

Can Judge Run Internet Search To Confirm "Hunch" Before Ruling?

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The judge assigned to your case has a "hunch" about a piece of evidence introduced at the hearing or trial. To confirm the hunch, the judge has his clerk run a quick Google search. In ruling on the matter at hand, he specifically refers to the search results.

This is exactly what happened in a recent hearing in a federal court in New York. Judge Denny Chin was presiding over a release revocation hearing for criminal defendant Anthony Bari. The prosecutor alleged that Bari had violated his supervised release by robbing a bank in September 2008. A key piece of evidence was a yellow rain hat found in Bari's landlord's garage that was the same type worn by the suspect, as shown on the bank's surveillance video. In revoking Bari's supervised release, Judge Chin was persuaded by the rain hat, citing the Google search revealing that "there are also lots of rain hats, many different kinds of rain hats that one could buy." Bari appealed the decision on the basis that the judge was acting as a witness in violation of Federal Rule of Evidence 65.

The Second Circuit Court of Appeals rejected this argument, finding that the judge's use of an Internet search engine merely confirmed his hunch that the rain hat in the surveillance video and the one found in Bari's landlord's garage was more than a coincidence. The appellate court noted that "as broadband speeds increase and Internet searches improve, the cost of confirming one's intuition decreases."

While the rules of evidence are generally more relaxed in a revocation hearing, this decision may have broader implications for litigants who find themselves in front of tech-savvy judges. For a copy of the court's decision, contact Kathy Ossian.

For more information about legislation or litigation involving technology, intellectual property protection of information technology assets or any other Information Technology law issue, contact your Miller Canfield attorney or Kathy Ossian, Leader of our Information Technology Team, or call her direct at 313.496.7644.