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WYOMING RULES OF EVIDENCE, ARTICLE II: JUDICIAL NOTICE OF ADJUDICATIVE FACTS

INTRODUCTION

Traditionally, questions of law are for judicial determination and questions of fact are ascertained by the trier of fact, both on the basis of formal proof. Judicial notice allows the judge to make a factual determination without formal proof, and such notice excuses or bars a party from establishing it by formal proof.[1] "The basic purpose of judicial notice is to accommodate a strong social need for judicial convenience and efficiency."[2] Rule 201 of the Federal Rules of Evidence governs the taking of judicial notice in the federal courts and has recently been adopted by the Wyoming Supreme Court.[3]

Rule 201 is limited in scope to a regulation of judicial notice of adjudicative facts. This restriction leaves judicial notice of legislative, evaluative, basic or multi-faceted facts to prior procedures. The adjudicative facts must be indisputable to be judicially noticed, either because generally known or readily verifiable. Taking judicial notice is discretionary with the court unless it has been requested to do so and supplied with the necessary information. In order to safeguard the procedure from abuse by any party or court, opportunity to be heard on the nature and propriety of taking judicial notice is afforded. The methods by which parties can be notified that judicial notice is being contemplated, or that it has been taken, should be as varied and flexible as necessary to insure due

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1. MCCORMICK, EVIDENCE § 328 (2d ed. 1972) [hereinafter cited as MCCORMICK].
2. LOUISELL & MUELLER, FEDERAL EVIDENCE § 56 at 393 (1977) [hereinafter cited as LOUISELL & MUELLER].
3. Rule 201 is as follows:
RULE 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS
(a) *Scope of rule.* This rule governs only judicial notice of adjudicative facts.
(b) *Kinds of facts.* A judicially-noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
(c) *When discretionary.* A court may take judicial notice, whether requested or not.
(d) *When mandatory.* A court shall take judicial notice if requested by a party and supplied with the necessary information.
(e) *Opportunity to be heard.* A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
(f) *Time of taking notice.* Judicial notice may be taken at any stage of the proceeding.
(g) *Instructing jury.* In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

process. Perhaps the most debatable aspect of the rule is when judicial notice may be taken. As long as procedural safeguards are employed, however, judicial notice may be taken at any time. Judicial notice of an adjudicative fact has a conclusive effect in jury-tried civil cases; it creates a permissible inference in favor of the fact noticed in a jury-tried criminal case. The same impact should be expected in judge-tried cases. Details of these provisions are discussed in the following comment.

SCOPE OF THE RULE

Rule 201(a) limits the rule's application to adjudicative facts only. Adjudicative facts are those which are central to the controversy and which normally go to the jury in a jury case.[4] They are facts concerning the immediate parties which are generally established through the introduction of evidence. They include facts involved in the proof or disproof of issues in the case: who did what, where, when, how and why.[5]

This rule does not deal with so-called "legislative" facts. These are facts used by the judge to determine law or policy, and they are not subject to any of the requirements or limitations of Rule 201. A judge determining questions of law is therefore free to investigate and make findings of legislative facts that may not be supportable by any evidence in the case.

The scope of legislative facts may be extremely broad.[6] An example of the judicial notice of legislative facts which would not be subject to any of the requirements of Rule 201 is *Miranda v. Arizona.*[7] The court referred to extra-record sources concerning recommended police practices. The same consideration could be made today under Rule 201. Moreover, the facts noticed in that case, while perhaps all true, were not necessarily indisputable. Frequently, legislative facts are disputable because their determination is often based on socio-

4. WRIGHT & GRAHAM, 21 FEDERAL PRACTICE AND PROCEDURE, EVIDENCE § 5103, at 478 (1977) [hereinafter cited as WRIGHT & GRAHAM].
5. FED. R. EVID. 201, Adv. Comm. Note; *see also* Davis, *Judicial Notice*, 55 COLUM. L. REV. 945, 952 (1955).
6. *See* Note, *Judicial Notice: Rule 201 of the Federal Rules of Evidence*, 28 U. FLA. L. REV. 723, 756-57 (1976).
7. 384 U.S. 436, 445-55 (1966).

logical, economic, moral and political data subject to various interpretations.[8]

Two other categories of facts are excluded from coverage and limitations of Rule 201: evaluative and basic facts. Evaluative facts are the "non-evidence facts which appraise or assess the adjudicative facts of the case."[9] For example, the court may take judicial notice that pain is endured in various degrees by different people even though the evidence in the case shows, from a medical standpoint, that most persons would not be in excruciating pain under symptoms similar to complainant's.[10]

