

# Twitterpated



By Glenna Herald

Twitter, a relatively recent addition to the social networking scene, has gotten the attention of the mass media. News stories about Twitter abound. They range from the serious – Twitter aiding revolutionaries in their resistance of repressive regimes – to the frivolous – Twitter allowing celebrities to share with fans their favorite brands of cereal. However used, indoctrinated Twitter-ers trumpet Twitter’s utility and simplicity, claiming it helps build and strengthen personal and professional connections.

## What is Twitter?

Twitter, according to its website, “Is a real-time short messaging service that works over multiple networks and devices . . . . A service for friends, family, and co-workers to communicate and stay connected through the exchange of quick, frequent answers to one simple question: *What are you doing?*” “What are you doing?” must be answered in 140 characters or less. These short updates, called “tweets,” post to your Twitter profile allowing your “followers” to keep up with you.

“Followers” populate Twitter. What is a “follower?” What does it mean to “follow” and be “followed?” Twitter’s Help Resources page explains:

Followers are people who receive other peoples’ Twitter updates. When you post an update to your Twitter account, your followers will get it on their home page and/or phone. You don’t have to follow

everyone who follows you, and unless an account is private, you can follow and un-follow who ever you want without them following back. Mutual followers can send each other private messages, and you can even choose to get notified by email when someone new follows you or sends you a private message. Your follower/following stats are listed on your profile page.

In other words, were it not for the congregation or “followers,” there would be no church or Twitter.

To set up an account you need only

content of your updates, some strange “followers” might connect to your Twitter profile. Fear not, you can block them. And, if these intrusions become bothersome, Twitter gives you the option to “protect” your updates by keeping them hidden from the public timeline, which means only those who “follow” you can view your posts.

Whether or not you intend to use Twitter, it might be a good idea to become more familiar with what it does and how it is used because, in the future, there is a chance you may encounter it in your legal practice. The *About Twitter* page on Twitter’s website is a good place to start your research.

**As the onslaught of technology continues to condition human behavior, the courts must find resourceful ways to cope with this conduct and anticipate how future technologies might impact the justice system.**

an internet connection and/or a wireless mobile device, like an iPhone. Visit Twitter, choose a username and a password and answer the question, “What are you doing?” To make the most of this service invite friends and family to open Twitter accounts. Make sure to “follow” them, as well as your favorite news outlets, blogs, and organizations. Be prepared, however, for uninvited Twitter-ers to pop into the scene. At times, depending on the

## Twitter’s impact on the legal profession

The tentacles of technology eventually attach themselves to most segments of our society. Therefore, the legal profession has not been invulnerable to the social networking craze. One particular area of concern for legal professionals is how services like Twitter influence court proceedings. For example, Twitter and like services have created quite a splash

in the jury pool. This March, for instance, the *New York Times* investigated the story of a juror who used a mobile device to “tweet” the caveat, “Nobody buy Stoam. It’s bad mojo and they’ll probably cease to exist now that their wallet is 12 million lighter.”<sup>1</sup> This “tweet” referred to the \$12 million verdict against the company Stoam. Should the defense have been granted a mistrial because of this Twittering juror? The juror insisted he did nothing wrong when he posted these updates to his Twitter account because he had been released from all duties regarding this case before he chose to “tweet” his insights about the trial.

## Impacts on Trials

Roguish jurors have been a concern since the inception of the jury trial. They have been known to discuss trial events inappropriately or read extraneous materials about the facts of a trial, even when a judge specifically instructs against such conduct. They have also been caught sleeping or using drugs and/or alcohol during deliberations. Some conduct experiments to test facts and theories brought forth in trial. In this brief article, I will not attempt to discuss the numerous ways these behaviors undermine the integrity of the judicial process. I mention these behaviors to show that juror misconduct is not new.

What is new, however, is the technology used by jurors to aid them in their misguided acts. iPhones and other mobile devices offer jurors innovative and convenient ways to share their thoughts and experiences during trial deliberations. With ease, jurors can text, blog, or “tweet” their impressions of a trial directly from the court house. In addition, today’s jurors can use these gadgets to investigate issues and access information not discussed during trial deliberations, whereas in the past a curious juror would have, perhaps, had to travel to the local library to research such issues.

