

Potential Questions For A Trial Judge (Or A Court PIO) To Consider When Presiding Over A High Profile Case ***

1. Identifying the high profile case:
 - a. Does this case involve a public official, a celebrity, a heinous crime, a scandal or some unique legal issue or bizarre facts that is likely to draw media attention or be widely discussed on blogs or social media?
 - b. Complex or lengthy cases are not necessarily the same as high profile cases.
2. Early case assessment and planning:
 - a. Who do I need to assist in case management? Do I need a designated, internal trial team with clearly defined responsibilities? Are existing courtroom facilities and infrastructure adequate from a physical, administrative, security and technological perspective? Is media coverage likely to be local, state-wide, national or international?
 - b. When should I meet with the internal trial team to lay out procedures, roles and my expectations? Do courtroom personnel need training in conducting themselves in a high profile case?
 - c. When should I meet with counsel for the parties to discuss the unique demands of the case?
3. Should I request the media designate a representatives to act as a liaison with the court?
4. Managing the flow of information: parties and legal counsel:
 - a. Should I schedule an informal conference with counsel to seek a voluntary agreement re: extrajudicial statements? Are the local disciplinary rules, the ABA Fair Trial and Free Press Standards and the ABA Model Code of Professional Conduct Rule 3.6 on Trial publicity sufficient? Should they be incorporated into a court order?
 - b. Is a “gag” order necessary or appropriate? If so, should it extend not only to counsel, but to parties, court personnel, investigators, paralegals, law enforcement, etc.? Note: Gag orders on the media are presumptively invalid and should be considered in only the most rare of circumstances.
 - c. Should I have court personnel actively monitoring the social media posts of parties and counsel during the pendency of the case or should I rely on the parties to bring to my attention any inappropriate public statements?

- d. Are there any pro se litigants?
- e. Are there any anticipated media access/evidentiary issues? E.g. in camera hearings, motions to close, seal, suppress, confidential sources, informants, witnesses who are minors or deserve special treatment, etc.?

5. Managing the flow of information: The media

- a. Should I designate a court representative to act as a media liaison?
- b. Should I have any contact with the media outside of the courtroom?
- c. Have I adequately addressed the issues of timely media access to and copying of filings, exhibits and rulings?
- d. Will all filings, orders and other information about the case be promptly posted on a dedicated court website or available to the media on the court's database via efilings?
- e. How will media questions and inquiries be handled and by whom?
- f. Should I make one of my law clerks or the court public information officer or media liaison available to the media at the end of each trial day or other significant court session to answer generic procedural questions

6. Pretrial Issues:

- a. Will there be media coverage/ public attention to a preliminary hearing or other pretrial motions/proceedings?
- b. Will a change of venue or out of district venire be sought? Are there any local rules or orders governing the same E.g
- c. Will there be motions to suppress, in limine or other pretrial proceedings that will likely generate media/public interest?
- d. Will the passage of time lessen the impact of prejudicial pretrial publicity and the selection of a jury?

7. Jury selection and management

- a. Have I given appropriate cautionary instructions to the potential jury pool?
- b. How frequently should I repeat cautionary instructions to jurors who are seated?
- c. Is there a need for individual voir dire? How will media access be handled and, if granted, under what conditions? How can I safeguard legitimate privacy interests of jurors?

- d. Will media be granted access to blank or completed juror questionnaires and, if so, when and under what conditions?
- e. Do I need an enlarged jury pool and expanded number of alternate jurors?
- f. Should I increase the number of peremptory challenges available to the parties?
- g. Should I allow lawyer questioning during voir dire?
- h. Do I need to utilize an out of district jury pool? Is sequestration necessary and available?
- i. Have I addressed the issue of public disclosure of juror identities? Is there a court rule or statute governing when juror names are released to the public?
- j. Have I adequately cautioned the potential and seated jurors about not doing online research or discussing the case with anyone or on social media? Illustrative state and federal instructions are attached.
- k. Will potential jurors/jurors be allowed to possess/use mobile devices while in the courtroom and if so, under what conditions?
- l. Should I have court personnel actively monitoring the social media networks of jurors during trial or should I rely on the parties to bring to the court any issue regarding inappropriate social media use?

8. Trial Management

- a. Courtroom location: Should a larger courtroom be scheduled for the trial? Should an offsite facility be considered for either trial or jury selection?
- b. Seating: Have I provided adequate and appropriate seating for court personnel/security, parties, counsel, victims, media, public, consultants, shadow juries? Do I need a lottery system to determine media and public access? Should I have designated seating areas? Should I consider a public overflow room where audio and video of the proceedings could be viewed and heard?
- c. Media accreditation: Should I define media for the purposes of any decorum order, seating and access issues? Are bloggers and other non-traditional media entitled to media treatment?
- d. Media overflow room: Should I provide a media overflow room? If so, who has access and where should it be located? Is additional equipment/technology needed to provide appropriate audio and video? If yes, who will bear any costs associated with overflow room? Will interviews be allowed in the overflow room?

