, or other matters relating to jury service, feel free to ask one of the court staff. But remember that the Admonition applies to court staff, as it does to everyone else, so do not try to discuss the case with court staff.

If you have a question about the case for a witness or for me, write it down, but do not sign it. Hand the question to the bailiff. If your question is for a witness who is about to leave the witness stand, please signal the bailiff or me before the witness leaves the stand.

The lawyers and I will discuss the question. The rules of evidence or other rules of law may prevent some questions from being asked. If the rules permit the question and the answer is available, an answer will be given at the earliest opportunity. When we do not ask a

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PRELIMINARY 9

Admonition

I am now going to say a few words about your conduct as jurors. I am going to give you some do's and don'ts, mostly don'ts, which I will call "The Admonition." This admonition is designed to prevent jury tampering and any appearance of jury tampering, something that cannot be tolerated in our system of justice.

Do wear your juror badge at all times in and around the courthouse so everyone will know you are on a jury.

Do not do any research or make any investigation about the case on your own. Do not view or visit the locations where the events of the case took place. "Research" includes doing things such as looking up words in a dictionary or encyclopedia, or using treatises or similar sources with respect to any of the issues involved in the case. Research also includes searching on the internet or using other electronic devices to obtain information. The reason for this is that you have to base any decision on the evidence that is produced here in the courtroom.

Do not talk to anyone about the case, or about anyone who has anything to do with it, and do not let anyone talk to you about those matters, until the trial has ended and you have been discharged as jurors. Until then, you may tell people you are on a jury, and you may tell them the estimated schedule for the trial, but do not tell them anything else except to say that you can't talk about it until it is over.

It is your duty not to speak with or permit yourselves to be addressed by any person on any subject connected with the trial. If someone should try to talk to you about the case, stop him or her or walk away. If you should overhear others talking about the case, stop them or walk away. If anything like this does happen, report it to me or any member of my staff [insert phone number] as soon as you can. To avoid even the appearance of improper conduct, do not talk to any of the parties, the lawyers, or witnesses about anything until the case is over, even if your conversation with them has nothing to do with the case. For example, you might pass an attorney in the hall, and ask what good restaurants there are downtown, and somebody from a distance may think you are talking about the case. So, again, please avoid even the *appearance* of improper conduct.

The lawyers and parties haven been given the same instruction about not speaking with you jurors, so do not think they are being unfriendly to you. When you go home tonight and family and friends ask what the case is about, remember you cannot speak with them about the case. All you can tell them is that you are on a jury, the estimated schedule for the trial, and that you cannot talk about the case until it is over.

Continued

PRELIMINARY 9

Admonition

Continued

There is one and only one limited exception to the foregoing rules. During recesses from the trial, you may discuss the evidence presented at the trial, but: 1) only among yourselves; and 2) only when you are all together; and 3) only in the jury room.

[Even though you may discuss the case under the conditions I have described,][1] do not form final opinions about any fact or about the outcome of the case until you have heard and considered all of the evidence, the closing arguments, and the rest of the instructions I will give you on the law. Both sides have the right to have the case fully presented and argued before you decide any of the issues in the case. Keep an open mind during the trial. Form your final opinions only after you have had an opportunity to discuss the case with each other in the jury room at the end of the trial.

If at anytime during the trial you have difficulty hearing or seeing something you should be hearing or seeing, or if you have personal distress for any reason, raise your hand and let me know.

If you have any questions about parking, restaurants, or other personal matters relating to your jury service, feel free to ask one of the court staff. But, remember that the admonition applies to court staff, as it does to everybody else, so do not try to discuss the case with court staff.

Before each recess, I will not repeat the entire Admonition I have just given you. I probably will refer to it by saying, "Please remember the Admonition," or something like that. However, even if I forget to make reference to it, remember that the Admonition still applies at all times during the trial.

SOURCE: Bench Book For Superior Court Judges.

USE NOTE: The language in the box should be used unless the court has limited or prohibited juror discussions during recesses pursuant to Rule 39(f), A.R.C.P. If the court has prohibited juror discussions, the admonition should substitute the following language: "Do not talk to each other about the case, or about anyone who has anything to do with it, until the end of the trial when you go to the jury room to decide on your verdict."

