Innocent Until Tweeted: How New Media Threaten an Old System, and a Framework For Fixing American Courts

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Dedication

This thesis is dedicated to the incredible faculty who have guided me through an often trying three years in the Law School and two years as a dual degree JD/MA student with the School of Journalism and Mass Communication. I would especially like to dedicate this to two professors: Professor Seth Lewis, who is not only one of the best professors I have had in my post-graduate career, but who is also one of the most inspirational people I know; and Professor Jane Kirtley, who seems to be the smartest person in any room. I would also like to dedicate this, and everything I do, to my family, and especially to Suzanne, who has always been there for me not just in this program, but in life in general.

Abstract

The Sixth Amendment guarantees criminal defendants the right to an impartial jury. To protect this promise, jurors must, as stated in Patterson v. People of State of Colorado, ignore "outside influences" and determine guilt or innocence based solely on evidence offered in court. Courts are responsible for protecting jurors from these influences in two ways: first, by preventing them from seeking external information during the course of a trial, and second, by ensuring that jurors execute their role without carrying preconceived notions about a defendant into trial. These responsibilities, and thus the jury process as a whole, is threatened when a juror takes to social media, as both impartiality and the ability to maintain an open mind throughout trial are put in jeopardy. State courts have attempted to curb the problem by issuing social media jury instructions, limiting access to smartphones, and even supervising Internet activity—but these efforts have done little to eliminate the problem, and juror misconduct on social media continues to grow in the face of large-scale digital media proliferation. This study outlines the scholarly and legal frameworks for monitoring and managing social media usage by jurors in the courtroom, intertwined with conceptual rationales for social media reform in criminal trials. Using a Constant Comparative Analysis (CCA) methodology, this paper qualitatively assesses the current state court frameworks in place, interwoven with rhetorical critique of persuasive appeals, in order to assess and analyze the hurdles that the criminal justice system faces with regard to jurors' use of social media. Using this analysis, this paper suggests an approach that courts might take in devising and implementing more effective instructions for social media use by jurors.

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CHAPTER ONE

INTRODUCTION

In late August 2014, Arizona Cardinals linebacker Darnell Dockett tore his right ACL during a pre-season practice, ending his season and sidelining him for the year. Despite the seriousness of the injury, Dockett soon found the forthcoming media attention to be the least of his off-the-field concerns. With his newfound free time, Dockett took to learning the intricacies of social media, spending most of his days networking with fans and discussing the latest news, sports, and current events. When he was called to jury duty in December of the same year, however, he took those interactions a step too far.

In a series of tweets fired out over the course of five hours, Dockett revealed everything he witnessed while in the jury box, from his opinion on the accused to his issues with the criminal justice system. With tweets like, "I wish this guy would have told me what his intentions [were], I could have helped him plan this out better to get away with it," "I'm the wrong guy to be put on jury duty…dude is innocent in my book," and even, "They have no idea I am double parked in a handicap spot outside this courthouse in a 450K car with a registered pistol," Dockett found himself at the center of a firestorm over the lack of social media oversight in jury trials. As media outlets rushed to cover the story and its potential impact on the case at hand, legal scholars had mixed reactions, noting everything from Dockett's ignorance of the central tenets of the criminal justice

system to the surprising familiarity by which jurors are engaging in this type of behavior. Jurors' use of social media, some argued, was only the newest iteration of juror misconduct, placing the conversations that jurors have with the outside world in a more digitally permeating space—in other words, that the practice of external communication was not new, but the form in which it transpired was.

New media's immediate access to the outside world, combined with its ability to give jurors unprecedented glimpses into the nuances of trial evidence, poses a significantly more dangerous threat to the fair and effective administration of justice than previous modes of communication. The American judicial system has struggled to deal with social media usage for years, but the recent large-scale proliferation of smartphone devices has put an unparalleled amount of power in the hands of users—a power that jurors have reportedly utilized to a frightening extent. A 2010 investigative report by Reuters uncovered ninety verdicts since 1999 that were called into question because of juror misconduct on social media, with more recent studies finding that the instances of improper online behavior have increased exponentially (Morrison, 2010; St. Eve & Zuckerman, 2013). This rapid growth in the use of new media in the jury box threatens the effective administration of justice in criminal courts; more specifically, it undermines perhaps the most fundamental institution in the U.S. legal system: impartial juries.

The Sixth Amendment affords criminal defendants the right to an impartial jury. To guarantee this right, jurors must, as expressed in *Patterson v. People of State of Colorado*, ignore "outside influences" and determine innocence or guilt based only on evidence offered in court. Protecting jurors from these influences necessitates the

prevention of external information seeking, and it also requires that jurors arrive at the process without preconceived notions about the defendant. This process is threatened when jurors take to social media, as their impartiality and ability to maintain an open mind throughout trial are put at risk through digital media channels—with everything from posting on Twitter and Facebook to soliciting advice about the trial to using geo-location services to explore crime scenes.

Not only does this practice pose the potential to expand the means by which we understand the fair administration of justice in the modern criminal context, but it also holds the capacity to alter the ways in which we think about social media's place in the United States. While past research on jurors' use of new media has primarily centered on the dangers that such utilization poses, little research exists with regard to the constraints that courts place on juries to limit these dangers. Contemporary courts have attempted to curb the problem by devising social media instructions—sets of guidelines read to jurors at the start of a trial—but little scholarly research has examined the nature and efficacy of these efforts. Further, the research that does address these restrictions does so on a strictly survey level, gathering the instructions used by state and federal courts but largely failing to examine their rhetorical efficacy (Robinson, 2012). Given the wide array of variance among these instructions and the preferential flexibility afforded courts in even issuing them, combined with the potential effects of subsequent juror misconduct on criminal defendants, the state of social media jury instructions must be examined. Therefore, extensive study is imperative.

The Gap in Existing Research

Despite previous research on social media usage in criminal trials, several critical areas remain unexamined. First, prior research has analyzed jurors' use of social media primarily in terms of its negative effects on courtroom dynamics. However, such an approach fails to examine the relationship between misuse and the justice system's attempts to curb it, specifically by failing to dissect how and why these attempts are not working. But this system-focused approach is key to understanding how the criminal justice system is responding—and more important, how it should respond—to the evolving threat that social media pose. Second, while some research exists that analyzes how contemporary courts are addressing this problem, most of it does so from an observational, rather than analytical, perspective. Such literature surveys state and federal policies from a descriptive angle, but fails to analyze the language of the policies. This language is key to understanding the persuasive appeals that courts are currently using, and, by looking to which policies are proving more effective, to determining the best approaches for courts moving forward. In other words, prior research has not examined the rhetoric behind courts' attempts to stop jurors from using social media, and addressing this gap may help to uncover why certain states have seen a decrease in social media abuse, such as Utah and New York, while others have seen little, if any, change, such as Michigan and Indiana.

To do so, however, the research within the realm must be examined in three distinct areas. First, because social media allow jurors to access prohibited information that is more personal and responsive than previous forms of disallowed material, such as

the access of Google while at home after a day of deliberations, it necessitates a discussion of how these platforms alter juror perceptions and weaken the integrity of the judicial process. Second, because social media provide a platform for jurors to engage in real-time communication with non-jury-members, the literature surrounding the changing landscape of real-time juror interaction with external influences must be explored. Finally, because this study necessitates an examination of the rhetoric behind courts' approaches to restricting social media use, the current tactics utilized within the judicial system must be examined.

Defining Social Media in the Juror Context

Social media have varying definitions depending on the field of study. For the purposes of discussing these platforms in the legal context, scholars and legal professionals are most concerned with User-Generated Content (UGC) (Miller, 2013; St. Eve & Zuckerman, 2013). According to the Organization for Economic Cooperation and Development (2007), UGC must fulfill three requirements in order to qualify as such: first, it must be published on a publicly accessible website; second, it must show some amount of creative effort, defined by some semblance of original thought on behalf of the user; and third, it must have been created outside of professional routines or practices. These requirements limit what constitutes social media. The first requirement excludes content sent or received through private communication, such as email. The second excludes the basic replication of existing content. The final one excludes content created for commercial purposes. Social media in the legal context is thus best understood as the platforms that allow for the creation and exchange of UGC. Therefore, social media in

the legal context include social networking sites such as Twitter and Facebook, a definition which aligns with other established fields, such as mass communication. However, legal scholars in this area have highlighted the general lack of awareness exhibited by courts in how social media operate, and as such, many courts treat other application-based sites as social media as well, including, for instance, Google Maps (Robinson, 2011; St. Eve & Zuckerman, 2013). This falls outside of the more stringent definition of user-generated content described above, and is thus only mentioned briefly in this study. This study instead focuses on the more strict definition outlined above.

Access to Information

Social media has altered the accessibility of prohibited material and allowed jurors to access previously unavailable information (Browning, 2014). Instead of seeking out in-person sources or scouring through newspapers for information on a case or defendant, jurors now have infinite amounts of data available at the press of a button (Kaplan & Haenlein, 2010). With this ability, however, come two concerns over defendants' Sixth Amendment rights.

First, social media are notoriously incomplete, biased, and even intentionally misleading (Dewey, 2014). In spite of the pitfalls regarding accuracy, information found on social media networks has been connected to influencing decision-making processes (Romero, Galuba, Asur & Huberman, 2011), voting patterns (Beck, 2002), purchasing behavior (Heller Baird & Parsons, 2011; Naylor, Lamberton & West, 2012), and even relationship choices (Slater, 2007), partly because these digital interactions can take the place of interpersonal ones. As a result, legal scholars have expressed concern not only

over jurors' propensity for utilizing social media to seek out information on a defendant, but also to use incorrect or inaccurate information to do so (Zora, 2012). Access to such information can put defendants at a distinct disadvantage in a trial. In other words, through the medium of a social network, a juror may discover information about a defendant's criminal history, the personal lives of witnesses, or even the nature and landscape of a crime scene, each of which can not only significantly impact a juror's decision-making process, but can also be imprecise or erroneous, creating a double-edged sword in which social media present two equally problematic concerns at the same time (Simpler, 2012). Second, social media act as types of alternative evidence-providers, meaning that jurors can base their decisions on the external information noted above—such as online records—that the defendant never knows about, and therefore never has the opportunity to counter or contest. Given the Sixth Amendment's guarantee that criminal defendants have the right to refute both tangible evidence and circumstantial testimony, this loophole is understandably problematic (Sklansky, 2012). Gaebler (2014) expands on this problem, noting that this type of access to information about criminals, crime scenes, and even witnesses increases the likelihood of a conviction, and given the accuracy concerns noted earlier, combined with the popularity of smart phone devices, the potential pitfalls are only likely to increase over time. This results in skewed juror perceptions and undermines the protections of the Sixth Amendment.

Real-Time Communication

Prior to the advent of social media, court officials' primary concerns over juror tampering via improper communication revolved around a relatively limited amount of

in-person interactions. Discussion platforms such as Facebook, Twitter, and blog-based services allow jurors seemingly limitless potential interactions, and advanced privacy settings preclude officials from tracking many of them, leaving a large majority of them unnoticed. Even a cursory search of Twitter on the average day turns up approximately twenty live-tweets from jurors every hour, but as Goolsby (2010) highlights, the judicial system remains predominantly blind to this frequency. Popular mass media is only encouraging the problem, even glorifying Twitter users for posting about what they see while performing their civic duty, under the argument that it holds educational value as to how the process works (Marder, 2014).

Research suggests that jurors have utilized these platforms to provide the factual backgrounds of cases to other users within their social sphere and to solicit advice on how to decide (CCPIO, 2014). Distinct from the threat posed by information access, real-time communication allows jurors to petition on-demand advice about a trial (St. Eve & Zuckerman, 2012). In addition, the process of information dissemination serves to tarnish the reputation of the defendant long before a verdict is ever reached—meaning that real-time communication allows non-jurors to act as jurors before the actual jurors get to do so, and since these interactions are often publicly available, a defendant's reputation is potentially ruined in the court of public opinion, regardless of the actual outcome of the trial (Strutin, 2011). This not only prevents impartiality within the courtroom, but also tampers with the justice system itself, raising both legal and ethical implications. Jurors may post their opinions to social media prior to adjudication, suggesting that such opinions are already formed and impervious to change. This conclusion finds support in

Marwick's (2013) research, which suggests that once a person posts a prospective decision to social media, he or she feels obligated to follow through on that decision. Further, as Robinson (2012) highlights, jurors may seek advice from outside influences not involved in the courtroom process in order to form those opinions in the first place, creating a perpetual cycle in which any use of the platforms threatens the judicial system. Such a progression severely undermines the guarantees granted to defendants under the Sixth Amendment.

