

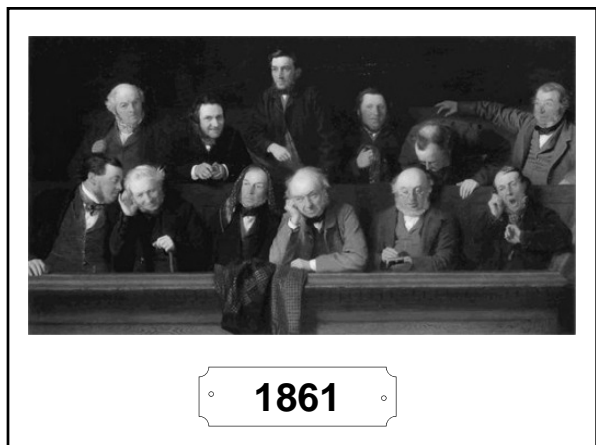
PANEL DISCUSSION: TRIAL LAWYERS FACING THE NEW DECADE

Moderated by
JERRY GLAS
Deutsch Kerrigan & Stiles

A NEW DECADE OF CHALLENGES FOR IN-HOUSE COUNSEL
PROTECT AND DEFEND IN 2010 AND BEYOND



**The Road Ahead:
Trial Lawyers Facing The New Decade**



1861



1957







Agenda

- Jurors
- Judges
- Experts
- Technology

JURORS

- **Dangers Of Online Jurors**
- **Investigating Issues & Jurors**
- **Teaching Jurors**

August 18, 2009

matter what the instructions may be, they are only as effective as the integrity of the juror who hears them. It remains to be seen whether jurors will ultimately be sequestered during trial to insure they do not use the internet to obtain information concerning the case or whether the unpopularity of this alternative will require that jurors be trusted to curb their curiosity despite the reality that some, like Juror Number Four, will be unable to resist the temptation.

Judge Joel M. Goldberg

People v. Jamison, 2009 WL 2568740 (N.Y.Sup., 8/18/09)

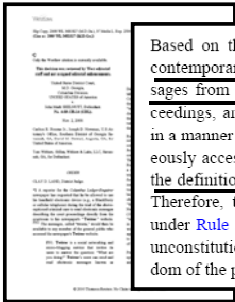
October 27, 2009

[D]id you know your plaintiff[s] advocated the use of mushrooms and weed smoking, and binge drinking all over the internet? ... I[t's] really sad what happened but with all the work going into this don[t] you think you should have address[ed] this issue and knowa such things so they could clean up their acts before court? I'm just trying to help []If you want more info and insight [I] will help you.

Juror's Post-Trial Email To Plaintiff's Lawyer

Wilgus v. F/V Sirius, Inc., 665 F.Supp.2d 23 (USDC, Maine, 10/27/09)

◦ November 2, 2009 ◦

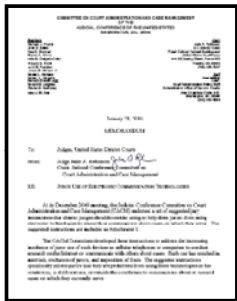


Based on the foregoing, the Court finds that the contemporaneous transmission of electronic messages from the courtroom describing the trial proceedings, and the dissemination of those messages in a manner such that they are widely and instantaneously accessible to the general public, falls within the definition of "broadcasting" as used in Rule 53. Therefore, this type of broadcasting is prohibited under Rule 53, unless the application of Rule 53 is unconstitutional because it unduly restricts the freedom of the press under the First Amendment.

District Judge Clay D. Land

U.S. v. Shelnett, 2009 WL 3681827 (M.D., Ga. 11/2/09), 37 Media L. Rep. 2594

◦ January 28, 2010 ◦



"The Committee believes that the more explicit mention in jury instructions of the various methods & modes of electronic communication and research would help jurors better understand & adhere..."

