How Juror Internet Use Has Changed the American Jury Trial

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Inevitably, the rise of the Internet has affected jurors' behaviors. When faced with new, stimulating information in voir dire or during trial, some jurors are turning to the Internet for background, clarity, or detailed information. In doing so, they are exposing themselves to potentially prejudicial media coverage and other extrinsic information that is outside the scope of what they would hear in the courtroom. Such information might include: inadmissible evidence; legal documents; information about the parties, crime scenes, and attorneys; and, definitions of legal and scientific terminology that may contradict judges' instructions.

In the face of this new juror behavior, judges and attorneys are encouraged to alter their techniques for handling exposure to information about the case or parties. Standard warnings to avoid media coverage tend to go unheeded. Jurors often do not even realize that Internet searching could be biasing.

This article examines the emerging problem of jurors' Internet research and the dangers it poses, and offers recommendations for reducing the likelihood of juror Internet research and mitigating its effects when it does occur.

Introduction

The explosion of the Internet in the past decade has changed American life. With an estimated 74% of North Americans now using the Internet (and a 130% usage growth rate from 2000 to 2008),[1] it has changed the way we communicate,

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1. Internet World Stats, http://www.internetworldstats.com/stats.htm.

learn, transact business, and run our personal lives. It has permeated every aspect of our society, including the American courtroom. The Internet, and the ways in which jurors may use it, is a force that must be reckoned with by the courts and by attorneys.

One hallmark of the trial process is that the court strives to control the flow of information to jurors: witnesses are named in advance; trial exhibits are submitted and approved by the judge; and, jurors are banned from obtaining information from outside the courtroom. In a sense, though, the very existence of the Internet is antithetical to the idea of a controlled flow of information. It is so easy to obtain enormous amounts of information with minimal effort that many people automatically search the Internet when confronted with a new name, subject, idea or other stimulus. In the face of ignorance—or curiosity—we "Google." We search, and we expect to find almost unlimited access to vast stores of information. This cultural expectation may be intruding on and interfering with the workings of the American courtroom.

The New American Courtroom: Jurors as Internet Researchers

Two anecdotes from our recent experience as trial strategy consultants illustrate the nature of this intrusion. The first is the 2007 re-trial of David Lemus, a high profile New York City case. He was convicted in 1992 of killing a nightclub bouncer, and sentenced to 25 years to life. After serving 15 years, new evidence resulted in Lemus being granted a new trial.

Jury selection for the re-trial began with an introduction to the case and some brief background questions. Before the lunch break, the judge instructed the panel not to discuss the case but did not instruct them not to read about the case. The break was going to be brief. When questioning resumed later, the panel was asked if anyone knew anything about the case. One juror said he had not heard of the case before, but the morning session had piqued his curiosity so he had used his cellular phone's web browser to learn more. Two others also reported conducting Internet searches during the break but, perhaps upon seeing the judge's reaction to the first juror's

search, said they had not actually read any of the search results. The judge rebuked and then dismissed the first juror, and sternly admonished the others to refrain from doing any research.

A few months later, in June of 2008 we saw this incident re-played in a criminal case involving officials of the carpenters' union, who were being tried on bribery charges. Voir dire began with a panel of sixteen jurors, who were dismissed at the end of the day and told to return in the morning. The beginning of the trial received some media attention that day, and the next morning, attorneys requested that the judge ask whether any of the jurors had heard or read anything about the case overnight. Two of the sixteen jurors said that they had conducted Internet searches. One had searched the defendants' names and the other had visited the union's website, though he claimed not to have read anything. He said that once at the website, he felt that he was doing something wrong so he stopped. Both jurors said they could remain fair and impartial. The judge instructed the panel to refrain from any further research, but left it up to the attorneys to make cause challenges if they saw fit. The first juror, who had searched the defendants' names, was already slated to be struck for cause for other reasons, and therefore attorneys did not pursue this issue with him. The second juror, who claimed he had not read anything, was questioned in detail. The attorneys concluded that he had in fact ended his research efforts without reading anything, and he eventually became a juror on the case.

