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**SOCIAL MEDIA: THE ATTORNEY’S BEST “FRIEND”
WHEN INVESTIGATING JURORS**

by

Reginia Judge*

I. INTRODUCTION

We live in a technological age. The emergence of the Internet, computers, tablets, and smart phones makes it easy to obtain data. This advanced technology has its advantages. It keeps us abreast with minute-by-minute updates in times of disaster and allows us to check stock prices and make immediate decisions on buying and selling. The use of technology even helps us locate childhood friends and classmates. Yes, having information available with the click of a mouse has many benefits. Attorneys have long used technology to enhance their practice of the law. Databases such as Lexis and Westlaw have assisted them in conducting legal research online. The Internet has also aided them in the investigation of prospective jurors. This paper explores the use of the Internet as a tool for investigating would-be jurors in an attempt to solidify the right to an unbiased jury as well as part of an attorney’s overall trial strategy.

II. THE DEFENDANT’S RIGHT TO A FAIR TRIAL

The Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution require fundamental fairness in the prosecution of all crimes.¹ Fundamental fairness necessitates that impartial juries hear and render verdicts pursuant to the Sixth Amendment.² At the center of this right is the guarantee that a jury's verdict will be based only on evidence admitted at trial and will not be motivated by outside influences.³ "A potential juror, biased as a result of online "evidence" that has not been scrutinized by both sides ...or influenced by the status updates of friends on Facebook, undermines the protections offered the defendant by the Sixth Amendment."⁴

The jury must consequently be composed of persons who will fairly hear the evidence presented at trial, and base their verdict solely on it and the relevant law.⁵ It is therefore imperative that a juror be an individual who is able to disregard information or views perpetuated by the media, family and friends. Most importantly, he or she must be fair and impartial towards all parties to a lawsuit. Attorneys have begun to ensure this right by using the Internet to investigate prospective jurors.

III. THE JURY SELECTION PROCESS

The selection of jurors is a very important element of criminal trial procedure. Since they determine guilt or innocence, a decision that could send an individual to prison for life or sentence them to death, jurors must be selected with

the utmost care. In order to qualify to serve as a juror, one must be a U.S. citizen, have residency in the summoning county, be physically and mentally capable of serving, have no convictions for indictable offenses, be at least 18 years old, and finally, be able to read and understand English.⁶

Often referred to as a civic duty, the jury selection process begins with the receipt of a summons to appear on a specific day and the completion of a questionnaire. The questionnaire asks for information such as:

“Their occupation, if they have earned any degrees and their areas of study, whether they belong to any clubs, associations or civic groups, such as, the Kiwanis, Rotary Club, Knights of Columbus, Veterans of Foreign Wars, American Legion, American Civil Liberties Union, National Rifle Association, League of Women Voters or any other organization, if they or any family member or close friend, ever applied to work or actually worked in any area of law enforcement, if they, or any family member, have been a member of any group that lobbies or takes public positions on law enforcement issues, or if they or a family member or close friend have been a victim of a crime.”⁷

The goal of the questionnaire is to help the court determine whether one can decide a case fairly. A number of the inquiries found on it are based on the type of case that will be heard. Some questions have been provided by counsels of record with the prior approval from the presiding judge. Based on the questionnaire responses that the lawyers receive prior to trial,

decisions can be made regarding whether to approve of a potential juror according to what is learned before going to court. If an attorney is undecided about a potential juror, he/she may formulate follow-up questions they wish to ask them in open court to help them come to a final decision. Additional decision-making may be derived from what is learned during voir dire⁸. Questions asked may be based on information learned about the prospective jurors via the Internet. "... instead of relying on stereotypes and intuition to vet jurors during voir dire, litigators may use the vast resources available online to find information about potential jurors that is unlikely to come out during the usual voir dire process."⁹ As a juror provides information on the websites he/she frequents or social networks he/she is a member of, the lawyer, armed with a laptop, can do on- the- spot research to explore the information found on these websites. A final decision can be made as to whether to keep or excuse the juror based on the information discovered in the few moments that the electronic research was performed.

Traditional methods of juror investigation employed the use of private detectives and jury consultants. These professionals would often use databases that house public information such as property-tax records. To gain insight into the juror's habits and lifestyle, they would also conduct interviews of neighbors and acquaintances.¹⁰ This would yield basic background information such as age, religion, employer, socioeconomic and marital status, and political affiliation.¹¹ Today, lawyers are more technologically equipped to conduct their own

searches. The World Wide Web provides extensive resources for learning about juror experiences and opinions with instant access at minimal to no cost, and without extensive leg work.¹² Essentially, any website containing an individual's name will bring forth results. A site like Social Mention allows searching of blogs, microblogs, networks and videos. In addition, it also enables receipt of daily email of requested search terms.¹³ Consequently, attorneys are better prepared for voir dire having had the opportunity to develop targeted questions from information obtained in advance that is designed to pinpoint biased individuals.¹⁴ They are also armed with the information they need to dismiss those persons they believe would be unsympathetic towards their client.

