

excluded from trial, or they may consult a biased or unreliable website. If jury deliberations and decisions are influenced by outside sources, that's juror misconduct, and the judge should declare a mistrial if there's a risk that it interfered with the right to a fair trial.

In a federal drug trial in Florida, a juror admitted researching the case online. When the judge questioned the rest of the jury, he discovered that eight others had done the same thing. He declared a mistrial, and all the work and expense of the eight-week case was wasted. A Montana juror looked up the word "preponderance" in an Internet dictionary; the definition matched the judge's instructions, and she didn't share her research until after the jury voted. Some jurors later changed their minds for other reasons and the losing side requested a mistrial. The jurors testified that they based their decision on the evidence at trial, not the Internet research. The judge found no prejudice and denied the request. In other cases, a defendant sought to overturn a multi-million dollar judgment after learning that a juror sent Twitter updates during the trial, and a juror in a federal corruption trial posted updates on Twitter and Facebook.

State Supreme Courts and rules committees are now working on recommendations and rules changes to limit jurors' misuse of new technology. However, it isn't just jurors—the judge in former Illinois governor Rod Blagojevich's corruption trial ordered him not to continue his Twitter campaign to clear his name.

## E. BURDEN OF PROOF

### Can you explain the presumption of innocence?

A fundamental principle of American criminal law, the presumption of innocence, means that the prosecution—the government, representing the people—has the burden of proving a defendant's guilt beyond a reasonable doubt. A defendant is not legally considered guilty until convicted.

Defendants are not required to prove or disprove anything, or even to present evidence. Most defendants cross-examine witnesses and present their own evidence to rebut arguments against them and attempt to show doubt about their guilt. Some testify, but they don't have to.

The presumption of innocence emphasizes to the jury and the public the importance of judging a person's guilt on the evidence presented in court, and not on suspicions arising from arrest, indictment, or pre-trial publicity.

The presumption of innocence emphasizes to the jury and the public the importance of judging a person's guilt on the evidence presented in court and not on suspicions arising from arrest, indictment, or pre-trial publicity.