Another category of facts which is judicially noticed comprises elementary factual data, *i.e.*, basic facts which are generally within everyone's capacity to understand, to assume without proof. For example, judges may take judicial notice that a car is an automobile, self-propelled with an engine and having four wheels.[11] However, neither basic nor evaluative facts is a proper subject for regulation of judicial notice under the rule.[12]

A single fact may have legislative, adjudicative and evaluative aspects in any combination. It may also be more a question of law than of fact. Because the rule and all of its procedural safeguards are inapplicable if the fact in question is evaluative or legislative and is applicable only if it is adjudicative, characterization of the fact to be noticed may be important. Three vague considerations can be suggested for resolution of the overlap. First, the more important the fact is to the controversy, the greater the need to restrict judicial notice, requiring a higher degree of certainty, notice and an opportunity to be heard on the propriety of taking judicial notice. Second, the clearer the legislative or evaluative aspect of the fact to be noticed, the less the need for notice and a

8. McCORMICK § 331; *see, e.g.*, Grayned v. Rockford, 408 U.S. 104, 118-119 (1972) (public schools are important institutions in the community, often the focus of significant grievances); and Frontiero v. Richardson, 411 U.S. 677, 684-88 (1973) ("women still face pervasive . . . discrimination in our educational institutions, in the job market and . . . in the political arena").
9. FED. R. EVID. 201, Adv. Comm. Note.
10. Ber v. Celebrezze, 332 F.2d 293, 299 (2d Cir. 1964).
11. *See, e.g.*, Ritchie Grocer Co. v. Aetna Cas. & Sur. Co., 426 F.2d 499, 503 (8th Cir. 1970) (judicial notice "that the unlawful entering of a building and the taking of property is burglary and larceny subject to the penalty of law").
12. FED. R. EVID. 201, Adv. Comm. Note.

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hearing, or indisputability. Finally, the more certain the fact, the less the need for notice and a hearing.[13]

The effect in Wyoming of regulating judicial notice of adjudicative facts should be minimal. Rule 201 is not phrased so as to exclude judicial notice of other kinds of facts.[14] The rule may be more broadly or narrowly applied if disputes arise over characterization of a fact as adjudicative or otherwise.[15] On the one hand, if the court is uncomfortable with these distinctions, judicial notice may be limited to only the most reasonable or indisputable facts, whatever their nature. On the other hand, the court may believe it more beneficial to recognize the merits of the rule's procedural safeguards and apply them whether the fact to be noticed is adjudicative, legislative, or mixed.

Finally, Rule 201 does not affect the process by which a court informs itself as to the law—either domestic or foreign. The basic principal of judicial notice of law has been accepted, applied and regulated by the rules and codes of civil procedure. Under the Uniform Judicial Notice of Foreign Law Act,[16] every court in the State of Wyoming shall take judicial notice of the common law and statutes of every other state. State and national administrative regulations having the force of law are also noticed in Wyoming.[17] The court may be informed of foreign laws and regulations in any proper manner. Printed copies of the written law shall be admitted as presumptive evidence thereof. The ready availability of published law makes it easier for the judge to rely on counsel's diligence to provide necessary materials.[18] Notice of intent to raise an issue concerning "foreign laws" must be given in the pleadings or other written form. Where the importance of the foreign law issue is known initially, the pleadings provide a convenient medium for transmitting notice. Where foreign law

13. *See* LOUISELL & MUELLER § 56, at 405.
14. WRIGHT & GRAHAM § 5103. at 481.
15. *Id.* at 469.
16. Formerly WYO. STAT. §§ 1-178 through 1-185 (1957), recodified as §§ 1-12-601 through 1-12-606 (1977 Cum. Supp.).
17. Chicago & N.W. Ry. Co. v. Bishop, 390 P.2d 731, 736 (Wyo. 1964); Logan v. Pac. Intermountain Express Co., 400 P.2d 488, 490 (Wyo. 1965).
18. These materials may include provisions of state or federal constitutions and statutes, legislative acts, history of law (including date of enactment or repeal) and municipal ordinances. *See* Kelly v. Fulkerson, 275 F. Supp. 134, 138 (M.D. Pa. 1967), *aff'd*, 394 F.2d 463 (3d Cir. 1968) (court would not notice contents of municipal ordinances from city in another state where they were not brought to its attention).