Courtroom Strategy

Contemporary courts, like most social institutions, tend to address burgeoning social issues more slowly than they occur, with some scholars even suggesting that the judicial system lags five to ten years behind social demands and movements (Neubauer & Fradella, 2016). Jurors' use of social media is no exception. The Supreme Court has not spoken on the issue of social media in courtrooms. And, because no federal legislation exists mandating proper usage—aside from a smattering of federal circuits that suggest jury instructions but do not require them (Robinson, 2011), with some circuits even maintaining via established case law that the instructions are non-binding and meant only as "helpful suggestions" (*U.S. v. Williams*, 1994)—the issue is left mostly addressed by state courts, which tend to have a greater aptitude for adjusting to social contexts (Neubauer & Fradella). Even on the state level, though, implementations have been gradual, with only nine states mandating specific instructions for jurors' use of social media (National Center for State Courts, 2016).

In 2010, the U.S. Judicial Conference, the national policy-making body for the

federal court system, drafted a model instruction regarding the issue, which it then updated in 2012 to read:

> You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter, through any blog or website, including Facebook, Google+, My Space, LinkedIn, or YouTube. You may not use any similar technology of social media, even if I have not specifically mentioned it here. I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

However, few federal circuits have adopted these guidelines in any form, largely due to judges' hesitancy toward discussing topics they know little about (St. Eve & Zuckerman, 2013). The states that have enacted guidelines appear to have done so on their own accord and not at the behest of, or even with the guidance of, the federal suggestion (Wold, 2012). Complicating the issue is research showing that jurors do not view online usage during trials as problematic. In some instances, jurors even reported that utilization should be encouraged, so as to give them a more complete picture of the case (Morrison, 2010). Some scholars suggest that at least a portion of this belief is attributable to the lack of specificity rampant throughout both federal- and state-level jury instructions. Most courts that implement these instructions use only generic prohibitions against Internet use, rather than providing more precise and exacting guidelines that give jurors a clearer picture of what is, and what is not, allowed. Further, because of the ubiquity of social media noted earlier, it seems unlikely that generalized instructions, without more specific deterrence language, will prove effective—and, as Morrison (2010) underscores, such language would have a difficult obstacle to overcome, given jurors' beliefs that the benefits of social media usage outweigh the drawbacks.

This disparity between law and belief has led some scholars to suggest that courts

take a more active role in the process, without articulating what that role should be, or how it should be dictated by the current state of judicial efforts (Cole & Dioso-Villa, 2007; Davis & Loftus, 2011; Johnston & Keyzer, 2013; St. Eve & Zuckerman, 2013). This lack of guidance is largely a product of the gap in the literature noted earlier—that little research exists to synthesize the rhetorical efficacy of the existing instructions, so as to highlight the appropriate means for courts moving forward.

Methodological Framework

The diverse assortment of social media jury instructions necessitates a methodological framework that accounts for the similarities and differences, in order to develop a framework for future courts seeking to implement such policies. It therefore necessitates a comparative content analysis. Because this project was legal in its aim, yet intended for both legal and non-legal observers alike, this methodological approach was deemed ideal, as it seeks to uncover a framework of best practices for courts and drafters. Under this approach, this study sought to group states' policies according to similarities and differences, and then utilized a rhetorical analysis that played upon these similarities and differences, expounded upon further in chapters 3 and 5, as a springboard for assessing and analyzing the strengths and weaknesses of each. As such, this paper utilized McDowell's (2004) modification of Glaser and Strauss' (1967) Constant Comparative Analysis Method (CCA) for sorting and consolidating data into parsimonious groups. This process is conducted in four steps, with the coherent structure identified in the final step consisting of a set of best practices for courts moving forward:

1. Comparative assignment of incidents to categories

2. Elaboration and reinforcement of categories
3. Searching for relations and themes among categories
4. Simplifying and integrating data into a coherent structure

Glaser (1965) first articulated the need for a groupings-driven, comparative-based content analysis as a methodology that would allow researchers to study burgeoning social problems that had been inadequately addressed, especially ones that were of significant interest to specialized communities, such as law. By sorting content into groupings and continually readjusting categories to allow for new information, Glaser's proposal could result in the identification of thematic elements that responded to cultural needs, providing researchers a tool to accomplish analyses that accounted for current practices in developing and proposing future ones. In their fully formed expression of the methodology, Glaser and Strauss (1967) argued that the four-step process noted above could be particularly useful for qualitative researchers seeking to compare seemingly disparate content that, at its core, still shared some fundamentally similar goal. Here, the fourth step in the process was the creation of a set of best practices for courts. As McDowell (2004) notes in his adaptation of the CCA, when the final step is beyond the scope of mere synthesis, the methodology is best used in tandem with another quasi-lens that results from the categories. This study used tenets of persuasive appeals as such a lens. Because social media jury instructions are varied and distinct, yet contribute to a larger social purpose for a commonality of goals, the CCA method is ideal.

Using the CCA approach, this paper examined the commonalities and differences among state courtrooms that have mandated juror instructions regarding social media.

This analysis illuminated similarities in methods by which states are attempting to restrict and control jurors' social media usage, and the themes that emerged served as a springboard for suggestions for courts in the future.

Selected Artifacts

To do this, specific texts were examined. There are nine states that mandate jury instructions regarding social media, and as such, there were nine units of analysis. Each unit consisted of the guidelines themselves. These units were thus the instructions from Arizona, California, Connecticut, Indiana, Michigan, New York, South Carolina, Utah, and Wisconsin. Analysis of these texts through the CCA methodology was rhetorical in nature, providing an in-depth description of the policies, with specific examples given from the texts to illustrate the rationales behind sorting and organizing according the methodological framework. The policies were then scrutinized in conjunction with rhetorical critique in order to identify the practices that may prove most successful in curtailing jurors' use of social media.

Research Questions

Studies surrounding social media and juries have focused largely on their legal impact, and have done so through primarily observational modes, neglecting to analyze the policies from a perspective that allows for scholarly critique and a resultant structure for fixing a broken system. The current study, however, does just that, addressing the following research questions about social media jury instructions:

RQ1: How are the nine states with mandated jury instructions regarding social media attempting to curb this problem?

The purpose of this question was to provide a foundation for the present study into examining the manifestations of social media jury instructions—and to establish whether, as prior research suggests, the states implementing such instructions are doing so with vastly different approaches.

RQ2: What similarities and differences exist among the rhetorical tactics used in each state's jury instructions?

The purpose of this question was to determine groupings based on the language of the instructions. These groupings then served as the foundation for the themes analyzed in the final research question:

RQ2: What themes emerged from the analysis that might serve to guide future courts in drafting jury instructions, in light of socio-legal concerns and the ever-evolving nature of technological advancement?

This qualitative analysis allowed this study to identify the strategies adopted by varying state courts and outline effective practices for future courts in guiding juries on their use of social media. More important, the final research question led the discussion section of this project into a constructive argument detailing the steps that state courts must take in order to make their policies more effective in the digital age.

Preview of the Study

In chapter 2, I will take an extensive look at the literature regarding access to information and real-time communication. In chapter 3, I will further lay out the method and provide an in-depth description of the texts. In chapter 4, I will analyze the artifacts using the CCA method. Finally, in chapter 5, I will present a discussion of the findings

and provide answers to the questions posed above, looking to the emergent themes in order to detail avenues for courts moving forward.

CHAPTER TWO

REVIEW OF LITERATURE

Previous research on social media use by jurors has focused primarily on the dangers it poses, rather than on the preventative systems that courts are using. Further, the literature that does address this does so largely through a descriptive, rather than critical, lens. Such an approach fails to capture the relationship between the two previous areas of study and does not examine how these preventative systems could be improved. This chapter analyzes the prior research that has been conducted in this area. Because the study-at-hand relies heavily on the implicit concept that the availability of social media to jurors during trials is, in fact, problematic for Sixth Amendment guarantees, a discussion of the legal framework and the subsequent research surrounding social media must be explored.

Sixth Amendment

The Sixth Amendment to the U.S. Constitution states:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

This requires that jurors be prohibited from conversing or conferring with anyone other than their fellow jurors, and they must decide based only on the evidence offered in court (*United States v. Olano*, 1993). Contemporary courts have been forced to grapple

with this provision in the age of social media, although some courts still remain split on whether this use of new media can or should result in a mistrial—with some courts ruling that posting critical statements about a defendant's character does not violate the right to an impartial jury (*State v. Goupil*, 2006), and others ruling that posting any information about a trial or a potential verdict is grounds for a mistrial (*Dimas-Martinez v. State*, 2011). Courts appear more decisive on the issue of evidence gathering, ruling almost unanimously that researching the nuances of a case beyond the information offered in court violates a defendant's Sixth Amendment rights (Browning, 2011; Schwartz, 2014; Sklansky, 2012; Zora, 2012). While some research suggests that jurors believe social media to be a valuable tool for finding the truth in complicated cases, other scholars vehemently argue that such access is directly contradictory to the Sixth Amendment's promise that a defendant be informed of the evidence against him, and in the event of testimony, the opportunity to cross-examine such witnesses (Aaronson & Patterson, 2012; Krawitz, 2012; Simpler, 2012; St. Eve & Zuckerman, 2013; Marder, 2014; Merritt, 2012; Morrison, 2010; Robinson, 2012, Zora, 2012).

Justice Oliver Wendell Holmes declared in *Patterson v. Colorado* that the American judicial system is rooted in the guarantee that the "conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print." The Supreme Court has failed, as of yet, to hear any cases involving the use of social media by juries, meaning that state courts are bound only by higher state precedent, which, as noted above, tends to fluctuate on a case-by-case basis. Most courts, however, look to precedent involving mass media in

general (Miller, 2013). The most influential case involving the consequences of juror exposure to media played out in *Sheppard v. Maxwell* (1966), a case involving the murder of Marilyn Sheppard, the pregnant wife of Dr. Sam Sheppard. Ohio police focused on Dr. Sheppard as the primary suspect, and the media supported the effort. With intense coverage in local and national newspapers that included op-ed pieces calling for Dr. Sheppard's conviction, statements and photographs of the trial that depicted Dr. Sheppard as guilty, and even improperly recorded and transcribed conversations between Dr. Sheppard and his attorney, Dr. Sheppard was all but convicted in the court of public opinion (Miller, 2013). He was also convicted in the court itself.

On certiorari to the Supreme Court, Dr. Sheppard argued that his Sixth Amendment rights were jeopardized by the wide-scale media publicity that allegedly influenced jurors' voting behaviors. In its 8-1 decision in favor of Dr. Sheppard, the Court reversed the conviction and remanded for a new trial, citing that the "media circus" around the case had amounted to a "carnival atmosphere" that produced a reasonable likelihood of juror prejudice, noting that "[l]egal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper." Critically, the Court determined that actual evidence of jury prejudice was unnecessary, ruling that only the likelihood of such prejudice is required under the Sixth Amendment, and emphasizing the importance of courts taking active steps through courtroom rules and regulations to isolate juries from external influences. *Sheppard* established the rule that without these regulations in place, juror exposure to outside information can result in a reversal of a conviction.

Nearly ten years later, the Court slightly altered the *Sheppard* standard in *Murphy v. Florida* (1975), a case involving a jewel thief famous for his role in the heist of the J.P. Morgan jewel collection from the American Museum of Natural History in New York. The defendant was charged in the first-degree murder of a woman whose body was found in Whiskey Creek near Hollywood, Florida. Media coverage surrounding the trial exposed the defendant's criminal history, and *voir dire*—the process by which attorneys conduct pre-trial screenings of the jurors to determine potential biases—revealed an inclination among several jurors to find the defendant guilty merely because of his history and the resultant press coverage. After the jury convicted Murphy, he filed and was granted certiorari by the Supreme Court, where he argued that his Sixth Amendment rights were violated through juror exposure to media. In a somewhat contradiction of the *Sheppard* decision, the Court upheld Murphy's conviction, creating a new two-pronged test that would find juror prejudice to be presumed only when there is an apparent departure from fundamental due process and decorum, and where there is an intrusion of external influences into the courtroom.

The Court looked primarily to the second prong, and whether there were "any indications in the totality of circumstances that petitioner's trial was not fundamentally fair." In ruling that the trial itself was fair, the Court declared that such a standard does not necessitate that jurors be entirely ignorant of the facts and issues surrounding the case, but that it only requires a juror be able to put aside personal opinions and outside information in order to render a verdict based solely on the evidence and testimony offered in the physical courtroom. This reiteration of the law fundamentally shifted the

burden of proving juror bias, declaring a clear hesitancy toward reversing convictions and establishing that a finding of impartiality could only be negated by a showing of manifest error. This standard stands in stark contrast to harmless error, which represents a juror's use of improper information, but in a way that does not clearly prejudice a defendant.

