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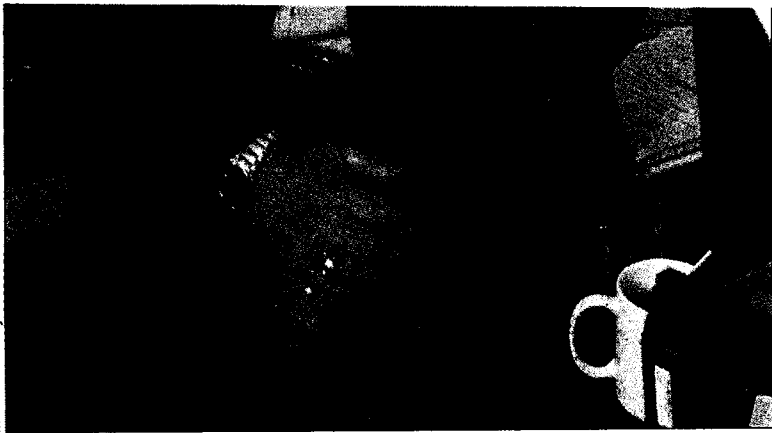
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 PO BOX 250
 COLUMBUS IN 47202-0250
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 King & King P.C.

IL Photo/Robin Jerstad



David F. Hurley, a volunteer for the Judges and Lawyers Assistance Program, helped educate prosecutors and public defenders about JLAP's offerings.

ior — one deputy public defender in Marion County decided to do something about it.

David F. Hurley, a long time co-leader for a support group and volunteer for the Judges and Lawyers Assistance Program, brought the idea to Robert Kodrea, the training director of the Marion County Public Defender Agency, to have a session for his coworkers to learn about what JLAP has to offer.

Having had similar sessions in

encourage people who could benefit from JLAP to seek their help.”

Anna Onaitis Holden, deputy public defender

age of things (that could have been helped if they worked with JLAP),” he said.

Because the sessions were mandatory, they were filmed for those who couldn't attend to watch at a later time.

The sessions focused on how to reach out to

JLAP, that JLAP helps with more than just substance abuse issues, and that a key piece of JLAP's mission is confidentiality for all.

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www.InternetImpactingCourts.com

Legal system seeing effects of online research in litigation, judicial writing.

Michael W. Hoskins
mhoskins@ibj.com

Turning to the Web is a phenomenon the legal system is still trying to embrace as it determines what the best standards are for judges, juries, litigants, and lawyers who may face the urge to access online information during the course of litigation or appellate review.

Evidence is stacking up in courtrooms across the country, including those in Indiana. For example, one Indianapolis-based federal judge has relied on Wikipedia for informa-

tion about the jackalope hunting season, while a lawyer from Columbus is involved in a wrongful death case in which a juror's Google search before voire dire resulted in a tossed verdict and an order for a new trial.

Another example: A juror in a Vanderburgh County murder case was admonished Oct. 9 after the court learned he posted "jury duty, day one complete" on his Facebook page. Despite objections from Starks' attorney, Chris Lenn, the juror was allowed to continue but was ordered to not discuss the incident with the other jurors.

Litigation

Bartholomew County-based law firm Cline King & King in September saw the negative effects of technology first-hand in a case it was handling in South Dakota.

That state's Supreme Court issued an order in a wrongful death case, which involved the estate of a 16-year-old who died in 1999 after losing control of her mom's SUV and was ejected from the vehicle when the seatbelt came unbuckled during a rollover. General

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Motors and the Suzuki Motor Corp. settled before trial, but the seatbelt manufacturer Takata denied the claims and proceeded to trial.

Summons went to prospective jurors in May 2007, and despite a notice about not researching the case beforehand, a juror wondered what kind of business Takata was in and performed a Google search on his home computer before reporting to jury selection two months later. The juror didn't acknowledge his online searches and was chosen for the 19-day trial. At one point during deliberations, that juror mentioned to another that he'd looked up the defendant company online and didn't see any online information that Takata had been sued before. Three jurors heard the exchange, and the jury deliberated for another couple hours before reaching a verdict in favor of Takata. After the verdict, attorneys learned about the jury exchange and the previous Google searches, and filed a motion for a new trial on the grounds of juror misconduct.

