

THE ONE MINUTE TRIAL TIP

The brain child of IADC Past President Rob Hunter, each of our newsletters features a quick, practical trial tip.

Trial Tip

After every trial, particularly a successful one, trial attorneys long to speak to the jurors. Consider it the ultimate peer group -- getting direct feedback on everything you have prepared and implemented over the trial, but also months, if not years in preparing for this undertaking. As the victor, it can be intoxicating fuel for the ego. But is it a good idea to talk to jurors after a successful outcome?

Before you reply, consider what everyone in the profession now understands -- jurors are routinely ignoring judicial admonitions in their deliberations and resorting to the web for "research" to assist them in reaching a conclusion. And also remember that jurors are typically more interested in talking to the winning attorney than the losing one. So do you resist the temptation to hear how amazing you were?

Recently the New York Times reported the story "As Jurors Turn to Web, Mistrials Are Popping Up." Reporter John Schwartz cited several recent high profile verdicts tossed out in the face of evidence that jurors were conducting research both during the trial and during deliberations.

As noted by Schwartz, judges are finding not just one juror, but multiple jurors are conducting their own research as part of the evidence gathering process. "It might be called a Google mistrial. The use of BlackBerrys and iPhones by jurors gathering and sending out information about cases is wreaking havoc on trials around the country, upending deliberations and infuriating judges."

The story quoted a jury consultant who concluded: "It's really impossible to control it" particularly when jurors think they are helping, not hurting the fact finding process.

To be sure, if you have independent evidence of jury misconduct, you have an ethical duty to report to the judge. But here, you have none. Just a hard fought victory that gives every appearance of one that will be sustained on appeal. And further, a brief visit with a couple jurors could be completely harmless and also very insightful in future trials. But still... So here's the one minute trial tip from this Midwest attorney -- celebrate the victory with your client, and allow the jurors to resume their lives. They've already spoken loud and clear; no other message really matters.

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