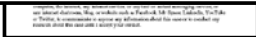
Memorandum From Judge Julie A. Robinson
Chair, Judicial Conference Committee On
Court Administration & Case Management

◦ Jury Instructions ◦



At the Close 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.



Proposed Model Jury Instructions
Judicial Conference Committee On Court
Administration & Case Management

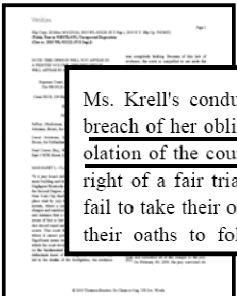
January 1, 2010



“San Francisco Superior Court on Jan 1 began including such instructions after 600 jurors said they went online because there were no explicit prohibitions against such independent research.”

Courts Crack Down On Jurors' Online Activity
Deseret News, Published March 6, 2010, 9:35 MST

February 23, 2010



Ms. Krell's conduct was unquestionably a serious breach of her obligations as a juror and a clear violation of the court's instructions. The fundamental right of a fair trial cannot be guaranteed if jurors fail to take their obligations seriously and disregard their oaths to follow the court's rules. Before a

Judge Margaret L. Clancy
People v. Rios, 2010 WL 625221 (N.Y. Sup.), 26 Misc.3d 1225(A)

JURORS

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The Transverse Myelitis
Association

Acute Therapies for the Neuroimmunologic Disorders

If you or your family member are currently in the hospital and experiencing an inflammatory attack, it is very important that you carefully review all of the following information on this page that describes and explains the acute treatments. You should review and consider this information carefully if your inflammatory attack (immune-mediated) has been diagnosed as NMJ, ADEM or ON. There is a short window of opportunity for treating the inflammatory attack. Once the inflammatory attack has resolved, the window of opportunity for acute treatment is closed.



Rule 3.5

Advocate

Rule 3.5 Impartiality And Decorum Of The Tribunal

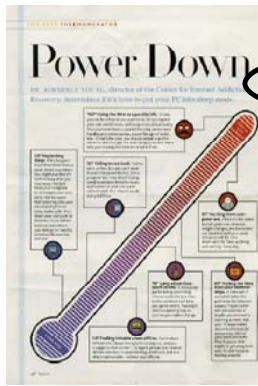
A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;
 - (2) the juror has made known to the lawyer a desire not to communicate; or
 - (3) the communication involves misrepresentation, coercion, duress or harassment; or

Model Rules of Professional Conduct

JURORS

- Dangers Of Online Jurors
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How many hours do you spend online each day?

Do you feel irritable when you are offline?

Do you neglect sleep more than 3 times a week?

Do you have an anonymous handle or screen name?

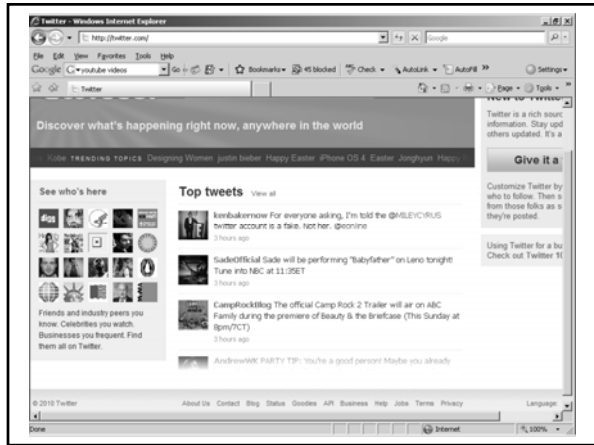
Do you like to escape into virtual reality?

Do you have backaches or carpal tunnel syndrome from computer use?

