

BACK STORY

WILD AND CRAZY JURORS

BY MARK HINUEBER, ESQ.

[OMG, this guy is so guilty #Ihatejuryduty]

[Hope they learn their lesson after this \$\$\$\$\$\$ verdict #heyitsnotmymoney]

While these are not real Tweets, they are, unfortunately, very possible scenarios faced by litigators and courts in the age of jurors who regularly use social media services such as Twitter and Facebook.

Facebook recently crossed the 1 billion-user mark. Fifteen percent of all adults on the Internet use Twitter, according to the Pew Research Center. Smartphone and tablet sales have soared, and mobile usage and texts are the way many Americans, especially younger people, now consume news, exchange information and communicate. Based on my recent juror experience, jurors bring their smartphones and tablets with them to jury duty. The Regional Justice Center in Las Vegas helpfully provides free wireless access in the jury assembly room.

Courts typically admonish jurors not to read or communicate about the case while the trial or deliberations are underway, but the level of admonishment regarding social media and Internet usage varies widely among the states.

Eric Robinson, writing for The Donald W. Reynolds National Center for Courts and Media at the University of Nevada Reno, recently surveyed all 50 states and federal courts regarding social media and jury instructions. (See, Vol 1, Issue 3, *Reynolds Courts and Media Law Journal* (2011)). The survey found that 21 states, including Nevada, have “archaic” jury instructions since they do not address, in Robinson’s view, social media or internet usage.

Nevada Jury Instructions – Civil General Instruction 1G1.9 notes: “Do not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with it.”

As discussed in the Reynolds survey, two Nevada cases have involved jurors using the Internet for research. In one, the jury foreperson conducted research on the effects of sexual assault and shared the research with fellow jurors. The Nevada Supreme Court reversed the conviction of the defendant.

In the other, a defendant in a child pornography case argued that he did not know the ages of the persons depicted in photographs. One juror attempted unsuccessfully to review sites mentioned at trial. Two other jurors observed persons

at the mall and church in an attempt to determine the ages of persons. The court held that while the Internet research was improper, “the average hypothetical juror would not be influenced by what the juror did.”

A widely reported case in Arkansas involved a juror who tweeted after the case was over that, “he just gave away TWELVE MILLION DOLLARS of someone else’s money,” and that one of the defendants’ wallets “is 12M (dollars) lighter.” A motion for a new trial was denied. The juror, who testified in a post-trial hearing told the *Northwest Arkansas Times* that he was surprised by the interest in the case and that “the courts are just going to have to catch up with technology.”

Even comedian Steve Martin has been caught up in the tweeting juror craze. While awaiting jury duty Martin tweeted, “Report from jury duty: Defendant looks like a murderer. Guilty. Waiting for opening remarks.” His spokesman said he was not actually on a jury when he sent those tweets.

In the federal courts, a Judicial Conference Committee this summer updated federal instructions that now include the prohibition: “You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone, Blackberry or computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case.”

Increasingly courts are going to be called upon to deal with “digital natives,” those persons who have grown up with the Internet, including its freewheeling culture and nearly instantaneous access to information. And, like all natives, they are a restless lot. #theend ■

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