[1] If the language in the box is used, the phrase in brackets should be used.

WIRELESS COMMITTEE

Date of Meeting:	This is for:	Subject:
June 7, 2012	[ ] Formal Action/Request [X] Information Only [ ] Other	**ROSALIND GREENE:** **BRIEF BIOGRAPHY**

From: Staff

Presenter(s): Rosalind Greene

Rosalind Greene, J.D., Consultant

Rosalind R. Greene, J.D., trial and jury consultant, received her J.D. from the University of Arizona and served as Research Editor for the Arizona Law Review. Ms. Greene is a licensed attorney in Arizona as well as an adjunct professor at the University of Arizona, teaching Communication in the Legal Process. She also received a B.A. degree in Communication, with high distinction, from the University of Arizona. Prior to consulting, Ms. Greene practiced with Snell & Wilmer for eight years, primarily in areas of general litigation with an emphasis on product liability. She has also worked extensively in mediation having been a Judge Pro Tempore Settlement Master and a mediator with JAMS / ENDISPUTE, U.S. Arbitration & Mediation, and the Arizona Attorney General's Office.

Rosalind Greene combines her legal training and experience with her communication expertise to provide consulting services in witness preparation, jury selection, mock trial and focus groups, case strategy sessions, and settlement negotiations. She has been a CLE seminar presenter for the Arizona State Bar, the Arizona Trial Lawyers' Association, The Pima County Bar Association, the Alternative Dispute Resolution section of the State Bar, and the American Society of Trial Consultants. Her academic achievements include induction into the National Honor Societies of Phi Beta Kappa and Phi Kappa Phi. Ms. Greene is a member of the American Society of Trial Consultants, the State Bar of Arizona, the Pima County Bar Association, and the Arizona Women's Lawyer Association. She has written extensively on legal matters, and a number of her articles can be found in AJR's Publications section.

//

Here is the actual wording of the juror pledge in the Viktor Bout trial:

I agree to follow all of the Court's preliminary instructions, including the Court's specific instructions relating to Internet use and communications with others about the case. I agree that during the duration of this trial, I will not conduct any research into any of the issues or parties involved in this trial. Specifically, I will not use the Internet to conduct any research into any of the issues or parties involved in this trial. I will not communicate with anyone about the issues or parties in this trial, and I will not permit anyone to communicate with me. I further agree that I will report any violations of the Court's instructions immediately.

Signed under penalty of perjury.

_____

_____

(Sign and Print)

Dated: New York, New York

October 11, 2011

JURY INSTRUCTIONS CAUTIONING AGAINST USE OF THE INTERNET AND SOCIAL NETWORKING

Approved by the Board of Regents
September 2010

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◆◆◆

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INTRODUCTORY NOTE

The use and misuse of technology in courtrooms and courthouses has raised a number of issues that pose new and difficult challenges to judges, lawyers, jurors and litigants. Across the country, trials have been affected by jurors who, either intentionally or unintentionally, have used technology to conduct unauthorized research or communicate about court proceedings. The American College of Trial Lawyers explored some of these issues at its Fall 2009 meeting in a program entitled "The Dark Side of Technology." The College recognizes the importance of these issues, and seeks to develop "best practices" for handling the use of technology in the courtroom. These suggested instructions address many of the problems that have come to light in recent years.

The use of these or similar instructions is not without controversy. Despite a growing body of case law concerning the improper use of technology, some believe that the use of specific instructions such as those advocated by the ACTL will serve only to increase the number of violations by suggesting actions that would not otherwise have occurred to jurors. Others take the position that the use of specific instructions, accompanied by an explanation of why certain conduct must be prohibited during trials, will reduce at least the number of inadvertent violations, and may help to deter jurors who would otherwise not understand the potential harm that might flow from their seemingly innocuous actions. The College has concluded that the growing number of model instructions promulgated by the state and federal courts demonstrates the need to provide guidance to jurors, some of whom have shown that, without it, they are prone to lapse into use of the Internet and social networking, to the detriment of the fair administration of justice.[1]

The suggested instructions are classified according to time frames or stages of court proceedings, and are tailored to address specific issues that might arise at those times. These materials also include a suggested message for impaneled jurors to send to family and friends explaining the juror's situation, and a written agreement to be signed by each juror acknowledging the court's instructions. It is suggested that the formality of a writing may serve to impress upon jurors the gravity of the court's instructions.