These two incidents illustrate how the Internet has insinuated itself into the American courtroom. In both cases, voir dire questioning focused on exposure to pre-trial publicity. But, pre-trial exposure to traditional media coverage was only part of the problem. Several potential jurors thought nothing of conducting Internet searches of the case during court recesses.

A Little Extrinsic Information is a Dangerous Thing

The ease with which jurors can access information about a case from the Internet stands in stark contrast to the potential dangers of having them do so. Research has demonstrated that jurors' exposure to media coverage and other extrinsic informa-

tion about a case can be highly influential to their decision-making.[2] Field studies of pre-trial publicity in criminal cases, particularly high-profile ones, suggest that pre-trial exposure to media coverage of a case increases potential jurors' belief in the defendant's guilt.[3] Simulation research with mock jurors has demonstrated the same prejudicial effect of exposure to media coverage.[4] Moreover, both "real-world" and experimental findings suggest that while jurors—whether actual or mock—are indeed prejudiced by publicity, they are not aware that they are affected in this way. These jurors tend to believe, and to tell the court, that they are able to be impartial.[5]

Psychologists and others have theorized about the mechanisms by which exposure to pre-trial publicity affects verdicts. Edith Greene has suggested that media exposure can contribute to the formation of particular cognitive schemata, or frameworks for organizing information.[6] These schemata then influence the ways in which case information is heard and processed. Similarly, Neil Vidmar and Valerie P. Hans argue that pre-trial publicity shapes the way in which jurors later hear evidence: Jurors are more likely to attend to and remember evidence that supports pre-existing beliefs they may have formed about the case.[7] Vidmar also noted that pre-trial—or mid-trial—media coverage both affects and is affected by community sentiment about a case, including gossip, rumors, and pressure to conform to community opinion and to community normative values about justice.[8]

The challenge for a juror of setting aside extrinsic information, whether obtained pre-trial or mid-trial, is a difficult one. Judges instruct jurors not to rely on information they have learned outside the courtroom, but that admonition makes little

2. Neil Vidmar, *Case Studies of Pre- and Midtrial Prejudice in Criminal and Civil Litigation,* 26 Law & Hum. Behav. 73, 86 (2002).

3. Christina A. Studebaker & Steven D. Penrod, *Pretrial Publicity: The Media, the Law, and Common Sense,* 3 Psychol. Pub. Pol'y & L. 428 (1997).

4. Amy L. Otto et al., *The Biasing Impact of Pretrial Publicity on Juror Judgments,* 18 Law & Hum. Behav. 453 (1994).

5. Christina A. Studebaker et al., *Assessing Pretrial Publicity Effects: Integrating Content Analytic Results,* 24 L. & Hum. Behav. 317, 318 (2000).

6. Edith Greene, *Media Effects on Jurors,* 14 Law & Hum. Behav. 439, 445 (1990).

7. Neil Vidmar & Valerie P. Hans, American Juries: The Verdict, 112 (2007).

8. *Id.*

difference. Despite these instructions, jurors tend to bring to deliberations any issues that they consider to be relevant to their decision-making process.[9] This is not the result of intentional disobedience to judicial instructions. Rather, jurors, like other people, are generally unable to disregard information that they know and that they consider to be relevant, whether they ought to or not.[10] Once heard, the information cannot be ignored.

Preventing Jurors from Obtaining Extrinsic Information: Traditional Approaches May Not Work

With the advent of the Internet and the ease with which it can be accessed anytime, anywhere, concerns about exposure to pre-trial or mid-trial information obtained outside of the courtroom and about juror use of such information take on a whole new dimension. Our two anecdotes about jurors who did Internet research during voir dire illustrate the challenges courts face in controlling jurors' access to information.

