



New California Law Takes Aim at Jurors' Uses of Internet

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We have written about the impacts of ubiquitous Internet access and social-media networking on the jury system. Last February, we considered a Reuters Legal study that identified an exponential increase in the number of jury verdicts that [have been challenged due to Internet-related juror misconduct](#). We also commented on a U.K. juror's [eight-month sentence for chatting with a criminal defendant through Facebook](#).

In August, California became the first U.S. state to address the growing problem through legislation. The new law, AB 141, was approved without opposition and signed into law by Governor Jerry Brown on August 5, 2011.

The law requires judges to tell jurors that existing bans on research and dissemination of trial-related information apply to all forms of electronic and wireless communication. The statute expressly requires judges to read specific admonitions at certain times in civil and criminal proceedings. It also expands the existing definition of "contempt" to include a juror's willful disobedience of the judge's instructions prohibiting any form of communication or research about the case, including electronic and wireless communication. Beginning next year, jurors found to be in criminal contempt for Internet-related misconduct will face up to six months in jail.

It remains to be seen what practical impact AB 141 will have in California -- the legislation did more to clarify existing law than it did to create new law. In fact, the California legislature presented a similar bill to former Governor Arnold Schwarzenegger, who vetoed it on grounds that then-current judicial warnings were adequate. Long before AB 141 amended California's Codes of Civil and Criminal Procedure, judges were required to remind jurors that they could not conduct research, disseminate information, or converse with or permit themselves to be addressed by any other person on any subject of the trial. AB 141 clarifies that the long-standing proscription applies to forms of electronic and wireless communication, too.

But one has to wonder if there was any real doubt that the previous judicial instruction prohibited jurors from posting trial-related comments on Facebook and Twitter and from conducting research on Google or Wikipedia. Certainly, no one would have argued with a straight face that jurors were free to discuss trial-related matters via older forms of electronic and wireless communication -- Morse Code, walkie-talkie, or Western Union telegram, for example -- simply because the instructions did not expressly prohibit electronic and wireless communication.



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The real newsworthy event seems to be that California legislators spoke with one voice to deliver a not-so-subtle message: Internet-related juror misconduct is a real and growing problem and courts are not doing enough to stop it. Until now, courts have condemned this type of juror misconduct and, in some cases, granted the defendant a new trial; but courts have seemed reluctant to punish Internet-related misconduct as criminal contempt. Perhaps judges worry that harsh punishment in the form of stiff fines or jail time will discourage people from jury service. Or maybe more senior judges do not fully appreciate the extent to which continuous electronic communication has become the norm for younger Americans.

Whatever the case, by enacting AB 141, California lawmakers have signaled clearly that a more robust response is necessary to prevent further erosion of defendants' Sixth Amendment rights, promote interests in finality, and limit the extraordinary costs of juror misconduct.

Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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