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becomes pertinent later in the litigation, notice may still be given.

Under Wyoming Rule of Civil Procedure 44.1, an issue of foreign law is a question of law for the court. In deciding it, the court "may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible. . . . The court's determination shall be treated as a ruling on a question of law."

Kinds of Adjudicative Facts Judicially Noticed

Subsection (b) of Rule 201 limits judicial notice to those adjudicative facts which are "either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." In other words, the adjudicative fact must be indisputable within either of these two meanings.[19] This requirement has long been recognized by courts and is derived from a suspicion of facts not subjected to cross-examination and rebuttal. As a result of judicial notice of an adjudicative fact, neither party can offer evidence in support or disproof thereof. It must be indisputable to retain fairness.[20]

Generally known facts are those so commonly known in the community as not to require the time and expense of proof at trial.[21] The time at which notice is taken is important to the status of common knowledge, and old cases determining general knowledge cannot be regarded as binding precedents.[22] As used in the rule, general knowledge refers to the knowledge possessed by well-informed persons within the locality, and it is immaterial that a particular person or jury does not know the fact in question.[23]

In *Cities Service Oil Co. v. Pubco Petroleum Corp.*,[24] the court stated, "[i] t is . . . common knowledge that the amount of overriding royalty charged in a farmout depends on the ex-

19. WRIGHT & GRAHAM § 5104, at 484.
20. *See* FED. R. EVID. 201, Adv. Comm. Note; MCCORMICK § 328.
21. Varcoe v. Lee, 180 Cal. 338, 181 P. 223, 227 (1919).
22. WRIGHT & GRAHAM § 5105, at 491.
23. Porter v. Sunshine Packing Corp., 81 F. Supp. 566, 575 (W.D. Pa. 1948), *aff'd in part and rev'd in part*, 181 F.2d 348 (3d Cir. 1950), *cert. denied*, 340 U.S. 819 (1950).
24. 497 P.2d 1368, 1372 (Wyo. 1972).

tent to which a field is or is not proved and the amount of oil being produced from wells in the field." Though it is probable that members of the jury, as representatives of the community, did not know that farmout royalties are a function of these factors, it was proper for the court to notice this fact if it was within the general knowledge of well-informed persons in this jurisdiction. Universal knowledge is not necessary, and courts regularly take judicial notice of facts which have distinctly local character.[25] It is the knowledge of persons in the jurisdiction of the trial court which is determinative of the propriety of taking notice under the rule. Consequently, the trial judge will be allowed wide discretion in ascertaining what is generally known to the well-informed person, particularly where the appellate court is distant from the trial court or sits in an environment of markedly different character. At the same time, general knowledge does not refer to the judge's personal experience, nor is the notion of general knowledge limited thereby, as shown by the rule's provision for notice of verifiable facts.[26]

A second category of facts properly noticed are those which can be verified by resort to sources whose accuracy cannot reasonably be questioned. Traditionally within this class are scientific, technological and natural phenomena which can be unquestionably demonstrated by resort to indisputable references such as almanacs, encyclopedias and historical works.[27] The importance of this catagory will probably decrease as society becomes more complex and facts are recorded in these sources of indisputable accuracy.[28] "A major risk when the trial judge resorts to outside sources to verify facts is that he may choose to decide the whole dispute on the basis of his own independent research."[29]

This category of noticeable, indisputable facts follows the development of the common, and of Wyoming, law. Verifi-

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25. Humble Oil & Refining Co. v. Tug Crochet, 288 F. Supp. 147, 150 (E.D. La. 1968), *aff'd*, 422 F.2d 602 (5th Cir. 1970) (common knowledge that marking buoys are liable to be extinguished); and Dagger v. U.S.N.S. Sands, 287 F. Supp. 939, 942 (S.D. W.Va. 1968) (common knowledge that waters of Ohio River are navigable).
26. *See generally* LOUISELL & MUELLER § 57 and MCCORMICK § 329.
27. *See, e.g.*, Shannon v. United States, 206 F.2d 479, 481 (D.C. Cir. 1953) (referring to almanac to determine Philippines are west and United States are east of International Date Line).
28. WRIGHT & GRAHAM § 5105, at 495.
29. LOUISELL & MUELLER § 57, at 439; United States v. 1078.27 Acre of Land, 446 F.2d 1030, 1034 (5th Cir. 1971), *cert. denied*, 405 U.S. 936 (1972).

able facts extend to historical, climatological, geographical,[30] and governmental facts.[31] It is also settled that, in Wyoming as well, courts take notice of their own past and present records in current litigation.[32]

PROCEDURE FOR TAKING JUDICIAL NOTICE

Pursuant to subsection (c), "[a] court may take judicial notice, whether requested or not." By this procedure, judicial notice remains discretionary unless a party requests it and supplies the necessary information.[33] When requested to take judicial notice, the court may have some discretion in determining whether the necessary information has been supplied.[34] This procedure appears to coincide with present practice in Wyoming for taking judicial notice of any fact.

