

“tweet tweet tweet”

Goes the Jury:

Jury Misconduct in the Twitter Age

What are you doing right now? A seemingly innocuous question. In everyday conversation, the response is usually as inconsequential as the query. Everything changes, however, when a juror tweets an answer to this question to his or her Twitter followers. A tweet is a 140-character text-based post or update displayed on the author’s profile page and immediately delivered to the author’s subscribers or “followers.” In addition to Twitter’s microblogging service, there are several popular sites that allow users to easily inform a broad group of friends of their whereabouts and actions, including Facebook, MySpace, LinkedIn and Friendster.

In every trial, jurors are told not to discuss the case with anyone, not to let anyone discuss the case with them, and to let the judge know if anyone outside of the court attempts to discuss the case. Today, these instructions may not be enough. Based on the actions of jurors in recent cases in New Hampshire, Pennsylvania and Arkansas, it is clear that at least some jurors don’t understand that their daily tweets

fall squarely within the scope of this instruction. Some of the offending updates include:

- Lucky me, I have Jury Duty! Like my life doesn’t already have enough civic participation in it, now I get to listen to the local riff-raff try and convince me of their innocence.¹
- Stay tuned for a big announcement on Monday everyone!²
- “So, Johnathan, what did you do today?” Oh, nothing really. I just gave away TWELVE MILLION DOLLARS of somebody else’s money!³

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As a result of such posts, courts have been faced with motions for curative instructions, new trials and mistrials. These tweets and status updates are enough to provide an unsuccessful litigant with a colorable argument for a new trial.

Although it is extremely rare for a jury verdict > [Continued](#)



to be overturned, it can happen. Smartphones provide instant access to Twitter during lunch and trial breaks. A juror’s daily trial updates and friends’ subsequent responses could possibly taint jury deliberations. If a court were to find that a party suffered actual prejudice as a result of a Twittering juror, then a new trial would be warranted.

How can a litigant mitigate potential Twitter issues? Specificity is the key. Model civil jury instructions have language such as “You must not discuss this case with anyone. You must not let anyone discuss the case with you.”⁴ This language fails because it lacks any reference to tweet-like activity. Litigants can and should request special instructions that directly address these issues.

Minnesota’s Criminal Jury Instruction Guide includes an instruction, adopted within the last year, that leaves little unsaid: “When you go home during the trial, do not talk to your family, friends, or others about the case. You may tell them you are a juror on a criminal case and that is all that you should tell them. Do not report your experiences as a juror while the trial and deliberations are going on. Do not e-mail, blog, tweet, text or post anything to your Facebook, MySpace, or other social networking sites about this trial. Do not visit any ‘chat rooms’ where this case may be discussed.”

While the model instruction should prevent confusion regarding tweeting, it does not address trial “Googling,” another emerging problem.

In March, a federal district court judge in Florida declared a mistrial after discovering that eight jurors had been doing internet research about the case during trial.

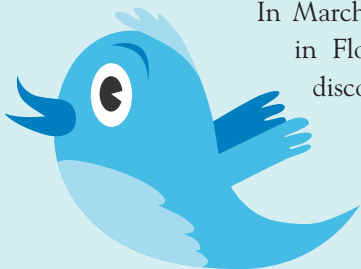
An instruction to jurors directly prohibiting internet research is warranted. For example:

Do not do your own investigation, whether by making in-person visits to any of the places that will be discussed by witnesses during the trial or by any other means, especially the internet and search engines such as Google or Yahoo.

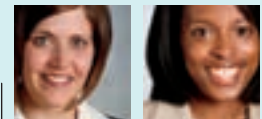


Although some judges may be reluctant to give instruction addressing tweeting and Googling because it would prevent jurors from staying in touch with their work and homes during trial, some courts have enforced and emphasized the importance of instructions by requiring that jurors, witnesses, and observers check their electronic devices in the lobby of the courthouse. For example, the Southern District of New York prohibits jurors from bringing electronic devices into the courthouse.⁵ If appearing in a court with no rules regarding electronic devices, a litigant could request that the court instruct the jurors to leave their electronic devices at home during the trial.

Until Twittering and Googling jurors understand that their daily updates and internet research violate the court’s instructions, litigants should ensure that the instructions read to the jury before, during, and after trial include specific references to online activity. No Googling or tweeting allowed.



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¹State v. Goupil, 908 A.2d 1256 (N.H. 2006) ²Commonwealth v. Roseboro, CP-36-CR-0004499-2008 (Cr. of Common Pleas of Lancaster Cty. July 30, 2009) ³Nystrom v. Stroom Holdings LLC, No. 2006-1471 (Washington Cty. Cir. Ct. of AR.) ⁴See Minnesota Civil Jury Instructions 10.40 ⁵http://www1.nysd.uscourts.gov/jury_faq.php.