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Jury Impartiality in the Modern Era

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Overview

The strength of the jury system in an adversarial system of justice depends on the impartiality of the jurors. Yet the rapid evolution of Internet-based communication technologies poses serious challenges to the traditional concept of juror impartiality. It is now possible for jurors to access virtually any piece of published information about pending cases in minutes, and the volume of potentially case-relevant information is growing exponentially. Many jurors have become accustomed to using these technologies to conduct research and communicate with friends and family. For some jurors, reliance on these technologies has become so ingrained that it would require conscious effort to refrain from doing so for the duration of a trial.

This entry discusses the notion of what it means for a juror to be and to remain impartial in the digital age. First, it focuses on the impact of new media on how jurors acquire and process information. Then it discusses the impact of new media on public perceptions of the justice system, especially in high-profile trials. Finally, it examines the viability of traditional judicial responses to the newly wired and media-saturated jury pool. It concludes with some sobering reflections about the ability of the justice system to keep up with these technological changes.

The Traditional Concept of Juror Impartiality

The strength of the jury in an adversarial system of justice is the impartiality of the jurors. Impartial jurors are those who are willing and able to consider the evidence presented at trial without preconceived opinions about the defendant's guilt or innocence, to apply the governing law as instructed by the trial judge, and to deliberate in good faith to render a legally and factually justifiable verdict. Traditionally, the process of identifying impartial jurors focused on voir dire during which judges and lawyers questioned jurors about their knowledge of the facts of the case, opinions about issues that might arise during trial, or life experiences that might affect how jurors perceive the evidence they would hear during the course of the trial. Once the judge and lawyers had removed biased jurors, the trial would begin. Except under very unusual circumstances, there was little risk that the selected jurors might lose their impartiality during the remainder of the trial.

The rapid evolution of various types of new media over the past two decades poses serious

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challenges to this concept of juror impartiality. Internet-based technologies now make it possible for jurors to access virtually any piece of published information about pending cases in minutes, regardless of when or where published. Many jurors have become accustomed to using these technologies to conduct research and to communicate with friends and family. For some jurors, reliance on these technologies for everyday tasks has become so ingrained that it would require conscious effort to refrain from doing so for the duration of a trial. As a result, judges and lawyers can no longer be confident either that a sufficient number of prospective jurors on any given panel will meet the traditional definition of impartiality or that the jurors selected for trial will remain so for the entire trial.

The volume of potentially case-relevant information that might jeopardize juror impartially is also growing exponentially with the proliferation of various types of news media including traditional media outlets as well as cable news organizations, online print media, and specialty blogs. The traditional news cycle involved at most daily updates, but some trials now receive continual, minute-by-minute, 24/7 news coverage as well as ongoing commentary and background information based on interviews with trial attorneys, litigants, witnesses, and even less central players such as coworkers, neighbors, and childhood friends. This level of media saturation exposes a larger number of prospective jurors to potentially prejudicial information about more upcoming trials than ever before in history, making it more difficult to select impartial jurors for trial and to maintain their impartiality throughout the trial.

Traditional approaches to minimizing these effects seem to be losing their effectiveness given the volume and intensity of trial information available to prospective jurors. Some of the most pressing concerns in contemporary jury system management are the impact of these technologies on juror decision-making and on public perceptions of the justice system.

The Impact of New Media on Juror Decision-Making

In a provocative essay published in the July/August 2008 issue of *Atlantic Monthly*, Nicholas Carr described how his use of the Internet seemed to be changing how his brain operates, especially his memory and his capacity for sustained concentration. The article provided an overview of how the development of various technologies – written language, the mechanical clock, the printing press, radio and television – all affected the brain's neural circuitry. For the most part, those changes had a positive impact on civilization, both increasing the scope of human knowledge and distributing it more widely. He then posited that the Internet, which he describes as an immeasurably powerful computing system, might be affecting a similar shift in human cognitive ability. Preliminary neurological studies suggest that Carr's insights may be quite accurate. If so, that prospect will have a profound impact on juror decision-making, especially how trial jurors receive and interpret information during the course of a trial.