The courts may find it tricky to manage this trend because, according to attorney and law librarian Ken Strutin,

“Sharing the minutest details of our lives through mobile telecommunications has become second nature.” But, the courts must focus on these trends because, “Indiscriminate use of blogs, tweets, and text messages is assailing the sanctity of deliberations and threatening the constitutional rights of criminal defendants to

## Finding Out About Twitter

### Twitter

<http://twitter.com>

### Twitter Help Resources

<http://help.twitter.com/forums/10711/entries/14019>

### More About How Twitter Works

<http://twitter.com/about#about>

### Opening a Twitter Account

<https://twitter.com/signup>

a fair trial.”<sup>2</sup> As the onslaught of technology continues to condition human behavior, the courts must find resourceful ways to cope with this conduct and anticipate how future technologies might impact the justice system.

According to psychologist *Kent Berridge*, managing juror misconduct in the social networking age will be difficult because, “Nature imbued us with an unquenchable drive to discover, to explore.”<sup>3</sup> He argues that without these human drives, we would lack the motivation needed to get out of bed every day. So, how should the legal system combat such inherent human urges?

## Curbing Enthusiasm

One way courts have attempted to gain control over the infiltration of Twitter, blogs, texting, email, and other social networking tools into the jury pool is to construct specific and pointed jury instructions against such conduct.<sup>4</sup> It is hoped that jury instructions, directly tailored to stop such behaviors, will motivate jurors to curb their natural impulses to search for, find, and share information relating to their assigned trials.

Another option some judges have employed is to ban iPhones and other wireless mobile devices from their courtrooms. However, some think cutting the electronic leash by classifying these items

as contraband will only delay the inevitable. For example, attorney Christopher Danzig writes “If you take somebody’s BlackBerry away for a day, they almost become suicidal. I don’t think we need to go there yet. If somebody really wants to cheat, they’re going to cheat. They’ll go home at night and do it.”<sup>5</sup>

At this point in time, there appear to be more questions, both philosophical and empirical, than answers surrounding these issues. One thing does seem certain, however, human urges, bundled with developing technologies, will continue to test the strengths and the limitations of our judicial system.

- 1 John Schwartz, *As Jurors Turn to Google and Twitter, Mistrials Are Popping Up*, N.Y. Times, March 18, 2009.
- 2 Ken Strutin, *Electronic Communications During Jury Deliberations*, 241 N.Y.L.J. 5 (2009).
- 3 Emily Yoffe, *Seeking: How the brain hard-wires us to love Google, Twitter, and texting. And why that’s dangerous*, Slate, Aug. 12, 2009, [www.slate.com/id/2224932/pagnum/2](http://www.slate.com/id/2224932/pagnum/2).
- 4 Richard Raysman and Peter Brown, *How Blogging Affects Legal Proceedings*, Law.com, May 13, 2009, [www.law.com/jsp/legaltechnology/pubArticleLT.jsp?id=1202430647333](http://www.law.com/jsp/legaltechnology/pubArticleLT.jsp?id=1202430647333).
- 5 Christopher Danzig, *Mobile Misdeeds: Jurors with Handheld Web Access Cause Trials to Unravel*, Inside Counsel, June 2009, [www.insidecounsel.com/Issues/2009/June%202009/Pages/Mobile-Misdeeds.aspx?page=1](http://www.insidecounsel.com/Issues/2009/June%202009/Pages/Mobile-Misdeeds.aspx?page=1)

## Private Dispute Resolution



**David Winchester Peck**

Mr. Peck is available to handle mediation and arbitration of disputes in the areas of employment law, professional liability, construction/engineering/architectural liability, premises liability, product liability, and bodily/personal injury litigation.

He is also available to serve as an expert witness in professional liability litigation and insurance bad faith allegations.

For more information or to schedule a mediation, please contact David Peck, at (513) 381-9226 or [dpeck@rendigs.com](mailto:dpeck@rendigs.com). CV available at [www.rendigs.com](http://www.rendigs.com).



1 West Fourth Street, Ste. 900 Cincinnati, Ohio 45202  
[www.rendigs.com](http://www.rendigs.com)