

NEW MEXICO INJURY ATTORNEY BLOG

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Outside Influence of Jurors Growing Problem in Jury Trials

The New Mexico Supreme Court addressed the growing problem of outside influence on jurors. The case addressed a low tech version of the problem but the holding has far broader implications on New Mexico jury trials in the age of Google, Facebook, Twitter ...

The case of *Kilgore v. Fuji Heavy Industries*, the manufacturer of Subaru) addressed a situation where a juror in a seatbelt malfunction case received input from a source outside the courtroom. The juror's brother in law, a Subaru mechanic, apparently opined with the juror that a break failure in the Subaru was very unlikely. The jury found for the defendant Fuji Heavy Industries.

The plaintiffs requested a new trial on the grounds of improper juror conduct prejudicial to the plaintiffs. The trial court denied the plaintiffs' motion. The New Mexico Supreme Court reversed the trial court. However, rather than order a new trial, the Court ordered that the case return to the trial court for an evidentiary hearing to determine whether the outside influence was indeed prejudicial to the juror's decision.

In sending the case back for an evidentiary hearing, the Court ruled that it was the burden of the plaintiff to show that material extraneous to the trial reached the jury, the material related to the trial, and it was reasonably probable that the outside information affected the jury's verdict or the typical juror. This in short was a small victory for the plaintiff which must now go back and prove that information reaching the jury in the 2006 trial did in fact prejudice the jury's ruling.

The case is perhaps more interesting due to the growing influence of the internet on juror deliberations. In any trial that lasts more than a few hours where the jurors remain sequestered, some jurors just cannot resist the urge to conduct a little outside research or in many cases to even post the events of the day to Facebook, MySpace, Twitter or other social media. One recent Detroit juror went so far as to post his verdict on Facebook before the trial was over!

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The challenge then becomes proving outside juror influence or bias. Jurors are not allowed to testify to juror deliberations. Instead, the parties and their attorneys must uncover the wrongdoing themselves. In the case of the Detroit juror, the defense attorney was fortunate enough to have a tech savvy teenage son who discovered the impropriety on Facebook. Uncovering improper conduct on Facebook can be very difficult where security settings are in place. Proving that a juror did some independent research is near impossible without an actual admission from the juror himself.

If a party is fortunate to have a juror honest enough to admit wrongdoing, it must still be proved that the research had a prejudicial affect on the outcome of the trial. This must be proved at an evidentiary hearing which may come years later as it did in *Kilgore v. Fuji* making this a very difficult burden to carry. In the past, there was presumption of prejudice. In these cases, this seems like a rather safe presumption. After all, why would a juror research the topic at all but for the influence it would have on his or her decision.

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