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## **#juryduty: The Use and Abuse of Social Media Communications Among Jurors and Implications of the Sixth Amendment**

Kat Zangari

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Kat Zangari  
April 29, 2022

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## **I. Introduction**

The advent of newsfeeds on social media previously used mainly for personal or professional networking has been particularly impactful in the legal field, especially jury trials. The tradition of shielding jurors from outside information while deliberating the outcome of a case has been upended by technology that allows sitting jurors to research the background of defendants, witnesses, and counsel, receive news alerts in real-time, and communicate with the public across a variety of virtual mediums. There has been a lack of uniformity in courts across the country regarding the use of Internet and social media by jurors. Courts are left to follow suggested guidelines, rather than clear precedence, when navigating these nuanced situations. In the absence of uniform guidelines, judges in most jurisdictions have the discretion to instruct jurors on the use of electronic communications during the trial and post-trial deliberation and grant post-verdict remedies as they see fit. These discretion-based instructions and recommended solutions have proved to be less than wholly effective in curbing the use of social media among jurors. Indeed, the lack of uniformity, application of ad hoc solutions, and wide judicial discretion has permitted a rise of in social media use by jurors on breaks and at home, including receiving news alerts while in the deliberation room and communicating about the trial or deliberations with friends, family or the general public.<sup>1</sup> Such conduct by jurors runs the risk of causing an egregious outcome: a biased vote of jurors, fueled by unmonitored social media use; a mistrial, in which court resources, time, and efficiency are wasted; or a potential miscarriage of justice, whereby a defendant is denied a new trial despite the possibility that the jury determining their innocence or guilt was not impartial.

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<sup>1</sup> Emily Janoski-Haehlen, The Courts Are All A 'Twitter': The Implications Of Social Media Use In The Courts, 46 VAL. U.L. REV. 43, 53 (2011).

Social media does not discriminate between jurors serving on federal courts or those serving on state courts; it is omnipotent within today's society and has the potential to affect the impartiality of state and federal jurors alike. Similarly, the solution to this issue should not discriminate between jurisdictions. This article focuses on the need to establish clear-cut national standards regarding social media use, applied to all juries regardless of jurisdiction. This article examines how social media has created a new veil of uncertainty around justice and challenged the proper functioning of our jury system, specifically the extent to which social media impacts the Sixth Amendment guarantee to a fair trial and whether the judiciary's response to the use and abuse of social media by jurors has been effective. This article proposes ways in which the judiciary can more effectively regulate the use of social media sites among jurors, including the implementation of uniformly applied detailed jury instructions, more active juries, and waivers acknowledging the punitive sanctions for disobeying instructions.

## **II. The Dawn of Social Media**

Social media has become integral to both our personal and professional lives. It has become seemingly impossible to detach from the impulse to run a quick Google search and discover a wealth of information on any person or issue in an instant.<sup>2</sup> Jurors are not resistant to this impulse that has only intensified as search engines such as Google have expanded to serve a wide variety of purposes. For example, Google Earth provides maps of the Earth and claims to be a "virtual globe" providing users with the ability to view satellite images, maps, terrain, three-dimensional

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<sup>2</sup> See *About Us*, GOOGLE, <https://about.google> (depicting a search engine meant to organize the world's information and make it universally accessible and useful) (last visited Mar. 10, 2022).

buildings, and more.<sup>3</sup> Google+ allows users to categorize their friends, acquaintances, and colleagues into specific “circles” and communicate with members of those groups accordingly.<sup>4</sup>

Still, other platforms are specifically designed for professionals to connect with each other or to boast their businesses, such as LinkedIn,<sup>5</sup> Yelp,<sup>6</sup> and Fishbowl.<sup>7</sup> Platforms including TikTok<sup>8</sup> and YouTube<sup>9</sup> allow users to create and upload video content and provide a space for other users to view the videos regardless of whether they subscribe to the creator’s content. Social media sites such as Facebook,<sup>10</sup> Instagram,<sup>11</sup> and Twitter,<sup>12</sup> are designed for personal socialization and connection, yet have transformed into hubs for news sharing.<sup>13</sup> Facebook, and its subsidiary

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<sup>3</sup> *Overview of Google Earth*, GOOGLE EARTH, <https://support.google.com/earth/> (last visited Apr. 8, 2022).

<sup>4</sup> *Overview*, GOOGLE+, [https://www.google.com/intl/en/+/learnmore/#\\_](https://www.google.com/intl/en/+/learnmore/#_) (depicting a social media product that allows users to “share life’s important moments with just the right people”) (last visited Apr. 8, 2022).

<sup>5</sup> *See About Us*, LINKEDIN, <http://press.linkedin.com/about> (noting that LinkedIn is the world’s largest professional network on the Internet boasting 810 million members in more than 200 countries, and that it allows members to connect and network with other professionals in their field) (last visited Mar. 10, 2022).

<sup>6</sup> *See About Us*, YELP, <https://www.yelp.com/about> (depicting a networking site that allows people to connect with local businesses) (last visited Mar. 10, 2022).

<sup>7</sup> *See About Us*, FISHBOWL, <https://www.fishbowlapp.com/about> (depicting a networking website that puts junior professionals and CEOs on a level playing field to help professionals and companies get ahead by facilitating conversation) (last visited Mar. 10, 2022).

<sup>8</sup> *See About*, TIKTOK, <https://www.tiktok.com/about?lang=en> (depicting a mobile application claiming to be the “leading destination for short-form mobile video” with a mission to “inspire creativity and bring joy”) (last visited Apr. 10, 2022).

<sup>9</sup> *See About*, YOUTUBE, <http://www.youtube.com/yt/about/index.html> (depicting a site providing a “forum for people to connect, inform, and inspire others across the globe and acts as a distribution platform for original content creators”) (last visited Apr. 10, 2022).

<sup>10</sup> *See* FACEBOOK, <http://www.facebook.com> (depicting a mainly text-based social networking website that connects people to other users who live, study, and work around them) (last visited Mar. 10, 2022). Facebook’s mission is to give people the power to build community and bring the world together. *Id.* Facebook claims to have more than 800,000 active users. *See Statistics*, FACEBOOK, <http://newsroom.fb.com/content/default.aspx?NewsAreaId=22> (last visited Mar. 10, 2022).