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1 *See* U.S. Judicial Conference Committee on Court Administration and Case Management, Proposed Model Jury Instructions: The Use of Electronic Technology to Conduct Research on or Communicate about a Case (available at http://www.uscourts.gov/uscourts/News/2010/docs/DIR10-018-Attachment.pdf); U.S. Court of Appeals for the Third Circuit General Instruction for Civil Cases 1.2; U.S. Court of Appeals for the Third Circuit Criminal Instruction 1.03; U.S. Court of Appeals for the Eighth Circuit Preliminary Instructions 1.05, 1.08; U.S. Court of Appeals for the Ninth Circuit Model Civil Jury Instruction 1.12; U.S. Court of Appeals for the Ninth Circuit Model Criminal Jury Instruction 1.9; California Civil Jury Instruction 100; Connecticut Civil Jury Instruction 1.1-1; Connecticut Criminal Jury Instruction 1.2-10; Florida General Pool Instructions, Qualifications Instruction; Florida Civil Preliminary Instruction Given Before Voir Dire Begins 201.2; Florida Civil Preliminary Instruction Given After Voir Dire Ends and the Jury Is Sworn 202.2; Florida Civil Closing Instruction 700; Indiana Supreme Court, Cause No. 94S00-1003-MS-128, Rule 20 (Preliminary Instructions) and Rule 26 (Final Instructions); Michigan Court Rule 2.511; Missouri Supreme Court 2.01 Explanatory Instructions for All Cases at (1) Prohibition of Juror Research or Communication about This Case; New York Criminal Jury Instructions, Jury Admonitions in Preliminary Instructions at (4); New York Civil Pattern Jury Instructions 1:10, 1:11; Ohio State Bar Association Jury Instructions I(C)(2)-(3); South Carolina Supreme Court Order 2009-07-20-01 re Juror Use of Personal Communication Devices; Wisconsin Criminal Jury Instruction No. 50.

JURY INSTRUCTIONS CAUTIONING AGAINST USE OF THE INTERNET AND SOCIAL NETWORKING

For Summons to Prospective Jurors

The court understands that you may be unfamiliar with the court system, and that you may have many questions about what to expect from your jury service. In order to assist you in answering some common questions, we have [prepared the enclosed pamphlet] [created a special website], which you should feel free to review before you report to court. If you have questions that are not answered, you may bring them to court with you on the day or your service, or you may call [CONTACT PERSON].

However, in order to assist the court in providing the litigants with a fair trial, it is important that you refrain from conducting any research which might reveal any information about any case pending before the court, or any of the parties involved in any case. Therefore, you should avoid any attempts to learn which cases may be called for trial during your jury service, or anything about the parties, lawyers or issues involved in those cases. Even research on sites such as Google, Bing, Yahoo, Wikipedia, Facebook or blogs, which may seem completely harmless, may lead you to information which is incomplete, inaccurate, or otherwise inappropriate for your consideration as a prospective juror. The fair resolution of disputes in our system requires that jurors make decisions based on information presented by the parties at trial, rather than on information that has not been subjected to scrutiny for reliability and relevance.

REFERENCES:

Russo v. Takata Corp., 2009 WL 2963065 (S.D. 9/16/09).

Instructions for Impaneled Jurors

Now that you have been chosen as jurors for this trial, you are required to decide this case based solely on the evidence and the exhibits that you see and hear in this courtroom. At the end of the case, I will give you instructions about the law that you must apply, and you will be asked to use that law, together with the evidence you have heard, to reach a verdict. In order for your verdict to be fair, you must not be exposed to any other information about the case, the law, or any of the issues involved in this trial during the course of your jury duty. This is very important, and so I am taking the time to give you some very detailed explanations about what you should do and not do during your time as jurors.

