

# SOCIAL MEDIA In the Courtroom

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Before social media sites existed, jury verdicts were based largely on the evidence presented at trial. Fast-forward a decade. Now jurors, with the use of their cell phones and laptop computers, have readily-available access to the Internet and social media sites like Twitter, Facebook, MySpace, and YouTube.

When jurors browse the Internet and social media sites to gain additional information about their assigned case, challenging ramifications, including potential mistrial, can result.

### IMPACT ON JURY VERDICTS

Recently, a juror in Jefferson County, Kentucky, admitted watching a YouTube video of an A&E report involving the criminal trial she was assigned to. The admission was made after a verdict of negligent homicide, but prior to sentencing. The judge interviewed the juror in a closed court session and concluded that the juror's viewing of the video did not prejudice the jury. In this instance, the court let the verdict stand and found no basis for holding the juror in contempt.

On the other hand, in *United States v. Hernandez*, a federal Internet pharmacy trial in Florida, the judge learned that nine jurors used the Internet to research information relating to the trial. After eight weeks of witness testimony, the judge declared a mistrial.

### NEW JURY INSTRUCTIONS

New jury instructions with penalties for using information obtained from outside the courtroom are on the way. The Judicial Conference Committee on Court Administration and Case Management recently sent the U.S. District Courts a set of model jury instructions to prevent jurors from accessing social media sites as well as reference books, magazines, television, radio, and other outside sources. Sooner, rather than later, most state courts

will likely adopt a similar set of jury instructions. Recently, the Michigan and Florida Supreme Courts adopted and the Ohio State Bar Association recommended a new set of instructions aimed at thwarting outside research.

### PREVENTATIVE MEASURES

Litigants and their attorneys concerned about the impact of the Internet and social media sites on their jury verdict can take action.

- Ask the judge to ban all cell phones, laptops, and other technology in the courtroom.
- Ask the judge to instruct jurors not to use the Internet or social networking sites to research information relating to the case.
- Question jurors about their Internet and social networking habits.
- Research the Internet and social media sites to learn what information exists on the Web about the case.

- Monitor jurors' pages on social media sites to verify they are not posting information about the case.

Courts and litigants will continue to be challenged by jurors seeking information outside of the evidence on social media and other websites. For more information about legislation involving technology, please contact your Miller Canfield attorney.



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