<sup>11</sup> *See* INSTAGRAM, <https://www.instagram.com> (depicting a mainly photo-based social networking website that allows users to share photos or videos with their audiences) (last visited Mar. 10, 2022).

<sup>12</sup> *See* TWITTER, <http://twitter.com> (depicting a text-based social networking website that encourages users to update their followers, in 140 characters or less, about what they are doing) (last visited Mar. 10, 2022). Users range from individuals to organizations who “tweet” to provide their followers with real-time updates. *Id.* About 300,000 new users register each day. *Twitter User Statistics Revealed*, HUFFINGTON POST (May 25, 2011), [http://www.huffingtonpost.com/2010/04/14/twitter-user-statistics-r\\_n\\_537992.html](http://www.huffingtonpost.com/2010/04/14/twitter-user-statistics-r_n_537992.html).

<sup>13</sup> *See COVID-19*, TWITTER, <https://twitter.com/explore/tabs/covid-19> (during COVID-19, Twitter created a tab where users could access trending news, budding information, and important updates surrounding the pandemic at any time) (last visited Apr. 28, 2022).

Instagram, allow users to digest news articles published by sources they choose to “follow” and suggest similar content based on what any given user “likes.” Facebook users can scroll through their “Newsfeed” to receive updates from friends, pages, groups, and events.<sup>14</sup> Additionally, Facebook, Instagram and Twitter send users push notifications about the news akin to those sent when a “friend” on the platform “likes” or “comments” on content that user has posted.

Other sites don’t fall squarely within the “social media” box but still boast collaborative content and sharing mechanisms through which jurors have utilized these spaces to share their experiences with the public. For example, Wikipedia is an encyclopedia website created and maintained through collaborative efforts of a community of users known as “Wikipedians,” consisting of individuals with Internet access and in “good standing.”<sup>15</sup> Because virtually anyone can write and make changes to Wikipedia entries, the platform is prone to fake, flawed or biased information. Similarly, Reddit is medium hosting thousands of conversations covering endless topics, whereby “millions of people around the world post, vote, and comment in communities organized around their interests.”<sup>16</sup> Lastly, tweeting jurors have been known to “check-in” at Foursquare,<sup>17</sup> a social networking site whereby users can log in at various locations and link to their blogs detailing their jury service.

There are applications (“apps”) for each of these social media sites, which allow iPhone, Android, Windows, and other smartphone users to communicate with others in a nanosecond.

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<sup>14</sup> *Products*, FACEBOOK, <http://newsroom.fb.com/Products> (last visited Apr. 8, 2022).

<sup>15</sup> *See About*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Wikipedia> (depicting an online free-content encyclopedia helping to create a world where everyone can freely share and access all available knowledge) (last visited Apr. 8, 2022).

<sup>16</sup> *About*, REDDIT, <https://www.redditinc.com> (depicting a social news aggregate, web content rating, and discussion website whereby users submit content such as links, text posts, images, and videos which then are voted positively or negatively by other users) (last visited Apr. 10, 2022).

<sup>17</sup> *About Foursquare*, FOURSQUARE, <https://foursquare.com/about> (depicting an independent location data platform providing personalized recommendations of places to go near a user’s current location based on their previous browsing and check-in history) (last visited Apr. 8, 2022). Foursquare has a community of approximately 40 million worldwide. *Id.*

According to Pew Internet & American Life Project, 85% of Americans own smartphones as of April 2021, which is up from 35% in Pew Research Center’s first survey of smartphone ownership conducted in 2011.<sup>18</sup> Furthermore, 72% of American say they use social media sites.<sup>19</sup> Broken down by age demographic, “some 84% of adults ages 18 to 29 say they use social media sites, which is similar to the share of those ages 30 to 49 who say this (81%). By comparison, a somewhat smaller share of those ages 50 to 64 (73%) say they use social media sites, while fewer than half of those 65 and older (45%) report doing this.”<sup>20</sup> Overall, the statistic showing that roughly seven-in-ten Americans use social media sites—which has remained relatively stable over the past five years—reflects a pervasive need to reform policies and procedures surrounding jury duty.

### **III. The Clash Between a New Era of Juror Impartiality and an Antiquated Justice System**

Jurors carry one of the heaviest civic responsibilities: determining the guilt or innocence of a person alleged to have committed a crime. The Sixth Amendment guarantees criminal defendants “the right to a speedy and public trial, by an impartial jury” and the right “to be confronted with the witnesses against him.”<sup>21</sup> Thus, jurors must consider only evidence that originates from the witness stand and not be influenced by external pressure.<sup>22</sup> Further, the Fourteenth Amendment’s “Confrontation Clause” extends rights—such as the right to cross-examine the witness in a criminal case—to individuals prosecuted in state courts.<sup>23</sup> In addition, the Constitution requires that jurors be “impartial” in their decision-making—the only real safeguard against unjust or arbitrary verdicts specifically written into the text of the Constitution.<sup>24</sup>

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<sup>18</sup> *Mobile Fact Sheet*, PEW RSCH. CTR. (Apr. 7, 2021), <https://www.pewresearch.org/internet/fact-sheet/mobile/>.

<sup>19</sup> *Social Media Use in 2021*, PEW RSCH. CTR. (Apr. 7, 2021), <https://www.pewresearch.org/internet/2021/04/07/social-media-use-in-2021/>.

<sup>20</sup> *Id.*

<sup>21</sup> U.S. Const. amend. VI.

<sup>22</sup> See *Turner v. Louisiana*, 379 U.S. 466, 472-73 (1965).

<sup>23</sup> U.S. Const. amend. XIV.

<sup>24</sup> U.S. Const. amend. VI.



