

# Law would help keep jurors off Google

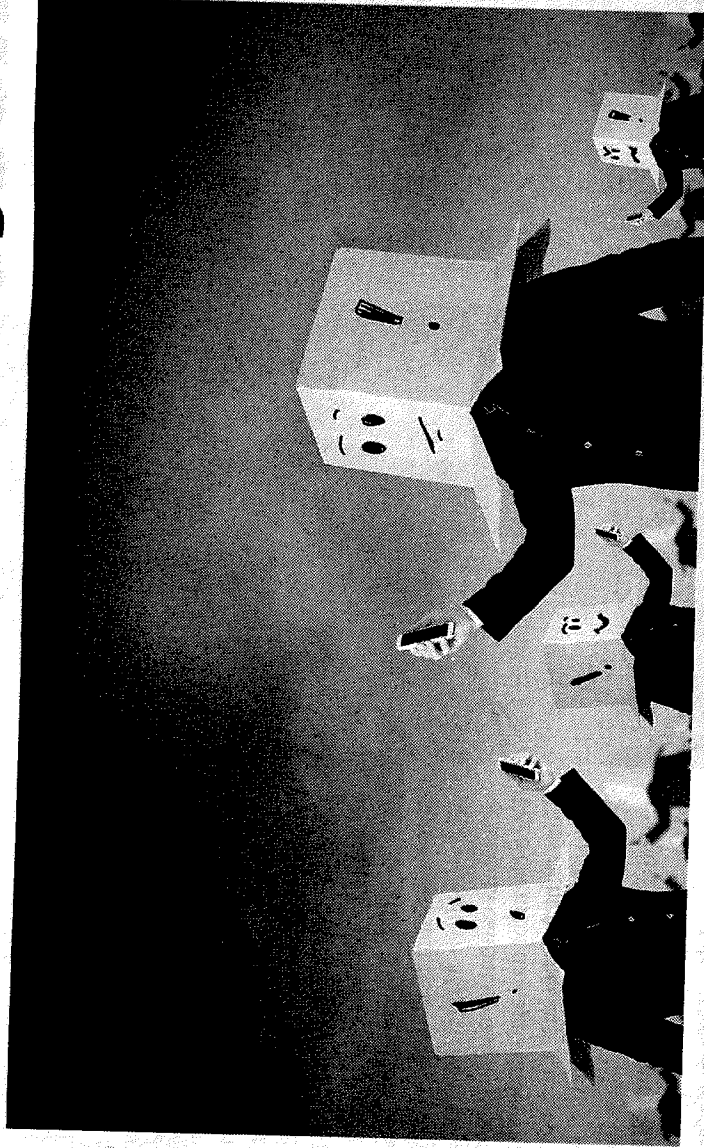
By Karen Diep

California lawmakers are considering fining jurors caught violating court orders not to Google — or consult with or post on Facebook — anything regarding information on their trial. Assembly Bill 2101, in relevant part, seeks to “impose reasonable monetary sanction, not to exceed one thousand five dollars ... on an impaneled jury for any knowingly violation of a lawful court order without good cause.”

A standard jury instruction, CACI No. 100, advises jurors “not to use any electronic device or media, such as a cell phone or smart phone ... computer, the Internet ... any Internet chat room, blog, or website, including social networking websites ... to send or receive any information to or from anyone” about their case or even their experience as a juror until after their discharge.

What happens, however, when a juror disregards these instructions and Googles the plaintiff? Answer: Not much.

In California today, the only recourse judges have is finding the errant juror in contempt of court. California courts are no strangers to finding contempt. Some examples include interrupting the course of



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the trial or insolent behavior towards the judge. These contempt holdings, however, are completely disruptive.

In particular, judges must hold separate contempt hearings where offenders are afforded substantial due rights (e.g., full and fair hearings, assistance of counsel, the opportunity to gather evidence and present evidence, etc.). This ultimately delays the main case and expends additional and finite state resources. Seriously, what harm comes from a

little LinkedIn search? A lot.

A juror's improper use of the internet could result in a mistrial and overturned verdict, which happened this past January. In *People v. Fernandez*, the California Court of Appeal reversed the judgment of conviction and remanded the matter for a new trial. In *Fernandez*, Juror no. 11 conducted online research that led her to believe that the defendant and his accountant conspired to commit fraud alleged. When this

came to light, the trial judge denied the new trial motion concluding that Juror no. 11's belief could have formed from “interpretation of the evidence” and was not “actually biased against the defendant.”

The Court of Appeal disagreed and highlighted that “[i]n cases of juror misconduct by receiving extraneous material, prejudice is presumed. If the material, judged objectively, is inherently and substantially likely to have influenced the juror,

the prejudice cannot be rebutted. It is per se reversal.”

Such prohibition is not a novel concept. In fact, it has been around as early as 1886. In *People v. McCoy*, the court established that jurors cannot receive information about a case from newspapers. Assembly Bill 2101 is nothing more than a modern day adaptation of *McCoy*, but with more teeth.

Moreover, citizenship carries with it both rights and duties. A citizen has a duty to serve on a panel but also must play by the rules. Any misconduct by the juror may infringe on another's constitutional right. For example, a criminal defendant has a right to trial by jury. This type of jury misconduct could taint the juror by creating prejudicial sentiments against the defendant and also poison the watering hole for those also serving.

At the end of the day, will this work? Seventy-six voting assembly members believe it will.

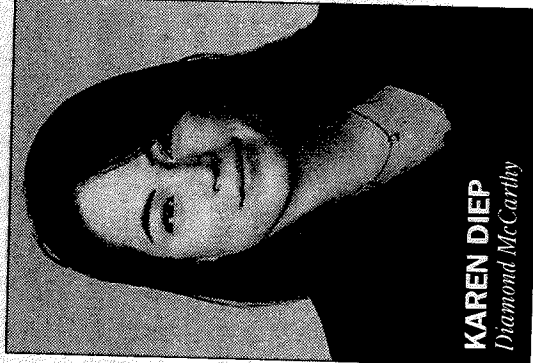
The bill's sponsor, state assemblyman Rich Gordon, believes it could be a good deterrent to jurors. For deterrence to work, the expected fine must exceed the expected gain. We have a ballpark of the costs — \$1,500 and under.

Furthermore, for skeptics, Assembly Bill 2101 is a five-year pilot

program, where only a number of counties will participate. This, of course, is contingent upon the bill passing in the Senate. Near the end of the pilot program, the Judicial Council must report to the legislature and the governor on its evaluation of the pilot.

The proposed piece of legislation will support judicial economy and provide teeth to existing prohibitions against such jury misconduct. So why not?

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