Much of the existing scientific literature on juror decision-making is grounded in theories derived from cognitive psychology that individuals engage in schematic processing to interpret their environment efficiently and effectively. "Schemas" act as cognitive filters through which individuals identify people and situations quickly, according to familiar paradigms. For jurors, these schemas take the form of preconceptions and knowledge of the world that they use to construct narratives or stories from trial evidence and fill in missing details to increase the story's internal consistency and convergence with their world knowledge. This cognitive processing helps jurors assess the trial evidence for credibility, consistency, and relative importance. Contemporary researchers refer to this theory as the "story model" of juror decision-making. In more colloquial terms, jurors bring their common sense and community values to inform judgments about a criminal defendant's guilt or a civil defendant's liability for damages.

During deliberations, jurors compare these individual narratives and, except in very rare exceptions, arrive at a consensus about the "correct" interpretation of the evidence and application of the governing law to produce a legally valid decision.

Historically, this process took place during trial as the lawyers presented each new piece of evidence to the jury through direct and cross-examination of witnesses. The question-and-answer format through which attorneys elicit oral testimony to support their respective theory of the case was originally intended to provide jurors with an unvarnished and neutral presentation of trial evidence. The format is exceedingly archaic and is almost never employed in other settings in which information is communicated to a lay audience. The jurors' task can be tremendously complicated insofar that it involves taking the individual bits of trial evidence and piecing them together into a coherent picture. In most trials, however, the relatively slow and methodical nature of the trial process, often interrupted by trial recesses and sidebar conferences between the judge and trial attorneys, provided ample time for jurors to reflect carefully on the evidence and make sense of the disparate pieces.

There are two significant implications of the changes wrought in neurological processing by increased use of new media. First, contemporary jurors are increasingly accustomed to the fast-paced and constant mode of transmission that one expects from handheld devices and Internet surfing in which readers jump from hyperlink to hyperlink, skimming materials for key nuggets of critical information without stopping to digest the entire webpage. In addition to reflexively seeking out information online with which to better understand the world, contemporary jurors are also accustomed to receiving constant updates in the form of e-mail and text messages, tweets, and notices from social networking sites that do not require active intent to acquire new information. They just arrive, unsolicited, on one's computer screen or smart phone with information formatted in the highly abbreviated style of headlines, sound bites, and bullet points. Communication in the Internet Age must conform to the "140 characters or less" requirement or risk losing the intended audience in the confusion or boredom of excessive detail and nuance. The traditional style of trial procedure is more and more likely to perplex and antagonize jurors who will have greater difficulty making sense of how its organizational framework presents disparate and detailed pieces of trial evidence.

Second, there is the possibility that contemporary jurors are cognitively either less reliant on or less confident in their collective common sense and community values and thus find it necessary to verify initial impressions about the evidence or to supplement it with external sources found online. Their cognitive schemas are no longer purely internal psychological constructions, but rather exist as an externalized collective schema in "the cloud" where they can be accessed with the click of a mouse. As the urge to use these technologies becomes stronger and the ability to do so becomes easier, judges and trial lawyers will find it increasingly difficult to block juror access to these potentially prejudicial sources of extraneous information so that jurors might maintain some semblance of impartiality until the evidentiary portion of the trial is complete.

At this time, it is uncertain how often jurors already access the Internet on a routine basis. In a preliminary study of the frequency of juror and jury use of new media, the National Center for State Courts (NCSC) found that sizeable portions of trial jurors reported interest in using new media to conduct research on case-related topics and to communicate with friends and family about their jury service experience. Although the vast majority of jurors in that study had daily, if not immediate, access to new media, none of them admitted to acting on that desire. That study involved a very small sample of trials; however, it is clear from court opinions and news stories discussing the problem of the "Googling juror" that the risk is not purely hypothetical. In a review of court opinions published between 1998 and 2010, Thompson-Reuters reported that at least 90 verdicts were challenged based on claims of Internet-related juror misconduct. One-half of

those challenges occurred between 2008 and 2010. In 28 cases, civil and criminal, new trials were granted or verdicts overturned. Even where judges declined to declare a mistrial, in three-quarters of the cases, the courts held that Internet-related misconduct had occurred. Indeed, it is likely that the frequency of juror use of new media is much greater than written court opinions reflect as many such instances would not result in a written opinion. In fact, most would likely go undetected.