Efforts by the judiciary to maintain juror impartiality and protect the sanctity of witness testimony are commonly administered by judges through routine instructions that jurors refrain from conducting their own investigations, from communicating with others about the case, and from discussing the case with other jurors prior to the deliberation stage.<sup>25</sup> However, these court instructions are often more prohibitive in theory than in practice; stemming from the absence of uniform national standards, these ad hoc instructions often lack clarity and enforcement of the punitive measures available to deter behavior that undermine impartiality. While courts have always been concerned with maintaining juror impartiality by way of preventing outside information from coming into jury deliberations, the solution is no longer as easy as prohibiting jurors from looking at newspapers, given that modern-day jurors have access to the news and public discourse via social media at the touch of their fingers.<sup>26</sup>

As noted above, there are punitive deterrents available to maintain impartiality. Federal Rule of Evidence 606(b) forbids jurors from testifying about “any statement made or incident that occurred during the jury’s deliberations” after a verdict has been announced.<sup>27</sup> The purpose of this rule is to encourage free and open discussion among jurors in the deliberation room, and to preserve the tradition of anonymous jurors who reflect the “conscience of the community.”<sup>28</sup> Trial safeguards, such as voir dire, leave Rule 606(b)’s prohibition on any inquiry into jury verdicts consistent with the Sixth Amendment guarantee of an impartial jury.<sup>29</sup> Yet, these preventative measures appear to be insufficient to deal with the challenges of social media. Although caselaw has laid the foundation for federal courts to remedy post-verdict reports of “outside influence,”

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<sup>25</sup> Hon. Antoinette Plogstedt, E-Jurors: A View From The Bench, 61 CLEV. ST. L. REV. 597, 608 (2013).

<sup>26</sup> Marcy Zora, The Real Social Network: How Jurors’ Use of Social Media And Smart Phones Affects a Defendant’s Sixth Amendment Rights, 2012 U. ILL. L. REV. 577, 583 (2012).

<sup>27</sup> Fed. R. Evid. 606(b).

<sup>28</sup> Caren Myers Morrison, Jury 2.0, 62 HASTINGS L.J. 1579, 1600 (2011).

<sup>29</sup> *See Tannerv. United States*, 483 U.S. 107, 127 (1987).

circuit courts are split on their acceptance of exemptions to Rule 606(b).<sup>30</sup> Furthermore, state courts are not explicitly bound by the Federal Rules of Evidence, which exposes another layer of discrepancies in how these exemptions are applied. This is problematic because a juror who tweets and blogs on social media about their case is no longer an impartial and anonymous representative of the community. The failure to universally recognize social media misconduct as an exemption to Rule 606(b)—regardless of jurisdiction—reflects an antiquated view of what threatens juror impartiality. Because jurors can send real-time updates to the public about trials and more readily obtain outside information through social media, juror impartiality has become exponentially more difficult to ensure, thus threatening the integrity of the Sixth Amendment.

The first prominent clash between impartiality and information sourced by jurors from the Internet took place in a U.S. court in 2009. A federal trial in Florida, dubbed the “Google mistrial,” gained national attention after nine jurors admitted to electronic misconduct, resulting in a mistrial.<sup>31</sup> A juror’s use of the Internet to obtain outside information during trial infringes on a defendant’s Sixth Amendment rights when the solicited information was not subjected to scrutiny by counsel or rebuttal in court and thus had an erroneous, detrimental impact on their verdict.<sup>32</sup> As an example of information having such an impact, past criminal convictions may be barred by the Federal Rules of Evidence from admission in most cases to prevent jurors from finding the defendant guilty of a crime based solely on their criminal record.<sup>33</sup> In the modern Internet era, the

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<sup>30</sup> Compare *United States v. Benally*, 546 F.3d 1230, 1236 (10th Cir. 2008) (holding that post-verdict juror testimony about behavior during deliberations may be admitted only if it falls within Rule 606(b)’s manifest exceptions for “communication with third parties, bribes, and jury tampering”), with *United States v. Villar*, 586 F.3d 76, 87 (1st Cir. 2009) (“The rule against juror impeachment cannot be applied so inflexibly as to bar juror testimony in those rare and grave cases where claims of racial or ethnic bias during jury deliberations implicate a defendant’s right to due process and an impartial jury.”).

<sup>31</sup> Plotstedt, *supra* note 25, at 583 (citing John Schwartz, *As Jurors Turn to the Internet, Mistrials Are Popping Up*, N.Y. TIMES (Mar. 18, 2009), <https://www.nytimes.com/2009/03/18/us/18juries.html>).

<sup>32</sup> *Id.* This topic is a separate issue than the one being discussed in this article and could warrant a separate article.

<sup>33</sup> Fed. R. Evid. 609.

potential for outside information to penetrate a trial is greatly heightened. It is not difficult to imagine a juror accessing the Internet during trial and discovering the defendant's prior criminal history, mistaking the defendant for a convicted individual with the same name, and in either case, using that information or even sharing that information with fellow jurors. Consciously or subconsciously, such outside information is likely to unfairly prejudice the defendant and lead to a finding of guilt. That information may be unfairly prejudicial because the existence of a past criminal conviction can prompt a jury to find the defendant guilty.<sup>34</sup> Reasons a juror may want to access the Internet during trial include a desire to uncover the truth, an attachment to precluded information and its potential importance to the case, or confusion about terms used in instructions or by expert witnesses, attorneys, and judges.<sup>35</sup>

Internet research by jurors during trial and jury deliberations has escalated to social media sharing. When a juror uses social media, their actions turn from a desire to uncover the truth or resolve confusion about legal jargon to a modern-day societal need to maintain a virtual presence by oversharing with friends, family, and even strangers. For example, the "Twitter Effect" refers to when a juror ignores court instructions and "tweets" information containing their thoughts and impressions.<sup>36</sup> In 2013, an author searched Twitter with the hashtag #juryduty<sup>37</sup> and identified 235 tweets from jurors engaging in discussions about their jury service, with several of the tweets linking to photos posted on Instagram or Twitter depicting their summons, the courthouse, or other

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<sup>34</sup> Theodore Eisenberg & Valerie P. Hans, Taking a Stand on Taking the Stand: The Effect of a Prior Criminal Record on the Decision to Testify and on Trial Outcomes, 94 CORNELL L. REV. 1353, 1385 (2009).

<sup>35</sup> Plotstedt, *supra* note 25, at 613-14.

<sup>36</sup> *Id.* at 583.