First, you must not try to get information from any source other than what you see and hear in this courtroom. This means you may not speak to anyone, including your family or friends. You may not use any printed or electronic sources to get information about this case or the issues involved. This includes the internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, Blackberries, iPhones, Smartphones, PDAs, or any other electronic device. You may not do any personal investigation, including visiting any of the places involved in this case, using Internet maps or Google Earth, talking to any possible witnesses, or creating your own demonstrations or reenactments of the events which are the subject of this case.

Second, you must not communicate with anyone about this case or your jury service, and you must not allow anyone to communicate with you. In particular, you may not communicate about the case via emails, text messages, tweets, blogs, chat rooms, comments or other postings, Facebook, MySpace, LinkedIn, or any other websites. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case. But, if you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

The court recognizes that these rules and restrictions may affect activities that you would consider to be normal and harmless, and I assure you that I am very much aware that I am asking you to refrain from activities that may be very common and very important in your daily lives. However, the law requires these restrictions to ensure the parties have a fair trial based on the evidence that each party has had an opportunity to address. If one or more of you were to get additional information from an outside source, that information might be inaccurate or incomplete, or for some other reason not applicable to this case, and the parties would not have a chance to explain or contradict that information because they wouldn't know about it. That's why it is so important that you base your verdict only on information you receive in this courtroom.

Some of you may have heard about trials where the jurors are not permitted to go home at night, or were sequestered for the entire length of the trial. For a variety of reasons, this is something we rarely do anymore. It is far more of an imposition on your lives than the court wishes to make. However, it was effective in keeping jurors away from information that might affect the fairness of the trial—that was the entire purpose.

You must not engage in any activity, or be exposed to any information, that might unfairly affect the outcome of this case. Any juror who violates these restrictions I have explained to you jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. As you can imagine, a mistrial is a tremendous expense and inconvenience to the parties, the court and the taxpayers. If any juror is exposed to any outside information, or has any difficulty whatsoever in following these instructions, please notify the court immediately. If any juror becomes aware that one of your fellow jurors has done something that violates these instructions, you are obligated to report that to the court as well. If anyone tries to contact you about the case, either directly or indirectly, or sends you any information about the case, please report this promptly as well.

These restrictions must remain in effect throughout this trial. Once the trial is over, you may resume your normal activities. At that point, you will be free to read or research anything you wish. You will be able to speak—or choose not to speak—about the trial to anyone you wish. You may write, or post, or tweet about the case if you choose to do so. The only limitation is that you must wait until after the verdict, when you have been discharged from your jury service.

REFERENCES:

U.S. v. Hernandez et al, No. 07-60027-CR (S.D. Fla. 2009): In a case from Florida, Federal prosecutors spent two years building their case against defendants accused of participating in an illegal internet pharmacy network. The judge, however, declared a mistrial when he discovered that 8 members of the jury had performed their own internet research on the case. These jurors Googled defendants' names and definitions of medical terms. Another juror discovered evidence that had been excluded from testimony. One alternate juror used the internet on his cell phone during breaks to conduct his own research.

U.S. v. Fumo, 2009 U.S. Dist. LEXIS 51581 (E.D. Penn. June 17, 2009): In a Federal corruption trial in Pennsylvania, a juror posted remarks about the trial and the jury deliberations to Facebook and Twitter. The juror even told readers that "a big announcement" was coming. Another Juror learned that the defendant had a prior overturned conviction. Regardless, the judge allowed trial to continue and the jury found the defendant guilty. A motion for a new trial was denied.

Courtroom Conduct

While court is in session, jurors, parties, witnesses, attorneys and spectators are not permitted to use electronic devices unless specifically authorized by the court. This includes sending or receiving phone calls, voice mails, text messages, tweets, or accessing the internet. No electronic device may be used to record, photograph or film any of the court proceedings.

When you arrive at the courthouse in the morning, you will be asked to give any electronic devices to the court officer. These devices will be returned to you at the end of the court day. You will be provided with a telephone number in the courtroom that your family may use to contact you in the event of an emergency. Any emergency message will be received by the court staff and communicated to you at the appropriate time.

REFERENCES:

Sky Development Inc. v. Vistaview Development Inc., 2007-32308-CA-01 (Fla. Miami-Dade County Ct. 2009): In a Florida circuit court case, a judge dismissed plaintiff's civil fraud case after finding out that a witness on the stand was texting his boss while the judge and attorneys were at sidebar. The texts were related to the content of the witnesses' testimony. Basically, the boss was telling the witness what to say during his testimony. The misconduct was brought to light when a courtroom spectator passed a note to the defense counsel informing him of the texts.