Finding that the juror didn't disclose his online research, the trial court found he'd violated the rules and his comments about the Google search constituted "outside information brought into the jury's deliberations that was extrinsic, extraneous, and not intrinsic." As a result, the court vacated the verdict in October 2007 and ordered a new trial after finding the juror's comments likely influenced the jury's decision-making. The South Dakota Supreme Court affirmed that decision last month.

"Admittedly, this is a close case," the high court wrote. "Today, we announce no hard and fast rule that all such types of Internet research by a juror prior to trial without notice to the court and counsel automatically doom a jury's verdict."

Attorney Pete King, who handled the case with his brother Kevin, said this was his first where anything of this magni-

tude had occurred involving online research by jurors. He suspects it won't be the last, though.

"It brings the law and technology into convergence, and we've yet to see a clear direction in how courts will handle this issue," King said.



King

Courtroom concerns

While Hoosier courts haven't seen that level of impact at this point, technology's influence is surfacing more frequently throughout the nation, and judges are cognizant of the effects as they try to address it regularly in their jury instructions and procedures.

Judges are also finding more guidance about how to handle those issues, particularly in writing opinions. In the past decade, judges have slowly started citing and even basing some judicial decisions on Internet sources and including information gleaned from Web sites like Google Maps.

Until recently, citing Internet sources in judicial opinions has been a haphazard affair with little guidance about how to identify reliable sources or how to present a citation accurately. In March 2009, the Judicial Conference of the United States sent the chief judge in every district a set of guidelines, called "suggested practices," to help them decide when and how to use Internet sources. The guidelines say judges should apply the same criteria to Internet sources as for traditional media: accuracy, scope of coverage, objectivity, timeliness, authority, and verifiability.

The short-lived nature of the Internet was a prime concern for the guideline writers, according to Judicial Conference Secretary Jim Duff.

"Unlike printed authority, Internet information is often not maintained at a permanent location, and a cited web page

can be changed or deleted at any time," he wrote in an accompanying cover letter in May to chief judges.

"Obviously, this has significant implications for the reliability of citations in court opinions," he wrote.

Among the guidelines on the use of Internet sources, the judicial conference recommended the following:

- Judges should take into account whether the information is "stable and likely to remain accessible" via the citation used.

- Judges should follow the standard Bluebook citation format and use the cut-and-paste method to ensure the correct Web address, known as a Uniform Resource Locator (URL).

The federal guidelines recommend capturing a Web page and attaching it to the opinion if the Internet source is "fundamental to the reasoning of the opinion and refers to a legal authority or precedent that cannot be obtained in any other format." A captured Web page should be converted to PDF format with some notation of the date, such as a watermark.

If copyrighted materials are involved, permission might have to be obtained and the capture should include the copyright notice.

Because lawyers also cite to online resources, courts "might want to require counsel to capture and attach Internet resources cited in motions or briefs filed with the court, to ensure that the information relied upon by counsel is readily available to the judge," according to the guidelines.

Hyperlinks, which can take a reader directly to a cited Web source, should generally not be used where they lead to a commercial vendor's fee-based site. A judge who opts to do so must include a

disclaimer, stating that the court does not accept responsibility for or endorse the product, organization, or content of the site or any other site to which it might be linked and that if the link stops working, it does not affect the court's opinion in the case.

In the Southern District of Indiana, Chief Judge David Hamilton said nothing systematic has been put in place but judges are using their own discretion to handle these issues. He personally has relied on online sources, such as maps for distances or location descriptions relevant to a case, or even Wikipedia to learn if the one-day jackalope hunting season starts in February or June.

Chief Judge Robert Miller in the Northern District of Indiana said his District judges are quickly adapting to online research, such as by revising instructions for juries to include references to blogging and updating online information.

"Everyone is doing some variant on that," he said. "I've put it into the instruction of 'Don't talk to anyone about the case, in any e-format.' I'm not singling out Twitter or any of the social networking sites, but am making it clear that it does include those."

Others use similar instructions, though the chief judge said he's been told that Senior Judge James Moody has a specific paragraph telling jurors not to use Twitter.

"Most are trying to cover it the best we can," Chief Judge Miller said.



Hamilton



"I've put it into the instruction of 'Don't talk to anyone about the case, in any e-format.'"

Chief Judge Robert Miller, Northern District of Indiana

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See Page 3 for a related article about JLAP's initiatives in

executive director of JLAP, about nine years ago. The support groups had only

after the support groups if anyone needs to talk more.