<sup>37</sup> *Id.* at 645 (citing sample #juryduty tweets between April 30, 2013-May 3, 2013); *See Using Hashtags on Twitter*, TWITTER, <https://support.twitter.com/articles/49309-using-hashtags-on-twitter#> ("The # symbol, called a hashtag, is used to mark keywords or topics in a Tweet. It was created organically by Twitter users as a way to categorize messages.") (last visited Apr. 9, 2022).

jurors.<sup>38</sup> Similarly, jurors have begun to create blog-style videos on TikTok using the hashtag #juryduty which allows other users on the platform to follow along on their experiences as jurors. In addition to posting about their own jury-related experiences, jurors have also utilized Twitter or other previously mentioned social media platforms to poll other users on their opinions about the case at hand. In fact, jurors have even used Facebook and Twitter to reach thousands of other users in real-time with questions about how they should rule; other users are encouraged to respond with their own opinions.<sup>39</sup>

When a juror posts on social media during trial, the question becomes whether the communication creates prejudice or whether the post or communication is innocuous as it relates to a defendant's Sixth Amendment rights. A judge must first ask whether the communication violated the instruction to refrain from cellular communication.<sup>40</sup> Second, a judge must determine whether the juror's language in the post was so prejudicial that it compromised the juror and inherently infringed on the defendant's Constitutional right to an impartial jury.<sup>41</sup> The subjective line between a juror's social media post being found prejudicial or not leaves far too much discretion in the hands of a judge, and the fact that an identical tweet could arguably be found prejudicial in Florida but not in Arizona is proof enough that a defendant's Sixth Amendment rights are impacted by a lack of uniform guidance in this area. Furthermore, court resources are wasted when trial is paused to examine instances of social media use among jurors, which pop up with increasing frequency. To allow jurors to use phones and social media during trial so long as

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<sup>38</sup> Plotstedt, *supra* note 25, at 603-604; *FAQ*, INSTAGRAM, <http://instagram.com/about/faq> (explaining that Instagram users can link their photographs to other social media sites, such as Facebook, Twitter, and Foursquare) (last visited Apr. 8, 2022).

<sup>39</sup> Rosalind R. Greene & Jan Mills Spaeth, Are Tweeters or Googlers in Your Jury Box?, ARIZ. ATT'Y, Feb. 2010, at 39-40.

<sup>40</sup> See SUP. CT. OF THE STATE OF FLA., CRIMINAL JURY INSTRUCTIONS CHAPTER 2: INSTRUCTIONS DURING THE TRIAL (2016).

<sup>41</sup> *Id.*

the activity does not violate the specific language of the instruction would require unrealistic oversight and trust in each juror's ability to control their impulses.<sup>42</sup> Thus, the judiciary must implement a standardized jury instruction mandating a ban of all social media and Internet use among individuals serving in their capacity as a juror.

#### **IV. The Creation of Social Media Jurors**

A person's reliance on social media in their normal daily life undoubtably has the potential to carry into their time on a jury unless its use is strictly prohibited and uniformly enforced throughout the nation. Enough incidents of juror misconduct involving social media have already occurred, which should prompt court administrations to formulate a cohesive and unified approach to preventing and remedying this type of juror misconduct. One particular case signals that some courts have been able to delineate when social media conduct crosses into the presumption of prejudice. During Baltimore Mayor Sheila Dixon's criminal trial, five jurors dubbed the "Facebook Five" by the media all friended each other mid-trial and violated the jury instruction by communicating with each other via Facebook about the trial.<sup>43</sup> A message in which one juror wrote to another juror, "see you tomorrow," was deemed innocent enough to not warrant a prejudicial finding.<sup>44</sup> In contrast, when another juror responded to a nonjuror's Facebook comment saying, "guilty as hell," the judge ordered a hearing to evaluate the online comment's potential abuse.<sup>45</sup> This high-profile case underscores the need to regulate jurors' activity on social media activity

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<sup>42</sup> This approach that purports as more of a Hail Mary than a solution.

<sup>43</sup> Leslie Y. Garfield Tenzer, *The Gen Z Juror*, 88 TEN. L. REV. 173, 195 (2020).

<sup>44</sup> Miland F. Simpler, III, *The Unjust "Web" We Weave: The Evolution Of Social Media And Its Psychological Impact On Juror Impartiality And Fair Trials*, 36 LAW & PSYCHOL. REV. 275, 286 (2012) (citing Robert Little, *Juror Contact in '06 with Dixon, Witness Could Cause Mistrial*, THE BALTIMORE SUN REPORTER (Dec. 5, 2009), [http://articles.baltimoresun.com/2009-12-05/news/bal-md.juror05dec05\\_1\\_dixon-trial-juror-contact-main-streets-program](http://articles.baltimoresun.com/2009-12-05/news/bal-md.juror05dec05_1_dixon-trial-juror-contact-main-streets-program)).

<sup>45</sup> *Id.*

which, if left unchecked, will continue to jeopardize juror impartiality and threaten the Constitutional safeguards guaranteed to criminal defendants.<sup>46</sup>

Yet, courts across the U.S. continue to address these types of juror misconduct cases in vastly different ways. In a sex abuse case that amassed attention in the media, a torn jury member expressed her uncertainty on Facebook alongside a poll, and some of the jurors' Facebook friends replied, recommending a guilty verdict.<sup>47</sup> In a murder trial in California, a juror was held in contempt of court for blogging throughout the trial, posting a photo of the murder weapon, and hosting a chat room in which outsiders could ask questions about the case.<sup>48</sup> When a juror sitting on a capital jury in Arkansas tweeted mid-trial, "Choices to be made. Hearts to be broken. We each define the great line," and the judge was alerted to the juror misconduct, the juror was instructed to cease tweeting but was not removed from the trial.<sup>49</sup> The juror continued to tweet, and the defendant was found guilty and sentenced to death.<sup>50</sup> The defendant's motion for a new trial was denied.<sup>51</sup> Another Arkansas court had the opportunity to revisit the issue of juror misconduct with social media when a juror used a phone to search information about the trial and shared that information with other jurors.<sup>52</sup> The court chose to merely replace the juror who sent the texts and continue with deliberations, concluding that "a mistrial is a drastic remedy and should be declared when there has been an error so prejudicial that justice cannot be served by continuing the trial."<sup>53</sup>

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<sup>46</sup> Simpler, III, *supra* note 44, at 278.

<sup>47</sup> Frank J. Mastro, Preventing the "Google Mistrial": The Challenge Posed by Jurors Who Use the Internet and Social Media, 37 LITIGATION 23, 27 (2011).

<sup>48</sup> Morrison, *supra* note 28, at 1600.

<sup>49</sup> Hon. Amy J. St. Eve, Ensuring An Impartial Jury In The Age of Social Media, 1 DUKE L. & TECH. REV. 1, 13 (2012) (quoting *Dimas-Martinez v. State*, 238 S.W.3d 238, 246 (Ark. 2011)).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Tenzer, *supra* note 43, at 195 (citing *Finch v. State*, 542 S.W.3d 143, 146-49 (Ark. 2018)).