The problem with such a standard is clear. As some scholars have noted, the manifest error standard essentially requires that a defendant prove the juror would have voted differently had it not been for his or her access to media (Caldwell & Seamone, 2007; Hardy, 1960; MacCoun & Kerr, 1988; McKnight, 1994). Such a standard is difficult to enforce in the age of social media, where the nature of the medium is both hard to track and easy to misunderstand. This has led at least some scholars to argue that modern courts institute a manifest error standard with regard to social media not only because it is the existing standard for mass media as a whole, but also because it decreases the risk of convictions being overturned, upholding a greater number of decisions and preserving the apparent finality of the judicial process (Browning, 2010; Davis & Loftus, 2011; Strutin, 2011). The standard is one that demands case-by-case determinations and necessitates that courts look to how social media was used in a particular case to decipher whether or not an apparent misconduct amounted to a flagrant violation of a defendant's Sixth Amendment rights, a burden of proof that is undoubtedly hard for a defendant to meet. Such violations with regard to social media are best expressed through two critical areas: the access to existing information, and the availability of real-time communication.

Information Access

In March 2009 a juror in a Florida drug trial told the judge that he had researched the case online and looked into the validity of the evidence raised at trial (*United States v. Hernandez*, 2009). After approaching the remainder of the jury to inform them about what happened, the judge discovered that eight other jurors had done the same. Following two months of trial work by both sets of attorneys, the judge was forced to declare a mistrial.

Compared to the "media circus" outlined in *Sheppard* and contended in *Murphy*—in which the defendant could easily point to the potential media problems—social media have a much more invisible presence, occurring often without notice, yet existing with equal importance. The pertinent research surrounding social media in this area occurs in two critical spaces: first, that social media present an incomplete picture of facts, and second, that social media act as alternative evidence providers that influence decision-making and undermine the right to a fair trial.

First, social media are often incomplete, biased, and even intentionally misleading. In his research on the impacts of social media on disaster response efforts, Lindsay (2011) found that social networks play a vital informational role during emergency situations, noting that it was effectively used by the U.S. Army in providing Twitter updates to the general public about the shootings at Fort Hood and by the American Red Cross in issuing Facebook alerts about flood situations. However, as Lindsay notes, much of the information posted to social media during emergency situations is issued not by organizations, but by citizens, and that such sources often provide inaccurate information that leads to improper decision-making. For instance, in

the 2007 shooting at Virginia Tech, students posted information about the location of the shooter to social networking sites that was largely inaccurate, putting a greater number of students in jeopardy (Lindsay, 2011).

In their work on the impacts of social media opinions on analyses of financial securities and stock investing, Chen et al. (2014) investigated the extent to which shareholder attitudes posted on digital networks could influence the health of a stock and change investor opinions. The researchers found that not only were social networks influential in investing choices, but that they were persuasive regardless of their accuracy, meaning that posts on social networks that were intentionally misleading could drive the price of a stock up or down through investor speculation, benefitting one party to the direct disadvantage of another. Even without this intentional aspect, however, information posted on social networks can still be misleading based on timeliness. While this implication is obvious in the investing world, where timing is crucial to success, it is nonetheless apparent in other realms. In studying employment screening processes that occur through social networks—in which employers use information acquired on social media to make hiring or firing decisions—Kandias et al. (2013) found that many employers base such decisions on outdated information that is no longer applicable to the employee's file or circumstances. This problem is especially pertinent in the legal context, where items such as expunged records that are legally inadmissible in trial can still be accessible via the Internet, and where changing modes or nuances of evidence are no longer scientifically sound but are still promulgated online. As Mannuzza et al. (2008) note in their study of juvenile criminals, arrest records or conviction reports are often

available online years after they are considered inapplicable to the offending adult, creating a lifetime cycle of criminality that is nearly impossible to escape.

Such access, however, is not new—but the medium through which it occurs is. Cuiller and Piotrowski (2009) note in their historical description of civilian access to records that citizens have long been able to visit a courthouse or city hall to collect information on a defendant. However, the quarantines imposed by judges, especially in lengthy, high-profile cases, made this accessibility nearly impossible—and even in less noteworthy cases, the motivation to undertake such an action was typically nonexistent. But the rise of social networks and almost ubiquitous Internet access allows jurors to view these records without any significant investment of time or effort, increasing the likelihood that a juror will do so (Cuiller & Piotrowski, 2009).

Second, however, even with this information, the question of a juror's use of social media extends beyond the issue of access and into the realm of utilization—whether, once armed with this data, a juror will actually use it to make or change a decision. The research surrounding social media and behavioral patterns suggests that he or she will. In their work on consumer decision-making in online shopping environments, Häubl and Trifts (2000) found that when customers are faced with high-value purchasing decisions involving multiple options, they are often unable to research and evaluate all available alternatives in any significant depth. When these consumers turn to social media to solicit advice, such as pre-existing reviews or comments posted to networking sites and review sections, they use the interactive sites as recommendation agents to more efficiently screen alternatives and make a final decision. They further found that the

interactive nature of social media made consumers feel as though they had more control over the situation, and thus were more likely to be subtly influenced by what they viewed.

Fueling the impact of this research on individual behavior is the work done by Xiang and Gretzel (2010) in the context of online travel information. They sought to identify how consumers access social media sites in the decision-making process. While their initial hypothesis suggested that shoppers were actively seeking out these sites, they instead discovered that many of them found the pages and posts through simple Google searches. Their work showed that approximately 11% of principal search results were composed of social media sites and posts, representing a "substantial part of the online tourism domain" (p. 184). In other words, a user seeking information on a travel topic would not have to actively pursue a social network site in order to see one—he or she would likely stumble upon one in the regular course of an Internet search, thus being influenced by it without any particular intention to even find it. Complicating this issue, as Xiang and Gretzel (2010) allude to, is the work of Gursoy and McLeary (2004), which highlights that in the travel industry, a sector overwrought with varying personal opinions, the information on social networks is often misrepresentative of the truth, meaning that consumers may be basing their decisions on faulty information.

As noted above, tourism is hardly the only industry affected by this accuracy problem. Perhaps nowhere is this issue more evident than in the health care industry, an area that some scholars have directly compared to the legal sector, since both rely on complicated underpinnings that are not well-understood by the public at-large (Powell,

Brock, & Hinings, 1999). Research in health communication has found the inaccuracies on social media to be especially problematic (McNab, 2009; Moorhead, Hazlett, Harrison, Carroll, Irwin & Hoving, 2013; Neiger, Thackeray, Van Wagensen, & Hansen, 2012). In their work on the effects of participative Internet use in the role of self-diagnosis, Chou et al. (2009) found that social media are "penetrating the US population independent of education, race/ethnicity, or health care access," but that the most likely users of the networks in a health context are those seeking to better understand a prospective ailment. However, as the researchers discovered via focus groups, users often solicit information from wide swaths of people, but then only internalize the most serious of advice (Chou et al., 2009). In other words, if a person experiences a set of symptoms and is then presented with four potential options that match those symptoms, he or she will assume that the affliction is the worst possible alternative among the four. Such a discovery is problematic in the course of information-seeking via social media in the juror context, as it suggests that a juror would assume the worst about a defendant if presented with multiple scenarios or options found online, further disadvantaging the defendant in a given trial.

Gaebler (2014) expands on this particular problem, noting that this type of Internet access, when placed within the context of information about criminals, crime scenes, and even witnesses, increases the likelihood of a conviction. As he argues, when a juror finds pieces of information about a defendant on the Internet, he or she is more likely to believe that information to be true than the potentially contradictory information presented in court—citing that jurors presume the Internet to be more honest and truthful

than lawyers (Gaebler, 2014). Perhaps more concerning is his contention that in the digital age, where multiple results may populate a search about different people with identical names, a juror might assume to be true the most unfavorable item using the defendant's name, whether that particular item is referring to the specific defendant or not, a contention that seems to align with the research done by Chou et al. (2009) in the medical space.

This issue of inaccuracy, compounded by the research suggesting the power of social media in decision-making, is undoubtedly problematic for Sixth Amendment guarantees. However, it is not the only concern that jurors face. While the access to information focuses predominately on material that already exists on the Internet prior to a juror's use of the medium, the real-time communication inherent in social media proffers even more difficult questions for American courts.

Real-Time Communication

In September 2013, the Tennessee Supreme Court considered whether a juror's communication with an expert witness warranted the reversal of a murder conviction. The basis for the claim rested on the following exchange, which took place on Facebook, between juror Scott Mitchell and Dr. Adele Lewis, a medical examiner hired by the prosecution and affiliated with Vanderbilt University:

> Mitchell: "A-dele!! I thought you did a great job today on the witness stand…I was in the jury…not sure if you recognized me or not!! You really explained things so great!!"
>
> Dr. Lewis: "I was thinking that was you. There is a risk of a mistrial if that gets out."
>
> Mitchell: "I know…I didn't say anything about you…there are 3 of us on the jury from Vandy and one is a physician (cardiologist) so you may know him as well. It has been an interesting case to say the least."

The conversation, because it occurred through digital media, went unseen until the medical examiner, worried about potential repercussions, forwarded the exchange to the judge. The court found juror misconduct and cautioned future courts to diligently watch social media usage by jurors, since it, as the court stated, threatened the "fundamental right to a fair trial." Research suggests that jurors have utilized the real-time communication aspect of social media platforms to threaten Sixth Amendment guarantees in two fundamental ways: first, by providing information about the case to other users within their social spheres; and second, by soliciting advice on how to decide.

First, the literature surrounding the use of social media suggests that users are more likely to post their experiences online when faced with a situation that they believe to be of high cultural or societal importance (Leskovec, Huttenlocher & Kleinberg, 2010). As Losh et al. (1999) suggest, few situations are more socially or culturally important in the United States than jury duty, in which the notion of serving as a purveyor of another's actions is a fundamental civic duty.

But jury duty also involves another critical element—difficulty. As Cecil et al. (1990) argue in the civil trial context—in which money is at stake, rather than jail time—jurors are often easily overwhelmed by the process, struggling to comprehend challenging arguments raised by each side's attorneys, but often not explained with enough clarity to provide jurors with a transparent explanation of the issues at hand. When faced with such a challenge, individuals tend to choose one of two options: either self-contain their experiences and refuse to share for fear of embarrassment over admitting ignorance, or over-share in order to seem self-confident in their decision-

making (Elson, 2001). Similar research in this area tends to echo the latter conclusion, with Combs' (1996) seminal work on narrative therapy arguing that the natural inclination of people faced with a difficult situation is to discuss the situation with others. However, as Steele (1988) notes, such an inclination is not always infused with the intention of soliciting advice. In certain contexts, the power of self-affirmation overtakes the desire to choose a position based on advice, and individuals may instead share their experiences with others in order to reaffirm a decision they already intend to make. Research on social media supports this idea. As Van Dijck and Poell (2013) argue in their work on social media logic, interactive media are often anything but interactive, as users turn to the platforms not to engage with others, but to reify their own life experiences through their expression of choice. In other words, when a person posts an important decision to a social network, he or she feels obligated to maintain that position, even when confronted with other opinions or scenarios that seem to negate the validity of the original position.

In the context of jury duty, the problem is clear. The Sixth Amendment's guarantee of an impartial jury is premised on the notion that jurors will remain open to voting in either direction until the conclusion of the trial, once all arguments have been made and all evidence has been presented. Given that criminal trials involve the prosecution presenting all its evidence first—with even cross-examination of witnesses by the defense still considered to be a part of the prosecution's case—social media use by a juror that indicates he or she has already taken a particular position would prevent the defendant from receiving a fair trial, since the research above indicates that a juror might

feel obligated to maintain that position throughout the process, even when confronted with evidence in the defense's case that suggests the original conclusion was incorrect.

Such premature posting is further problematic because of concerns over digital permanency. As Mason (2007) notes in her research on the impacts of online footprints on the law, digital technology allows legal opinions and conclusions to be available long after they may no longer be valid, using as an example the availability of decades-old legal opinions that were overturned and no longer represent sound law, but which are still present on the Internet and purporting to be valid law. In the context of social networks, when a juror posts an opinion of guilt to an interactive media site, that post remains on the network until he or she deletes it, and even then, it is still available through certain crawl and recovery sites that pre-index social networks and archive posts prior to deletion. And as the work by Xiang and Gretzel (2010) highlighted above notes, social network posts not only remain online for years, but also persist as highly indexed returns on search engines—meaning that, as an example, a future employer could run a Google search of a prospective hire and find a social media post describing that person as guilty of a crime, even if he or she was, in fact, acquitted. Such a debate has already raged in the European Union over the issue of "the right to be forgotten" in Internet searches, and such an argument is gaining steam in the United States (Ambrose & Ausloos, 2013; Eugen, 2013; McNealy, 2012; Rosen, 2012).