- e. Use of video/still cameras inside courtroom/courthouse: Is such coverage allowed under existing rules? If so, should such rules be modified in any manner? Should pool coverage be mandated? Who is responsible for determining placement and operational ground rules? What are the consequences of violating the rules governing camera use? Utah's rule governing camera coverage of judicial proceedings is attached to the Wall Decorum Order referenced below and attached.
- f. Photographing restrictions: Do I need to supplement existing court rules on the subject of who may or may not be photographed? Should any ban on the photographing of a juror or witness extend beyond the courtroom to the courthouse?
- g. Use of mobile devices: Does my jurisdiction have an existing court rule regulating the possession or use of mobile devices in the courtroom? Is there a need to modify the rule in light of the circumstances? Will live tweeting or blogging be allowed? Do I need a special admonition regarding mobile devices and excluded witnesses? Note: a copy of Utah's mobile device rule is attached as an exhibit to the Wall Decorum Order referenced below and attached.
- h. Sidebar conferences & in camera discussions: how can they be minimized to avoid charges of "secret proceedings"? Where appropriate, can I give an explanatory comment regarding the sidebar? Should I allow the photographing, but not the audio recording of sidebar conferences or should I ban both photographing and audio recording?
- i. Courtroom ingress/egress during trial: If desirable, is there separate access to and exit from the courthouse for jurors, parties and witnesses? Should spectators be prohibited from displaying messages expressing support for or against the defendant or the alleged victim on signs, buttons, pins or clothing when in the courtroom? Should newspapers or magazines be prohibited from the courtroom during trial?
- j. Exhibit coverage issues: Should I impose a prohibition upon the photographing of exhibits until they are admitted into evidence?
- k. Pool camera coverage: Do space or other considerations warrant still and/or video pool coverage and, if so, how are the pool representatives selected and under what conditions must they operate? Do I want to be personally involved in these decisions or should I delegate them to a media liaison or require the media to reach agreement among themselves? How will disputes be handled?
- l. News media interviews: Should all interviews in the courtroom/courthouse be barred? Should you designate a specific area in the courthouse for interviews?

- m. Pretrial meeting with court staff, litigants and media: Should I meet separately or together with trial participants and when and under what conditions?
- n. Courtroom equipment and technology: Do the parties/media need equipment or technology beyond the Court's existing items.
- o. A disruptive litigant: Is a disruptive litigant likely and if so, have I thought of available alternatives to address any disruption?
- p. Decorum order: Do I need a decorum order and do I personally want to review the Order with all court personnel, trial participants and the media before trial or should I delegate that task? Should I require all media representatives to sign the decorum order and agree to abide by its terms, subject to contempt of court for failing to do so? Have I posted the decorum order in a place where members of the public are likely to view it? Note: sample decorum orders are attached.

9. Verdict

- a. Are there special security or other issues I should address when the verdict is announced?
- b. Should I advise jurors they are free to speak to the media, but are under no legal obligation to do so?
- c. Should I make a room available at the courthouse for those jurors who consent to being interviewed following announcement of the verdict?
- d. Should I suggest to jurors that they not discuss the specific votes or opinions of other jurors in order to encourage free deliberation in the jury room?
- e. Is there a separate exit from the courthouse for jurors who do not wish to be interviewed?

10. Sentencing

- a. Have I addressed any potential issues surrounding victim participation, e.g. who will participate, how they participate (written statements or live testimony) and how many victims may make statements?
- b. Do I need to instruct victims about appropriate courtroom behavior and conduct?
- c. Will media be given access to written victim impact statements?

11. Post-verdict treatment of criminal defendants:

- a. Will I order immediate incarceration if convicted and out on bail?

- b. Should a convicted defendant be given an opportunity to visit privately with family before leaving the courthouse?
- c. Will I allow an acquitted defendant to address the jury/media after the trial in the courthouse or provide a non-public exit from the courthouse?

12. Security

- a. Is existing security adequate or do I need additional security? Who are the security experts with whom I should consult?
- b. Should I have a written trial security plan that is distributed to all appropriate persons?
- c. Are there separate exits from the courthouse that jurors may use who do not wish to be interviewed?

13. The Court of Public Opinion

- a. How will my conduct in presiding over the case be perceived by the public? Would a neutral observer conclude that I have been fair and impartial in my handling of the case?
- b. Where appropriate, have I availed myself of the opportunity to educate the public and media about the judicial process and provide adequate context for my rulings?
- c. Since defense counsel are increasingly concerned with the court of public opinion as well as the court of law, should I have court personnel affirmatively monitor social media and other out of court statements made by counsel or the parties?
- d. Are there steps I may take to protect jurors, counsel, witnesses, litigants and other trial participants from inaccurate or unfair public criticism for their role in the proceedings?

*** Many of the questions identified in this list were informed by a National Center for State Courts publication titled "Managing Notorious Trials." The NCSC publication was originally published in 1992, revised in 1998 and is scheduled for further revision in the near future.