<sup>53</sup> *Id.*

In contrast to Arkansas, the Eastern District of Pennsylvania ruled in one case that a juror was in criminal contempt of the court because he sent emails containing information about the trial to other jurors prior to deliberations.<sup>54</sup> A different Pennsylvania case points to the serious disparities in the way these matters are handled, not only between states across the country, but even in different state courts within the same state. In the high-profile case *United States v. Fumo*, a former Pennsylvania State Senator was convicted of fraud, tax evasion, and obstruction of justice while in public office. A television station reported during deliberations that a juror had been posting on both Facebook and Twitter about the trial for many months.<sup>55</sup> Upon hearing of the news report, the juror deleted his posts, and when questioned about his social media activity, the juror successfully convinced the court that he had not been influenced by outside materials.<sup>56</sup> The court held that the posts were “nothing more than harmless ramblings having no prejudicial effect. They were so vague as to be virtually meaningless.”<sup>57</sup> In denying the defendant a new trial, the Third Circuit acknowledged the risks associated with social media in the courtroom and “enthusiastically endorse[d]” the model social media instructions proposed by the United States Judicial Conference Committee on Court Administration and Case Management (“CACM”).<sup>58</sup> While the Third Circuit denial of a new trial can be reasonably doubted, its embrace of CACM’s proposed model instructions should be a rallying point for both the prosecution and defense. The ability of individual judges at the federal and state court levels to make discretionary decisions in this sphere based on whim or loosely-worded judicial recommendations continues to present significant implications for defendants’ Sixth Amendment protections.

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<sup>54</sup> *United States v. Juror No. One*, 866 F. Supp. 2d 442, 444-53 (E.D. Pa. 2011).

<sup>55</sup> 655 F.3d 288, 302 (3d Cir. 2011).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

In high-profile cases with heavy news coverage, such as *Fumo*, it becomes exponentially more difficult to secure and maintain an impartial jury. In *Palin v. N.Y. Times Co.*, former Alaska Governor Sarah Palin sued The New York Times for defamation over a gun violence article that linked a map circulated by Sarah Palin’s political action committee to the 2011 mass shooting in Arizona.<sup>59</sup> U.S. District Judge Rakoff dismissed the complaint in 2017, finding that Palin had failed to meet the standard of showing actual malice, and the Federal Appeals Court revived the case in 2019.<sup>60</sup> While the jury was deliberating at the second trial, Judge Rakoff publicly announced that he would dismiss the case regardless of the jury’s decision.<sup>61</sup> During the trial, the jurors had been reminded not to read or watch any coverage of the case in the press or talk to anyone other than their fellow jurors about the case.<sup>62</sup> Shortly thereafter, it was revealed that multiple jury members had received news alerts about Judge Rakoff’s decision on their cell phones.<sup>63</sup> According to Judge Rakoff, the jurors claimed this news blast had not “played any role whatever in their deliberations,” but he gave the parties the opportunity to seek relief and initiate further proceedings.<sup>64</sup> At a bare minimum, jurors’ awareness of Judge Rakoff’s proclamation as reported by the media injected an element of doubt into their ability to render an impartial verdict.

When a judge exercises discretion in deciding during trial whether a particular tweet or other juror misconduct on social media was prejudicial or not—or post-verdict, whether jury misconduct was present during deliberation—the concern becomes whether the judge, rather than the jury, is taking the role of the “fact-finder.” For example, in the *Palin* case, the possibility that

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<sup>59</sup> 933 F.3d 160, 165 (2d Cir. 2019).

<sup>60</sup> *Id.*

<sup>61</sup> Ashley Cullins, *Could Jurors’ Smartphone Alerts Push an Appellate Court’s Buttons in Sarah Palin-N.Y. Times Defamation Fight*, THE HOLLYWOOD REPORTER (Feb. 16, 2022), <https://www.hollywoodreporter.com/business/business-news/sarah-palin-new-york-times-legal-1235094885/>.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*



the news update tainted the decision of the jury is more than palpable, yet the judge did not grant a mistrial and left it up to the parties to present grounds for relief. This decision begs the question of whether the judge—through the implication of social media—is replacing the judgment of the jury with his own judgment of how the case should be decided. If true, then Sarah Palin’s Sixth Amendment right to a fair and impartial trial was violated.

## **V. Developing and Refining Solutions**

While it is challenging for courts to prevent jurors from learning about a case by way of exposure to media and news outlets prior serving on a jury, it seems comparably less burdensome to prevent individuals from using social media while acting in their capacity as a juror. Courts have experimented with several methods intended to curb jury misconduct with social media, such as imposing limits on jurors' access to electronic devices, monitoring jurors’ Internet activity,<sup>65</sup> implementing jury instructions which specifically restricting Internet and social media activity, and allowing attorneys to use voir dire to identify jurors at risk for Internet-related misconduct.<sup>66</sup> However, none of these methods have proven to be infallible on their own.

Jury instructions merely prohibiting jurors from communicating with outsiders during trial, void of any specifications, are among the least effective yet most easily remediable solutions to jurors’ social media misconduct. Jurors may disregard these vague instructions either intentionally or unintentionally. In today’s day and age, smartphones and social media are so ingrained into peoples’ lives that it is second nature to share experiences with friends and family in real time. Rather than pick up the phone and call people individually, it has become the norm to take to social

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<sup>65</sup> Ralph Artigliere et al., Reining in Juror Misconduct: Practical Suggestions for Judges and Lawyers, FLA. B.J., Jan. 2010, at 8. Privacy concerns arise when courts monitor jurors’ Internet activity, and jurors may circumvent these efforts by creating anonymous or cryptic social media accounts requiring significant oversight to identify and supervise.

