

Mobile technology jeopardizing court cases



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profession, but it is a necessary evil and I even like a couple of lawyers, really. Want to hear a good lawyer joke? Maybe later.

Since the prosecution and the defense are both trying to make their case, the specific information has to be carefully

and precisely delivered to the jury members. That cuts both ways with opposing sides sometimes limiting other data points in order to keep jurors in the dark on challenging issues.

Attorneys want to paint an exact picture of their case so each of the jurors has just the right amount and type of information to reach a verdict in their favor. That vector of information cannot divert from the litigants' constraints.

Any stray rumor, random statement or even documented fact that was not delivered within the judicial informational pipeline can queer the case and result in a mistrial.

Mistrials are terrible wastes of time, money, and human energy. Justice delayed is justice denied and mistrials just prolong the agony of litigation since it is a mostly negative experience in normal people's lives.

Criminal defense lawyers sometimes strive for a mistrial just to keep their clients out of jail hoping their chances that the case will go away will increase.

The instant access to information via our smartphones that most of us carry can be just the

ticket for a mistrial if it gets used during a hearing, jury deliberation, or even at home regarding the facts of the case. Recently there have been numerous examples of how cases have been retried or verdicts even thrown out due to jurors personally acquiring via their cellular phones additional information, legal definitions, or prior case history related to the court proceedings.

Jurors have been cited and disciplined for text messaging restricted information during trials to friends and family which puts the case in jeopardy. Some of these bored or distracted jurors have even posted controlled information on social networking Web sites like Facebook, LinkedIn and Twitter.

As of Sept. 1 of last year all Michigan state courts have banned the use of iPhones, smartphones, and other communications devices by jurors during deliberations. Other jurisdictions have gone even further by collecting all digital communications devices of jurors as they enter the courtroom.

The judge and lawyers want those jurors fed solely on the stream of information doled out by the legal system rather than their own research on Google.

In Florida last spring during a major federal drug trial, a juror had been doing research on the case over the Internet which was a direct violation of the judge's instructions to the jury. Turns out there had been eight other jurors doing the same thing.

The result was a mistrial declared by the judge thereby wasting two months of court time and huge expenses. I'll bet the drug dealer and his lawyer were smiling though.

If I served on a jury they would definitely have to confiscate my iPhone because just by habit I would be Googling, verifying and analyzing almost everything I hear. I would be pulling my phone out and unconsciously tracking down additional information on the defendant, seeking out previous news articles about the event and searching for related cases and outcomes just because I'm

such a curious George.

Those rogue actions would quickly get me in trouble and may jeopardize the case which is something I would not want. So my plan, if I'm even called to serve on a jury again, is to leave my iPhone locked in my car so I will not be tempted to data mine outside the legal informational highway.

Our local county family law Judge Matt Reue has a rule that no jurors can have cellular or smartphones in the jury box or deliberation room. He has been closely following the judicial journals and legal trades concerning jurors and Internet enabled cellular phones in the courtroom.

Judge Reue explained how our legal system is based on an 'adversarial system' which relies on the contest between to two opposing parties presenting their information to an impartial person or group of people, judge and/or jury, to determine the truth of the case. This is compared to older or European style legal platforms called the

"inquisitorial system" where the judge and/or jury asks questions and whose job is to investigate the case.

Our adversarial legal system has a goal of a "blank slate" and non-biased judge and jury that evaluates the filtered information presented by the opposing parties only and have no personal investment of time and energy on either side of the issue.

This is why judges like Matt Reue, JP Doug Zwiener and thousands of others ban communications devices in the jury box to maintain our adversarial legal constraints of information presentation and deliberation.

Bottom line: Being dynamically informed by your smartphone is a good thing as long as you are not deciding someone's legal fate.

Next week's column: Intel vs AMD.

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