



Will the Internet Taint a Loughner Verdict?

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As Arizona plans a trial for accused Tucson shooter Jared Lee Loughner, a new set of questions has arisen: How will a jury be able to sit in impartial judgment, untainted by nonstop online coverage of the crime and its aftermath? What safeguards should a judge impose to keep the jury from following the case on the Internet and reaching a verdict based on facts that aren't in evidence?

The Sixth Amendment guarantees every criminal defendant, no matter how heinous the charges, the right to trial by a fair and impartial jury. That means, among other things, that jurors aren't allowed to consider facts not in evidence. So judges routinely instruct jurors not to discuss the case with anyone outside the courthouse and not to read or listen to news reports about the case.

But in today's world of instant communication, are these traditional safeguards still workable? According to a recent study, at least 90 jury verdicts have been challenged since 1999 based on allegations of Internet-related misconduct by jurors. More than half of those cases occurred within the last two years. Roughly one third of the challenges were successful; judges granted new trials or overturned verdicts in 28 cases—21 since January 2009.

Some people argue for an absolute ban on all forms of electronic communication—a type of “virtual sequestration.” California, the state where



Loughner may be tried, revised its civil jury instructions last year; they now bar jurors from “all forms of electronic communication” that are directly or indirectly related to the case. But overly broad restrictions are problematic for several reasons.

First, an absolute or near-absolute ban increases the likelihood of juror “misconduct,” however benign. As a result, defendants will have a strong incentive to challenge jury verdicts based on minor infractions. In the Loughner case, for example, what if a juror simply pulls up archived news of the shooting? These challenges would tie the courts in knots and delay justice for victims. Second, how can we assume that potential jurors are capable of putting aside media-induced prejudice based solely on their testimony that they can do so? Third, onerous rules on Internet usage may result in juries taken from discrete subpopulations who are unfamiliar with the cyber world and thus do not represent a jury of the defendant’s peers.

Dispensing with jury restrictions altogether is equally problematic. That would break with the important societal value that jurors should decide based solely on the evidence. And it would reflect a deep cynicism that assumes that prospective jurors cannot be expected to uphold the law.

We advocate a workable solution that permits jurors to use the Internet, prohibits them from conducting case-specific research regardless of the media involved, but does not disqualify them based simply on their access to broad media coverage. This approach is consistent with the nation’s history in two important ways. First, it protects against jury bias as courts have done with every technological advance, by imposing substance-based restrictions rather than wholesale media-based restrictions. Second, it presumes, as courts have



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for centuries, that jurors understand and follow jury instructions, including safeguards against improper bias.

We believe that these narrow restrictions strike the appropriate balance. Courts will safeguard constitutional guarantees in a way that minimizes interference with jurors' personal and professional lives and affirms the bedrock principle that jurors can and will render impartial verdicts. In one of the most heinous crimes in the nation's history, we can show that we can arrive at a verdict that is fair to the defendant, the jurors, and the justice system as a whole.

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