

EXTRANEOUS PUBLICITY

During the time that you serve on this jury, there may be reports about this case in the newspapers or on radio or television. You may be tempted to look at or listen to them. Please do not do so.

Due process of law requires that the evidence you consider in reaching your verdict meet certain standards; for example, a witness may testify about events he has personally seen or heard but not about matters told to him by others. Also, witnesses must be sworn to tell the truth and must be available for questions from the other side.

News reports about the case are not subject to these standards, and if you look at or listen to such reports, you may be exposed to information, true or not, which unfairly favors one side and which the other side is unable to respond to.

In fairness to both sides, therefore, please avoid such news reports. Put them aside immediately if they come to your attention. Your sworn obligation is to decide this case solely on the evidence presented in the courtroom.

In any trial likely to be of significant public interest, the American Bar Association recommends that such an instruction be given at the end of the first trial day if the jury is not sequestered. 2 ABA Standards for Criminal Justice, *Fair Trial and Free Press* § 8-3.6(e) (2d ed. 1980). See generally *Jury Trial Manual for Criminal Offenses Tried in the District Court* § 2.62.

NOTES:

1. **Claim of extraneous influence.** Where there is an allegation that jurors have been improperly exposed to information from a source other than the evidence at trial, the judge must follow the steps set out in *Commonwealth v. Fidler*, 377 Mass. 192, 385 N.E.2d 513 (1979). Initially the defendant must show by a preponderance of evidence that the improper extraneous influence occurred. The burden then shifts to the Commonwealth to show beyond a reasonable doubt that the defendant was not prejudiced by the extraneous information. In determining the effect the extraneous information would have on a “hypothetical average jury,” the judge may consider post-verdict jury testimony as well as whether there was overwhelming evidence of guilt, whether the extraneous matter produced such a high probability of prejudice that error must be inferred, and whether one juror’s introduction of extraneous information was rejected by other jurors. *Commonwealth v. Kincaid*, 444 Mass. 381, 828 N.E.2d 45 (2005).

2. **Questions and jury instruction on cameras in the courtroom.** Before allowing cameras in the courtroom pursuant to S.J.C. Rule 1:19, a judge may, but is not required, to question prospective jurors as to any effect that cameras may have on their ability to judge the evidence impartially. “It may be advisable that empanelled jurors be instructed, prior to the commencement of a televised trial, to inform the court if the presence of television cameras interferes with their ability to concentrate and render a fair and impartial verdict.” *Commonwealth v. Cross*, 33 Mass. App. Ct. 761, 605 N.E.2d 298 (1992).