To the Editor:

Re “As Jurors Turn to Google and Twitter, Mistrials Are Popping Up” (front page, March 18):

Jurors’ use of online resources is inevitable and, as the article shows, already widespread. One law professor says that this subverts “hundreds of years of jurisprudence,” developed to ensure that “the facts that go before a jury have been subjected to scrutiny and challenge from both sides.”

But our jurisprudence has also always recognized that lay jurors bring their common knowledge and experience to the deliberation room. The meanings of these terms are shifting, however, in the digital age. Even as courtrooms themselves become paperless, the legal system may seem increasingly archaic if it denies jurors their usual share of the knowledge and experience that are a click away.

This will all pose a big challenge for the legal community, and specifically for our ways of thinking about how to arrive at acceptable legal outcomes.

If the litigation ritual continues to be seen as a search for truth, and as a way to peacefully settle social conflicts and promote fairness, then society, and jurists, will be able to adjust.

Alani Golanski
New York, March 18, 2009

The writer is a lawyer.

To the Editor:

Let’s face it, jurors may tweet, Facebook, Google, FriendFeed, Digg and search while on jury duty. Even when instructed not to. Yesterday, there were more than 60 tweets on Twitter that mentioned jury duty in a 24-hour period. Fortunately, none of these
messages were of a substantive nature about a case or a trial and were mostly just personal announcements about being called for jury duty.

The legal industry can be slow to adapt to new technology, but trial lawyers must get used to the realities of Web 2.0 and the social media coverage of their case and case issues. There is no more excuse for trial lawyers not to be prepared for this possibility.

As a lawyer and a professional trial consultant providing social media awareness training and social media analysis for trial lawyers, I make sure that my clients know that if their case is in the news media, it is also in the social media. Knowing what is being said online about their clients and their case issues is essential.

Trial lawyers need to know what jurors are reading online and what they are potentially exposed to. Trial teams can track search terms that could be commonly used if a juror resorts to “independent research.” They need to find out what key definitions are provided on Wikipedia that could be searched if your case goes to trial.

This information is not only critical in the case of a potential mistrial, appeal or dismissal of an individual juror, but may also go a long way to inform jury research and trial strategy.

This is really not new. But the question today is, Are trial lawyers savvy enough to track and monitor everything that the jury can? If not, isn’t it time that they learned how to tweet?

Christine Martin
New York, March 18, 2009

To the Editor:

I can’t say I am really surprised to see that jurors are doing research on the Internet. It seems to me that more and more people thumb their nose at respect or responsibility for the law or “doing the right thing.”

Every day, we all witness people driving and holding their cellphones in their hands — a direct violation of the law, but not for them: it was an important call.

How many times have you been to a movie or a Broadway play where people continue to talk freely among themselves (or on a cellphone) with a complete lack of respect for those around them? This is a “me first” society, and people do what they want to.

What does surprise me a little is that people are freely admitting that they are searching for this information on the Net. People who perform these explorations while performing their duties as jurors and get caught should be subject to a heavy fine and/or jail time.

Errol Arne
New Fairfield, Conn., March 18, 2009

To the Editor:

Our system of justice claims to seek the whole truth, and that needs the whole facts, not a censored set of information controlled by a judge and lawyers.

Jurors should be encouraged to participate in a trial and discover information for
themselves by any means possible — Internet, books and so on. They should also be encouraged to question prosecutors, defendants and witnesses, with the judge and lawyers assisting (not controlling) the process.

We need to adjust our justice system to modern times and make it a more participatory, democratic process and discard the closely controlled, adversarial game favored by judges and lawyers. Open up the system and let the facts fall where they may.

Barrie F. Taylor
Miami, March 18, 2009

To the Editor:

Jurors are asked to decide cases in a thoughtful and yet naïve way, reflecting a dichotomy improperly created by the current evidentiary rules. While jurors are considered competent to award millions of dollars and to properly weigh the evidence in the process, they are considered incompetent to decide what evidence should be admissible.

Instead, judges serve as the gatekeepers of information, protecting jurors from information that might corrupt their ability to decide the case. But with the advent of the Internet, jurors are given broader access to information denied to them based on arcane legal rules.

Jurors’ use of the Internet reflects both the day-to-day importance of the Internet as well as a revolt against a system that insists on keeping intelligent and discerning jurors from being given the whole truth before they render a verdict. We should have greater faith in jurors’ abilities to separate and weigh evidence properly.

Luke Wilson
Washington, March 18, 2009

The writer is a law student.

To the Editor:

Allowing jurors to submit questions that are screened by the judge for witnesses is one way to overcome the limitations of the purely adversarial trial system.

As full an account of the truth as possible is the goal of a trial, and answering admissible juror questions can mitigate the problem of jurors seeking better understanding of the facts of a case outside the courtroom.

Bruce Kerievsky
Great Neck, N.Y., March 18, 2009