Before the Internet explosion, a judge could instruct a jury not to read newspaper articles or listen to television or radio news accounts of the case. While it was always recognized that some might ignore this admonition, or accidentally encounter news coverage of a trial or hear local rumors or gossip,[11] the instruction was usually easy to follow. Most cases that went to trial, civil or criminal, were not widely covered in the local or national media, so jurors were unlikely to hear about a case unless they made an active effort to do so. Only the most highly motivated juror would actually go to the trouble of searching newspaper archives, or seeking out more specialized publications (such as law periodicals) that might be covering a patent case, for example.

All of that has changed with the increasing reach of the Internet. In cases that generate moderate to high levels of publicity, it is almost impossible for jurors not to see news head-

9. Shari S. Diamond & Neil Vidmar, *Jury Room Ruminations on Forbidden Topics,* 87 VA. L. REV. 1857, 1863 (2001).

10. Shari S. Diamond, *Beyond Fantasy and Nightmare: A Portrait of the Jury,* 54 BUFF. L. REV. 717 750-51(2006).

11. Vidmar, *supra* note 2, at 88.

lines pop up every time they turn on their computers and connect to their web browsers. Moreover, powerful search engines allow jurors to obtain information about a case from sources other than traditional media. In fact, it is almost ridiculously simple for them to do so: Witness the juror who used nothing but his cell phone during a lunch break to search for and read information about a case. Many potential jurors come to court with Blackberries, iPhones and other types of personal digital assistants ("PDAs") or cellular phones with web browsers. In the age of the mobile Internet, jurors have easy access to a veritable treasure trove of information about cases and some are clearly taking full advantage of it.

In the global village, all news is local

In the Internet age, jurors can easily find information about trials that have garnered little publicity. A year-old article in an out-of-state publication will show up in an Internet search just as easily as a current headline from the daily local paper. The Internet has truly transformed much of the world into a global village, and jurors are no longer limited to "local" news. Virtually every trial is newsworthy to someone and can therefore end up on the Internet where jurors can easily find it.

The scope of Internet intrusion into jury deliberations

Although there are no published studies of how often jurors use the Internet to access information about cases, news stories suggest that it is not uncommon. Luci Scott reported on several cases in which mistrials were declared when jurors researched the cases on the Internet and learned information which was not admissible at trial, such as what a defendant's sentence would be if he were convicted.[12] Recently, this issue arose in the second trial of Richard Scrushy, founder of HealthSouth.[13] After a lengthy high-profile federal trial in Birmingham, Alabama, Scrushy was acquitted of fraud charges in 2005.[14] In 2006, however, he was convicted of political corrup-

12. Luci Scott, *Internet-Surfing Jurors Vex Judges*, NAT'L L. J., December 4, 2002, *available at* http://www.law.com/jsp/article.jsp?id=900005533365.

13. Bob Johnson, *Ex-CEO Scrushy Asks Court to Throw Out Conviction,* ASSOCIATED PRESS, June 3, 2008 *available at* http://news.moneycentral.msn.com/provider/providerarticle.aspx?feed=AP&date=20080603&id=8722703.

14. U.S. v. Richard M. Scrushy, Case No. CR-03-BE-0530-S.

tion charges.[15] After this second trial, attorneys learned that some jurors had relied on information obtained from the Internet, including excluded information about Scrushy's earlier prosecution.

In a brief supporting their motion for a new trial, Scrushy's attorneys provided jurors' accounts of their use of extrinsic material.[16] The foreperson reported to the attorneys that he had visited the district court's website, printed an unredacted version of a superseding indictment that had not been provided to the jury, studied it extensively, and brought his annotated copy into the deliberations to help him lead the discussion. Other jurors reported that they had followed a local television station's daily blog about the case and had read an online news story on the case. One used the Internet to research the legal terms and criteria on which the judge had instructed the jury, and then shared her findings with the rest of the jurors during deliberations.