Opportunity to Be Heard

Rule 201 prescribes informal and flexible safeguards for the taking of judicial notice. Subsection (e) entitles a party the "opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed" before the judge. To determine propriety of taking judicial notice, the best way an opponent can demonstrate the matter to be subject to reasonable dispute is for him to dispute it.[35] Whether reasonable men would dispute the truth of a given proposition is a determination which has always been left to the court.[36] The court must also allow the parties an opportunity to be heard upon the general character or nature of the matter to be noticed.

Notification to the Parties

Rule 201 does not require prior notification and a hearing when the court takes judicial notice, nor does it preclude such practice. The court can notify parties, hold a hearing, and

30. *See* Bunten v. Rock Springs Grazing Ass'n, 29 Wyo. 461, 215 P. 244 (1923).
31. *See generally* LOUISELL & MUELLER § 57, at 441-44.
32. Ellis v. Cauhaupe, 71 Wyo. 475, 260 P.2d 309, 310-11 (1953); *see also* WRIGHT & GRAHAM § 5106, at 505; Shuttlesworth v. Birmingham, 394 U.S. 147, 157 (1969) (judicial notice of other litigation concerning related facts between same parties previously before same court).
33. WYO. R. EVID. 201 (d).
34. United States v. Sorenson, 504 F.2d 406, 410 (7th Cir. 1974) (there was no error in failure of trial judge to take judicial notice of a necessary element in the crime where government had not requested the court to do so nor supplied the court with the information regarding the fact to be noticed).
35. *See* Morgan, *Judicial Notice*, 57 HARV. L. REV. 268, 274-75 (1944).
36. MCCORMICK § 329.

obtain record consent to judicial notice. One commentator, however, contends that Rule 201 "switches the burden of initiating a hearing on judicial notice from the judge to the parties" in a case where a party is requesting that judicial notice be taken.[37] The effect of notification may mean that the party adversely affected must request a hearing or make a motion that notice not be taken, on pain of waiving all objections. Or, it could mean that the person seeking judicial notice should seek the hearing.[38] Under either alternative, a prior notification terminates the right to be heard after judicial notice has been taken.[39]

In most instances, the request by one party asking the judge to take judicial notice will notify the other party that judicial notice may be taken. When the court takes judicial notice on its own, however, there is no formal scheme to notify the parties that judicial notice is being contemplated so that they might request an opportunity to be heard.[40] Therefore, when judicial notice is taken without advance notification to some or all of the parties, such parties are entitled to request and receive a hearing within a reasonable time thereafter.[41] If a party can demonstrate that judicial notice could not properly have been taken, the judicial notice must be withdrawn or rescinded.

The rule does not provide any sanction for failure of the court to afford a hearing. It must be assumed that no court would deny the request for one, or at least that no court would be anxious to notice a disputable or inaccurate fact in the face of opposition. A beneficial side-effect should also result from allowing argument before the judge. He should be more confident that the fact qualifies for notice than by relying on his own intuition or knowledge. The rule should increase use of judicial notice by providing safeguards against such abuse.

Time of Taking Judicial Notice

Subsection (f) states simply that "[j]udicial notice may be taken at any stage of the proceeding." The Advisory Com-

37. WRIGHT & GRAHAM § 5109, at 518.
38. LOUISELL & MUELLER § 58, at 446-47.
39. WRIGHT & GRAHAM § 5107, at 510.
40. *See* FED. R. EVID. 201, Adv. Comm. Note.
41. *See* North American Van Lines, Inc. v. United States, 412 F. Supp. 782, 806 (N.D. Ind. 1976).

mittee Notes on this section add only the phrase "whether in the trial court or on appeal." This brevity may be due to the rule's accord with the usual view that "an appellate court can properly take judicial notice of any matter of which the court of original jurisdiction may properly take notice."[42]

