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LegalLOOP

When judges, jurors and the Internet collide

In the past, I've described misguided attempts by judges to excessively penalize jurors for using social media or the Internet during the pendency of trials. In fact, over the last year, judges have gone so far as to fine or jail jurors who have used social media during trial, and legislators have proposed laws that would criminalize such conduct. This despite the fact that jurors have been violating judges' orders not to research or discuss pending cases since the dawn of jury trials.

But for some reason, the use of social media and the Internet by jurors really bothers some judges. In fact, it just gets their goat. The question is: why?

Perhaps it's because many judges don't understand social media so they find it to be more threatening than traditional methods of violating their orders, such as reading about a case in the newspaper, researching issues using encyclopedias, or discussing the case with their spouses over dinner. Or perhaps it's because use of the Internet leaves a digital trail, making violation of judicial orders easier to prove.

Or maybe it's because jurors these days aren't as smart as they used to be and can barely restrain themselves from rushing out immediately after a verdict is handed down and blabbing to reporters all about the different ways that they've used the Internet to violate judicial orders.

I'm not exactly sure what the answer is, but I do think that it was a combination of the three theories above that lead to the latest brouhaha stemming from a juror allegedly using the Internet during a trial to research issues raised during trial.

The case at issue arose in Tampa, Fla., in the aftermath of a federal criminal trial in which the defendant, Buju Banton, a reggae star, was convicted of drug charges. Following the conclusion of the trial, the Broward/Palm Beach New Times quoted one particularly clueless juror as saying, "I would get in the car, just write my notes down so I could remember, and I would come home and do the research."

Shortly thereafter, defense counsel wisely brought a motion seeking a new trial. The news of the alleged Internet research rankled U.S. District Court Judge James Moody so much that on Jan. 8, he issued, post haste, an ex parte order requiring federal marshals to enter the wayward juror's home and seize her computers.

This move caused the prosecutor to spring into action, and, motivated by what I can only assume was an intent to hopelessly confuse everyone involved, he objected on grounds usually made by defense counsel. The prosecutor raised both privacy and due process concerns, arguing that the court was required to issue a warrant supported by probable cause.

He explained the basis of that argument in his motion: "The order theoretically would permit the marshal to enter the juror's home, business or vehicle and take any computer device (desktop, laptop, tablet, smartphone) found therein. The order allows for these devices to be held indefinitely, without any regard for the disruption the loss of personal computers might have on Ms. Wright's affairs."

Either the prosecutor's thinly veiled attempt at obfuscation was a success or the judge was swayed by his cogent constitutional arguments. Because the next day, on Jan. 9, in a sudden and unexpected turn of events, the judge abruptly rescinded his order and instead instructed the rogue juror to retain counsel and bring the hard drive of any computer that she owns or the computer itself to an upcoming hearing.

So, the saga in Tampa continues. Will the accused juror be excessively penalized because she chose to violate the judge's order by using a computer instead of a newspaper or encyclopedia? Will the prosecutor remember to take off his defense counsel hat once this hearing is over? Will our reggae star get a new trial?

Also of interest — will the legal profession ever become

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By **NICOLE BLACK**

Daily Record
Columnist

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accustomed to “newfangled technologies” like the Internet? Or, will we insist on exhibiting knee jerk, negative reactions every single time a new technology comes along and affects the practice of law — like some kind of warped legal edition of “Groundhog Day?” And, most importantly, if we choose the latter, will we choose Bill Murray to play the leading role or should we choose someone younger and more dope, like Zac Efron?

Tune in tomorrow and see.

Nicole Black is VP at MyCaseInc.com, a cloud-based law practice management platform. She is also of counsel to Fian-dach & Fiandach in Rochester and is a GigaOM Pro analyst. She is the author of the ABA book Cloud Computing for Lawyers, co-authors the ABA book Social Media for Lawyers: the Next Frontier, and co-authors Criminal Law in New York, a West-Thomson treatise. She speaks regularly at conferences regarding the intersection of law and technology. She publishes three legal blogs and can be reached at niki@mycaseinc.com.