The crux of the dilemma for the justice system is the impending collision between the traditional view of juror impartiality and contemporary jurors' increasing reliance on new media to inform their decision-making. The traditional strength of the jury system rests on the assumption that the jury considers only evidence properly admitted at trial. Jurors take an oath at the beginning of the trial to render a "true verdict . . . according to the evidence, without fear, favor, or affection, and . . . governed by the instructions of the court." Intentionally seeking extraneous information about case-related topics is a clear violation of the juror's oath and can result in a mistrial or overturned verdict. As individuals increasingly rely on the Internet to access information to help navigate their environment and interpret the world, it will likely become ever more difficult to prevent them from doing so when serving as trial jurors. After all, jurors understand that jury service is a serious task that requires the greatest degree of attention and competence. It will become increasingly counterintuitive to jurors that they would violate a solemn oath by using the very tools on which they normally rely to inform their judgments in serious matters.

To a certain extent, trial courts have already accepted, and even embraced, a seismic shift in jurors' role in the trial process by adopting trial techniques (e.g., juror note taking, juror submission of written questions to witnesses, juror discussion of evidence before final deliberations) that facilitate active learning styles. Traditionally, it was assumed that juror passivity helped to maintain their impartiality. Contemporary empirical research confirms that enforced passivity does not significantly enhance impartiality and, in fact, can seriously undermine juror performance and satisfaction. The transition to the "active juror" model mirrors many trends in contemporary life in which individuals are encouraged to assume a more active role. In health care, financial management, and continuing education, for example, responsible and competent behavior is defined by a person's willingness and ability to undertake an active partnership with professionals to accomplish both personal and collective tasks. The key question in the context of contemporary jury service is whether Internet use is a legitimate tool to aid juror decision-making (as appears to be the case for increasing numbers of jurors) or a serious breach of juror impartiality that threatens the legitimacy of the jury's verdict.

The latter viewpoint predominates among contemporary trial judges and lawyers. Responses to this type of "juror misconduct" run the gamut from education and outreach to persuade prospective jurors not to engage in Internet use during trial and deliberations, to preventive measures intended to block juror access to the Internet, to punitive measures imposed on jurors who disobey direct orders to forego the Internet for the duration of the trial. Increasingly, informational booklets and orientation programs for prospective jurors emphasize the importance of not accessing the Internet during trial. Many judges and lawyers now question prospective jurors about their Internet use during voir dire to screen out jurors who indicate reluctance to adhering to prohibitions on juror use of new media. Jury instructions have become increasingly specific about prohibitions on various types of the online activities. Judges repeat these instructions more frequently throughout the trial to remind jurors of these prohibitions and to emphasize their importance. Hoping that jurors who understand the underlying rationale for the prohibition on Internet use will be more likely to comply, some judges also explain that extraneous information encountered online is not evidence and deserves no weight in the jurors' deliberations. Finally, some courts ban all forms of electronic devices

from the courthouse or confiscate such devices from jurors during trial and deliberations. Ironically, some courts have proposed using technology to combat problems associated with juror use of technology including blocking electronic transmissions in courtrooms and jury deliberation rooms to prevent juror misconduct. When prevention is insufficient, judges are also becoming more willing to punish jurors for violating the admonition and to consider posttrial challenges to verdicts based on juror misconduct.

Impact of New Media on Public Perceptions of the Jury System

Because jurors are drawn from the community at large, they reflect the general social outlook and values of their communities. Indeed, one of the primary roles of the jury is to inject community values into judicial decision-making. Although, as designed, the voir dire process identifies and removes jurors who hold such strong opinions about case-specific issues that they could not serve fairly and impartially, those opinions will still be present in the public at large. This is particularly the case in high-profile trials that generate considerable media attention. One of the great ironies of contemporary society is the apparent disconnect between the jurors' trial and the public trial. Trial jurors will largely be isolated from ongoing media coverage of the trial. All the while, public sentiment may become even more inflamed over the course of the trial in reaction to evidence admitted at trial as well as media commentary on that evidence and non-trial information disclosed by the litigants, lawyers, and witnesses. In essence, a high-profile trial is actually two very different trials – one that the sworn trial jurors experience and one that the public observes as quasi-jurors, which can sometimes lead to very different conclusions about the appropriate verdict. Recent examples include O.J. Simpson's acquittal of murder charges, Michael Jackson's acquittal of child molestation charges, life sentences rather than the death penalty for Terry Nichols (coconspirator in the Oklahoma City bombing) and Zaccarias Moussoui (the alleged 20th hijacker in the September 11th terrorist attacks), and the acquittal of Casey Anthony on charges of murdering her 2-year-old daughter.