The trial judge rejected Scrushy's request for a new trial.[17] He questioned the credibility of some of the jurors' reports. Though he believed that some jurors had seen the unredacted superseding indictment, he did not think it created a reasonable possibility of prejudice to the defendant. He did not believe that there had been juror misconduct in this case, as he was satisfied that jurors did not intentionally seek out media information about the case.

Nonetheless, the range of information that the Scrushy jurors reported obtaining illustrates the broad scope of ways in which jurors' Internet usage can intrude on their deliberations. Exposure to publicity about the case was compounded by exposure to court documents, the opinions of bloggers, and legal definitions that were not pertinent to this case, which could have been confusing at best and misleading at worst.

The Scrushy jurors' Internet activities demonstrate that news accounts are only the tip of the iceberg when it comes to searches for extrinsic information. Here, we consider several other types of information including: background on the parties

15. U.S. v. Richard M. Scrushy, Case No. 07-13163-B.

16. Initial Brief of Appellant Richard M. Scrushy, Case No. 07-13163-B, 11th Fed. Cir.

17. Judicial Order R10-611, U.S. v. Richard M. Scrushy, June 27, 2007.

and events of the case; information on attorneys, judges, and witnesses; and, information on subject areas pertinent to the trial. All of these are ripe areas for jurors who are curious, and the reality is that some curious jurors will indeed search.

Background information about the parties In criminal cases, jurors may search for information about the defendant such as occurred in the *Scrushy* case.[18] In civil litigation, jurors may use the Internet to visit companies' websites, examine their financial statements, track their stock prices, and read about other litigation in which the company was involved. Notably, jurors can do all of these things without violating a typical judicial admonition not to read news reports about the case.

Background about case events Technology has made it possible for jurors to do their own detective work and research case events, while still following the "letter of the law" with regard to judicial instructions. For example, jurors in a criminal trial may be instructed not to visit the scene of the crime. This instruction, however, would not preclude use of an Internet-based satellite photo program (such as "Google Earth") that allows users to obtain a detailed picture of a particular block, street, or address, while seated at their own computers at home.

As new technologies emerge, jurors will undoubtedly have greater capabilities to conduct their own investigations should they so desire. These capabilities will challenge the courts in ever-changing ways with regard to preserving the controlled flow of information to jurors.

Information about attorneys, judges and witnesses For many Americans, especially younger people who have grown up with the Internet, the natural follow-up to meeting a new person either socially or in business is to search them on the Internet. It is reasonable, then, to assume that some jurors will turn to the Internet to learn more about the attorneys and judges whom they have just met in court and the witnesses they have heard. Such Internet research may be analogous to the way that jurors discuss amongst themselves various aspects of an attorney's ap-

18. *Supra* note 16.

pearance or demeanor. Because they are not permitted to discuss the case *per se*, jurors may focus on attorneys as an acceptable outlet for their desire to discuss what they have heard. Similarly, they may visit the websites of the attorneys' law firms and research personal and professional backgrounds as an outlet for their broader curiosity about what they are seeing and hearing in court. In fact, some law firms design their websites with jurors in mind, adding humor or other supposedly endearing qualities to their material in order to create positive impressions.[19]

Attorneys must also consider what personal information jurors might learn about them by searching their names. We strongly recommend that before going to trial, every attorney conduct a thorough Internet search on himself or herself to see what jurors might find if they were to do the same. The results can be sobering and disconcerting. Jurors might find attorneys' political and charitable contributions, which can reveal a great deal about the attorneys' values and whether they are similar to or different from the jurors' values. Personal information, such as the name of a spouse or partner, church or synagogue membership, and participation in sports events may also come up. For younger attorneys in particular, the searcher might be directed to any social networking sites of which the attorney is a member. All of this information has the potential to affect jurors' views of attorneys and consequently, of the parties they represent. Similar concerns arise with respect to witnesses and even to judges.

