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Outside Jury Influence Difficult Challenge with Rise of Mobile Technology and Social Media

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The use of social media by jurors has been a hot topic in the courts over the last couple of years. The explosion of smart phones, mobile access to the internet and social media is causing new and unique challenges to the courts, particularly in the case of jury trials.

Over the past year, there have numerous cases challenged and some overturned due to juror use of social media during trial. Juror use of the internet and social media during trial raises a host of problems for both sides of the case. The possibility of undue outside influence on jury verdicts is of great concern to all. Unfortunately, the pace of technology has far exceeded the pace of measures by the courts to protect against it's abuse.

Among the traditional instructions from the court to jurors is that they not discuss the case with others outside the case. This is to protect against improper influence on the juror during a trial. This might arise when the juror has a friend or family member with some experience or expertise with the subject matter in the trial. For instance, a juror might ask an uncle who has retired from the law enforcement or the practice of law about the case. Other times, the juror will call on family members who have engineering expertise or think they do to discuss a products liability claim.

There are countless ways this problem could arise in the past. However, this problem at least would not affect the many trials that lasted only one day, such as most [misdemeanor](#) criminal trials and many small civil trials. With the growth of the internet and social media, this too has changed with jurors able to do a little of their own research or even run the case by their Facebook panel of advisors during a break or at lunch. The problem becomes far worse with longer trials and more time to reflect, conduct online research and enlist input from the panel. In short, the problem of outside

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jury influence has grown exponentially with the growth of mobile technology, the internet and social media. And the problem may be harder to solve than one might think.

Courts have begun to routinely instruct jurors not to do their own research, not to email, text, or post information related to trial during the trial. This has not deterred many. In fact, the problem is so bad that California was compelled to pass a law making it a crime punishable by up to 6 months in jail for using the internet during trial for research or posting trial related topics on any social media site such as Twitter, Facebook, MySpace and LinkedIn. California believed this law necessary due to blatant disregard of judges' instructions by many jurors.

The most obvious question that then arises is whether such laws will prevent jurors from engaging in these prohibited activities during trial. A recent survey points to some challenges the courts will face even with the tool of contempt and jail to deter these practices at their disposal.

Several sources have noted a recent McCann survey of 6000 people aged 16 to 30 found that 53 percent of respondents would rather lose their sense of smell than access to social networking. Perhaps these folks simply do not appreciate the importance of the sense of smell. Or the survey may have had some design issues that would lead to such surprising results. Several sources raise this issue in noting that 67 percent of those in the survey would also give up their genitals for a Klondike bar, also a surprising result in most circles.

Notwithstanding the possible glitches in the survey, the results do not bode well for future jury deliberations. With the rise of texting, smart phones, mobile access to the internet and social networking, one does not need to look far to see the problem ahead. For many parents, one need look no further than the back seat to see the hold that this technology has on society. For everyone else, just take a peek at the driver in the next car.

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