Different degrees of information presented to the public also result in a blurring of the line between news reporting, education, and entertainment, between fiction and reality. Much of what the public knows about what actually occurs in the courtroom is what the ever-merging news and entertainment outlets portray. While reports on trial events provide a glimpse into how the justice system works or does not work, most people do not have a realistic sense of what it is like to serve as a juror in an actual trial. People routinely report that their primary source of courtroom knowledge comes from television trial shows such as the *People's Court* and crime dramas such as *Law and Order*.

The various iterations of entertainment shows and news outlets affect the public's expectation about the justice system and jury verdicts. The number of law enforcement and forensic-based crime dramas on television (e.g., *CSI* and its numerous iterations) outnumbers the number of actual trial drama shows. Yet an underlying theme across all of them portrays a fast-paced trial that is resolved in an hour or less with justice unequivocally done. Cable television's 24-hours news coverage and shows such as *Court TV* provide what appears to the public as the inside story with all of the facts revealed including commentaries by so-called experts. Inherent in most jury trials, however, is the reality that trial evidence is often ambiguous, conflicting, and incomplete; the law articulated in jury instructions sometimes borders on incoherence; jury deliberations can be quite contentious; and jurors may nevertheless harbor some doubts (albeit not reasonable doubts) about a defendant's guilt even after returning a guilty verdict.

The public forum for hearing jury trials, as guaranteed by the Sixth Amendment, was seen by the founders as a safeguard for the defendant against abuses by the government. Freedom of the press under the First Amendment was intended to protect the people, to be the voice of

the community. The tension between the two, spurred along by new media in the Information Age, contributes to a decline in the public's trust and confidence in the jury system. The courts depend on the jurors as representatives of their respective communities to provide legitimacy to the justice system. As such, central to the mission of the courts is a way to maintain the public's trust and confidence in trial by jury as an effective way to resolve disputes. When there is public outrage over a perceived injustice, especially in a notorious trial, the courts must work quickly and effectively to counter the public's doubt.

Courts now use many contemporary communications tools and techniques to make the justice system appear more accessible and more transparent. Some provide online access to court documents including filings and decisions. Others offer real-time video feeds of court proceedings. Many courts, especially in urban areas, now employ public information officers who are specifically tasked with communicating information about the court's mission and role in contemporary society to the public. Inherent in that task, however, is the paradoxical challenge that the culture of the court is fundamentally at odds with the societal culture that has developed with and in response to these new communication technologies. A recent study entitled "New Media and the Courts: Current Status and a Look at the Future," undertaken by the Conference of Court Public Information Officers, observed that courts rely almost exclusively on textual communication – written opinions and court orders – to speak publicly. This mode of public communication, detailing the proven facts and logic on which court decisions were made, underscored the message that the court's legitimacy rested firmly on the rule of law. Moreover, court communication is primarily hierarchical and unidirectional; opinions and court orders are intended as the final word to be obeyed. They are not intended as an invitation for further discussion except within the highly stylized procedures of a legal challenge to those orders.

In contrast, the Internet is a multimedia environment offering visual and audio formats to communicate in addition to traditional text. These technologies also are intended to be interactive and to encourage collective decision-making on the largest scale possible. While many court public information officers have made tremendous progress in incorporating some new media tools and strategies, at least to communicate non-case-specific information to the public, it is not clear that they will ever fully harmonize these two incongruous cultures without a radical reconceptualization of many of the fundamental principles of judicial independence and legitimacy.

The Continued Viability of Judicial Responses to Counter the Effects of Pretrial and Trial Publicity

High-profile trials cause the most difficulty by far for judges and lawyers in terms of how to mitigate the impact of pretrial publicity on prospective jurors. Trials can become the focus of intense media attention for a variety of reasons. Sometimes the litigants, witnesses, or victims are celebrities, such as in the O.J. Simpson and Michael Jackson trials. Sometimes the case involves particularly violent or heinous crimes that shock the community, including the Oklahoma City bombing trials, the Unabomber trial, and the Moussaoui terrorism trial. Sometimes the case raises controversial social or political issues, including the California Proposition 8 trial involving the constitutionality of same-sex marriage or the prosecution of financial fraud charges against key executives at Enron and WorldCom. The media themselves sometimes highlight particular cases, such as when Headline News (HLN) anchor Nancy Grace took on the Casey Anthony trial as a personal cause célèbre to see justice done for a murdered child. And sometimes there is no apparent reason other than a slow news day for a case to suddenly attract great media attention.

