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Case of the curious juror: when the Web invades the courtroom

A King County rape trial highlights a challenge confronting judges across the country: How to keep jurors, accustomed to reaching for their smartphones when any question arises, from going online to do their own research on cases.

By Ken Armstrong

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Last week, in King County Superior Court, a jury foreman sat before a judge, hands clasped, and tried to explain. He had violated her orders not to do any research on the case. She wanted to know why.

At home, after two days of deliberations, he'd gone online to look up the statute for first-degree rape, the juror told Judge Mary Roberts. There, he saw a link for the crime's penalty.

"I clicked on it," he said.

The juror, in his 60s, with a bald pate, white hair and glasses, said that in his line of work, there's not a week that goes by when he's not researching some product. "So I fell into work habits, I guess," said the man, whose employment history includes time as a software engineer and system-support manager.

Now his Web surfing, brief as it was, threatened to undo everything. His research had taken him beyond what had been presented in court: Jurors get instructed on what constitutes a crime, not on the potential sentence. So Roberts had to decide whether to order a new trial. If she did, that would mean five weeks wasted — not just her time, but that of the lawyers, the bailiff, the court reporter, the members of the jury.

Five weeks is how long the trial had lasted for 26-year-old Abdulkadir Gargar, convicted in November of first-degree rape and attempted unlawful imprisonment. Prosecutors say that in May 2012, Gargar assaulted a 23-year-old woman in a Tukwila motel.

A new trial would mean the woman would have to testify again about being threatened, choked and bitten. A new trial would mean money wasted. Gargar speaks Somali. During the trial, the court spent more than \$20,000 on interpreters alone.

On Monday, as the judge prepared to rule, the woman's parents sat in the courtroom, waiting.

The challenge confronting Judge Roberts — keeping jurors from doing extrinsic research — is one faced by judges around the state and country. And the easier it gets for jurors to go online, the steeper that challenge gets.

These days just about everyone carries a smartphone. So judges beseech jurors to keep those phones in their pockets, or at least to avoid the search engine: No Googling the defendant or the attorneys or the law or the meaning of words or anything else related to the case.

But time and again, jurors can't resist. Nationally, they've pulled up images of a crime scene (Google Earth), mapped the distance from crime scene to defendant's home (MapQuest), and researched terms from "reasonable doubt" to "retinal detachment." They've looked up "lividity," "great bodily injury," "prudent," "perverse" and "oppositional defiant disorder."

For judges and lawyers, independent research by jurors poses danger. Information gleaned from the Internet or other sources can be misleading, false, incomplete, irrelevant, unfair or outdated. Bogus material might even be planted. The possibilities seem as endless as the Web. And if the lawyers don't know what information a jury is relying upon, they have no opportunity to rebut or clarify.

In 2009, in Florida, a federal judge declared a mistrial in a drug case when he discovered that not one, but eight of the 12 jurors had done online research. "There was a lot of Googling going on," one lawyer told a Florida newspaper.

Breaking the habit

In King County, new trials have been ordered in criminal and civil cases due to jurors going online. Two months ago, the state Court of Appeals threw out a felony conviction against a man accused of trying to elude police by busting down Interstate 5 in a black Mercedes, after midnight, lights off, at up to 130 mph. During deliberations, a juror researched the defendant's criminal history.

Five years ago, in an employment-discrimination lawsuit where the plaintiff had been awarded \$4.3 million, the appeals court ordered a new trial on damages because a juror researched the employer's annual earnings.

In Washington, each judge decides how to instruct a jury. But most consult recommended jury instructions from a committee appointed by the state Supreme Court. In 2010, the committee inserted detailed prohibitions against Internet research. In 2011, it created a poster for jury rooms. Reminiscent of public-pool signs — "No Diving, No Horseplay" — the poster lists rules, pictured on a smartphone, including: "Avoid outside information from the Internet or other sources."