Second, however, the counter to the research conducted by Steele (1988) and Van Dijck and Poell (2013) is that of Heinonen (2011) and Kane et al. (2012), who argue that users frequently turn to social media in order to solicit advice about important situations,

rather than to merely reaffirm their own choices, so as to deflect some of the onus of responsibility in a difficult decision. Such actions, they contend, create networks of trust in which users on social media feel more confident in a prospective decision if a number of other users are encouraging the individual to move in a particular direction. This is perhaps the most obvious threat posed to constitutional rights by jurors' use of social media. The Sixth Amendment guarantees that a defendant will be judged only by the people in the jury box, but outsourcing any part of this decision to networked users on social media impermissibly extends the criminal trial beyond the courtroom itself, undermining the Sixth Amendment and severely disadvantaging the defendant.

As Strutin (2012) argues, the nature of social media allows hundreds, or even thousands, of individuals to voice their opinions into a courtroom in which only twelve voices should matter. This issue is exacerbated by the inherent inconspicuousness of social media. In her work on networked anonymity in the healthcare context, Hawn (2009) found that an emerging business model in the medical industry is to utilize social-media-based businesses as replacements for traditional doctors or hospitals—allowing prospective patients to receive a diagnosis online. She argues that such a shift downplays the magnitude of the job by granting less accountability to the person doing the diagnosing. Effectively, the role of a doctor is subsumed within a digital medium, taking the burden of accuracy-based repercussions at least partially away—meaning that a person hired to diagnose an individual via a social network may feel less of an obligation to conduct a full investigation of the problem at hand. In the legal context, the analogy is clear. A juror seeking information from an external sources has much more at stake than

the source itself, since said source is not emotionally or physically tied to the trial and is less connected to the fairness of the outcome, raising serious constitutional concerns.

But Strutin (2012) also argues that the issue threatens ethical boundaries. The modern jury, as echoed in the research done by Bornstein et al. (2005), appears less convinced of the seriousness of jury duty than past generations, with nearly 11% of respondents indicating that they did not perceive jury duty to require a wealth of ethical responsibility. Strutin expands upon this idea, contending that the digital age has brought with it a general lack of concern over ethical limitations, and that the number of jurors who view their position as not demanding strict ethical codes will only increase. Indeed, the research seems to bear this out, as a 2010 investigative report by Reuters uncovered ninety verdicts since 1999 that had been called into question because of juror misconduct on social media—most notably consisting of jurors asking their public networks for advice on how to decide. As the report cautions, these verdicts only consist of the ones uncovered by courts, and given the private and often anonymous nature of social media—and the large-scale ineptitude often shown by lawyers and courts in how these networks work, combined with a hesitancy to even learn them—the actual number of cases that should be overturned is likely exponentially higher (Comisky & Taylor, 2010; Jacobwitz & Singer, 2013; Namen & Kinnison, 2011). With all of this research in mind, it is clear that the judicial system faces a burgeoning problem in the use of social media. However, it has not completely ignored the problem, developing several avenues for prospective relief.

The Current Approach

In October 2011 the Federal Judicial Center, the education and research agency of the United States federal courts, sent a questionnaire to active, senior district judges to "assess the frequency with which jurors use social media to communicate about cases during trial and deliberation" (St. Eve & Zuckerman, 2013). The survey received 500 responses, with 470 indicating that social media had become a courtroom problem that judges were struggling to address. Their solutions, though, varied tremendously, with some judges instituting technology bans, some threatening to hold jurors in contempt, and even some requiring jurors to sign written pledges that they would not use social networks to communicate about the case (St. Eve & Zuckerman, 2013). Many judges, however, had attempted to implement jury instructions, which are guidelines read by the judge to the jury twice—once before trial and again at the close of the case. The Federal Judicial Center found that most federal judges follow some form of the instructions suggested by the United States Judicial Conference Committee on Court Administration and Case Management (CACM):

> [Before trial:]…. Until you retire to deliberate, you may not discuss this case with anyone, even your fellow jurors. After you retire to deliberate, you may begin discussing the case with your fellow jurors, but you cannot discuss the case with anyone else until you have returned a verdict and the case is at an end. I hope that for all of you this case is interesting and noteworthy. I know that many of you use cell phones, Blackberries, the internet and other tools of technology. You also must not talk to anyone about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter, through any blog or website, through any internet chat room, or by way of any other social networking websites, including Facebook, My Space, LinkedIn, and YouTube.
>
> [At the end of the case:]…. During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to

> communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict (CACM, 2012).

However, the survey also found a wide variety among the types of instructions that federal judges utilized—and given that there is no equivalent research institution for the state courts, Robinson's (2011) conclusion that state judges lack a coherent vision for how to curb this problem through jury instructions seems apparent. Complicating this issue is the fact that many state courts fail to make jury instructions regarding juror behavior mandatory, meaning that judges can—and often do—choose when to issue jury instructions and when to ignore them (Aaronson & Patterson, 2012; Janoski-Haehlen, 2011; Lee, 2010; Simpler III, 2013). Such a practice threatens the effective administration of justice, and requires further study not only into how differing states are issuing individual instructions, but also into how state courts can modernize their practices using grounded and consistent rhetoric in order to ensure an impartial jury in the age of social media.

Principles of Persuasion

This project seeks to examine and identify the ways in which these social media jury instructions can be improved, which requires that they be made more persuasive in order to effectuate change in juror behavior. Such an approach necessitates a brief examination of critical persuasive techniques. In his seminal work on the art of persuasion, Cialdini (1987) identified the six most important principles for convincing an audience to perform a specific task: reciprocation, social proof, commitment and consistency, liking, authority, and scarcity.

Reciprocation relies on a feeling of indebtedness, in which a person is more likely

to perform an act if he or she feels he or she owes something to other person. While this abstract something can be more tangible, such as a gift, subsequent scholars have argued that it can more intangible, such as an emotional debt, or a feeling that the other person has given them a sense of responsibility that must be taken seriously (Eisenberger, Lynch & Rohdieck, 2004).

Social proof entails a form of group acknowledgement, by which people will look to others' courses of actions when uncertain about their own. Cialdini uses the example of a laugh track in a comedy show, noting that viewers at home are more likely to laugh if they hear viewers on the show laughing. When people are presented with the notion that others have acted, or continue to act, in a certain way, then will be more likely to act in a similar manner.

Commitment and consistency appeals to individuals' need to stay true to their word. Cialdini compares this principle to the act of signing a contract. When a person agrees to an action, whether verbally or in writing, he or she is more likely to follow that action through to its end. This requires not only a commitment to one's word, but also a consistency in the way this word is carried out.

Liking speaks to the proclivity for people to say 'yes' to those whom they like. In 2005, Garner tested this principle by mailing out survey requests to strangers, all of which were signed by a person whose name was either similar or dissimilar to the recipient's. He found that those who received a letter from a similar sounding name—such as Bill Taylor receiving a letter from Will Baylor—were nearly twice as likely to return the survey. The liking principle applies beyond the person-to-person connection,

however, and can also apply to a person-to-institution connection, meaning that a person is more likely to perform an action on behalf of an institution if he or she likes said institution, such as an employee going above and beyond for a company he or she likes.

Authority intimates respect. The appearance of authority increases the likelihood that a person will comply with a particular request (Cialdini, 1987). Whether it be a lofty business title, fancy clothing, or even a nice house or car, an individual will respond more positively to someone he or she respects as an authority figure. Milgram (1974) used a similar ideology in his infamous 'shock tests," in which he tested whether participants would administer a shock to a stranger if a person in white lab coat told them to do so. He found that the participants almost universally followed instructions, without questioning the purported doctors' authority. This principle can also be applied to the person-to-institution context, by which an individual will be more likely to take a course of action if he or she believes it is being requested an organization with high authority, and which has vested at least some of that authority in him or her.

The final principle scarcity, relates to the economic principle by the same name, which states that the less there is of an item, the more valuable it is. Individuals are more sensitive to potential losses than to potential gains (Cialdini, 1987), meaning that they will likely respond better to tactics that speak to this. If a person believes that he or she is in a unique position not often acquired by others—and which is in constant threat of being taken away—then that person will be more likely to take a particular action requested of them, especially if it speaks to the other principles as well.

CHAPTER THREE

METHODOLOGY

This study addresses the following questions about contemporary courts and jurors' use of social media:

RQ1: How are the nine states with mandated jury instructions regarding social media utilizing language-based policies to curb the problem?

RQ2: What similarities and differences exist among the rhetorical tactics used in each state's jury instructions?

RQ2: What themes emerged from the analysis that might serve to guide future courts in drafting jury instructions, in light of socio-legal concerns and the ever-evolving nature of technological advancement?

Roberts (2012) argues that one of the greatest limitations in studying juror behavior is that it is often conducted from a reactive standpoint, identifying problems with jurors long after anything tangible can be done to fix said problems. Kovera et al. (2016) contend that such a limitation can only be cured by more proactive measures that focus on, when possible, addressing and curbing bias before it ever occurs. In the context of social media use, this bias often arises during the course of a trial, as the research highlighted in the preceding chapter notes, thereby making it a somewhat curable offense.

The current study attempts to address the gap in the literature by examining how social media jury instructions can be refined from a rhetorical standpoint in order to best

curb this problem moving forward. This study will analyze nine artifacts—the social media jury instructions for each of the states that require them—in conjunction with persuasive principles, to establish a framework for the future of social media control within the courtroom.

The Constant Comparative Analysis Method as a Lens

As noted earlier, jury instructions regarding social media are highly variable. However, some states, such as Utah, have seen more success in curbing the practice than others, such as Michigan and Indiana. This study aims to uncover why that might be, using a rhetorical analysis of the various jury instructions using the CCA methodology. Under this approach, this study sought to group states' policies according to similarities and differences, and then used scholarly rhetorical critiques as a framework for assessing and analyzing the strengths and weaknesses of each. This study utilized McDowell's (2004) modification of Glaser and Strauss' (1967) Constant Comparative Analysis Method (CCA) for sorting and consolidating data into parsimonious groups. This process is conducted in four steps:

1. Comparative assignment of incidents to categories
2. Elaboration and reinforcement of categories
3. Searching for relations and themes among categories
4. Simplifying and integrating data into a coherent structure

The CCA methodology allows researches to study growing social problems that have remained largely unaddressed by institutions, especially ones pertaining to specialized communities like law (Glaser, 1965). The first three steps in the process allow

for the identification of thematic elements present across the units of analysis, with the fourth and final step being the formation of a larger end-goal. This study uses as its end goal the creation of a set of best practices for courts moving forward. However, such an aim is beyond the traditional scope of the final step in the CCA methodology, as it requires additional information to make rhetorical conclusions. Therefore, this study relies on McDowell's (2004) adaptation of the CCA, in which he notes that when the final step is beyond the scope of mere synthesis, the methodology is best used in tandem with another frame of reference—one that emerges from the uncovered categories. This study uses tenets of persuasive appeals as such a frame. Because social media jury instructions are varied and distinct, yet contribute to a larger social purpose for a commonality of goals, the CCA method is ideal.

Using the CCA approach, this study examined the commonalities and differences among state courtrooms that have mandated juror instructions regarding social media, and the texts were coded according to this methodology. The coding sought to identify two primary areas of classification. First, the terms and phrases from the jury instructions were classified according to similarities and differences. Second, these similarities and differences were compared with one another to determine whether differing categories could either be expanded or deleted. Such a process allowed for an effective examination of the themes that emerged, and it highlighted similarities in methods by which states are attempting to restrict social media usage in the jury box, and the resulting discrepancies served to illuminate the residual gaps that remain in the legal system's efforts to curtail this problem in light of evolving technological sophistication.

Rhetorical Critique as a Backdrop

The CCA Method is premised on the selection of groupings, but as Glaser and Straus (1967) note, these groupings are mostly useful for the researcher in understanding similarities and differences. When the final element of the CCA method requires more than mere synthesis of information, something else must be used in tandem with the CCA (McDowell, 2004). In the present study, this additional step was the process of rhetorical critique. Building on foundational principles of persuasion, this study uses as its base the CCA methodology to determine where courts succeeded and where they failed, and then complements such an analysis with rhetorical criticism that shapes the suggestions for the future found in the discussion section. Such critique focused on the rhetoric surrounding emotion, historical pleas, example-based logic, consequence-focused reasoning, frequency and currency. However, because this rhetorical literature stems from the CCA methodology, it is not a lens through which the artifacts were examined, but rather, a counterpart that sprung from the methodology itself. This is in accord with McDowell's (2004) interpretation of such an event. It therefore was not expounded upon in chapter 2 of this paper, since doing so would have no theoretical or ideological background—only the analysis itself gives it such a background. Thus, the rhetorical literature is woven throughout the discussion section and serves as a backdrop for this study's forward-looking aims.