The key issue for courts concerning both the scope and tone of media treatment of pending cases is the impact that it will have on jurors' judgments of defendant guilt, the conditions under which those effects will most likely occur, and the remedial efforts, if any, that are most likely to minimize those effects. Over the past 40 years, numerous empirical studies have attempted to examine these questions, sometimes with inconclusive or even contradictory results, using a variety of methodological and analytical approaches. A meta-analysis (Steblay et al.) of 23 such studies published between 1966 and 1997 offers some well-documented findings on this question. First and foremost, it is clear from the studies that jurors exposed to negative pretrial publicity are more likely to judge defendants guilty compared to jurors exposed to less pretrial publicity or at least more neutral pretrial publicity. The effect was documented most acutely in those studies that employed jury-eligible citizens as study participants compared to those that employed students. The amount of detail communicated in media accounts (e.g., crime details, arrest information, confessions, prior criminal record, and other incriminating evidence) as well as accounts that employed both video and print media produced greater effects than studies that focused on just one type of pretrial publicity. Crimes involving violence, especially homicide and sexual abuse, also produced greater effects on juror judgments of defendant guilt than other types of crimes. Even general publicity, not specifically related to the case at hand, which included a discussion of similar legal concepts (e.g., eyewitness identification) or case facts (e.g., acquaintance rape) had an indelible impact on juror decision-making.

Of critical importance, these studies collectively confirm that the impact of pretrial publicity on individual juror judgments about defendant culpability carries through to the collective verdicts rendered by juries. Remedial efforts employed by courts (e.g., brief trial continuances, expanded voir dire, judicial instruction, trial evidence, and jury deliberation) do not effectively counter the biasing effects of pretrial publicity. Instead, pretrial publicity exerts a disproportionate imprint on juror memory compared to the evidence actually presented at trial. Most of these studies predate the advent of the Internet Age, or at least its apparent effects on human neural circuitry, so it remains to be seen whether these effects are accentuated or attenuated by frequent Internet use.

Traditional mechanisms for mitigating the impact of pretrial publicity include trial delay, a change of venue or impaneling an out-of-county jury, and extensive voir dire including the use of written juror questionnaires. Unfortunately, the approaches to addressing publicity concerns may not be as viable as they once were given the geographic reach and intensity of 24-hours news coverage. Multiple news media, along with the varied reliability of the information source, simply reach more people, often delivered as an unfiltered or even politicized message. Finally, court use of anonymous juries to prevent communication affecting jury decision-making, such as that of external jury tampering or intimidation, is also explored as a valid response.

Change of Venue

One response to pretrial publicity is to delay a trial date as news often migrates "off the front page." Ironically, that phrase was derived from the traditional print newspaper of the past. In our technology-saturated culture, such a topic is no longer the most popular tweet or the post no longer appears in the current news feed section. As a result, people forget the details they read initially. While Internet postings are virtually eternal, they migrate to the less-visible archive sections. There is no guarantee, however, that an interested juror would be unable to access the old information quickly, if he or she desired. This is in stark contrast to the era of newspapers in which the juror would be required to spend significantly more time to be able to uncover the details of a past news event and would most likely need to physically leave the courtroom to accomplish this task. The loss of control over the flow of information into and out of the courtroom has indeed left some courts unprepared.

Although a change of venue is an option for courts, numerous notorious trials have been successfully tried in the original venue (e.g., the Nanny trial and a series of well-known Mafia cases), and legitimate concerns about the logistical and financial burdens arise when moving the trial. The proposed venue must also resemble the original community in terms of both demographic and attitudinal characteristics due to the historical importance of public access. The US Supreme Court in *Murphy v. Florida*, 421 US 794 (1975), addressed the level of pretrial publicity that deems one incapable of being impartial. The decision did not require jurors to be completely unaware of publicity, but to be able to set aside the information and judge the defendant solely on the information provided in the courtroom. Courts have developed a fairly consistent analytical framework for determining whether the extent and tone of pretrial publicity have so "poisoned" the local jurisdiction that a change of venue is necessary. In *Irvin v. Dowd*, 366 US 723 (1961), the US Supreme Court wrote that if "an appellant can demonstrate that prejudicial, inflammatory publicity about his case so saturated the community from which his jury was drawn as to render it virtually impossible to obtain an impartial jury, then proof of such poisonous publicity raises a presumption that appellant's jury was prejudiced, relieving him of the obligation to establish actual prejudice by a juror in his case." The presumption is rebuttable, however; if the government demonstrates that an impartial jury was actually impaneled in the appellant's case, the conviction will stand despite appellant's showing of adverse pretrial publicity.