Information about subject areas pertinent to the trial Just as it is practically instinctive to research unfamiliar people on the Internet, so too do we turn to the Internet to familiarize ourselves with subjects that pique our curiosity or otherwise demand our understanding. There have been suggestions that jurors are no exception to this rule. As noted earlier, a Scrushy juror researched legal terms on the Internet.[20] Scott reported on jurors in other cases who researched legal definitions, and still others who

19. Henry Gottlieb, *Should You Design Your Firm's Web Site With Jurors in Mind?* N. J. L. J., January 2, 2007, *available at* http://www.law.com/jsp/article.jsp?id=1167386817011.

20. *Supra* note 16.

researched medical terms and conditions that were pertinent to their case.[21]

Patent cases provide an excellent example of the dangers of this kind of investigative work by jurors. Internet-supplied definitions of key terms from patent claims may be entirely inconsistent with the ways in which those claim terms have been defined by the judge. Of course, the judge's definition of claim terms is the only one that may be applied. Thus, jurors who are working with extrinsically acquired definitions and knowledge may well reach conclusions that are antithetical to the interests of justice.

This is an area where an ounce of prevention is worth a pound of cure. If jurors are turning to the Internet because they are confused by important ideas or terminology in a trial, it is in everyone's best interest to forestall that by maximizing comprehension and minimizing confusion.

Remedies: What Courts Can and Cannot Do

Much has been written about the problem of finding remedies for prejudice created by traditional media coverage.[22] Here, we consider how well those remedies might work for the types of Internet research described above, and suggest additional strategies for addressing these types of research. We also address the issue of mid-trial publicity to which empanelled jurors may be exposed (voluntarily or involuntarily) during the trial.

While some researchers have cited voir dire as the favored remedy for addressing the impact of pre-trial publicity,[23] others have found it less effective than changing the venue or importing jurors from other venues.[24] Other potential remedies for mitigating the prejudicial effects of pre-trial publicity include a delay in trial date, sequestration (to limit exposure to ongoing community bias), and the judicial admonition delivered to the jury at the start of trial. Because the admonition is both the sim-

21. *See* Scott, *supra* note 12.

22. Solomon M. Fulero, *Afterword: The Past, Present, and Future of Applied Pretrial Publicity Research,* 26 LAW & HUM. BEHAV. 1 (2002).

23. VIDMAR & HANS, *supra* note 7, at 116.

24. Fulero, *supra* note 22, at 1.

plest and the most often used, we consider this last remedy in greater detail below.

Judicial Admonition: Offering Reasons to Resist Temptation

Often, the admonition delivered by judges is clear and to the point, omitting any mention of the Internet entirely: *Avoid all media coverage and any other information relating to the case*. While some judges and some state's instructions specify that this includes avoiding Internet coverage of the case, even these admonitions could be more effective if they conveyed two key issues: first, an understanding that seeking outside information is indeed tempting and second, an explanation to jurors as to why it is so important to resist that temptation.[25]

The Internet is particularly tempting to jurors.[26] Judges can acknowledge that this feeling of temptation is both rational and natural. Jurors may have logical reasons for wanting to get information from the Internet. They may want to clarify something they heard in court but did not understand. They may wish to learn more about the defendant or the attorneys. Even general curiosity may lead jurors to search the Internet for a variety of topics related to their case.

Judges can acknowledge the temptations of Internet research, but then can explain to jurors *why* their cooperation in refraining from extrinsic research is so vitally important to the fairness of the judicial system. Jurors may feel that their searching is harmless and will not bias them, something that research has demonstrated is untrue.[27] An understanding of why this rule is not arbitrary should enhance jurors' commitment to adhering to it. Judges must explain that the fairness of the judicial system relies on the court being able to control the information to which jurors are exposed during trial.