<sup>66</sup> Zora, *supra* note 26, at 579.

media to talk about the daily happenings and share thoughts on hot topics. Although jurors are told to refrain from communicating about the trial until deliberations are over, some jurors may not realize that posting on social media is considered a “communication,” given that posts on Facebook and Instagram are typically “one-way communications” in which users express ideas rather than solicit ideas from other people.<sup>67</sup> Jurors who unintentionally disobey jury instructions would benefit from the implementation of specific social media jury instructions on a national level. This would allow all jurors—regardless of jurisdiction—to attain a deeper understanding of what types of communications are limited, why the limitations are in place, and how the trial process might be harmed if the instructions are disobeyed.<sup>68</sup>

However, some jurors might realize that posting on social media is regarded as a “communication” but continue to post anyway because they are unwilling to sacrifice that part of their everyday lives. Unlike jurors conducting outside research, jurors posting about their thoughts and experiences about the trial on social media cannot argue that they are looking for information to aid in making an informed decision in deliberations.<sup>69</sup> For example, a juror on a high-profile case may be more likely to ignore the jury instruction on social media communication and give in to the urge to share information with the public if the punitive threat is not enough of a deterrence.<sup>70</sup> Thus, a judge cannot merely order a juror to write an essay about the Sixth Amendment and pay a fine of \$250 for disobeying a social media instruction.<sup>71</sup> A stronger approach to curbing intentional

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<sup>67</sup> James A. Edwards, Jurors Who Tweet, Blog & Surf - Deciding and Discussing Your Case, Part I, 77 THE BRIEFS, Oct. 2009, at 18.

<sup>68</sup> BAR OF ARIZ., PRELIMINARY CRIMINAL INSTRUCTIONS (2020) (“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.”).

<sup>69</sup> Zora, *supra* note 26, at 589.

<sup>70</sup> *Id.*

<sup>71</sup> Jameson Cook, *Juror Ordered to Write Essay About Sixth Amendment for Facebook Posting*, MACOMB DAILY (Apr. 11, 2012), <http://www.macombdaily.com/article/20100902/NEWS/309029991/video-juror-ordered-to-write->

juror misconduct may be to require jurors sign a waiver acknowledging they are aware of the consequences for disobeying social media jury instructions. An effective sanction would be to hold the juror in contempt of court, which would result in mandatory community service for up to a year and payment of some or all the cost of lost court resources resulting from that juror's wrongdoings. Execution of this sanction would vary based on factors such as the number of jurors involved, the income of the juror(s), and the total amount of resources lost. If multiple jurors were complicit in the social media misconduct, the individuals would share the cost of recouping the court's lost resources. While this is a significant repercussion, its deterrent effects would certainly decrease electronic misconduct among jurors and act as an added safeguard to Constitutional guarantees.<sup>72</sup>

Common court instructions have failed to reliably prevent misconduct from occurring, when in practice, they should be a strong first line of defense against Sixth Amendment violations. The federal judiciary should establish and mandate a uniform set of requirements for social media jury instructions and implement punitive sanctions on a national level. Allowing these two solutions to work in tandem would remove the wide discretion of judges and help ensure the carriage of justice regardless of jurisdiction. The most recent American Bar Association ("ABA") report on the Principles for Juries and Jury Trials recommends the court provide instructions to the

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<sup>72</sup> See generally Alexandra Schonfeld, *New Law to Reuigre Drunk Drivers to Pay Child Support if Parent is Killed*, NEWSWEEK (Mar. 4, 2022), <https://www.newsweek.com/new-law-require-drunk-drivers-pay-child-support-if-parent-killed-1685047>. "Bentley's Law" was recently passed in Tennessee, whereby a person who has been convicted of vehicular homicide or aggravated vehicular homicide due to intoxication and in which the victim of the offense was the parent of a minor child will be ordered to pay damages in the form of child support to each of the victim's children until each child turns eighteen years old and has graduated from high school. If the person is incarcerated and can't pay, the defendant is given one year after their release to begin payments. If the child turns eighteen and hasn't been paid in full, payments will continue until the child is entirely compensated. The payments will vary depending on the offender's income.

jury in plain and understandable language throughout the course of trial.<sup>73</sup> The ABA recommends the social media jury instruction state the following:

The ban on outside communication is broad, encompassing not only oral discussion in person or by phone, but also communications through e-mails, texts, Internet postings, blog postings, social media websites like Facebook or Twitter, and any other method for sharing information about the case with another person or gathering information about the case from another person.<sup>74</sup>

In 2020, the Federal Judiciary Committee (“FJC”) also issued a set of model jury instructions that judges may use to deter jurors from using social media to research or communicate about cases.<sup>75</sup> These instructions aim to caution jurors about the ways in which social media can undermine a jury’s impartiality. Additionally, the FJC suggests that reminders about social media restrictions be given throughout trial, rather than just at the beginning and the end. These model instructions come eight years after the last recommended instructions were disseminated by the FJC—a period so significant within the social media sphere that the 2012 model instructions referenced smartphone services and social media sites that significantly declined in popularity or completely ceased to exist, signaling a need for the judiciary to revisit this issue with increased regularity.<sup>76</sup>

The FJC model instructions for voir dire warn potential jurors that they are prohibited from using social media and communicating in any way with fellow jurors prior to the conclusion of trial or with anyone else until after a decision has been reached.<sup>77</sup> Some modern-day courts have experimented with the use of voir dire questioning, whereby attorneys ask potential jurors about their regular social media use, inform potential jurors of the restrictions they would face during

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<sup>73</sup> AM. BAR ASS’N, PRINCIPLES FOR JURIES AND JURY TRIALS 15 (2016).

<sup>74</sup> *Id.*

<sup>75</sup> FED. JUD. COMM., PROPOSED MODEL JURY INSTRUCTIONS: THE USE OF ELECTRONIC TECHNOLOGY TO LEARN OR COMMUNICATE ABOUT A CASE (2020).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

trial, and permit them to forego jury duty if they are unable to comply with the technology and social media bans.<sup>78</sup> However, attorneys have only a limited number of peremptory strikes, which are likely insufficient to eliminate every potential juror who engages in high levels of Internet activity.<sup>79</sup> Furthermore, voir dire questioning poses concerns regarding the jury pool, as the selected juries would leave out tech-savvy individuals and thus would not be representative of the community.<sup>80</sup> Similarly, allowing potential jurors to recuse themselves from jury duty merely because they are unable to detach from their devices and platforms jeopardizes the justice system, which hinges on each American's fulfillment of their civic duty. Thus, attorneys should be given additional peremptory strikes specifically dedicated to removing potential jurors believed to be unsuitable for jury duty based on voir dire questioning regarding social media use. Attorneys would be required to provide detailed reasoning for use of these peremptory strikes, as to ensure they are not used as a veil to satisfy a different motive. The in-depth justification could include screen grabs from the individual's social media pages to verify their significant follower count and frequent activity on the platform. This solution would not pose a threat to the representative nature of the jury pool. For example, if there are five self-proclaimed social media connoisseurs in the jury pool, but one is a social media "influencer" who makes an income from engaging with their followers, the jury pool hardly becomes any less representative of the tech-savvy population if the attorney removes that one potential juror.<sup>81</sup> Rather, the court has taken preventative steps to protect the Sixth Amendment guarantee to a fair, speedy trial and an impartial jury, and court resources

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<sup>78</sup> Zora, *supra* note 26, at 597.