The question for contemporary courts trying the most high-profile cases is whether *any* venue can satisfy these requirements. Timothy McVeigh's trial moved from Oklahoma City to Denver, but that was only possible because the trial was held in federal court. State court, by definition, would be required to maintain jurisdiction and hold the trial within the same state. The Washington DC Sniper trial moved from Fairfax, Virginia (a suburb of Washington, DC), to the southern tidewater area of Chesapeake/Virginia Beach. Complicating the matter, some news accounts indicated the sniper had been in the tidewater area of Virginia, possibly seeking additional victims, before capture, raising the possibility that prospective jurors in that venue would be similarly biased. The saturation of national news undermines the widespread effectiveness of granting a change of venue to overcome the challenge of impaneling a fair and impartial jury for it will be increasingly difficult to locate an alternative venue not equally affected.

The Supreme Court recently revisited this framework in *US v. Jeffrey Skilling*, in which the Enron CEO was convicted of multiple counts of securities and wire fraud involving the collapse of the Enron Corporation. The court ultimately held that the amount and tone of pretrial publicity about the Enron collapse was insufficient to establish a presumption that the jury pool was prejudiced, and in any case, the fact that Skilling only challenged one juror for cause and the jury returned acquittals on nine counts of insider trading demonstrated that the impaneled jury was, in fact, impartial.

Intensive Voir Dire

Another traditional mechanism for addressing pretrial publicity is to conduct intensive voir dire. A written juror questionnaire is often given to potential jurors to identify potential bias. Although case law varies in state courts concerning the scope of permissible questions, the strength of using such a questionnaire is its ability to elicit truthful information from the potential jurors about bias, including attitudes about the specific case as well as underlying attitudes about relevant case issues (e.g., personal experience with substance abuse). Conducting voir dire through written questionnaires in addition to oral questioning in the courtroom is more likely to uncover sensitive or personal information that may affect the juror's ability to be fair and impartial. Courts have identified a number of factors relevant to whether the voir dire in a case involving extensive and prejudicial pretrial publicity would be adequate to impanel an impartial jury including (1) the percentage of

the entire pool of veniremembers who evidenced bias; (2) whether the court questioned the veniremembers individually; (3) whether the court questioned the veniremembers thoroughly concerning their knowledge of the circumstances surrounding the alleged crime; (4) whether the court asked each veniremember specifically about the nature and extent of any preconceived notions; (5) whether the court asked each veniremember about his or her capability to render an impartial verdict; (6) the length of time the process took; (7) whether the court examined the veniremembers outside the presence of other veniremembers; (8) whether the attorneys had the opportunity to recommend further inquiries, and (9) whether the judge . . . inquired into the prospective jurors' exposure to publicity and ability to render a fair and impartial verdict.

If these remedies are no longer viable, at least in the most notorious trials, what else can be done? Or do courts simply acknowledge that the traditional view of juror impartiality cannot be achieved under these circumstances? If impartiality is an elusive goal, the courts would have to accept a compromised version of justice, mitigating to the greatest extent possible the problems while hoping for the best outcome.

Anonymous Juries and Jury Sequestration

In recent times, judges have become more likely to use anonymity measures (protecting the juror's identities). In the trial of Illinois governor Rod Blagojevich on public corruption charges, Judge James B. Zagel ordered that jurors' names not be disclosed publicly until after the trial ended. He noted that he had personally received dozens of letters, telephone calls, and e-mails from the public concerning the trial and was concerned that jurors would also be targeted for harassment or intimidation if their names became public. He noted that prohibiting jurors from using e-mail or other Internet technologies to communicate with friends and family about non-trial matters for the duration of the 4-month trial would impose an extraordinary burden on them, and other means of screening jurors' personal correspondence, e-mail, and telephone calls would be similarly intrusive. Jury sequestration, which can also be used to insulate jurors from outside influence, is expensive to the court and onerous on the jurors, their families, and the courts. Consequently, it is rarely employed except in the most extreme circumstances. Local and national media outlets challenged the order on First Amendment right to access government proceedings in an interlocutory appeal to the federal Seventh Circuit of Appeal. Historically, anonymous juries were rarely permitted in the federal courts unless the trial judge made specific factual findings concerning the immediate risk of jury tampering or intimidation. The fact that Judge Zabel's order ultimately prevailed illustrates the point that many courts have come to appreciate that contemporary communications technologies pose as great a risk or more to juror impartiality as traditional in-person approaches, in part due to the substantially larger pool of Internet-savvy people who might be inclined to contact jurors in high-profile cases.