One final addition to the judge's pre-trial instructions could diminish the potentially harmful effects of mid-trial pub-

25. New York's Criminal Jury Instructions include reference to the Internet both as a media source and as a research tool to be avoided. Jurors are also told why it is important for them to avoid getting outside information. The New York instruction, however, does not acknowledge that it could be tempting to use the Internet as a research tool. http://www.nycourts.gov/cji/1-General/CJI2d.Jury_Admonitions.wpd

26. See Scott, *supra* note 12.

27. *See* Vidmar, *supra* note 2.

licity or other information on the jury's deliberations: an instruction from the judge that if any juror sees another juror seeking extrinsic information or has reason to believe another juror has done so, he or she is obligated by law to notify the court.

Working to bolster this 'watchdog effect' should serve the legal system in two primary ways. First, jurors will be more likely to resist seeking information during the trial day on their Blackberries or personal computers if they fear that a fellow juror will observe them and subsequently notify the judge. Second, if a juror nevertheless obtains extrinsic information that juror should be less likely to convey that information to other jurors. This should provide an effective form of damage-control and diminish the possibility of more widespread contamination in the event that a juror is unable to resist the lure of the Internet.

Reducing Juror Motivation to Seek Clarification on the Internet

It is important for attorneys and judges to consider jurors' motivations in conducting their own research on unfamiliar terms, issues, or technologies. Sometimes jurors are simply curious to learn more, and sometimes they are trying to resolve competing explanations or theories offered by the two parties. Sometimes, they may simply be trying to understand something that confuses them. Especially if a case involves complex and difficult technology—a not uncommon scenario in patent cases, for example—jurors may turn to the Internet for a simple explanation if they did not understand the presentations they heard in court. The more they understand what they hear in court, the less motivated they may be to do Internet research for clarification.

To that end, attorneys should work hard to ensure that they are both persuasive advocates and effective teachers. Attorneys are encouraged to use clear language and a variety of still and animated demonstratives to help jurors fully comprehend what they hear in the courtroom, so that they will be less likely to look elsewhere for clarity.

Similarly, "plain-English" jury instructions may go a long way toward reducing jurors' needs or desires to research legal concepts on the Internet. Finally, allowing jurors to submit

questions to witnesses can provide another outlet for their curiosity or confusion. This too may help to prevent jurors from conducting Internet research on material they hear in the courtroom.

After taking the most complete and thorough approach to *preventing* extrinsic information from being accessed by the jury, the most prudent next step would be to prepare for when jurors access extrinsic information anyway. While there is no single, or simple, resolution to this issue, we offer two broad recommendations: *control* what you can with regard to what appears on the Internet, and *know* what is out there.

Managing Internet Information: Control What You Can

Much of the information that jurors will find if they do case-related searches is out of the control of the court and the attorneys. The United States, unlike many other countries, largely gives free rein to the media to cover ongoing trials,[28] although "gag orders" are used sometimes to halt the flow of current media coverage.[29] Our national commitment to freedom of speech means that news stories will be what they will be, as will blogs, online dictionaries, and many other sites that provide news or information to jurors who seek it.

In recognition of this fact, some attorneys have begun to "work the web," especially in high-profile cases. They have set up websites promoting their clients' positions in an effort to balance or counteract the impact of any negative media coverage. Martha Stewart, for example, posted information about her legal status on her website and accepted emails from the public about what they had read—a kind of informal opinion polling. They have also blogged: Joseph Lopez, an attorney for a convicted mob boss, blogged about the trial on an ongoing basis until the judge ordered him to stop.[30] While attorneys may engage in this kind of behind-the-scenes providing of information to the public, the breadth of easily available informa-

28. VIDMAR & HANS, *supra* note 7, at 108-09.

29. *See* Otto, *supra* note 4.

