

ALERTS AND UPDATES

New Jersey Appeals Court Allows Counsel During Jury Selection to Research Potential Jurors on the Internet

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Although counsel's use of laptop computers during trials has now become more common in courtrooms, the New Jersey Appellate Division recently addressed an issue of first impression concerning the use of the Internet during jury selection. In *Carino v. Muenzen*,¹ the appellate court held that it was permissible for counsel to access the Internet to research prospective jurors during jury selection, even if counsel did not provide advance notice to the court or opposing counsel. This ruling is one of the latest examples of how technological advances in the courtroom can reshape and significantly impact pivotal phases of trial practice.

Carino was a medical malpractice case where the plaintiff, as executor of the estate of his wife, alleged that the physician defendant deviated from accepted standards of medical care by failing to timely diagnose a brain hemorrhage. During jury selection, counsel for the plaintiff was seen using a laptop to access the Internet via the court's Wi-Fi connection. Upon realizing what was occurring, defense counsel, who had no similar technology, objected. The objection was sustained, and the trial court prohibited plaintiff's counsel from utilizing his laptop for this purpose during jury selection.

The trial judge based his ruling on the fact that counsel for all parties should have a fair and even playing field. To that end, plaintiff's counsel was instructed to close his laptop because he had not apprised the trial court and defendant's counsel of his intent to utilize a laptop for research purposes during jury selection. The trial court, however, noted that it would have been acceptable for plaintiff's counsel to use his laptop to access such information if he had provided advance notice to the court and defense counsel, and that the failure to do so resulted in giving the plaintiff an inherent advantage during jury selection. After the jury returned a no-cause-of-action verdict, the plaintiff filed an appeal on several grounds, including the trial judge's preclusion of using the laptop to access information about potential jurors during jury selection. The plaintiff contended on appeal that the trial judge deprived him of one of the fundamental rights of litigation as it related to jury selection by precluding research about potential jurors.

The New Jersey Appellate Division began its analysis by recognizing the well-settled principle that trial judges have broad discretion regarding the manner in which jurors are selected, but it also noted that the issue of laptop use to access the Internet during jury selection was not addressed by the New Jersey Rules of Court. The appellate court recognized that wireless Internet access in courtrooms first became available in April 2008, and there had never been any orders or instructions by the trial court administrator or assignment judge requiring counsel to notify the court and opposing counsel of the intent to use the Internet during jury selection.

The appellate court concluded that the trial judge acted unreasonably in prohibiting plaintiff's counsel from using his laptop to access the Internet during the jury selection process. In support of this conclusion, the court emphasized that there was not any suggestion in the record that plaintiff's counsel was disruptive while accessing the Internet with his laptop. The court addressed the "level playing field" rationale cited by the trial judge in his ruling below by noting that plaintiff's counsel had the foresight to utilize a laptop during jury selection, while defense counsel chose not to. The court also noted that the use of a laptop computer "simply cannot serve as a basis for judicial intervention in the name of 'fairness' or maintaining 'a level playing field.'" Notwithstanding this finding, the appellate court held that the plaintiff had not demonstrated any prejudice

based on the lower court's ruling. Therefore, a reversal was not warranted on this issue because the plaintiff did not point to "a single juror who was unqualified or as to whom he claims he would have exercised a peremptory challenge, even though he has subsequently had the opportunity to perform an Internet search concerning each juror."

Analysis

This decision highlights the ever-increasing use of technology in the courtroom and how trial and appellate courts continue to grapple with issues that emanate from the use of such technology. While decisions have been published across the United States regarding jurors conducting Internet research before, during and after the jury selection process, the *Carino* decision appears to be the first decision specifically addressing the issue of permissibility of Internet access by counsel during jury selection where no prior notice is given to the court and opposing counsel—and in a circumstance where opposing counsel opts not to utilize similar technology. In the future, it appears likely that Internet access by counsel during jury selection will become a fixture in most courtrooms during jury selection. A myriad of additional appellate issues flowing from such practice may then follow.

For Further Information

If you have any questions about this *Alert* or would like more information, please contact [Sharon L. Caffrey](#), [Demetrios C. "Jim" Batsides](#), [Paul M. da Costa](#), any [member](#) of the [Trial Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Note

1. *Carino v. Muenzen*, 2010 N.J. Super. Unpub. LEXIS 2154 (App. Div. Aug. 30, 2010).