

Revised jury instructions: Do not use the Internet

Researching, discussing of cases 'huge problem'

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Type the name "Jennifer Strange" into your favorite search engine and see how many hits come up.

Or try the terms "Hold Your Wee for a Wii" or "water intoxication" and look at the tallies. You get tens of thousands of results.

That is exactly what San Diego lawyer Harvey Levine wants to stop jurors from doing in an upcoming, high-profile trial over the death of Strange during a radio station contest in 2007. Jury selection is set to begin this week in Sacramento.

In the latest sign of the collision between the courts and new communication technologies, jurors will have to sign declarations attesting that they will not use "personal electronic and media devices" to research or communicate about any aspect of the case. That includes computers, cell phones and laptops. Jurors will have to sign the declarations, made under penalty of perjury, both before and after they serve.

It is believed to be the first time in California that such a move has been made.

It comes at a time when lawyers are becoming increasingly concerned about jurors firing up their iPhones and BlackBerrys to update their statuses and more easily breach rules that prohibit them from seeking information outside the courtroom.

Judges routinely tell jurors not to discuss any aspect of the case, consult outside sources or do independent research. But experienced trial lawyers know such warnings are often not followed.

"It's a huge problem," said San Diego criminal defense lawyer Christopher Plourd. He was recently involved in a case in which a juror, during deliberations, searched Google with the term "attempted murder."

One jury expert said Levine's move was intriguing but probably will not be enough to stem the problem.

"I think it reinforces the general admonishment jurors get," jury consultant Toni Blake said. "When people have to sign something, they might be more likely to obey it. But this is a huge concern, and it gets worse and worse every year with more people on Facebook and Twitter."

Veteran San Diego trial lawyer Vincent Bartolotta agreed. Jurors are told not to go to the scene of, say, a car accident, on their own, he said. "But heck, they can pull up Google Earth and be at the scene in a heartbeat," he said. "Technology is changing the face of the courtroom."

Levine was last seen in San Diego courts in July 2008 after reaching a \$5.5 million settlement in a lawsuit filed by former Chargers linebacker Steve Foley, who was shot by an off-duty Coronado police officer.

Now Levine is representing one of Strange's children in a wrongful-death lawsuit against Entercom Communications, the owner of Sacramento radio station KDND-FM.

Strange died 2½ years ago after participating in an on-air contest in which contestants drank as much water as they could without going to the restroom. The winner got a Wii game console.

In court papers, Levine argued that jurors "conducting independent research on Internet sites whether through computers or through cellular phones with Internet capabilities has become a judicially recognized occurrence and has been found to constitute juror misconduct" in several cases across the nation.

Moreover, Levine wrote, a central issue in the case will be whether the radio station employees were negligent because they did not research the dangers of water intoxication before the contest. That line of questioning could tempt jurors to do their own sleuthing, he wrote.

Jurors will have to swear that they did not use any communication technologies to do research that "in any way directly or indirectly" dealt with the incident and the lawsuit — or even with the attorneys and judge. They will also have to swear that they did not watch or read any media coverage during the trial.

Sacramento Superior Court Judge Lloyd Phillips has imposed a gag order on both sides, so Levine was not available for an interview. But in court papers, he said a Google search of "Jennifer Strange water intoxication" yielded 63,700 hits. A Yahoo search coughed up 63,500 Web sites, blogs and legal analyses.

A juror who signs the declaration but is found to have done research or otherwise communicated online about the case could face fines and possibly probation or jail time, both of which are among the penalties for perjury. But that would occur only if lawyers or judges wanted to push the issue.

"I've seen a ton of intentional jury misconduct," Blake said. "But I've never seen anyone punished for it."

In March, a federal drug trial in Florida was derailed when nine jurors admitted they had been doing research on the Internet. A mistrial was declared after an eight-week trial.

A corruption trial in Pennsylvania was almost derailed when lawyers discovered that jurors had been posting updates on their Facebook pages. The defendant was convicted, but lawyers are already laying groundwork for an appeal based on the postings.

“The whole Googling issue and the idea that jurors can easily research on their own is terrifying to trial attorneys,” said Julie Cromer Young, a professor of civil procedure at Thomas Jefferson School of Law in San Diego.

“Courts take great pains to try to figure out what is relevant and what is not, and what needs to be in front of a jury and what doesn't.”

Young said that while most jurors try to follow the rules, there may be a subconscious distinction they are making among various forms of communication.

Talking about the case with a neighbor is obviously wrong. Sending out a Tweet? Maybe not so much.

“People tend to forget that e-mail, twittering, updating your status on Facebook is also speech,” Young said. “There's an impersonality about it because it's a one-way communication — but it is a communication.”

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