

Internet-Surfing Jurors Vex Judges

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Some jurors have always had an urge to visit a crime scene or research a case they're considering, but now the Internet is making it much easier to play detective.

And courts across the country are wrestling with the problem.

"As simple as it might have been to research facts on their own in the past, now jurors don't have to have a brother-in-law who's a doctor or a next-door neighbor who's a dentist. Everyone has access to the world of doctors and dentists," says Laura A. Miller, the chair of the criminal litigation section of the American Bar Association and a partner at Nixon Peabody.

Michael Wilkinson, a Maricopa County Superior Court judge in Phoenix, describes the growing habit of Net-savvy jurors as a "major problem."

Wilkinson declared a mistrial recently after a juror went on the Internet and discovered that an accused child molester faced a minimum of 17 years in prison if convicted.

The juror thought that was "too excessive," Wilkinson says. The jury deadlocked with a 7-1 margin.

Definitions of legal terms available online have also given Wilkinson and his fellow judges headaches.

"Sometimes they get a definition that isn't the legal definition but is a more common definition that is not correct in a legal situation," Wilkinson notes.

Such a problem occurred in a court in Pittsburgh.

"When a judge charges a jury and tells them the law on first-, second- and third-degree murder, it's very complicated," says Patrick Thomassey of Monroeville, Pa.'s Thomassey, Miller & DeRiso. "This guy went home, got on the computer and got the definitions and was leading the jury in the jury room, going over the definitions word by word."

In Conway, S.C., a mistrial was declared last year in the first trial of Regina McKnight, who, in a widely publicized case, was accused of killing her fetus by using crack cocaine during her pregnancy. Two jurors had used the Internet to look up medical information. She was convicted in a second trial. *South Carolina v. Regina McKnight*, No. 00-GS-26-3330.

MEDICAL RESEARCH

Joseph Just of Tacoma, Wash.'s Williams, Kastner & Gibbs recalls a trial in which jurors hadn't reached a verdict so they were sent home for the evening. That night a defense-oriented juror,

who worked as a district court clerk, used the Internet to research medical issues involved in the case.

The next morning, she brought into the jury room a number of pages she had printed, as well as a copy of a Physician's Desk Reference. The bailiff saw the book, and the juror was replaced with an alternate juror, who appeared to be plaintiff-oriented, Just says.

When deliberations resumed, a second juror admitted that she too had been on the Internet but said she had looked up only the definition of a medical term.

There were no more alternate jurors. The plaintiffs would not agree to having the case decided by 11 jurors. Just says he was pleased with the way trial had gone and did not ask that this juror be removed. She remained on the jury. An hour later, the jury came back with an 11-1 defense verdict. *Tracy v. Thakker*, No. 98-2-01191-1 (Lewis Co., Wash., Super. Ct.).

Learning that jurors are doing Internet research doesn't always halt court proceedings.

A federal judge in Philadelphia ruled this month that there were no grounds for a new trial, despite a juror's admission that he researched a defendant's financial condition on the Internet before the jury rendered a \$2 million verdict. Senior U.S. District Judge Clarence C. Newcomer of the Eastern District of Pennsylvania said in that case that the information would have been admissible at trial. *CGB Occupational Therapy v. RHA/Pennsylvania Nursing Homes Inc.*

The ABA's Miller says that jurors' cyberspace research is clearly misconduct, and that judges need to be even more specific about what jurors can and cannot do than they have been in the past. "I think it's going to be a significant problem," she says.

Other lawyers see it that way, too.

"The most efficient way to head this off would be to have the judges put it in their instructions, to put it in the judges' manual and mention it in seminars when they train new judges," says Arley Harrel, chairman of the litigation department at Seattle's Williams, Kastner & Gibbs. "It's an education process."

'SO TEMPTING'

"Going on the Internet is so tempting. In the old days, if you wanted to learn something that happened five states away, it would take a while. Now, four minutes on Google-dot-com and you can find all sorts of information, but it's not necessarily reliable."

Maricopa County Attorney Rick Romley in Phoenix says that if a juror brings in a dictionary to look up a definition, "the judge will inquire exactly what they did and make a determination whether it was a harmless error or not."

But Internet research presents new problems, Romley says. "One of the difficulties is: How would you know, unless they are talking to someone?" he says. "If we had information they were doing it, we all have an ethical obligation to bring it to the court's attention, but how do you

know? That's the difficulty."

And there are plenty of difficulties when the court finds out that jurors have indulged in Internet research.

Lisa Fox, judge at a Dallas County, Texas, criminal court, recalls a trial when she was a prosecutor involving a man accused of killing a 73-year-old woman during a robbery of a doughnut shop.

A juror researched news reports of the death on the Internet, despite repeated warnings from the judge not to do so.

Judge Faith Johnson threatened to hold the juror in contempt of court but ultimately decided not to. The jury deadlocked, so the judge declared a mistrial. The defendant was acquitted in the next trial. *Texas v. Tracy Terrell Freeman*, No. F0126548W.

Fox says if a judge warns jurors away from the Internet, "it may just give them the idea to get on, because who's going to monitor them at home?"

But she thinks it's best to warn jurors away from cyberspace.

"Then if they're caught doing it, you have to take the harsh measures or people are not going to take the judge seriously," Fox says.