The poster is so in demand that it's now used in at least 20 states, as well as in some federal courts.

William Downing, a King County judge who co-chairs the committee, says: "In the not-so-distant past, the biggest concerns were that a juror might go to a law library to look up legal information, might go to the public library to peruse old newspaper stories about a crime or might go to the scene of an auto accident to check out sightlines." Those steps took work. Now they can just "pull out a smartphone or tablet."

Michael Downes, presiding judge of Snohomish County Superior Court, says: "It's almost reflexive. We want to know something and we go on the Internet." He tells jurors to suspend that habit: "I stress it very heavily at the beginning of the case, and then at every recess, I remind them."

To highlight the pitfalls of Internet research, Ronald Culpepper, the presiding judge of Pierce County Superior Court, tells jurors he can go online and find the lost continent of Atlantis.

Some judges take phones away during trial, but they're the exception: Courts don't want to be responsible for damaged or lost phones, and besides, jurors will still have electronic access when they go home at night.

Around the country a few judges have held jurors in contempt for going online to research cases. A Georgia judge fined a juror \$500, a New Hampshire judge, \$1,200.

“Over in England they hammer jurors,” says Thaddeus Hoffmeister, a University of Dayton law professor who specializes in juries. Two years ago in England, a psychology lecturer who researched a defendant’s criminal history — and shared her findings with her fellow jurors — received a six-month jail sentence, with the lord chief justice, Igor Judge, saying: “In the long run, any system which allows itself to be treated with contempt faces extinction.”

But many judges see a downside to going after jurors. “We already have enough people who don’t want to serve on juries,” says Susan Craighead, the presiding judge of King County Superior Court. “If they start thinking we’re going to punish them if they do something wrong, I think that would be a real deterrent.”

There’s no saying how many jurors do online research. In 2011, the Center for Jury Studies in Williamsburg, Va., surveyed more than 500 potential jurors across the country. They were asked: If ordered to refrain from all Internet usage for the duration of a trial, could you do it? Fourteen percent said no.

The center’s director, Paula Hannaford-Agor, says the online habit is more ingrained with youth: “As these people age into the jury pool, it’s going to be much harder to control.”

For some jurors, gathering additional information seems conscientious; being ordered to abstain sits wrong. So judges need to describe how online research can result in an unfair trial, Hannaford-Agor says. “The default explanation of many judges — ‘Because I said so’ — is not going to cut it anymore.” She says judges also need to stay current, lest they lose credibility by telling jurors to stay off MySpace.

“It’s because of you”

In the Abdulkadir Gargar case, the foreman’s misconduct came to light only because jurors agreed to sit with the lawyers afterward and discuss the case. When the defense attorney asked if any jurors knew the penalties for the crimes charged, the foreman said he happened to — because he had looked it up. To this, another juror said: You did?

At the hearing on Monday, Judge Roberts was faced with evaluating the potential effect of the jury foreman’s misconduct. The law says that if the misconduct could have influenced the verdict, a new trial should be granted.

Roberts noted that on the second day of deliberations, the jury sent out a question indicating that it was struggling with the difference between first- and second-degree rape. And it was that night the foreman looked up the penalty for first-degree rape, picking up information that’s intentionally kept from jurors for fear their deliberations regarding guilt will be shaded by considerations of what is an appropriate punishment.

The judge ordered a new trial.

“Jesus Christ,” said the father of the woman who would now have to testify again.

Before ending the hearing, Roberts told the foreman how upset she was. “I’ve never had a juror so flagrantly violate my orders,” she said. She described how expensive the trial had been. One witness was flown in from Arizona — and because he’d been in custody there, two sheriff’s detectives had accompanied him. “I can’t imagine how much that cost,” the judge said.

“It’s all going to have to happen again, and it’s because of you,” she said.

Leaving the courtroom, the juror walked past the parents of the woman who had testified against Gargar.

The father, his voice sarcastic, said, "Thanks a lot."

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