CHAPTER FOUR

ANALYSIS

Jury instructions are read aloud to jurors at the outset of trial and at the close of the case. However, each of the nine states selected as artifacts for this study implements social media jury instructions with a length prohibitive to seamless inclusion within an analysis section. Therefore, while the analysis of this project encompassed all aspects of each state's instructions, this section includes only relevant excerpts that were used in the identification of themes. The full texts of the instructions are available in the appendix.

Arizona's Jury Instruction (APPENDIX A)

The Arizona Bar mandates jury instructions regarding social media in criminal trials. Arizona implements a social media instruction within the larger body of its jury directions, rather than as a separate item. Arizona's set of jury instructions is a fourteen-page document with twenty-four topic fields—a topic field defined here as an individual subject area. Its policy on social media usage occurs midway through the instructions and is dictated as the thirteenth topic field. It forbids jurors from discussing the case on social media via the following language:

> Do not talk to anyone about the case, or to 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 email, Facebook, MySpace, Twitter, instant messaging, Blackberry messaging, I-Phones (sic), I-Touches (sic), 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.

Surrounding this section are roughly 800 words of reinforcing language regarding

jurors' obligation to remain neutral observers within the trial process. Arizona's instructions provide no explanation for the need to limit real-time communication in the courtroom, they do not address any of the hazards that social media present, and they neglect to mention the post-trial risks associated with uncovered conduct relating to jurors' use of social media during trial.

California (APPENDIX B)

The state of California provides a two-page document of jury instructions. These instructions begin by impressing upon jurors the importance of the right to a fair trial, but they do not mention either the state or federal constitution. They then instruct jurors to avoid communication, either face-to-face or via electronic devices, using the following language:

> Do not allow anything that happens outside this courtroom to affect your decision. During the trial do not talk about this case or the people involved in it with anyone, including family and persons living in your household, friends and coworkers, spiritual leaders, advisors, or therapists. This prohibition is not limited to face-to-face conversations. It also extends to all forms of electronic communications. Do not use any electronic device or media, such as a cell phone or smart phone, PDA, computer, the Internet, any Internet service, any text or instant-messaging service, any Internet chat room, blog, or Web site, including social networking websites or online diaries, to send or receive any information to or from anyone about this case or your experience as a juror until after you have been discharged from your jury duty.

Like Arizona's instructions, California's document requests that jurors, upon finding any evidence of improper communication, report such conduct to the court. The instructions mandate that jurors refrain from "do[ing] any research on [their] own." However, the document conflates the discharge of duty using two distinct meanings—one referring to the close of jury duty on a given day of deliberations or proceedings, and the other referring to the end of the trial and the declaration of a verdict. Undoubtedly, these

are distinctly different periods in the trial phase. In high-value, lengthy trials, for instance, a juror may be in media quarantine for weeks, but a confusion in the language above might convince a juror that his or her obligations regarding social media only apply while he or she is in the physical courtroom itself, and not to the periods of time between the end of the day and the beginning of the next. It further neglects to mention specific social networking sites as examples, and it places the social-media specific restriction within the contents of "send[ing] or receiv[ing] any information" only, failing to raise the issues brought up in chapter 2 of this project concerning the access to user-generated content that is already on the Internet. It also does not mention potential consequences for the discovery of social media tampering during trial, and it does not provide a reason or rationale for requiring jurors to come forward when they suspect that other jurors have used social media.

Connecticut (APPENDIX C)

Connecticut provides a two-page set of instructions to jurors that can be separated into three parts: a prohibition against outside research, a prohibition against face-to-face communication, and a prohibition against communication via social media. The pertinent social media language states:

> You may not communicate to anyone any information about the case. This includes communication by any means, such as text messages, email, Internet chat rooms, blogs, and social websites like Facebook, MySpace, YouTube, or Twitter.

For each of the first two parts—the prohibitions against outside research and face to-face communication, neither of which are applied within the document as pertinent to social media—the instructions provide a clear and digestible rationale, even using

introductory verbiage like, “Why?” and, “Why is that?” followed by a socio-legal explanation. However, following the social media provision above, no such explanatory language exists, suggesting either that the state courts fail to recognize the seriousness of the issue, or that they simply misunderstand how dangerous such use can be—either one of which would be supported by the literature identified in chapter 2 of this project. The conclusion of the instructions states in general terms that a violation may result in a mistrial, but it fails to use any specific language as to what nuances might apply, or even what a mistrial is or what it means, a potentially hazardous omission depending on the legal knowledge of the jury. The instructions provide no grounded constitutional rationale for the instructions regarding social media, and the punishment provision is severable from the above language, as it does not reference any specific infraction and fails to impress upon a reader the severity of a violation. In other words, the instructions list consequences as a generalized provision for failing to follow the jury instructions as a whole, rather than particular repercussions as related to social media.

Indiana (APPENDIX D)

Indiana’s guidelines are derived from recent case law and do not mandate specific language. Rather, they instruct courts to include general information regarding social media and mobile device access. The case, issued and decided by the Supreme Court of Indiana in 2010, instructs courts to inform jurors of the following:

> In addition, jurors shall be instructed that when they are not in court they shall not use computers, laptops, cellular telephones, other electronic communication devices, or any other method to: 2 (1) conduct research on their own or as a group regarding the case; (2) gather information about the issues in the case; (3) investigate the case, conduct experiments, or attempt to gain any specialized knowledge about the case; (4) receive assistance in deciding the case from any outside source; (5) read, watch, or listen to anything about the case from any source; (6) listen to discussions among, or receive information from, other people

> about the case; or (7) talk to any of the parties, their lawyers, any of the witnesses, or members of the media, or anyone else about the case, including posting information, text messaging, email, Internet chat rooms, blogs, or social websites (Rule 20, 2010).

Indiana requires only that courts provide the instruction to juries, and it provides no requisite rationale for courts to offer jurors and proffers no language regarding potential consequences for noncompliance. Further, unlike some of the other states, it does not require jurors to inform the court if they become aware of any violation, and it does not specifically mention social media, a critical omission. Instead, it mandates a blanket ban on all electronic communication devices. Much like Arizona's restrictions, Indiana's conflates the conclusion of jury duty with two distinct definitions—one referring to the conclusion of the trial, and the other referring to the conclusion of an individual day's deliberations or proceedings.

Michigan (APPENDIX E)

The state of Michigan provides the most extensive set of jury instructions among the units examined in this project, with the complete packet reaching nearly 750 pages and containing severable instructions dependent upon the nature and severity of the specific charge. Its 2009 addition to the rules addressing social media is applicable in all criminal trials, and it provides that:

> The Court shall instruct the jurors that until their jury service is concluded, they shall not: (a) discuss the case with others, including other jurors, except as otherwise authorized by the court; (b) read or listen to any news reports about the case; (c) use a computer, cellular phone, or other electronic device with communication capabilities while in attendance at trial or during deliberation. These devices may be used during breaks or recess but may not be used to obtain or disclose information prohibited in subsection (d) below; (d) use a computer, cellular phone, or other electronic device with communication capabilities, or any other method, to obtain or disclose information about the case when they are not in court. As used in this subsection, information about the case includes, but is not limited to, the following: (i) information about a party, witness, attorney, or court officer; (ii) news accounts of the case; (iii) information collected through

> juror research on any topics raised or testimony offered by any witness; (iv) information collected through juror research on any other topic the juror might think would be helpful in deciding the case.

The rule makes no reference to specific social media platforms, or even social media in general, although it has been interpreted to mean as much. More important, the rules stipulate that cell phones and communication devices may not be used during trial or in deliberations, but may be used during breaks and recesses, a factor that complicates the instructions and undermines the effectiveness of preventing jurors' use of the platforms. However, Michigan's rules then forbid jurors in subsection (d) from accessing potentially social-media driven information while out of court. Paradoxically, then, the rule can linguistically be read literally to afford jurors the ability to use social networks to access important information during breaks and recesses, but not during times at which they are officially outside of the courthouse. Further, the rule provides no explanation for the consequences of violation, neglects to ground the obligation in constitutional law, and seemingly absolves jurors of the responsibility to report misconduct upon witnessing it. Critically, of course, this instruction is buried within 750 pages of other instructions, with some judges reading a significant majority of such guidelines, diluting the importance of the social media portion and overwhelming jurors with rules and guidelines about a variety of topics.

New York (APPENDIX F)

New York's instructions occupy a three-page document and address social media usage with the following language:

> In this age of instant electronic communication and research, I want to emphasize that in addition to not conversing face to face with anyone about the case, you must not communicate with anyone about the case by any other means, including by telephone, text messages, email, internet chat or chat rooms, blogs, or social

websites, such as Facebook, MySpace or Twitter.

While the instructions do not ground the need for impartiality in constitutional law, they do couch them in generic language involving state statutory law, such as "our law requires…." New York's instructions mention the threat to trials posed by—and therefore they forbid—satellite-based imaging sites, like Google Earth, used by jurors for the purpose of examining the scene of a crime. Though New York's is perhaps the most sophisticated in its elaboration of technological threats—most likely because of the state's reputation for high-profile legal cases—it, like many of the other states, does not list potential consequences for the breach of social media bans. It fails to even mention the vague language of a "mistrial" that other states utilize. Also unlike any other state, however, New York grounds its Internet prohibitions in privilege language, citing that the jurors in the courtroom are the only ones to have been found qualified to judge a case, and that therefore no one else is capable of doing so via the delivery of information. Such a statement addresses the courtroom expansion highlighted in chapter 2, granting self-affirmation to the jurors by convincing them that they are the only ones who can successfully answer and determine the difficult charges levied against the defendant.

South Carolina (APPENDIX G)

The Supreme Court of South Carolina issued an order in 2009 stipulating the jury instructions judges should provide regarding social media. The language of the instructions, and therefore the resulting analysis under the CCA method, is identical to that of the state of Michigan, examined above.

Utah (APPENDIX H)

Unlike other states examined in this analysis, Utah is the only state to provide an example-based set of instructions framed by an initial fear tactic expounding upon the problems that jurors using social media have caused in prior jurisprudence. The policy begins with the following language:

> Jurors have caused serious problems during trials by using computer and electronic communication technology. You may be tempted to use these devices to investigate the case, or to share your thoughts about the trial with others. However, you must not use any of these electronic devices while you are serving as a juror.

The language is simple, and it tells jurors, albeit in general language, that such actions could cause "serious problems." The policy then incorporates only three additional paragraphs. In the section immediately following the one above, courts are instructed to warn jurors about the consequences of social media usage, even seemingly innocuous use:

> You violate your oath as a juror if you conduct your own investigations or communicate about this trial with others, and you may face serious consequences if you do. Let me be clear: do not "Google" the parties, witnesses, issues, or counsel; do not "Tweet" or text about the trial; do not use Blackberries or iPhones to gather or send information on the case; do not post updates about the trial on Facebook pages; do not use Wikipedia or other internet information sources, etc. Even using something as seemingly innocent as "Google Maps" can result in a mistrial.

This language provides specific examples of what constitutes social media use, and it couches such violations within the larger violation of a juror oath, imparting to jurors not only that their role within the court is fundamentally important, but also that they are bound to the courthouse laws as much as the defendant might be. The instructions do not require jurors to report misconduct that they may witness; however,

they do impute that the legal system will eventually discover the wrongdoing, and that the consequences will be severe. Interestingly, in the same section, the state's courts are instructed to frame the ban on new-age social media usage as an extension of historical practices that serve as the traditional foundation of the law:

> Please understand that the rules of evidence and procedure have developed over hundreds of years in order to ensure the fair resolution of disputes. The fairness of the entire system depends on you reaching your decisions based on evidence presented to you in court, and not on other sources of information. Post-trial investigations are common and can disclose these improper activities. If they are discovered, they will be brought to my attention and the entire case might have to be retried, at substantial cost.

Such language neutralizes the novelty of evolving digital media platforms by citing the lengthy history of the American legal system. Such a tactic serves to convince jurors that they do not act as lone individuals—but rather, as pieces within the larger judicial system, granting them a sense of privilege over others who were not chosen, and impressing upon them that the importance of the criminal justice system is bigger than any individual case or person.

Wisconsin (APPENDIX I)

The state of Wisconsin requires courts to read a one-page set of jury instructions in criminal trials that focuses largely on keeping an open mind and remaining free from outside influences. It does not specifically cite social media at any length, either as individual platforms or on the whole, although it does mention Twitter in passing. It focuses more on electronic communication and avoids in-depth detail. Only one section deals with electronic access to information:

> Do not use a computer, cell phone, or other electronic device with communication capabilities to share any information about this case. For example, do not communicate by blog, e-mail, text message, twitter, or in any other way, on or off the computer. Do not permit anyone to communicate with

> you, and if anyone does so despite your telling them not to, you should report that to me. This case must be decided by you the jurors, based on the evidence presented in the courtroom.