<sup>79</sup> *Id.*

<sup>80</sup> Morrison, *supra* note 28, at 1613.

<sup>81</sup> See *What is a social media influencer?*, PIXLEE, <https://www.pixlee.com/definitions/definition-social-media-influencer> ("A Social Media Influencer is a user on social media who has established credibility in a specific industry. A social media influencer has access to a large audience and can persuade others by virtue of their authenticity and reach.") (last visited Apr. 21, 2022).

have been prioritized by reducing the chances of mistrial. Furthermore, courts cannot rely solely on trial safeguards such as voir dire to remedy antiquated laws such as Rule 606(b). Therefore, the judiciary must carve out universal exemptions allowing jurors to testify about deliberations post-verdict in cases where illicit social media transpired.

Regarding social media use, the FJC model jury instructions to be read prior to the start of trial state, in part, as follows:

The Sixth Amendment of our Constitution guarantees a trial by an impartial jury. This means that, as jurors, you must decide this case based solely on the evidence and law presented to you here in this courtroom. Until all the evidence and arguments have been presented and you begin to deliberate, you may not discuss this case with anyone, even your fellow jurors. After you start to deliberate, you may discuss the case, the evidence, and the law as it has been presented, but only with your fellow jurors. You cannot discuss it with anyone else until you have returned a verdict and the case has come to an end. I'll now walk through some specific examples of what this means.

First, this means that, during the trial, you must not conduct any independent research about this case, or the matters, legal issues, individuals, or other entities involved in this case. Just as you must not search or review any traditional sources of information about this case (such as dictionaries, reference materials, or television news or entertainment programs), you also must not search the internet or any other electronic resources for information about this case or the witnesses or parties involved in it. The bottom line for the important work you will be doing is that you must base your verdict only on the evidence presented in this courtroom, along with instructions on the law that I will provide.

Second, this means that you must not communicate about the case with anyone, including your family and friends, until deliberations, when you will discuss the case with only other jurors. During deliberations, you must continue not to communicate about the case with anyone else. Most of us use smartphones, tablets, or computers in our daily lives to access the internet, for information, and to participate in social media platforms. To remain impartial jurors, however, you must not communicate with anyone about this case, whether in person, in writing, or through email, text messaging, blogs, or social media websites and apps (like Twitter, Facebook, Instagram, LinkedIn, YouTube, WhatsApp, and Snapchat).

Please note that these restrictions are about *all* kinds of communications about this case, even those that are not directed at any particular person or group. Communications like blog posts or tweets can be shared to an ever-expanding circle of people and can have an unexpected impact on this trial. For example, a post you

make to your social media account might be viewable by a witness who is not supposed to know what has happened in this courtroom before he or she has testified. For these reasons, you must inform me immediately if you learn about or share any information about the case outside of this courtroom, even if by accident, or if you discover that another juror has done so.<sup>82</sup>

Additionally, the FJC recommends the following instruction be read to the jury prior to deliberations:

Throughout your deliberations, you may discuss with each other the evidence and the law that has been presented in this case, but you must not communicate with anyone else by any means about the case. You also cannot learn from outside sources about the case, the matters in the case, the legal issues in the case, or individuals or other entities involved in the case. This means you may not use any electronic device or media (such as a phone, computer, or tablet), the internet, any text or instant messaging service, or any social media apps (such as Twitter, Facebook, Instagram, LinkedIn, YouTube, WhatsApp, and Snapchat) to research or communicate about what you've seen and heard in this courtroom.

These restrictions continue during deliberations because it is essential, under our Constitution, that you decide this case based solely on the evidence and law presented in this courtroom. Information you find on the internet or through social media might be incomplete, misleading, or inaccurate. And, as I noted in my instructions at the start of the trial, even using your smartphones, tablets, and computers - and the news and social media apps on those devices - may inadvertently expose you to certain notices, such as pop-ups or advertisements, that could influence your consideration of the matters you've heard about in this courtroom.

You are permitted to discuss the case with only your fellow jurors during deliberations because they have seen and heard the same evidence and instructions on the law that you have, and it is important that you decide this case solely on the evidence presented during the trial, without undue influence by anything or anyone outside of the courtroom. For this reason, I expect you to inform me at the earliest opportunity, should you learn about or share any information about this case outside of this courtroom or the jury room, or learn that another juror has done so.<sup>83</sup>

If wholly implemented on a national scale, several points—most of which are included in the FJC model instructions—would contribute to the overall effectiveness of jury instructions on social media. These elements include the following: (a) explanations for reasons behind the social

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

media ban during trial; (b) descriptions of how improper juror communications and Internet research include the use of social media; (c) specifications of the platforms and accompanying activity prohibited (Facebook, Twitter, etc.); (d) designated social media preemptory strikes during voir dire; (e) reiteration the social media ban at multiple points throughout the trial, specifically before deliberations; (f) removal of all access to the Internet and cellular networks within the deliberation room; (g) warning of jurors' own personal consequences for violating the instruction; (h) warning of the cost of mistrials, both in terms of taxpayer money and the time of the judge, attorneys, parties, witnesses, and other jurors; (i) mandate for courts to frequently revisit methods of preventing and monitoring social media misconduct among jurors; and (j) requirement that judges be continually educated on the most current trends in social media, electronic devices, and Internet research.

The national implementation of deterrent punitive sanctions and social media instructions containing the aforementioned factors would undoubtably provide the fortification of the Sixth Amendment that the current system calls for. But as society evolves with social media, so too must the judiciary. Instances in which jurors receive information to their cell phones without actively seeking out that information—and those alike—will persist so long the judiciary does not continue the search for solutions. Some federal judges have reportedly confiscated cell phones and devices during deliberations, while others indicated that they confiscated cell phones at the beginning of the trial.<sup>84</sup> Efforts to confiscate cell phones seem futile, given the likelihood that jurors will access the Internet during breaks and when they return home prior to deliberations. Alternatively, restricting access to the Internet and cellular networks would be infallible even if a juror managed to smuggle a device into the deliberation room. Courts could disable access to all networks except

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<sup>84</sup> Plotstedt, *supra* note 25, at 639.



for one password-protected network available to those who require access, such as reporters. This solution would require far less court resources than would ensuring jurors are never in possession of a device with Internet capabilities, or sequestering jurors from their homes for the duration of a trial.