30. Stephanie Francis Ward, *Full Court Coverage: What Happens When Defense Counsel And Ordinary Citizens Blog About High-Profile Trials?* 94 A.B.A. J. 34 (Jan 2008), *available at* http://abajournal.com/magazine/full_court_coverage/.

tion on the Internet from other sources mitigates the impact of these litigation-inspired offerings.

It may be harder for attorneys (or judges) to work the web when it comes to information about them personally. Some information about individuals is in the public domain and cannot be removed or modified by the individual. However, attorneys and judges do have control over user-created materials such as personal web pages, firm (or court) websites and social networking sites. While it is hard to know, for example, how jurors might be affected by the knowledge that an attorney is single and seeking a partner, it is wise to err on the side of caution and remove such potentially prejudicial information.

Internet news coverage and blogs are completely outside of the court's control. The best that attorneys and judges can do is become familiar with what is out there, and know as much as possible about what jurors might be seeing. To that end, there is great value in ongoing monitoring of the Internet, from before the trial starts until it ends. Monitoring the media has always been an important aspect of trial strategy, but it has a new face now. It no longer involves identifying and tracking discrete news articles or television segments. The Internet, with its news updated by the minute and the running commentary of its bloggers, is a dynamic organism that is perpetually evolving. Search results can become obsolete in a matter of days, if not hours. This is not to suggest, however, that it is not worth the effort to monitor the media. Quite the contrary: we recommend that attorneys redouble their efforts to do so, assigning their most Internet-savvy team members to this task. By remaining familiar with what is on the Internet, attorneys can try to address any coverage that comes up that they believe is especially prejudicial.

A Final Warning: Beware the Blogging Juror

Our emphasis in this paper has been on what jurors may read on the Internet. However, it would be imprudent to ignore the fact that trial jurors occasionally contribute to the coverage of a trial. There have been several cases in recent years in which jurors were found to have blogged about a trial while

they were sitting on the jury.[31] For example, in July 2008, an alternate juror began blogging about a case. He discussed the proceedings each day, though he disguised witnesses' names and did not reveal the nature of the case. At one point, he even printed an excerpt of an exchange between an attorney and a witness. A few days after this alternate became a trial juror, his blogging came to the attention of the judge. He was instructed to stop and was dismissed from the jury. He posted an apologetic entry on his blog, explaining that because nobody but his friends and family read the blog and because he did not include any details about the case, he did not think his blogging would pose a problem.[32]

This anecdote suggests that attorneys are well-advised to question jurors in voir dire about whether they maintain personal blogs or follow others' blogs. Judges are well-advised to include admonitions against blogging about the trial or reading blogs that might have information related to the trial as part of their instructions not to talk about the case. Just as the Internet has changed the nature of jurors' access to information about a case, it has changed their ability to disseminate such information, in ways that will continue to pose new challenges to courts.

Conclusion

As trial consultants, we have witnessed the intrusion of the Internet into the American courtroom. Jurors are increasingly using the Internet to do background research on cases, learn more about the parties involved, and seek a better understanding of often complex and challenging material presented in the unfamiliar environment of the courtroom.

We have offered recommendations for reducing the likelihood of jurors researching case information on the Internet. These recommendations include: strengthening judicial admonitions about juror media exposure and educating jurors about why they should not do their own research; controlling personal and case-related information available on the Internet to

31. Vesna Jaksic, *A New Headache For Courts: Blogging Jurors*, NAT'L L. J. March 19, 2007, *available at* http://www.law.com/jsp/PubArticle.jsp?id=900005476512.

32. http://fuzzyraygun.com, see posting "Sorry," July 14, 2008.

whatever extent possible; and monitoring the Internet for pertinent information to remain aware of what jurors may be seeing. As technology advances and the Internet continues to permeate Americans' lives, the possibility that jurors will use it as a source of extrinsic information continues to grow. Courts and counsel will need to stay one step ahead of jurors by monitoring and controlling jurors' access to and use of extrinsic information. This is an emerging issue that is here to stay. As such, it must be reckoned with.