



JURY INSTRUCTIONS CAUTIONING AGAINST
USE OF THE INTERNET AND SOCIAL NETWORKING

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AMERICAN COLLEGE OF TRIAL LAWYERS

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Chancellor-Founder, ACTL

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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.

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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