The instructions make clear that electronic communications pose a threat to the oath of jury members, but they do not address the reasons why this is the case. Little reference to the law exists within the instructions, and no grounding in constitutional provisions or guarantees is provided. The language is straightforward and contains little in the way of imminent or evocative imagery to convey to jurors the seriousness of social media usage. However, it does demand that jurors report misuse to the judge, and it does so through relatable language like, "[Y]ou should report that to me." Such a directive gives jurors a clear understanding of what the course of action should be, although it fails to give significant detail into exactly what defines such misuse.

CHAPTER FIVE

DISCUSSION

Each of the nine states analyzed within this study was grouped according to emergent themes, per the Comparative Content Analysis (CCA) Method described in Chapter Three. This process served to highlight the similarities and differences among the policies, and through the lens of persuasive analysis, both within the legal field and within mass communication, this paper—by analyzing how each set of instructions compared to one another—uncovered three distinct themes that may prove instructive for states seeking to implement social media jury instructions, as well as for the states noted above that desperately need to rework their current documents.

Emotion-Driven and History-Based Pleas

Marony (2006) argues that legal scholars have long noted the aversion that attorneys and justices alike share toward emotional elements in argumentative structures. This practice stands in contrast to rhetoric scholars, who have consistently found that in persuasive appeals—especially those seeking to influence others to not undertake a specific action—emotion is key to reaching diverse audiences, especially in complicated situations littered with other messages (Buck, Anderson, Chaudhuri & Ray, 2004; Crano & Prislin, 2006; DeSteno, Petty, Rucker, Wegener, & Braveman, 2004).

For many legal practitioners, the acts of reason and emotion are wholly separable, and the notion that the law "rightly privileges and admits" only the former "is deeply

engrained" (Marony, 2006). While undoubtedly beneficial in certain contexts—such as the ability of an attorney to separate the often highly charged actions of which the client is accused from the methods and arguments that he or she has to make—the hesitancy toward emotion in the law may be entirely inappropriate when issuing jury instructions. Juries are, by constitutional standards, composed of a person's peers, and, by practical standards, often exclude lawyers from the final jurying pool. This means that most juries are comprised of non-lawyers who would prefer—and, indeed, potentially benefit—from the emotional aspect of language-based instructions that current model policies so rigidly ignore, especially given the work conducted by rhetoric scholars citing the increased likelihood of product-or-process adoption when confronted with an emotional plea (Bosmans & Baumgartner, 2005; Dillard & Nabi, 2006; Machleit & Wilson, 1998).

However, this project's analysis does not necessarily recommend that classic persuasive appeals be utilized within jury instructions. The practicability of such standards would likely serve to dilute the seriousness of the very issue it is trying to highlight, since some rhetorical work indicates that an overuse of emotion can actually undermine the appeal (Brader, 2006; Miceli, Rosis & Poggi, 2006). Rather, this paper contends that emotional pleas within jury instructions should be contextualized within personal language that humanizes the importance of the jurors' task, without providing list-style rules that may serve to disengage jurors from the process altogether. Take, for instance, the comparison between the following lines from the instructions of both New York and Wisconsin, the former of which has seen more success in curbing this type of behavior than the latter:

> New York: In this age of instant electronic communication and research, I want

> to emphasize that in addition to not conversing face to face with anyone about the case, you must not communicate with anyone about the case by any other means, including by telephone, text messages, email, internet chat or chat rooms, blogs, or social websites, such as Facebook, MySpace or Twitter.
>
> Wisconsin: Do not use a computer, cell phone, or other electronic device with communication capabilities to share any information about this case. For example, do not communicate by blog, e-mail, text message, twitter, or in any other way, on or off the computer. Do not permit anyone to communicate with you, and if anyone does so despite your telling them not to, you should report that to me.

In New York, the judge is asked to speak in the first person and provide context to the jurors that acknowledges he/she understands the realities of the digital age, but asks for conformance in the face of burgeoning resistance. Through the use of first-person narrative—which many scholars emphasize as highly effective in persuasive appeals (De Graaf, Hoeken, Sanders & Beenties, 2012; Patty & Cacioppo, 1986; Tussyadiah & Fesenmair, 2008)—New York's instructions convey the importance of the issue through easily digestible rules that feel more like requests than requirements, perhaps making it more likely for jurors to relate to the message in an already tension-filled atmosphere in which rules-based language, like that used by Wisconsin, may serve to distance jurors from the process altogether. However, because this certainly could backfire if a juror does not take such requests seriously, instructions must then highlight the consequences for failure to act in the requisite manner, a theme taken up later in this chapter.

Emotional pleas do not end with a first-person structure. Several other avenues of emotional enactment exist. For instance, several of the policies employ historical pleas that may serve to positively play on a juror's sense of prestige and importance, thereby keeping said juror from using social media, so as to maintain that sense of superiority. These historical pleas ground individuals within a larger social context, a rhetorical tactic

that some scholars have cited as highly effective when dealing with engrained socio-political scenarios (Dillard & Pfau, 2002; Etzioni, 2000). Utah's jury instructions ask jurors to "please understand that the rules of evidence and procedure have developed over hundreds of years in order to ensure the fair resolution of disputes," and New York's explicitly tells jurors, "Only you have been found to be fair and only you have promised to be fair—no one else has been so qualified." Using these emotional keys, which underscore the historical tradition so inherent in the legal system, these states use such a tactic to the advantage of privileging jurors to believe that they need to hold themselves with the same regard and esteem that the court has inherently granted to them.

This privilege does not stop with a juror's duty to monitor his or her own action. It also encompasses the duty to report to the court any infractions that a juror may witness. This is a critical step in the fair trial process, since it follows that violating jurors rarely self-incriminate themselves before the court. Instead, jurors must diligently monitor the activities of fellow jurors. However, several of the policies examined for this paper failed to mention this—and while this instruction may be buried within the annals of other instructions throughout the trial, it must be paired with the social media instruction as well, if courts are to truly tackle this issue. Jurors not only have a responsibility to taper their own activity on social media, but also to ensure that others do the same, since even one juror violation could cause a mistrial, thus negating the work of every juror. To do so effectively, the above discussion indicates that courts may find success through the incorporation of emotion, and through persuasive appeals that play on the integrity of the system and the importance of complicit behavior. For instance,

states may be wise to consider grounding the duty to report in language similar to that of the privilege-based verbiage above to intuit the historical importance of jury duty. In other words, a sound set of instructions might advise jurors that the legal system is founded upon the notion of righting wrongs—and the duty to monitor and report is a critical check upon the fairness of the trial and upon the realization of true justice under constitutional guarantees.

Utilizing Examples, Consequence-Based Reasoning, and Clear and Succinct Language

The American legal system is derived largely from precedent, which, when compiled, serves as a type of list for what is acceptable and what is not. In other words, our system of law, while codified in statutes and provisions, is truly metered out through application-based examples (Wilson, 1944). It is perhaps ironic, then, that the jurors tasked with deciding criminal cases are asked largely to follow a set of rules with few, if any, examples. Take, for instance, a comparison between Michigan/South Carolina's rules and Utah's:

> Michigan/South Carolina: [Do not] use a computer, cellular phone, or other electronic device with communication capabilities while in attendance at trial or during deliberation.
>
> Utah: Let me be clear: do not "Google" the parties, witnesses, issues, or counsel; do not "Tweet" or text about the trial; do not use Blackberries or iPhones to gather or send information on the case; do not post updates about the trial on Facebook pages; do not use Wikipedia or other internet information sources, etc. Even using something as seemingly innocent as "Google Maps" can result in a mistrial.

The former case provides a blanket ban on the listed devices; however, some literature argues that when studying behavior in the criminal context, all-encompassing laws typically prevent less crime than do specifically enumerated ones (Fletcher, 2000).

In other words, individuals respond better to specific examples, and the study of persuasive rhetoric bears this out (Antle, Tanenbaum, Macaranas & Robinson, 2014; Dal Cin, Zanna & Fong, 2004; Cheng, 2003). Yet, when it comes to jury instructions, many states have ignored this fact. This study recommends that a more case-based set of guidelines will force jurors to recognize that much of the conduct they engage in on a daily basis presents severe tampering problems in the juror context. The act of serving as a juror is distinct from everyday life in its importance, and it must be treated as such.

This example-based structure is not enough, however. Legal scholars have long heralded the importance of establishing clear guidelines for jurors regarding appropriate conduct, yet little insistence has been made toward rationalizing such conduct within consequence-based reasoning (St. Eve, Burnes & Zuckerman, 2014). Such language, which reinforces the repercussions of acting in a negative manner, is another crucial element of persuasive techniques, because it plays on juror's fear of consequences (Leventhal, 1971; O'Keefe & Jensen, 2008; Sternthal & Craig, 1974; Witte, 1992). In other words, courts are telling jurors that they cannot use social media but are not telling them why such non-use is important.

Of the nine states examined for this paper, only Connecticut and Utah attempted to elucidate the rationales behind such restrictions. In Connecticut's instructions, however, the court provides grounded reasoning for the need to protect impartiality and information access, but it then fails to provide a similar explanation regarding the ban on social media usage. In Utah's instructions, the court merely says that "[j]urors have caused serious problems" in the past. This study contends that neither approach is

enough, given the rhetorical demands of consequence-based reasoning in persuasive appeals (Rogers & Mewborn, 1976; Sternthal & Craig, 1974; Witte, 1992). Rather, courts should consider adding language that fuses potential consequences with the example-based logic argued above—by contextualizing the policies within relatable stories of misuse, perhaps through providing examples like the overturning of the Tennessee murder conviction noted earlier, courts can again avail themselves of emotional pleas that evoke articulable threats in the minds of jurors as to the potential repercussions for social media use. Such tactics would not only align with sound rhetorical principles, but they would also align with the example-based structure and emotional approaches noted earlier.

With each of the above suggestions, however, comes a critical principle that many of the states' policies fail to effectively utilize: the need for clarity. Clarity is a crucial aspect of persuasive rhetoric (Cacioppo, Petty, Kao & Rodriguez, 1986), and it demands that in crafting messages intended to convince audiences of a particular action, the said audience is clearly and succinctly told what to do and what not to do (Kennedy, 2015; Vosniadou, 2001). In each of the units of analysis, the courts are mandated to read the instructions to jurors at the beginning of a criminal trial, an often long and tedious process that requires more than a significant amount of focus and energy, and again at the conclusion of the case. As such, the jury instructions are the court's first, and sometimes last, opportunity to engage with the jurors in a meaningful way. This time cannot be wasted through exhaustive repetitions of the same requests. For instance, in many of the artifacts analyzed for this paper—for example, the instructions of California and

Arizona—the courts have made the oft-cited attorney's mistake of using thirty words where three will do. Courts must recognize that the primary appeal of digital media is its brevity (Kwak, Lee, Park, Moon, 2010). To curb the usage of such technologies, then, the court must also be brief. When this is not possible, courts must more effectively position substantive information regarding social media at either the beginning or the end of the instructions, rather than in the middle, which is where many of the states analyzed in this study have placed them. To do otherwise is to devalue the importance of such a violation, and if, as the research suggests, this problem continues to grow, it must be prioritized in a manner that accurately reflects such a contention.

This study acknowledges that such movement will necessitate a reorganization of previous priorities. However, the rise in digital media appears to have hit the courts so unexpectedly—as evidenced from the minimal number of state courts with social media guidelines—that they have merely dropped the instructions into a convenient place buried somewhere in the middle of most jury instructions. The threat that social media usage by jurors poses is worthy of greater rhetorical priority than that. It must be treated as such.

Frequency and Currency

Finally, courts need to realize that the trials in which jurors' social media usage should be most discouraged are usually the same trials that both last an extended period of time and are of high societal or cultural importance (Cecil, Lind & Bermant, 1988). As such, the jurors serving on these trials are inundated with large volumes of evidence and information, and the longer the trial, the more likely it is that external forces will come into play (Bilecki, 1989; Hastie & Pennington, 1996). Thus, courts should resist the

temptation to only provide social media instructions at the beginning and end of trial, and instead read them at periodic intervals throughout the duration of a trial. If possible, juries should be instructed on the matter at the start of each day, as well as during the opening and closing remarks. Given that rhetorical research on persuasion indicates repetition to be a fundamental aspect of effectiveness (Sawyer, 1981; Weiss, 1969; Wood, Tam & Witt, 2005), courts would be wise to use such a tactic. Reinforcing this conclusion is the research in the legal sphere itself, suggesting that in the course of trial, especially a lengthy one, jurors respond best to legal arguments and techniques that are repeated by the prosecution or by the defense over the course of several days (Hinshaw, 1954).

