

IN THE SUPREME COURT OF FLORIDA
Case No. SC10-51

In the matter of Standard Jury Instructions (Civil) and (Criminal), Committee Report 2010-01 (Civil)
Committee Report 2010-01
(Criminal)

Juror's Use of Electronic Devices

COMMENTS TO PROPOSAL

These comments are submitted by Peter D. Webster and Sylvia H. Walbolt, both of whom have been chairs of the Supreme Court Committee on Standard Jury Instructions in Civil Cases. Peter Webster currently is a judge on Florida's First District Court of Appeal and prior to that was a state circuit court judge. Sylvia Walbolt is a shareholder at Carlton Fields, P.A., and a board certified appellate attorney.

The undersigned believe it is important to tell the jurors what purpose is served by the prohibition of independent research and investigation by jurors during the trial, in order to maximize the jurors' compliance with that prohibition. The January-February 2010 issue of *Judicature* includes a "Viewpoint" piece titled "The internet infects the courtroom." Its premise is that "[t]he simple jury instruction to not consider anything other than the evidence and the law may no longer be sufficient in a technologically advanced society." That piece suggests, as the undersigned do, that jurors should be told not only not to use the internet for

research, but also "an understandable explanation why it is wrong and potentially disruptive."

To that end, we propose a statement along the following lines to come after the statement that "all of us are depending on you to follow these rules, so that there will be a fair and lawful resolution to this case":

Unlike questions that you may be allowed to ask in court, which will be answered in court in the presence of the judge and the parties, if you investigate, research or make inquiries on your own outside of the courtroom, the trial judge has no way to assure they are proper and relevant to the case. The parties likewise have no opportunity to dispute the accuracy of what you find or to provide rebuttal evidence to it. That is contrary to our judicial system, which assures every party the right to ask questions about and rebut the evidence being considered against it and to present argument with respect to that evidence. Secret, out-of-court inquiries and investigations unfairly and improperly prevent the parties from having that opportunity our judicial system promises.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished this 11th day of March, 2010, by United States Mail to the following:

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