Suggested Message for Impaneled Jurors to Send to Family and Friends

I am sending this message to you as instructed by Judge _____. I am now a sworn juror in a trial. I am under a court order not to read or discuss anything having to do with the trial, the parties or lawyers involved, or anything else concerning my jury service. Please do not send me any information about the case or my jury duty, and please do not ask me any questions or make any comments about the case or my jury duty. I will be following these rules for the length of the trial, which is expected to last approximately _____. I will send another note when my jury duty is completed and I am no required to follow the court order.

Suggested Statement of Compliance for Jurors to Sign

I agree that during the duration of the trial in _____, I will not conduct any independent research into any of the issues or parties involved in this trial. I will not communicate with anyone about the issues or parties in this trial, and I will not permit anyone to communicate with me. I further agree that I will report any violations of the court's instructions immediately.

_____

JUROR No. _____

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1. Draft: This proposed advice would be added to the **juror summons** and/or the **juror handbook** (if any):

> *Do not use the internet or media to look for information about cases in this court.*

2. Draft: The following is a proposed **preliminary jury admonition** for criminal and civil cases.

Note: The admonitions are contained in RAJI criminal preliminary instruction 13 and RAJI civil preliminary instruction 9. State Bar committees draft RAJI's. The AOC's Judicial College prepares the bench book. On the subject of preliminary jury instructions in a civil case, the January 2012 bench book, at page 2-12, refers to the civil RAJI. In turn, the introduction to the preliminary jury instructions in the January 2005 edition of the civil RAJI includes these observations:

> *During its drafting of RAJI (CIVIL) 4th, the Committee determined that superior court judges have a preference for the preliminary instructions contained within the Judicial College of Arizona's Civil/Criminal Benchbook, rather than the RAJI (CIVIL) 3d Preliminary Instructions. These two sets of instructions are quite similar and many of the instructions are identical. Nevertheless, there are a few differences between the two versions and the Committee believed it was preferable to adopt the preliminary instructions that most Arizona trial judges actually use. Placing these Benchbook preliminary instructions in RAJI will make them available for use by trial practitioners, who may not have copies of the Benchbook.*

- The Wireless Committee could request that the JCA discuss any admonition drafted by the Wireless Committee for possible addition to the bench book. The Wireless Committee could also recommend that State Bar consider the Wireless Committee's admonition for inclusion within the RAJI's.

Note further: The recommendation in the next paragraph was taken from the January 2012 bench book, at page 6-11. The recommendation appears in the bench book prior to the preliminary instructions for criminal cases. The same recommendation would apply to staff's proposed admonition:

> *The editors appreciate that the specific wording for preliminary jury instructions is best left to the style of the judge and the needs of the case. A conversational, person-to-person paraphrasing of the principles set forth in these instructions, and of other appropriate preliminary matters, will do more to set the proper tone for the trial — and to give good instruction to the jury of its duties and responsibilities — than will an impersonal recitation of any script.*

Here is the current draft of staff's **proposed admonition** to the jury for criminal and civil cases:

[Introductory note] The law requires me to conduct this trial according to the Arizona rules of procedure and the Arizona rules of evidence. We have these rules so that a trial is fair to everyone in this case, including the parties and the witnesses. These rules also provide the structure for a trial, so that a trial in my courtroom is conducted the same way as a trial in another courtroom before a different judge.

We must all follow rules during a trial. I must follow rules, attorneys and witnesses must follow rules, and you as jurors must follow rules. However, some of the rules we must follow may require us to do things differently from the way we do things at work, in school, or at home. I will now tell you about these rules, which I will call *"the admonition."*

[Definition of electronic devices] Every case has rules concerning the use of electronic devices. The term *"electronic devices"* means things that retrieve, store, and send information, and I am including anything that gives you access to the internet or that allows you to electronically send or receive messages. Some electronic devices are i-Phones, i-Pads, i-Pods, Droids, Blackberries, smart phones, notebooks, tablets, or laptops, but the term includes other computers and communication tools.