Further, courts might consider adopting a process by which attorneys can question the jurors about their social media usage throughout the duration of a trial. This will both reinforce accountability among the jurors and further complement the repetition of the instructions listed above, bolstering the notion that courts are indeed serious about imposing social media restrictions. This process would also allow concerned jurors an avenue to raise alarms about other jurors' potential social media abuse, without feeling like they are 'ratting out' their fellow jurors, thereby increasing the privilege dynamic noted earlier. Currently, many courts wait for problems with social media to arise before taking any action. This prevents courts from effectively handling the issue, since it entails that by the time a problem is discovered, it is likely too late to do anything.

Contemporary courts need to be proactive rather than reactive, and this requires consistent interaction with jurors about social media utilization. In addition, when problems do arise, this process would allow courts to sift through potential abuses and

determine which ones are serious enough to warrant further exploration and which ones are not, saving post-trial court resources and protecting cases from post-adjudication challenges in the event of minute or insignificant abuses. Further, such questioning would successfully convince jurors that the instructions are requirements, rather than merely suggestions, thereby easing some of the first-person narrative concerns noted earlier. This is critical to both reducing jurors' social media usage and, in the process, protecting defendants' Sixth Amendment rights.

Limitations

While this study holds value in forecasting effective measures that courts can take in the jury instruction process, several limitations exist. First, as its basic premise, this study accepts and adopts the notion that mistrials are a fundamental negative that should be avoided at all costs. Although there are many attorneys and legal scholars that would agree, there are also some that believe the opposite, arguing that the possibility of a mistrial is a crucial element of the American judicial system that many other countries lack, and that it benefits the defendant to have such a prospect in place (Klarman, 1982; Templin, 1965). As chapter 2 of this study noted, the threats posed by social media are only novel in their expression, not in their premise. The possibility of a juror improperly engaging with others has always been a problem faced by courts—but in the past, these conversations have been notoriously difficult to track, given that many of them happened in face-to-face communication. Transgressions of the same sort that occur on social media actually provide a digital footprint that is more permanent and discoverable, meaning that misconduct is more likely to be found—thereby advantaging the defendant,

and, in an ironic twist, ensuring that his or her Sixth Amendment rights are perhaps stronger than they previously were.

Second, the utilized text selection may leave out important units of analysis that will soon develop, or that are not publicly available. Because courts are often updating their jury instructions—and because many judges issue jury instructions that are not required—it is difficult to know the exact nature of all possible instructions regarding social networks. As a result, other critical texts may be missing from this analysis that would contribute to the larger dialogue surrounding the issue.

Third, and finally, this study used persuasive appeals as a basis for the discussion regarding emergent themes. However, this literature derived from the categories themselves, meaning that the support and selection of the rhetorical research was a product of the categories that materialized through the CCA methodology. If another methodology was selected that produced different themes or concepts, then a separate body of rhetorical literature might be more appropriate. Such a limitation highlights the need for more work in this area, as the growth of this problem requires that more research be dedicated to the intersection of law and mass media, so as to find more potential avenues for success in curbing this problem.

Future Research

As long as digital networks continue to grow, the need for this kind of research will grow as well. In the early 1990s, when science was just beginning to enter the courtroom in the form of DNA evidence, attorneys and judges scoffed at the idea, thinking the new technology would never overtake more traditional forms of lawyering

(Connors, 1996). Such a conclusion seems almost preposterous now, and a similar transformation may happen with social media in the courtroom. The topic has already gained considerable momentum in the fields of law and mass media, and it should only increase. However, the studies that have examined this area appear almost unanimously to do so with a qualitative focus. Given the legal profession's tendency toward more conclusive evidence, it seems logical that quantitative research might prove fruitful toward changing attitudes and behaviors. Researchers would be wise to consider such studies moving forward, focusing on the extent to which jurors have engaged in the problem, or the efforts by which attorneys and judges have sought to resolve the issue. While such work has been conducted on the federal level, it has only been accomplished for a small subset of the profession, and no such work exists on the state level.

Second, as the nature of jury instructions continues to change, so too must the demands of the research. Researchers in this area must continue to monitor the fluctuating landscape of jury instructions, and incorporate such changes within the larger context of the problem. Further, research should focus on the judges providing such instructions without being mandated to do so, as this sample might be more representative of the future of the legal profession, and because it might indicate a sample which is willing to be studied more in depth, such as with quantitative measures in addition to qualitative ones.

Finally, the nature of persuasive rhetoric is a vast expanse of opportunity. In the context of mediated messages, the possibilities for rhetorical success are practically endless. While this study used the CCA methodology in order to focus on rhetorical

improvements, other researchers might find more value in a different method, which may then lead to a different set of rhetorical conclusions. Individuals respond in different ways to messages, and this must be remembered in the course of research in this space, especially given the speed with which networked communities and their applicable mediums evolve. Future research must account for this.

Conclusion

In March 2015, Dockett returned from his injury and joined the San Francisco 49ers. By then the controversy over his live-tweeting during trial had dissipated, partly because of the passage of time, and partly because, when asked about the incident, he told media members that he only engaged in the behavior so as to be released from his obligations as a juror. Such an action, if true, is problematic within its own right, but the underlying presumption reflects that, at least to a certain extent, individuals are relatively aware that utilizing social media while serving on a jury is frowned upon. However, few are aware of the precise reasons behind the prohibition, and the existing strictures used by courts to convey these reasons are far from ideal.

In examining social media jury instructions, the most popular approach used by courts to curb the problem, this study aimed to analyze socio-legal artifacts within the context of rhetorical appeals, while simultaneously seeking to raise awareness for an issue that is not given the attention it deserves. In utilizing the Constant Comparative Analysis methodology, this study analyzed the selected jury instructions for their purported ability to potentiate behavioral change, and it found that while these instructions are, in many aspects, only minimally effective towards inspiring a shift in

juror conduct, they are undoubtedly a start. With instances of social media abuse by jurors continuing to grow—and continuing to cause legal ramifications for the judicial system—it seems promising that as the research in this area expands, there may ultimately be a uniform set of implementations used throughout the criminal justice system, which may help to not only ensure that an impartial jury is not lost in the digital revolution, but also that jurors can reliably know what is expected of them.

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Appendix A: Arizona's Preliminary Criminal Instructions, Section 13

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 email, Facebook, MySpace, Twitter, instant messaging, Blackberry messaging, I-Phones, ITouches, 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 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.

Appendix B: California Preliminary Criminal Instructions

You have now been sworn as jurors in this case. I want to impress on you the seriousness and importance of serving on a jury. Trial by jury is a fundamental right in California. The parties have a right to a jury that is selected fairly, that comes to the case without bias, and that will attempt to reach a verdict based on the evidence presented. Before we begin, I need to explain how you must conduct yourselves during the trial.

Do not allow anything that happens outside this courtroom to affect your decision. During the trial do not talk about this case or the people involved in it with anyone, including family and persons living in your household, friends and coworkers, spiritual leaders, advisors, or therapists.

This prohibition is not limited to face-to-face conversations. It also extends to all forms of electronic communications. Do not use any electronic device or media, such as a cell phone or smart phone, PDA, computer, the Internet, any Internet service, any text or instant-messaging service, any Internet chat room, blog, or Web site, including social networking websites or online diaries, to send or receive any information to or from anyone about this case or your experience as a juror until after you have been discharged from your jury duty.

You may say you are on a jury and how long the trial may take, but that is all. You must not even talk about the case with the other jurors until after I tell you that it is time for you to decide the case.

During the trial you must not listen to anyone else talk about the case or the people involved in the case. You must avoid any contact with the parties, the lawyers, the witnesses, and anyone else who may have a connection to the case. If anyone tries to talk to you about this case, tell that person that you cannot discuss it because you are a juror. If he or she keeps talking to you, simply walk away and report the incident to the court [attendant/bailiff] as soon as you can.

After the trial is over and I have released you from jury duty, you may discuss the case with anyone, but you are not required to do so.

During the trial, do not read, listen to, or watch any news reports about this case. [I have no information that there will be news reports concerning this case.] This prohibition extends to the use of the Internet in any way, including reading any blog about the case or about anyone involved with it or using Internet maps or mapping programs or any other program or device to search for or to view any place discussed in the testimony.

You must decide this case based only on the evidence presented in this trial and the instructions of law that I will provide. Nothing that you see, hear, or learn outside this courtroom is evidence unless I specifically tell you it is. If you receive any information

about this case from any source outside of the courtroom, promptly report it to the court [attendant/bailiff]. It is important that all jurors see and hear the same evidence at the same time.

Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. If you do need to view the scene during the trial, you will be taken there as a group under proper supervision.

It is important that you keep an open mind throughout this trial. Evidence can only be presented a piece at a time. Do not form or express an opinion about this case while the trial is going on. You must not decide on a verdict until after you have heard all the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.

Do not concern yourselves with the reasons for the rulings I will make during the course of the trial. Do not guess what I may think your verdict should be from anything I might say or do.

When you begin your deliberations, you may discuss the case only in the jury room and only when all the jurors are present.

You must decide what the facts are in this case. And, I repeat, your verdict must be based only on the evidence that you hear or see in this courtroom. Do not let bias, sympathy, prejudice, or public opinion influence your verdict.

At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law.

Appendix C: Connecticut Conduct as Jurors

A few moments ago you took an oath that will govern your conduct as jurors between the time you took that oath and the time that you are discharged by me after you have rendered a verdict in this case. That oath and the rules of court obligate you to do certain things and to avoid other things, and I want to review your obligations for you now.

First, you must decide this case based only on the evidence presented here in court and on the law as I will explain it to you.

Second, do not make up your minds about what your verdict will be until after you have heard all the evidence, heard the closing arguments of the attorneys and my instructions on the law, and, after that, you and your fellow jurors have discussed the evidence. Keep an open mind until that time.

There are some rules that flow from these obligations, and I'll go over them now.

You may not perform any investigations or research or experiments of any kind on your own, either individually or as a group. Do not consult any dictionaries for the meaning of words or any encyclopedias for general information on the subjects of this trial. Do not look anything up on the Internet concerning information about the case or any of the people involved, including the defendant, the witnesses, the lawyers, or the judge. Do not get copies of any statutes that may be referred to in court. Do not go to the scenes where any of the events that are the subject of this trial took place or use Internet maps or Google Earth or any other program or device to search for or view any place discussed during the case.

Why? Because the parties have a right to have the case decided only on evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we don't know about, then your verdict may be influenced by information that has not been tested by the oath to tell the truth and by cross-examination.

The same thing is true of any media reports you may come across about the case or anybody connected with the case. If you do come across any reports in the newspaper or a magazine, on TV, or any Internet site or "blog," you may not read or watch them because they may refer to information not introduced here in court or they may contain inaccurate information. If you are accidentally exposed to such information, do not discuss it with your fellow jurors and notify the clerk in writing.

You may not discuss the case with anyone else, including anyone involved with this case until the trial is over, and you have been discharged as jurors. "Anyone else" includes members of your family, your friends, your coworkers; if you wish, you may tell them

you are serving as a juror, but you may not tell them anything else about the case until it is over, and I have discharged you. You may not talk to any of the court personnel, such as marshals and clerks, about the case. You may not ask any friends you have who are lawyers or law enforcement personnel for advice or information about any matters related to this case.

Why is that? Because they haven't heard the evidence you have heard, and in discussing the case with them, you may be influenced in your verdict by their opinions, and that would not be fair to the parties, and it may result in a verdict that is not based on the evidence and the law.

You may not communicate to anyone any information about the case. This includes communication by any means, such as text messages, email, Internet chat rooms, blogs, and social websites like Facebook, MySpace, YouTube, or Twitter.

Both the defendant and the state are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. When you have rendered a verdict and been dismissed by the court, you will be free to discuss the case with anyone you wish, though remember that you are not required to. Until then you must be focused solely on the evidence presented in the courtroom and your obligations to the fairness of the proceeding.

In addition, you may not talk to each other about the case until I tell you to do so, and that will not be until you have heard all the evidence, you have heard the closing arguments of the attorneys, and you have heard my instructions on the law that you are to apply to the facts you find to be true. Why is that? It may seem only natural that you would talk about the case as it is going on. The problem with that is, when people start discussing things, they take positions on them and express opinions which are often hard for them to change later on. So, if you were permitted to discuss the case while it's going on, you might reach conclusions or express opinions before you have heard all the evidence or heard the final arguments of counsel or heard the law that you must apply. Your verdicts in the case might then be improperly influenced by the conclusions or opinions you or your fellow jurors have reached before you knew about all of the evidence or the law that will help you put that evidence in the proper context for your verdicts.

What happens if these rules are violated by a juror? In some cases violations of the rules of juror conduct have resulted in hearings after trial at which the jurors have had to testify about their conduct. In some cases the verdict of the jury has been set aside and a new trial ordered because of jury misconduct. So, it is very important that you abide by these rules.