Spirit Magazine, April 2010, p. 48



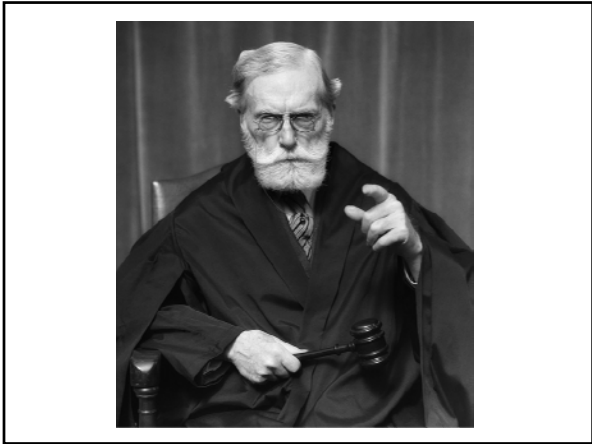






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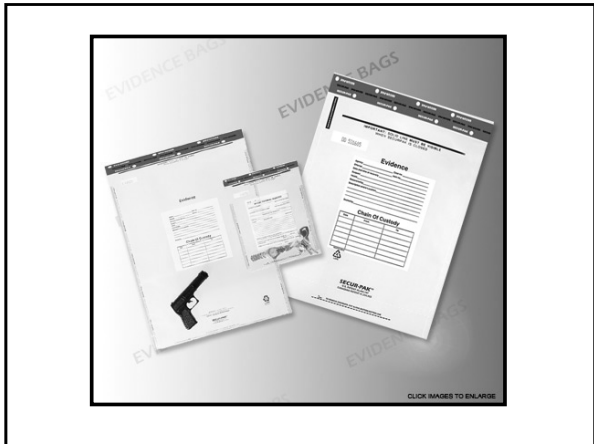


◦ **Agenda** ◦

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◦ **Gen X-perts** ◦

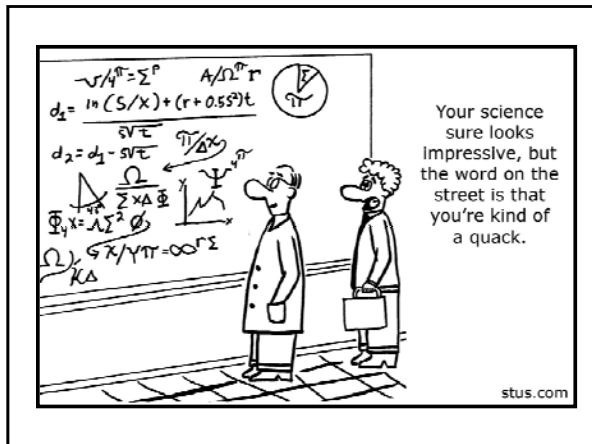
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- Daubert/Frye Trends
- Impact of Social Media
- The “Professional” Expert





