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Social Media and California Jurors

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Woodland Hills Personal Injury Trial Attorney Barry P. Goldberg has noticed that in April 2012, The Judicial Council of California Advisory Committee on Civil Jury Instructions (“CACI”) amended its Jury Instructions to address the prevalence of electronic communication and social media amongst our jurors. Instruction 116 states that “the parties can receive a fair trial only if the facts and information on which you base your decisions are presented to you as a group, with each juror having the same opportunity to see, hear, and evaluate the evidence.” The section continues on by saying that “using information gathered in secret by one or more jurors undermines the public process and violates the rights of the parties.” This basic idea isn’t new; jurors have been prohibited from discussing cases outside of the courtroom since the beginning. So what precisely is it about social media sites such as Facebook that have prompted the addition of a Jury Instruction section entitled “Why Electronic Communications and Research Are Prohibited”?

We know and assume that jurors breach the instruction to not discuss their case. Whether it’s chatting with a spouse before falling asleep, mentioning the general subject matter of the case to a neighbor in passing, or using jury duty as a jumping off point for explaining the legal system to one’s children, jurors feel a sense of security in their private conversations. The chance of a judge ever finding out that they privately discussed their case is practically non-existent. However, the presence of social media nearly guarantees that our jurors are discussing their case and might be influenced by numerous opinions by friends and relatives, whether related directly to the case matter or not.



Assuming that nearly every juror has access and uses Facebook, or other social media, it is reasonable to believe that social media influences jurors can have a tangible effect on the outcomes of jury trials. Instruction 100 recognizes this and states in the “100 Preliminary Admonitions” that jurors cannot “use any electronic device or media, such as a cell phone or smart phone, PDA, computer, the Internet, any Internet service, any text or instant-messaging service, any Internet chat room, blog or web site, including social networking website or online diaries, to send or receive any information to or from anyone about this case or [their] experience as a juror until after you have been discharged from [their] jury duty.” However, the instructions specify that jurors “may say [they] are on a jury and how long the trial may take.” Jurors who follow these directions are still likely to expose themselves to the influence of friends and family.

Following CACI 100, a reasonable juror might post a Facebook status that says “Stuck with jury duty for the next two weeks.” However, given Facebook’s structure, the juror will receive numerous immediate comments, which may begin the process which Instruction 100 seeks to avoid. “Hey, I was on jury duty last month, too. If your case is anything similar to mine, the plaintiff was trying to win the lottery or the business is probably insured and to pay.” Then, as Facebook designed, this one comment will spur an outpouring of commentary and “likes” from 50 of the juror’s closest internet friends, with 50 unique and opinionated comments. Not only will the juror take a census from these comments---during the trial---the juror may feel obligated to report the outcome of the case to these well-meaning “friends.” Given one’s false sense of privacy on the internet, it is reasonable to assume that the Facebook format frequently lures a well-meaning juror into breaking the rules by leaking innocuous details about the case. But, the responses and comments will prompt inappropriate influence: “been to that store before” “those truck drivers are all crazy” “my aunt recovered completely from her broken collar bone” “that’s the lawyer from TV!” Inappropriate external comments brought into the court room.



In *Juror Number One v. The Superior Court of Sacramento County* (May 31, 2012) 206 Cal.App.4th 854, the trial court learned that one of the trial jurors, fictitiously-named Juror Number One, had posted one or more items on his Facebook account concerning the trial while it was in progress, in violation of its admonition. Juror Number One admitted that during the trial he posted the number of weeks he was on jury duty, counting down the days, and that the phone record evidence he was listening to was boring. A realistic scenario repeated in our courts every day.

Although that case presented an interesting issue regarding privacy, the underlying facts are far more troubling. Jurors are definitely posting on Facebook. Further, it is unlikely that a trial court will ever find out or take any significant action.

Because social media cannot be realistically excluded from our jury system, we must adopt strategies to understand how jurors are influenced by the “Facebook-effect.” Today’s trial lawyer must not only understand a juror’s background and inherent biases. A trial lawyer must reasonably assume that a typical Facebook-savvy juror will receive feedback from a sizable number of online friends. With this assumption, a trial lawyer can tailor voir dire by urging jurors to disregard outside comments and postings. A trial lawyer must present evidence and argument with the eventual end-user in mind. How will the facts of my client’s case be posted? What comments will be forthcoming? As with any technological advancement, a trial lawyer must adapt to these changes. Assuming that everything said, seen and argued in your case is being posted by jurors may even make us better lawyers and force us to streamline our cases.

For more information about blog author and attorney Barry Goldberg's civil litigation expertise, please visit his web page, [Woodland Hills Civil Litigation Attorney. http://www.barrygoldberg.com/Practice-Areas/Civil-Litigation.aspx](http://www.barrygoldberg.com/Practice-Areas/Civil-Litigation.aspx) Call Mr. Goldberg today for a free consultation. (818) 222-6994

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