If someone should attempt to talk to you, please report it to the clerk immediately. If you see or hear anything of a prejudicial nature or that you think might compromise the proper conduct of this trial, please report it to the clerk immediately. These communications should be in writing. Do not discuss any such matters with your fellow

jurors.

Appendix D: Indiana Court Order Regarding Jury Instructions

ORDER AMENDING INDIANA JURY RULES Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Indiana Jury Rules 20 and 26 are amended to read as follows (deletions shown by striking and new text shown by underlining): . . .

RULE 20. PRELIMINARY INSTRUCTIONS (a) The court shall instruct the jury before opening statements by reading the appropriate instructions which shall include at least the following:

(1) the issues for trial;

(2) the applicable burdens of proof;

(3) the credibility of witnesses and the manner of weighing the testimony to be received;

(4) that each juror may take notes during the trial and paper shall be provided, but note taking shall not interfere with the attention to the testimony;

(5) the personal knowledge procedure under Rule 24;

(6) the order in which the case will proceed;

(7) that jurors, including alternates, may seek to ask questions of the witnesses by submission of questions in writing.

(8) that jurors, including alternates, are permitted to discuss the evidence among themselves in the jury room during recesses from trial when all are present, as long as they reserve judgment about the outcome of the case until deliberations commence. The court shall admonish jurors not to discuss the case with anyone other than fellow jurors during the trial.

(b) The court shall instruct the jurors before opening statements that until their jury service is complete, they shall not use computers, laptops, cellular telephones, or other electronic communication devices while in attendance at trial, during discussions, or during deliberations, unless specifically authorized by the court. In addition, jurors shall be instructed that when they are not in court they shall not use computers, laptops, cellular telephones, other electronic communication devices, or any other method to:

(1) conduct research on their own or as a group regarding the case;

(2) gather information about the issues in the case;

(3) investigate the case, conduct experiments, or attempt to gain any specialized knowledge about the case;

(4) receive assistance in deciding the case from any outside source;

(5) read, watch, or listen to anything about the case from any source;

(6) listen to discussions among, or received information from, other people about the case; or

(7) talk to any of the parties, their lawyers, any of the witnesses, or members of the media, or anyone else about the case, including posting information, text messaging, email, Internet chat rooms, blogs, or social websites.

(b)(c) It is assumed that the court will cover other matters in the preliminary instructions. (c)(d) The court shall provide each juror with the written instructions while the court reads them. . . .

RULE 26. FINAL INSTRUCTIONS (a) The court shall read appropriate final instructions, providing each juror with written instructions before the court reads them. Jurors shall retain the written instructions during deliberations. The court may, in its discretion, give some or all final instructions before final arguments, and some or all final instructions after final arguments. (b) The court shall instruct the bailiff to collect and store all computers, cell phones or other electronic communication devices from jurors upon commencing deliberations. The court may authorize appropriate communications (i.e. arranging for transportation, childcare, etc.) that are not related to the case and may require such communications to be monitored by the bailiff. Such devices shall be returned upon completion of deliberations or when the court permits separation during deliberations. Courts that prohibit such devices in the courthouse are not required to provide this instruction. All courts shall still admonish jurors regarding the limitations associated with the use of such devices if jurors are permitted to separate during deliberations.

Appendix E: Michigan Addendum 2.511

The Court shall instruct the jurors that until their jury service is concluded, they shall not:

(a) discuss the case with others, including other jurors, except as otherwise authorized by the court;

(b) read or listen to any news reports about the case;

(c) use a computer, cellular phone, or other electronic device with communication capabilities while in attendance at trial or during deliberation. These devices may be used during breaks or recess but may not be used to obtain or disclose information prohibited in subsection (d) below;

(d) use a computer, cellular phone, or other electronic device with communication capabilities, or any other method, to obtain or disclose information about the case when they are not in court. As used in this subsection, information about the case includes, but is not limited to, the following:

(i) information about a party, witness, attorney, or court officer;

(ii) news accounts of the case;

(ii) information collected through juror research on any topics raised or testimony offered by any witness;

(iv) information collected through juror research on any other topic the juror might thin would be helpful in deciding the case.

Appendix F: New York Preliminary Criminal Instructions

Jury Admonitions In Preliminary Instructions (Revised May 5, 2009)1 Our law requires jurors to follow certain instructions in order to help assure a just and fair trial. I will now give you those instructions.

1. Do not converse, either among yourselves or with anyone else, about anything related to the case. You may tell the people with whom you live and your employer that you are a juror and give them information about when you will be required to be in court. But, you may not talk with them or anyone else about anything related to the case.

2. Do not, at any time during the trial, request, accept, agree to accept, or discuss with any person the receipt or acceptance of any payment or benefit in return for supplying any information concerning the trial.

3. You must promptly report directly to me any incident within your knowledge involving an attempt by any person improperly to influence you or any member of the jury.

4. Do not visit or view the premises or place where the charged crime was allegedly committed, or any other premises or place involved in the case. And you must not use internet maps or Google Earth or any other program or device to search for and view any location discussed in the testimony.

5. Do not read, view or listen to any accounts or discussions of the case reported by newspapers, television, radio, the internet, or any other news media.

6. Do not attempt to research any fact, issue, or law related to this case, whether by discussion with others, by research in a library or on the internet, or by any other means or source.

In this age of instant electronic communication and research, I want to emphasize that in addition to not conversing face to face with anyone about the case, you must not communicate with anyone about the case by any other means, including by telephone, text messages, email, internet chat or chat rooms, blogs, or social websites, such as Facebook, MySpace or Twitter.

You must not provide any information about the case to anyone by any means whatsoever, and that includes the posting of information about the case, or what you are

doing in the case, on any device, or internet site, including blogs, chat rooms, social websites or any other means.

You must also not Google or otherwise search for any information about the case, or the law which applies to the case, or the people involved in the case, including the defendant, the witnesses, the lawyers, or the judge.

Now, ladies and gentlemen, I want you to understand why these rules are so important:

Our law does not permit jurors to converse with anyone else about the case, or to permit anyone to talk to them about the case, because only jurors are authorized to render a verdict. Only you have been found to be fair and only you have promised to be fair – no one else has been so qualified.

Our law also does not permit jurors to converse among themselves about the case until the Court tells them to begin deliberations because premature discussions can lead to a premature final decision.

Our law also does not permit you to visit a place discussed in the testimony. First, you cannot always be sure that the place is in the same condition as it was on the day in question. Second, even if it were in the same condition, once you go to a place discussed in the testimony to evaluate the evidence in light of what you see, you become a witness, not a juror. As a witness, you may now have an erroneous view of the scene that may not be subject to correction by either party. That is not fair.

Finally, our law requires that you not read or listen to any news accounts of the case, and that you not attempt to research any fact, issue, or law related to the case. Your decision must be based solely on the testimony and other evidence presented in this courtroom. It would not be fair to the parties for you to base your decision on some reporter's view or opinion, or upon information you acquire outside the courtroom.

These rules are designed to help guarantee a fair trial, and, our law accordingly sets forth serious consequences if the rules are not followed.

I trust you understand and appreciate the importance of following these rules and, in accord with your oath and promise, I know you will do so.

Appendix G: South Carolina

The court shall instruct jurors selected to serve on a jury that until their jury service is concluded, they shall not:

(a) discuss the case with others, including other jurors, except as otherwise authorized by the court;

(b) read or listen to any news reports about the case;

(c) use a computer, cellular phone, or other electronic device with communication capabilities while in attendance at trial or during deliberation. These devices may be used during lunch breaks, but may not be used to obtain or disclose information prohibited in subsection (d) below;

(d) use a computer, cellular phone, or other electronic device with communication capabilities, or any other method, to obtain or disclose information about the case when they are not in court. Information about the case includes, but is not limited to the following:

(i) information about a party, witness, attorney, or court officer;

(ii) news accounts of the case;

(iii) information collected through juror research on any topics raised or testimony offered by any witness;

(iv) information collected through juror research on any other topic the juror might think would be helpful in deciding the case.

Appendix H: Utah Jury Instructions

Now that you have been chosen as jurors, you are required to decide this case based only on the evidence that you see and hear in this courtroom and the law that I will instruct you about. For your verdict to be fair, you must not be exposed to any other information about the case. This is very important, and so I need 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. It's natural to want to investigate a case, but 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 social media or electronic device. You may not do any personal investigation. This includes visiting any of the places involved in this case, using Internet maps or Google Earth, talking to possible witnesses, or creating your own experiments or reenactments.

Second, you must not communicate with anyone about this case, and you must not allow anyone to communicate with you. This also is a natural thing to want to do, but 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 social media. You may notify your family and your employer that you have been selected as a juror and you may let them know your schedule. But do not talk with anyone about the case, including your family and employer. You must not even talk with your fellow jurors about the case until I send you to deliberate. 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 then please report the contact to the clerk or the bailiff, and they will notify me.

[Name of plaintiff] [name of defendant] is representing him/herself.

[Name of defendant] [name of plaintiff] is represented by _____.
[Name of plaintiff], [name of defendant], attorneys for the [plaintiff][defense] and witnesses are not allowed to speak with you during the case. When you see [plaintiff's] [defendant's] attorneys at a recess or pass them in the halls and they do not speak to you,

they are not being rude or unfriendly – they are simply following the law.

I know that these restrictions affect activities that you consider to be normal and harmless and very important in your daily lives. However, these restrictions ensure that the parties have a fair trial based only on the evidence and not on outside information. Information from an outside source might be inaccurate or incomplete, or it might simply not apply 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. Courts used to sequester—or isolate—jurors to keep them away from information that might affect the fairness of the trial, but we seldom do that anymore. But this means that we must rely upon your honor to obey these restrictions, especially during recesses when no one is watching.

Any juror who violates these restrictions jeopardizes the fairness of the proceedings, and the entire trial may need to start over. That is a tremendous expense and inconvenience to the parties, the court and the taxpayers. Violations may also result in substantial penalties for the juror.

If any of you have any difficulty whatsoever in following these instructions, please let me know now. If any of you becomes aware that one of your fellow jurors has done something that violates these instructions, you are obligated to report that 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. Notify the bailiff or the clerk, who will notify me.

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.

So, keep an open mind throughout the trial. The evidence that will form the basis of your verdict can be presented only one piece at a time, and it is only fair that you do not form an opinion until I send you to deliberate.

Appendix I: Wisconsin Preliminary Criminal Instructions

Before the trial begins, there are certain instructions you should have to better understand your functions as a juror and how you should conduct yourself during the trial. Your duty is to decide the case based only on the evidence presented at trial and the law given to you by the court. Anything you may see or hear outside the courtroom is not evidence. Do not let any personal feelings about race, religion, national origin, sex, or age affect your consideration of the evidence. Do not begin your deliberations and discussion of the case until all the evidence is presented and I have instructed you on the law. Do not discuss this case among yourselves or with anyone else until your final deliberations in the jury room. We will stop, or "recess," from time to time during the trial. You may be excused from the courtroom when it is necessary for me to hear legal arguments from the lawyers. If you come in contact with the parties, lawyers, (interpreters) or witnesses do not speak with them. For their part, the parties, lawyers, (interpreters) and witnesses will not contact or speak with the jurors. Do not listen to any conversation about this case. Do not research any information that you personally think might be helpful to you in understanding the issues presented. Do not investigate this case on your own or visit the scene. Do not read any newspaper reports or listen to any news reports on radio or television about this trial. Do not consult dictionaries, computers, web sites or other reference materials for additional information. Do not seek information regarding the public records of any party or witness in this case. Any information you obtain outside the courtroom could be misleading, inaccurate, or incomplete. Relying on this information is unfair because the parties would not have the opportunity to refute, explain, or correct it. Do not communicate with anyone about this trial or your experience as a juror while you are serving on this jury. Do not use a computer, cell phone, or other electronic device with communication capabilities to share any information about this case. For example, do not communicate by blog, e-mail, text message, twitter, or in any other way, on or off the computer. Do not permit anyone to communicate with you, and if anyone does so despite your telling them not to, you should report that to me. I appreciate that it is tempting when you go home in the evening to discuss this case with another member of your household, but you may not do so. This case must be decided by you the jurors, based on the evidence presented in the courtroom. People not serving on this jury have not heard the evidence, and it is improper for them to influence your deliberations

and decision in this case. After this trial is completed, you are free to communicate with anyone in any manner. These rules are intended to assure that jurors remain impartial throughout the trial. If any juror has reason to believe that another juror has violated these rules, you should report that to me. If jurors do not comply with these rules, it could result in a new trial involving additional time and significant expense to the parties and the taxpayers. You are to decide the case solely on the evidence offered and received at trial.