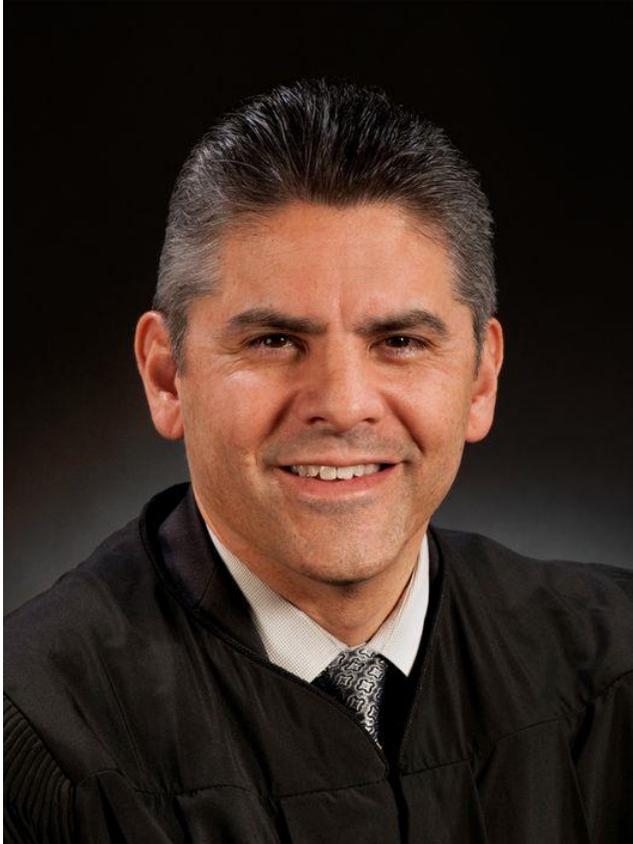


Can Facebook sway Avery, Dassey judges?

[Alison Dirr](#), USA TODAY NETWORK-Wisconsin 7:04 p.m. CST February 1, 2016
Postcrescent.com



Washington state Supreme Court Justice Steven C. González (Photo: Photo courtesy of the office of Washington state Supreme Court Justice Steven C. González)

What happens when your outraged Facebook post about "Making a Murderer" shows up in a judge's news feed?

It's not outside the realm of possibility, given that people from around the globe have seen the Netflix docu-series and chatted about it via their social media accounts.

Michael O'Hear, a professor at Marquette University Law School, says he doesn't think it's possible for judges to insulate themselves anymore.

"I think judges would say social media doesn't affect the way cases are decided, but I imagine it could make a difference in some cases," O'Hear said. "Judges are human beings. If they feel enormous pressure, then it has to play some sort of role in the back of their minds."

He's not accusing judges of making decisions based on social pressures, but subtle influences are there. When judges — just like the rest of us — look at Facebook for updates from friends and family, news stories and cultural references can't be weeded out.

Daily newsletter: [Sign up for 'Making a Murderer' updates](#)

Timeline: [History of the Steven Avery case](#)

Related: ["Making a Murderer" coverage, archived stories and more](#)

In fact, it's impossible to measure how often something judges see in their news feeds influences their courtroom decisions, said John Browning, a Texas attorney who has written extensively about social media's effect on the legal system.



John Browning (Photo: Photo courtesy of John Browning)

Some judges try to shut out as much outside commentary as possible while others are less strict in their media consumption.

But, if you think about it, it's not like judges couldn't gauge public opinion before Twitter and Facebook. Front-page newspaper articles and local TV broadcasts have always held sway, but additional influences have crept in with the Internet.

Washington state Supreme Court Justice Steven C. González said it's a myth that judges weren't affected by public opinion before social media, "but the point of being a neutral decision-maker is you're supposed to base your decision on the evidence that's produced in court and that both parties have a chance to contest."

"The courts are the one branch of government that is not supposed to be influenced by popularity but by the rule of law — regardless of how popular the outcome might be," he added.

Even so, González said justices receive daily news clippings about cases, and he might even hear through the news that someone is asking for review by the Supreme Court before the briefs actually reach his desk.

"I think it's important for us to understand what's happening in the world and I think judges need to be part of the community in which we live," he said. "I think that's healthy. We don't want to be cloistered and hidden away."

Most of the information judges get through news clippings center on details that are already in the court file or they'll include the public reaction to a case that has been decided, he said. Those clippings don't drive a decision, but understanding the effects of what the justices do is important, he said.

In the cases where the information in a story is outside the court record, however, he said he thought justices should generally avoid reading it.

González says he watched "Making a Murderer" because he won't be ruling on any part of Steven Avery's case. The issues raised, including administration of justice questions, are interesting, he said, but watching the 10-part series doesn't give him the ability to determine whether Avery should be released.

The 10 episodes have [turned an uncomfortable spotlight on Manitowoc County](#), where Avery and his nephew, Brendan Dassey, were accused of killing 25-year-old freelance photographer Teresa Halbach.

Juries convicted both men in 2007, and they were sentenced to life terms in the Wisconsin prison system, though Dassey has taken his case into the federal court system in hopes of being released. His case is awaiting a decision by [Magistrate Judge William E. Duffin of Milwaukee](#), whose office declined to comment because the case is before him.

Beneath the chatter about Avery's guilt or innocence is the question of whether the public can really trust the criminal justice system.

That's a factor that González said justices take into account in writing their decisions.

"It affects often how we write and the care we take in explaining why we've ruled the way we've ruled," he said. "I'll also say that our democracy works if people believe that it's fair, so it's critical that we not only be actually fair but that we appear to be fair as well."

For Texas District Court Judge Steve Smith, avoiding the social chatter about a case he's handling goes back to how he wanted judges to handle his cases when he was an attorney.

Today he mutes the television or just turns it off if coverage of a case he's handling comes on. He'll tune out talk at a nearby table when he's out to eat.

"People have the right to have their cases decided based on properly admissible evidence and they should not have any part of their case decided upon by innuendo, speculation or somebody's personal feeling about what a result should or should not be," he said.

Theoretically, it gets harder to tune out public opinion as the amount — and volume — of the community conversation grows.

Although the public's potential reaction to his decision might enter his mind, he said, it doesn't drive his decisions. He said that public perception is based on media reports that don't include every piece of evidence from a trial. In other words, those sentiments can be based on incomplete information.

Wisconsin Appellate Judge Mark D. Gundrum doesn't get into the Facebook commentary but doesn't deliberately shy away from the news, either.

Still, he said, he knows how to separate the relevant from the irrelevant when it comes to deciding cases.

"To think about other extraneous matters like that would really not be doing my job as a judge," he said.

He hypothesized that his time as a state legislator helped him learn to focus on the issues at hand and not get distracted by media commentary.

Maintaining that separation is something he has to do at work, too. He said in his job he often sees evidence that isn't meant to play a role in a decision.

"At the end of the day, whether it's personal experience, opinions, social media, news — you have to set all that aside and look at what the law requires in this particular case," Gundrum said.

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