There is occasion for judicial notice before, during, and after trials. "Proceeding", as used in the rule, must be interpreted to be broader in meaning than "trial." Thus, pretrial motions disputing jurisdiction and venue may be settled by judicial notice.[43] Where these pretrial motions involve adjudicative facts, their resolution is subject to the notice and hearing requirements of the rule. Challenges to a complaint for failure to state a claim requires extra-record knowledge and/or knowledge of the applicable law. Both of these areas are outside the scope of Rule 201. A court may sustain a complaint against attack by motion to dismiss or for judgment on the pleadings by taking judicial notice that a fact essential to a claim is true.[44] Conversely, taking judicial notice that an alleged or necessary fact is untrue will sustain the challenge.[45] Judicial notice may also be useful in determining whether there are any genuine issues of fact to decide motions for summary judgment.[46]

Probably the most frequent application of judicial notice during the course of a trial will involve decisions by the trial judge on admissibility of evidence under Rule 104.[47] His decisions must be based on his experience, knowledge and judgment, and he may be assisted by notice of readily-verifiable data.[48] This process may involve judicial notice which is not regulated by the rule, but should not be a reason for the judge to exclude from his opinion or from counsel the extra-record matters considered in admitting or excluding the evidence.

42. Varcoe v. Lee, *supra* note 21.
43. United States v. Hughes, 542 F.2d 246, 247-48 (5th Cir. 1976) (judicial notice that crime of driving while intoxicated occurred on federal enclave where there was testimony that defendant was arrested at Ft. Rucker).
44. Dagger v. U.S.N.S. Sands, *supra* note 25.
45. Odom v. Langston, 75 F. Supp. 651, 653 (W.D. Mo. 1948) (judicial notice of finding in earlier litigation that plaintiff's cause of action arose on a particular date, barring it presently).
46. United States v. Webber, 396 F.2d 381, 386 (3d Cir. 1968); Kern v. Tri-State Insurance Co., 386 F.2d 754, 755 (8th Cir. 1967); Nikiforow v. Rittenhouse, 277 F. Supp. 608, 611 (E.D. Pa. 1967).
47. *See* Comment, *Article I of the Wyoming Rules of Evidence: The Not-So-General Provisions*, 13 LAND & WATER L. REV. 555 (1977).
48. MCCORMICK § 185.

The court should be able to take judicial notice in the ruling upon a motion for directed verdict in a civil case at the close of evidence. This motion questions whether there is sufficient evidence to create an issue of fact for the jury to resolve, which, in turn, is an issue of law for the judge to decide.

The post-trial motion for judgment notwithstanding the verdict on the ground that the verdict is against the weight of the evidence is likely to become an occasion for taking judicial notice. The role of the trial judge and the degree of restraint under which he should operate varies under differing circumstances. He should not passively enter judgment in accordance with a verdict which is seriously and clearly erroneous in his view, nor should he discard the verdict only because he views the evidence differently or doubts the jury's resolution of the conflicting proofs.[49] In the context of motions for judgment notwithstanding the verdict, the facts to be considered are evaluative and therefore outside the rule.

It is arguable whether a party who requests an appellate court to take judicial notice and supplies it with the necessary information can impose an obligation on that court to take judicial notice even though the issue was not raised at trial. At least two commentators urge that the sound interpretation of Rule 201(f) in conjunction with subsection (d) is that a party may obligate a court to take judicial notice of an adjudicative fact if the necessary information has been supplied and the request is timely—which means some time during trial.[50] Rule 201(f) further authorizes an appellate court to notice an adjudicative fact in a civil case even if the record is barren on the point. The appellate court should be able to take judicial notice if the failure to request it at trial or the failure of the trial court to take judicial notice of generally known and indisputable facts was akin to plain error.[51] With respect to adjudicative facts which are judicially noticeable because readily verifiable, it is less likely that plain error will be a defense if the necessary information is made available for the first time on appeal.

49. Mann v. Hunt, 283 App. Div. 140, 126 N.Y.S.2d 823 (1953).
50. *See generally* WRIGHT & GRAHAM § 5107, at 509 and § 5110; LOUISELL & MUELLER § 59.
51. Celanese Corp. of America v. Vandalia Warehouse Corp., 424 F.2d 1176 (7th Cir. 1970); Cowen v. Fulton, 407 F.2d 93 (4th Cir. 1969); O'Brien v. Willys Motors, Inc., 385 F.2d 163 (6th Cir. 1967).

