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Juror Is Spared Sanctions for Doing Internet Research in Sex-Crime Trial

A juror who sparked a mistrial in a child sex assault case by surfing the Web and sharing his findings with fellow jurors escapes a contempt sanction as a judge finds it to be "a genuine, though perhaps reckless, mistake."

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A juror who sparked a mistrial in a child sex-assault case by surfing the Web and sharing his findings with fellow jurors escaped a contempt sanction on Tuesday, as a judge found it to be "a genuine, though perhaps reckless, mistake."

However, Bergen County Assignment Judge Peter Doyne urged changes to the Model Jury Charges to "make unquestionably clear the prohibition on juror research and outside materials is absolute."

Lawrence Toppin was a juror in the trial of Curtis Franklin, a former Mahwah pastor charged with five counts of sexually assaulting a girl in his congregation. Jury selection began on May 24 in Bergen County Superior Court.

During voir dire, Judge Edward Jerejian asked prospective jurors if they could abide by the instruction that the "only facts you can consider in this case are from the testimony and exhibits introduced at the trial" and that reading about the case in the media was forbidden.

When he swore in the panel on June 8, Jerejian read them a model charge that said their "deliberations should be based on the evidence in the case without any outside influence or opinions of relatives" and cautioned them against reading newspaper articles about the case "in print, on the Internet, or in any blog" or researching information "relating to the case" "on the Internet, in libraries, in the newspapers, or any other manner — or conduct any investigation about this case."

On each of the seven days of trial, Jerejian repeated his instructions not to read about the case in the paper or online.

On June 28, the jury began deliberations. Two days later, they declared they were deadlocked, but Jerejian told them to continue deliberating.

The day after the July 4 holiday weekend, Toppin showed up with printouts from the Internet that he distributed to his fellow jurors. He had looked up definitions for "preponderance" and "preponderance of the evidence" and Wikipedia articles regarding "legal burden of proof," "reasonable doubt," "beyond the shadow of a doubt," "jurisprudence" and "critical thinking," as well as an article entitled "Recovered Memories of Sexual Abuse."

The next day, July 7, the foreperson sent the court a note saying a juror had brought in Internet research on legal terminology. Judge Donald Venezia, filling in for the vacationing Jerejian, questioned the jurors under oath in open court and they confirmed that Toppin brought

the papers into the jury room and disseminated them. Most of the jurors testified they glanced at the papers but did not read them and knew they should not have them there.

Venezia had a sheriff's officer obtain the materials from Toppin's car. He also ordered the jury to cease deliberations and adjourned the case until Jerejian returned.

On July 12, Jerejian declared a mistrial, because it was too late to substitute a juror after five days of deliberations had left the jury deadlocked. He also reasoned that some jurors had read the materials, and that Toppin had deliberated with the other jurors and made statements based on his outside research, creating an impermissible taint.

On July 19, Doyne, notified by Jerejian of what had occurred, ordered Toppin to show cause why he should not be held in contempt. The motion was argued Oct. 6.

In Tuesday's ruling, Doyne spoke of "the Internet's widespread encroachment on the sterilized atmosphere of the courtroom" and "the dramatic increase in the number of incidents involving independent research conducted by jurors since the advent of the Internet." He mentioned instances in other states involving Googling jurors but said he knew of no New Jersey case where a "juror who has violated a jury instruction to refrain from independent research, generally by way of the Internet," had been sanctioned.

It is rare to punish jurors for misconduct because of the unfairness of penalizing them for "ordinary, otherwise legal conduct that occurs in the course of compulsory state service," Doyne wrote. Also, it could deter jury service, have a chilling effect on the reporting of juror misconduct and promote the "already negative view" of jury service held by the public, he stated.

Judges elsewhere have responded with fines, probation, incarceration, and a requirement to write an essay about the Sixth Amendment and one in California requires jurors to sign declarations stating they will not use the Internet or other media to research the case, Doyne noted. Preventative stops have included confiscating mobile phones during trial.

Doyne declined to hold Toppin in contempt because, although there was no doubt he brought the material into the jury room and his actions were contemptuous, there was reasonable doubt that the contempt was willful.

Toppin claimed he did not think the trial judge's instruction "not to read any newspaper articles, or search for, or research information relating to the case, including any participants in the trial, through any means, including electronic means," applied to legal terminology, such as burden of proof, and psychological concepts.

Toppin said he believed the prohibition on outside research pertained only to the facts, people and issues of the case and claimed his research was done to assist his fellow jurors.

Doyne termed that position "troubling," given that the other jurors knew enough to put aside the materials quickly and that Toppin was aware that the proper procedure was to ask the court to explain legal concepts.

Still, he said he understood how a layman like Toppin, who works with computers at a Wall Street company, could be confused. Doyne gave him the benefit of the doubt and found that "his purpose, although misguided, may have been to help."

To prevent other jurors from making the same mistake, Doyne suggested amending the Model Criminal Jury Charges. "While, again, the instructions used in the Franklin trial were clear enough to warrant the exercise of Toppin's better judgment, rather than maintaining the status quo and any possible ambiguities which exist, the court finds it wiser to err on the side of caution and recommend a revision of the model instructions which would make the juror's responsibilities clear and unequivocal."

Doyne added that his ruling should be narrowly construed since the courts have apparently "given little written consideration to sanctioning a juror for conducting independent research contrary to court instruction, and the result based on similar facts may not be the same if such a matter comes before the court again."

Toppin's lawyer, Steven Paul, of Randall & Randall in Westwood, agrees with Doyne that it is better to "err on the side of caution particularly in light of how much is available to people even just on their phones." He also agrees with a footnote stating Toppin "has already been sanctioned to some degree" by "having to go through this entire ordeal" — having his error exposed in open court during trial, enduring the stress of being called before the court and "not knowing for three months what his fate would be" and "retaining a lawyer, with the attendant expenses of both time and money." Paul thinks enhancing the model charges is a good idea.

Clifton solo Miles Feinstein, who represents Franklin, says he is happy no action was taken against Toppin because he was doing "what he thought was best to try to obtain justice," even though his actions hurt the defense more than the prosecution.

Feinstein says that after the mistrial, he and Franklin were lunching at Colonel Poor's Tavern near the courthouse and were approached by jurors who told them that they were 11-to-1 for acquittal and thought they would have reached a verdict within a few hours. They also said Toppin's research was meant to sway the holdout juror.

Bergen County Prosecutor's office spokeswoman Maureen Parenta says she expects the retrial to be scheduled for January but declines comment on Doyne's ruling.



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