Conclusions

The introduction and evolution of Internet technologies that has taken place over the past two decades has introduced a number of challenges to the concept of juror impartiality. In many instances, these challenges are simply extensions of the types of challenges that courts have faced in the past – and for which highly effective strategies exist. A thorough voir dire can identify jurors who cannot serve fairly and impartially due to personal knowledge about the case, exposure to pretrial publicity, or preconceived opinions or bias about case-related factors. Effective pretrial instructions about independent research and communications with family and friends can inform jurors about necessary restrictions on their activities during trial to prevent them from being exposed to potentially prejudicial information. Very high-profile trials may require additional measures including anonymous or sequestered juries to prevent jury tampering or intimidation by electronic means.

Although these are all tried and true techniques that require only a little tweaking to be equally useful for maintaining juror impartiality in the Internet Age, some aspects of modern telecommunications technologies appear to affect jurors and jury trials in a qualitatively different way. Perhaps the most troublesome is the apparent impact that frequent juror use of Internet technologies is having on cognitive behavior, especially the ability to retain and interpret information. Future jurors may not be as effective as decision-makers unless they are permitted to access the Internet to supplement and interpret the evidence they are given at trial. That access, however, is currently prohibited on grounds that doing so would undermine juror impartiality. It is hard to imagine a more direct confrontation of traditional trial procedure and modern technological innovation. It is not clear how new media will ultimately change how we think about courts, about jurors and their role in the justice system, and about how jurors should fulfill that role, but it is clear that some change will ultimately occur.

Similarly, the overwhelming volume of news, its iterative manifestations, and its expanding geographical distribution to all parts of the globe pose an immense challenge for courts. Even if the tone of media coverage of an upcoming trial is relatively neutral, the sheer level of detail may so saturate the potential jury pool that it becomes increasingly difficult to impanel a fair and impartial jury in that jurisdiction. But it may be equally difficult to locate an alternative jurisdiction where the level of pretrial publicity and community impact is sufficiently less. Even after a fair and impartial jury is impaneled and the trial has commenced, the court faces the ongoing possibility that the public audience watching both the trial proceedings, often in real time, and corresponding news and commentary will draw very different conclusions about the appropriate outcome of the trial than the impaneled jury would based solely on the evidence and law.

Courts can no longer blandly assume that the public understands their mission and the underlying rationale for trial procedures and that trial outcomes will be inevitably accepted as valid judgments in the court of public opinion. Ultimately, courts will have to devise more persuasive arguments, and more effective strategies to promulgate those arguments, of the continued importance and validity of its core function in the justice system. Courts are institutionally reactive organizations that have been slow to adapt to the implications of new media on court operations generally and in the context of jury trials specifically. But just as new media is affecting changes in human cognitive processing, it is similarly affecting – in a dynamic and interactive way spurred by the use of new media – both public perceptions about the courts and courts' own perceptions about themselves and their role in contemporary society.

As a final note, it is important to recognize that contemporary technologies are changing very rapidly. Courts have been taken entirely by surprise by many of the communications technologies in widespread use in contemporary society. They are even less aware of and prepared for newer technologies that likely have already been developed and deployed; they have not begun to imagine the future implications that these technologies will have on court operations. There is a distinct possibility that the issues discussed in this entry will already have become moot by the time this encyclopedia is published by the introduction of newer technologies. At the very least, however, this entry will provide a historical glimpse of the issues and problems that courts once confronted. Future researchers will have to assess whether their reactions and adaptations were ultimately adequate and satisfactory, or insufficient, in the long run.