A party who has made a timely and appropriate request for judicial notice at trial and has supplied the necessary information is in a position to urge error on appeal where the trial court erroneously refused to take judicial notice. This position is the same as a party whose offer of proof has been erroneously rejected. A party who opposed judicial notice at trial is in the same position to urge error on appeal as a party who objects to the introduction of evidence. Conversely, failure to make such opposition puts that party in as difficult a position to urge error on appeal as the party who fails to object to evidence.[52]

Appellate courts should exercise caution in the use of judicial notice if the party whose interest will be harmed by its use lacks an opportunity to be heard in opposition. But, where an appellate court takes judicial notice of an adjudicative fact which the trial court has also noticed, the procedural safeguards of the rule have already been satisfied. It seems equally clear that if an appellate court notices an adjudicative fact not previously proven or noticed, or resorts to sources not previously consulted in order to notice or not to notice an adjudicative fact, the parties are entitled anew to the procedural safeguards of subsection (e).

Appellate courts use judicial notice both to affirm and reject factual conclusions of trial courts. In assessing whether the trial judge erroneously took or failed to take judicial notice of an adjudicative fact, it is arguable that an appellate court should treat the trial court's decision as a finding of fact, and reverse only if the trial court's action was clearly erroneous. At least where the adjudicative fact judicially noticed or not noticed by the trial court is asserted on appeal to be indisputably known only within the territorial jurisdiction of the trial court and not known throughout the territorial jurisdiction of the appellate court, it might be appropriate for the appellate court to apply a similarly stringent test.[53]

Instructing the Jury: Effect of Judicial Notice

The court in a civil action must instruct the jury "to accept as conclusive any fact judicially noticed."[54] In criminal

52. LOUISELL & MUELLER § 59.
53. Pereza v. Mark, 423 F.2d 149 (2d Cir. 1970); WRIGHT & GRAHAM § 5107, at 507-08.
54. WYO. R. EVID. 201(g).

cases tried to a jury, subsection (g) prescribes the same effect that a permissible inference would have, requiring the trial judge to instruct the jury that "it may, but is not required to, accept as conclusive any fact judicially noticed." The House Judiciary Committee viewed a mandatory instruction in a criminal case as contrary to the spirit of the sixth amendment right to a jury trial.[55] The language of the finally-enacted rule forces an instruction to the jury (in an appropriate situation) that "it may, but is not required to accept" the proposition that to go from Laramie to Denver is to cross state lines. The result of such principle is to vest in the jury the power to nullify the law by ignoring either it or the proven facts. Whether they will use that prerogative often is unlikely. Further, most facts noticed will be evaluative in character and, therefore, beyond the scope and limitations of the rule.

Rule 201 is silent as to the effect of judicial notice in judge-tried cases. Probably, judicial notice should be treated the same in judge-tried cases as in jury-tried cases. Thus, the trial judge should give the same weight to the noticed fact as a jury would be instructed. The high degree of indisputability required of a fact before judicial notice is taken applies to both types of trials, but the procedural context in which notice is taken may be less formal in judge-tried cases. The judge should, however, reveal what sources have convinced him of a particular fact.

CONCLUSION

Judicial notice of law under the Wyoming Uniform Judicial Notice of Foreign Law Act,[56] is unaffected by adoption of Rule 201. Similarly, judicial notice of legislative, evaluative, basic or multi-faceted facts is left unregulated by the rule. The rule is likely to be more of an influence on judicial notice in these unregulated areas than an impact on judicial notice of indisputable adjudicative facts. The fact may be indisputable either because it is generally known within the community or readily ascertainable from authoritiative sources. The procedure can be discretionary or mandatory, and will be protected from abusive use by allowing the par-

55. FED. R. EVID. 201, Adv. Comm. Note.
56. Formerly WYO. STAT. §§ 1-178 through 1-185 (1975), recodified as §§ 1-12-601 through 1-12-606 (1977 Cum. Supp.).

ties an opportunity to be heard on the nature and propriety of taking judicial notice of a particular fact. Judicial notice may be taken at any time, creating a conclusive effect upon the jury in civil cases and a permissible inference in criminal cases.

It is possible that the adoption of Wyoming Rule of Evidence 201 will lead to wider use of judicial notice in Wyoming courts, serving judicial convenience and efficiency while protecting the rights of the parties.

KAREN H. MAURER