◦ Gen X-perts ◦

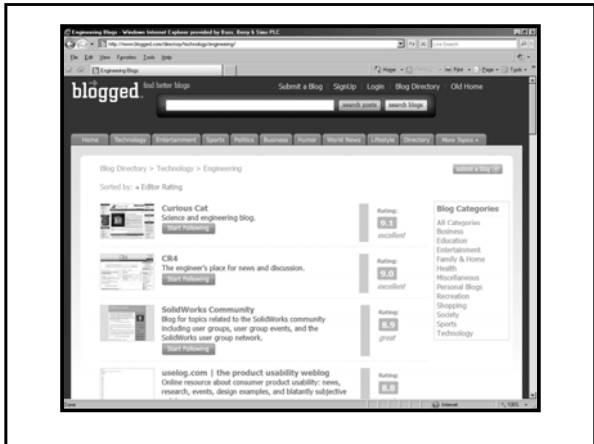
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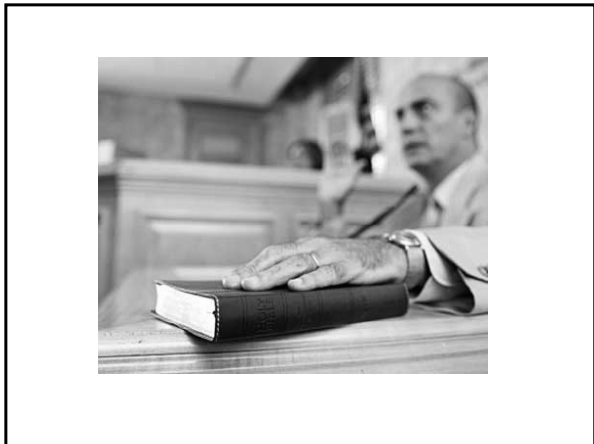
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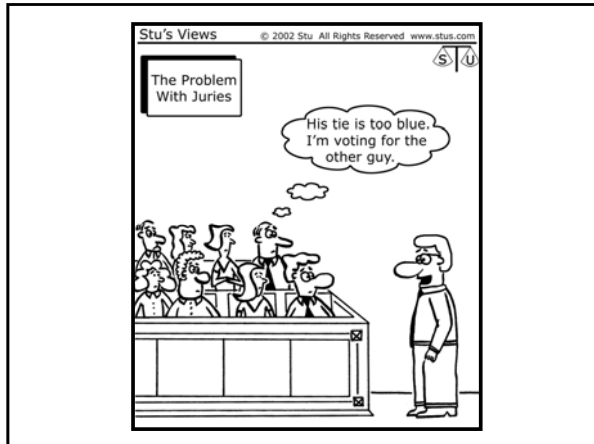
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- The "Professional" Expert



◦ Gen X-perts ◦

- The "Expert" Juror
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John Jerry Glas
Partner

Practice Areas

- Appellate
- Aviation
- Civil Litigation
- Energy
- Expropriation
- Personal Injury
- Premises Liability
- Products Liability
- Transportation
- White Collar
Criminal Defense

Jurisdictions:
Louisiana

Mr. Glas is a partner in the firm, and a member of the Civil Litigation Department. A significant portion of his practice involves Product Defect, Transportation, Negligent Security, Premises Liability, Intentional Torts, Toxic Exposure, and General Aviation cases throughout Louisiana.

Mr. Glas focuses on handling brain trauma claims, and has tried to verdict four brain trauma cases in the last four years. He has lectured on the testimony of neuropsychologists and neurosurgeons at legal education seminars, and serves as the moderator for Lorman Educational Services' annual one-day *Fundamentals Of Brain Trauma Cases Seminar* in New Orleans.

He has handled several cases for the oil and gas industry, including defending against claims involving plant exposure, scaffolding accidents, equipment failure, premises defect, slip & fall, and work-related auto accidents.

Mr. Glas has also defended manufacturers and owners of equipment against claims that their machinery is unreasonably dangerous by design under the Louisiana Products Liability Act. He has defended the design of 900-Series streetcars, mobile container ramps, and bucket trucks.

Mr. Glas has defended numerous commercial airlines, handling claims arising out of boarding accidents, claims governed by the Warsaw Convention, and claims brought under the Louisiana Products Liability Act.

Mr. Glas has defended law enforcement personnel in Parishes throughout Louisiana, as well as the leading manufacturer of electronic control devices, against claims filed by criminals and prisoners.

Mr. Glas has defended companies and employees against claims filed by co-workers who alleged that their workplace accident was the result of intentional tort and that their claims fell under the intentional tort exclusion to the Louisiana Workers Compensation Act.

Former Career As A State Prosecutor

Before joining the firm in 1999, Mr. Glas served as an assistant district attorney for the Parish of Orleans.

As a state prosecutor, Mr. Glas obtained extensive experience with jurors in Orleans Parish. During his first year in the Felony Trials Division, Mr. Glas tried more than sixty jury trials to a verdict, including four murder trials, four rape trials, six burglary trials, seven robbery trials, and fourteen drug distribution trials. He was placed in charge of Section "G" of Criminal District Court, and promoted to senior assistant district attorney.