Recommended Reading and References

Amey G (2011) Social media and the legal system: analyzing various responses to using technology from the jury box. J Leg Prof 35:111–130

Artigliere R (2011) Sequestration for the Twenty-First Century: disconnecting jurors from the internet. Drake Law Rev 59:621–645

907 Blackman J, Brickman E (2011) Let's talk: addressing the challenges of Internet-Era jurors. Jury Expert 23(2):35–45
910 Carr N (2010) The shallows: how the internet is changing our brains. New York, W. W Norton
912 Chesterman M (1997) O.J. and the dingo: how media publicity relating to criminal cases tried by jury is dealt with in Australia and America. Am J Comp Law 45:109–147
916 Dann BM (1993) "Learning lessons" and "speaking rights": creating educated and democratic juries. Indiana Law J 68:1229–1279
919 Farrell A, Givelber D (2010) Liberation reconsidered: understanding why judges and juries disagree about guilt. J Crim Law Criminol 100:1549–1586
922 Fiske ST, Taylor SE (eds) (1991) Social cognition, 2nd edn. McGraw-Hill, New York
924 Greene E (1990) Media effects on jurors. Law Hum Behav 14:439–450
926 Hannaford-Agor PL (2008) When all eyes are watching: trial characteristics and practices in notorious trials. Judicature 91:197–201
929 Hannaford-Agor P, Hans VP, Mott NL, Munsterman GT (2002) Are hung juries a problem? National Center for State Courts, Williamsburg
932 Hannaford-Agor P, Rottman D, Waters NL (2012) Jurors & new media: an experiment. Perspectives on state court leadership. National Center for State Courts, Williamsburg
936 Hans V (2007) Deliberation and dissent: 12 Angry Men versus the empirical reality of juries. Chicago-Kent Law Rev 82:579–589
939 Hans V, Vidmar N (2007) American juries: the verdict. Prometheus Books, Amhearst
941 Hans VP, Hannaford-Agor PL, Mott NL, Munsterman GT (2003) The hung jury: The American jury's insights and contemporary understanding. Crim Law Bull 39(1):33–50
945 Hastie R, Penrod SD, Pennington N (1983) Inside the jury. Harvard University Press, Cambridge
947 *Irvin v. Dowd*, 366 U.S. 717 (1961)
948 Marder N (2001a) Juries and technology: equipping jurors for the Twenty-First Century. Brooklyn Law Rev 66:1257–1299
951 Marder N (2001b) Cyberjuries: a new role as online mock juries. Univ Toledo Law Rev 38:239–269
953 McGee A (2010) Juror misconduct in the Twenty-First Century: the prevalence of the Internet and its effect on American courtrooms. Loyola Los Angel Entertain Law Rev 30:301–326
957 Meringolo JC (2010–11) The media, the jury, and the high-profile defendant: a defense perspective on the media circus. NY Law Sch Law Rev 55:981–1012
960 Munsterman GT, Hannaford-Agor PL, Whitehead GM (2006) Jury trial innovations, 2nd edn. National Center for State Courts, Williamsburg
963 Murphy v. Florida, 421 US 794 (1975)
964 Murphy TR, Hannaford PL, Loveland GK, Munsterman GT (1998) Managing notorious trials, 2nd ed. National Center for State Courts, Williamsburg
967 Salaz K, Hodson T, Davey C (2010) New media and the courts: the current status and a look at the future. A report of the New Media Committee of the Conference of Court Public Information Officers (available at www.ccpio.org)
972 Steblay NM, Besirevic J, Fulero SM, Jimenez-Lorente B (1999) The effects of pretrial publicity on juror verdicts: a meta-analytic review. Law Hum Behav 23:219–235
976 United States v. Jeffrey Skilling, 130 S. Ct. 2896 (2010)
977 United States v. Rod Blagojevich and Robert Blagojevich, 612 F. 3d 558 (7th Cir. 2010); 614 F. 3d 287 (7th Cir. 2010); 743 F. Supp. 2d 794 (N.D. Ill. 2010)
980 Vidmar N (2002) Case studies of pre- and midtrial prejudice in criminal and civil litigation. Law Hum Behav 26:73–105
983 Vidmar N (2006) When jurors talk about their verdict. In: Jury ethics: juror conduct and jury dynamics. Paradigm Publishers, Boulder
986 Waters NL, Hans VP (2009) A jury of one: opinion formation, conformity, and dissent on juries. J Empir Leg Stud 6:513–540