[Allowed use of electronic devices] The rules of this court allow you to bring electronic devices into the courthouse. Jurors and others who come to this building may generally use electronic devices in the courthouse as they would anywhere else. You may use your electronic device to call your work or your families, or to send or receive a text message to or from work or home, to prepare documents or spreadsheets, or to check the weather, stock quotes, or the sports page. However, there are special rules for members of a jury, and it is your duty as jurors to follow these special rules, which I will now explain to you.

[Prohibited use of electronic devices] To start with, you must not use your electronic devices while you are in this courtroom or in the jury room. When you are in the courtroom or in the jury room, you must not make or receive phone calls, you must not send or receive text messages, and you must not go on the internet. Only jurors can listen to or learn about conversations in the jury room.

You must decide the case using only the information you get here in the courtroom. You cannot use your electronic devices anywhere or at any time to go on-line to look for information about this case or about any of the issues you will decide. You may not use the internet in the courthouse, at home, at work, at school, in your car, in a coffee shop, or anywhere else to get information to help you decide this case.

There may be names, words, or subjects that come up during this trial and you would like to use your electronic devices just as you ordinarily would to get information on these names, words or subjects. You must not do that.

- You must not use Google or any other search engine or website to find information about the facts in this case or about any of the legal issues.

- You must not use Google maps or other websites to find out information about places or locations mentioned during this trial.

- You must not use the internet to find out information about the parties, or about witnesses or events in this lawsuit.

- You must not use newspapers, dictionaries, books, television, radio, or the World Wide Web as sources of information about this lawsuit.

You must decide the case only on the evidence that you see and hear within the four walls of this courtroom.

[Reasons for the rule prohibiting use of electronic devices by jurors] At first, this rule may seem strange, because you use books, television, radio, and newspapers, and especially the internet, to get information at home, at school, or at your job, and you may think you are being helpful if you do research on this case, but you are not being helpful; you are doing the opposite.

There are reasons for the rule about jurors not getting information about a case from the internet, from books, or from radio, television, or newspapers.

First, the parties and I have a right to know exactly what information you have for deciding the case. That is why the court staff and I will be recording the testimony of the witnesses, marking exhibits, and making a record of the events that occur within this courtroom. Deciding the case based on information that one of the jurors finds on the internet or in a book would be a violation of this right. The attorneys will not see or hear about the on-line information, or about the book or radio show, and I would not see or hear about it, and that runs against the principle of giving everyone a fair trial.

Second, the parties have a right to cross-examine witnesses who testify during this case. The right of cross-examination has been developed over centuries, and it is one of the fundamental principles of our legal system. If you obtain information from the internet or anywhere else outside this courtroom, you will be wiping out the right of the parties to cross-examine the source of that information.

Third, we have rules known as the rules of evidence that control the testimony of witnesses and other evidence in a lawsuit. These rules exist so that the evidence that you see and hear meets legal requirements. The rules of evidence do not control the materials that you see on the internet or on television or radio or in the newspapers. Information from television, radio, newspapers, or the internet may be correct, but it may also be unreliable or even very unreliable. Because one of the parties has not properly introduced this information under the rules of evidence, the attorneys and I have no way of knowing whether the information is accurate or inaccurate, reliable or unreliable, and therefore you must not consider that information in deciding this case.

So again, you may not use the internet, books, radio, television, or newspapers in any way to obtain information concerning this case.

[Prohibition about discussing the case, including not discussing the case on social media] In addition, you may not discuss this case with anyone except the other jurors while you are in the jury room. You may not use an electronic device to communicate with anyone about the case. Anyone includes your family, your friends, your significant other, your coworkers and colleagues, acquaintances, total strangers, and everyone else. You may not tell other people what you think about this case, and you may not ask other people what they think about it.

- You may not send or receive e-mail or text messages to anyone about this case.

- You may not discuss the case through instant messaging, Blackberry messaging, using an i-Phone, i-Pad, i-Touch, on Google, Yahoo, or on any other search engine, or by any other form of electronic communication. You may not use <u>any</u> form of electronic communication about the case, including the ones I have mentioned and including the ones that I did not mention.