Additionally, the idea of an active jury, whereby jurors can take notes and ask questions during trial, is a viable solution to social media use among jurors. Principle 13 of the ABA report highlights that one of the pillars of justice in American courts is for the court and the parties to vigorously promote juror understanding of the facts and the law.<sup>85</sup> Accordingly, the report says that jurors should be allowed to take notes during trial. The five caveats of this recommendation are as follows: (1) jurors should be instructed at the beginning of trial that they are permitted, but not required, to take notes; (2) jurors should be permitted to use their notes throughout trial and during deliberations; (3) the court should ensure that jurors have implements for taking notes; (4) the court should collect all juror notes at the end of each day of trial until the jury returns to deliberate; and (5) the notes are collected and destroyed after the verdict is returned.<sup>86</sup> While these guidelines are a crucial starting point for incorporating and mandating active juries in the American court system, there are two modifications to be made. First, all jurors should be required to participate in the process of notetaking. Giving jurors the ability to decide for themselves whether to fully engage during trial is a slippery slope. Jurors who do not wish to take notes may become distracted and wonder what jurors around them are writing. Additionally, when the jury is being read an instruction on notetaking, a juror choosing to forego participation in notetaking may tune out the instruction, believing that some instructions are less applicable to their personal experiences as a juror than others.

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<sup>85</sup> AM. BAR ASS'N, PRINCIPLES FOR JURIES AND JURY TRIALS 15 (2016).

<sup>86</sup> *Id.*

Second, it is important that jurors take notes on electronic devices. Of course, the devices would be stripped of Internet and accompanying communication capabilities. But allowing jurors to use computers or tablets to take notes would stimulate the feeling of being connected through technology—a feeling all too familiar in modern day society. Requiring the use of notebooks would not only perpetuate the feeling of disconnectedness among jurors that drives them to access the Internet in illicit ways, but it would also pose a challenge to one of the requirements set out by the ABA. The destruction of notes by the click of a button on an Internet-restricted device at the end of trial is far more practicable than by physically shredding and disposing of twelve different notebooks. Furthermore, allowing jurors to use tablets would decrease the possibility that one juror could look at another juror’s notes. Jurors would receive their own personal credentials allowing them to easily login and logout of any court-registered device and access the designated note-taking application containing their own personal notes.

In the ABA report, Principle 13 also recommends that jurors be allowed to submit written questions for witnesses.<sup>87</sup> The ABA says this would be possible if the following steps were taken: (1) jurors were instructed at the beginning of trial on their ability to submitted written questions; (2) the court enters the questions into the record and, outside the hearing of the jury, give the parties the opportunity to interpose objections and suggest modifications to the question; (3) after the question is deemed appropriate, the court determines who should pose the question to the witness and eliminate any objectionable material; and (4) after the question is answered, the parties should be given an opportunity to ask follow-up questions.<sup>88</sup> While the ability for jurors to ask questions during trial is essential to the functioning of an active jury, the judiciary would need to preemptively address limitations to this solution. For example, the judiciary must establish a

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<sup>87</sup> *Id.* at 16.

<sup>88</sup> *Id.*

protocol for how courts should proceed if they determine that a juror's question is inappropriate for a witness to answer. A juror whose question is deemed unanswerable will likely be tempted to search the Internet for information, which may be shared with other members of the jury. The solution to this problem may be as simple as requiring the judge and attorneys to jointly formulate a response as to why the question cannot be answered and disseminate it to the respective jury member.

Furthermore, juries can become more "active" by taking notes, asking clarifying questions, discussing the case with fellow jurors prior to deliberation, and participating in a juror orientation program. The first part of the juror orientation program hinges on a juror orientation video, created by the FJC and shown to all jurors, regardless of state or court. There should be three iterations of this video, each comporting to the different stages of trial, including voir dire, the beginning of trial, and prior to deliberations. Each video should contain specific instructions on Internet use and social media communications, reasons for the prohibitions, and sanctions that are imposed for noncompliance with the rules. Additionally, as part of the juror orientation program, jurors should be required to login to their notetaking account and take a "quiz" at the start of each new day of trial, after having been reunited with their devices at home the previous night. Jurors would simply document what they learned the previous day and take note of what, if anything, felt impactful to them. This quiz would benefit jurors during deliberations by serving as a reminder to what struck them at different points during trial. Furthermore, the quiz would allow judges to ensure jurors are fully paying attention during trial and maintaining their own thoughts and opinions. Judges would not be *required* to review the jurors' quizzes; the quizzes would simply serve as a record in an investigation into allegations of juror misconduct or impartiality. Ideally, if juror conducts outside research or communicates on social media at any point during trial, this will be evident upon

chronological review of the quizzes. The juror orientation program would ensure that individuals fully assimilate into their roles as jurors, rendering them more capable of comprehending the brevity of their duties and consequences of their actions. Disparate outcomes of trials tainted by juror social media misconduct would significantly decrease if the judiciary implemented uniform jury instructions, probative punitive sanctions, and more progressive jury systems. As a result, the American justice system would be better equipped to prevent Sixth Amendment violations stemming from social media use and abuse among jurors.

## **VI. Conclusion**

The implementation of national uniform jury instructions, probative sanctions, and a modernized jury system is long overdue within U.S. courts. Social media use among jurors does not vary between jurisdictions, and thus solutions to this prevalent issue must be uniformly applied to effectively decrease disparate outcomes of trials in which social media misconduct arises. The ability for judges at the federal and state court levels to make discretionary decisions in this sphere based on inconsistent, and often antiquated, judicial recommendations perpetuate implications for defendants' Sixth Amendment rights. As a starting point, each state must adopt uniform instructions on Internet and social media use—and accompanying punitive sanctions—to eliminate ad hoc solutions and same-state discrepancies. Ultimately, the establishment of clear-cut national standards for social media use among jurors will lift the veil of uncertainty and reveal a properly functioning jury system, which emphasizes the need to preserve defendants' Sixth Amendment guarantee to a fair trial and impartial jury.