- You may not discuss the case on Facebook, Twitter, LinkedIn, MySpace, YouTube, in a chat room, or on any other social media.

- You may not *"friend"* court staff, attorneys, witnesses, or other jurors. You may not discuss the case in person, on the phone, or in any other way with anyone except the other jurors. You alone have the responsibility for deciding this case. Once I give case to you to decide, you may discuss the case only with the other jurors, and only while you are all together in the jury room.

If anyone tries to discuss this lawsuit with you over the telephone, on-line, or in person, or in any other way, you must tell them you are on a jury and you cannot discuss the case with them until it is completely over. When you go home or back to work today or tomorrow, and your family, your friends, or your coworkers ask you what the case is about, simply tell them that the judge has ordered you not to talk about it. I have also instructed the lawyers and the parties not to discuss the case with you, or to speak with you at all until the case is over. No one can speak with you about the case until then.

[Blogs] Trials are open to the public. News reporters or someone who is writing a blog may be in the courtroom. You must decide this case only on the evidence that you see and hear in this courtroom. You may not read, watch, or listen to anything about this case, and that includes blogs and tweets.

[Consequences of violating the admonition] If any juror violates any of the rules that I have just explained, I may have to declare a mistrial. A mistrial means that this trial does not count. We have to start the trial all over again, beginning with calling a new jury. The time of jurors who spent hours, days, or weeks on the case is therefore wasted. A mistrial is unfair for the new jurors, because they are required to hear the case because the first jury did not finish it. A

mistrial is also unfair for the parties, for the attorneys, and for the witnesses, all of whom must come back to court a second time. The time and resources of the parties have been wasted, and the court's time and resources have been wasted as well. Everyone's time is valuable, and a mistrial, when the law requires it, is financially costly to the taxpayers and to the participants in this case. So please follow the rules that I have given to you, so that a mistrial will not be necessary. All of us, including every one of you, have the responsibility to conduct this trial fairly. If you believe that another juror has violated any of the rules I have given to you, please immediately send a note to me.

During the jury selection, each of you agreed to follow the law and the rules of this case. You agreed to follow the rules that apply to the case even though you may not agree with every rule. The rules that I have just explained are rules that you must follow.

[Concluding portion] If you have one, please make sure that your cell phone, laptop, or any other portable electronic device is off while you are in the courtroom. You may not take notes with your laptop or smart phone or other device; you may only take notes on the notepad the court has provided to you.

[Remember the admonition] Before a recess, I may not repeat this admonition, but I may say to you, *"Remember the admonition."* Even if I do not say that, the admonition applies at all times until the trial is over. Please remember the admonition.

3. Draft: Please also see on the following page staff's draft ***"smart juror"* card.** The court could provide a *"smart juror"* card to each juror after swearing the jury. A juror could use the card as a bookmark, or could simply place the card in a pocket or a handbag as a continuous and readily available reminder of the admonition. The *"smart juror"* card is a tangible cue of the admonition. Rather than being a verbal reminder, it is in a readable form that jurors can hold in their hand as a non-verbal reminder.

- When the judge reminds the jury of the admonition before a recess, the judge could hold up a larger version of the "smart juror" card. The court could also place a larger version in the jury deliberation room.

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What Happens in Court Stays in Court

A juror has an important role in ensuring a fair trial.

PLEASE REMEMBER THESE RULES:

You must decide this case based only on evidence that is available in the courtroom.

DO NOT GET INFORMATION FROM THE INTERNET OR FROM OTHER SOURCES

You must not look for information about the facts of this case, about any of the people involved in the case, about the meaning of words, about legal issues, or about anything else concerning this case:

-On the internet -On television or radio
-In newspapers -In books or magazines

DO NOT SEND OR RECEIVE MESSAGES ABOUT THE CASE

You must not text, tweet, e-mail, blog, post on any social network website such as Facebook, or send or receive any message that discusses or even mentions this case until it is over.

DO NOT TALK TO ANYONE, OR LET ANYONE TALK TO YOU, ABOUT THE CASE

You must not talk about the case with anyone, including other jurors, until this trial is over.

In a civil case, the last sentence should be modified pursuant to Rule 39(f), Ariz. R. Civ. P.