“The entire group summoned for service by the assignment judge is called the jury panel.”¹⁵ They are also referred to as the venire, venireman or venire persons. A number of jurors are randomly selected and sent to courtrooms for further questioning. Upon arrival, the venire receives a brief description of the case that they may be hearing and introduced to the parties involved.

The trial court judge is charged with determining whether potential jurors have formed opinions based on pretrial publicity, or possess any bias that would prevent them from impartially determining a defendant's guilt.¹⁶ This is accomplished during the voir dire phase of the jury selection process. In jurisdictions where attorneys are not allowed to personally question jurors, they are provided the opportunity to

submit questions to the judge that are read for them, provided that the judge approves of the questions. Depending on their answers to questions posed, lawyers can excuse venire persons from serving as a juror. Each lawyer possesses a limited number of peremptory challenges to excuse a member of the panel. Attorneys use peremptory challenges when it is believed that a potential juror is prejudiced against their clients.¹⁷ No explanation need accompany the reason for utilizing the peremptory challenge. Defense counsel and prosecutors may use an unlimited number of challenges for cause to excuse a venireman based on partiality or bias. Here, for example, one can be excused if he/she knows a party to the lawsuit, or believes that the defendant is guilty based on information learned via pretrial publicity.

“Voir dire questions must be fashioned to elicit truthful responses from the potential juror which provide counsel an opportunity to ferret out hidden biases and exposure to the details of the pending case.”¹⁸ The trial court is not required to automatically exclude anyone who has heard about a case they might be judging. It is sufficient if the juror can lay aside his impression or opinion, and render a verdict based on the evidence presented in court.¹⁹ Inquiries may include whether the prospective juror knows any of the witnesses that will provide testimony. They might also be asked if they or close friends or relatives were ever involved in a situation like the one presented in the case they might be hearing. In high profile cases, voir dire may contain questions about exposure to pretrial publicity. Probes might include inquiries about the

sources of a possible juror's news and information on current events, how much television they watch, what stations they frequent and what magazines and newspapers they read.

IV. WHY IS IT IMPORTANT FOR ATTORNEYS TO USE THE INTERNET TO INVESTIGATE PROSPECTIVE JURORS?

A. To Ensure that an Impartial, Unbiased Jury is Impaneled

Attorneys must be diligent about discovering would-be jurors' online habits. Therefore, our age requires that voir dire include questions about the amount of time they spend on the Internet, their level of use of social media, if they post videos, whether they participate in chat rooms, or post on bulletin boards or maintain a blog. "The Internet's current national and even international influence on information-gathering by the public at large renders it a significant consideration when choosing a jury.]"²⁰ The aim of this exploration is to discover material that will lead to further investigation of the venire. "Voir dire questions regarding Internet use must be structured to reveal information about venireman's pre-existing opinions about the case and any biases or prejudices they may hold."²¹

A wealth of information can be gained by delving into the online activities of possible jurors. Because voir dire questions are asked in open court in the presence of the judge, counsel, court personnel and others, potential jurors may be hesitant or embarrassed to answer some questions truthfully.²² Social

science research indicates that jurors are typically more candid in their online communications concerning their feelings and opinions on a subject, than they are on questionnaires and during voir dire.²³ "...a user updating a post on Facebook or Twitter or their personal blog, is likely to be more honest and provide "unvarnished" opinions, attitudes or values than they would feel comfortable expressing in a formal setting such as a courtroom. The kinds of candid disclosures that would preclude a potential juror from serving are more and more likely to appear on social media."²⁴ This is why online investigation of potential jurors is so very important. It is vital that this type of information is ascertained before the use of peremptory challenges. For example, an attorney representing a defendant who has been accused of animal cruelty may want to use a peremptory challenge to excuse someone who constantly expresses his love for animals on Facebook. This juror's affection for animals would probably cloud his or her judgment. He or she would most likely be biased against someone accused of hurting animals. If the case at bar involves a products liability claim against a boat manufacturer, one who posts numerous pictures of his boat that was made by the same manufacture on Instagram, may be an ideal juror for the defense. This is because said juror would most likely be partial towards the manufacturer. He or she would associate his or her boat with the manufacturer rather than the plaintiff's.

The goal of these online searches is to uncover clues as to potential prejudices that a venire person may possess. It is therefore imperative to ask prospective jurors about the

websites they frequent, and whether they use the Internet to obtain news information. The lawyer should therefore note the mission statement or goals of the website visited. Examining the websites frequented by jurors can also indicate whether they have been exposed to pretrial information concerning their client or the criminal justice system in general. “Voir dire that fails to recognize the vast amount and varied content of information to which potential jurors may be exposed on-line will not adequately ensure the selection of an impartial jury.”²⁵

The *Mu'Min v. Virginia*²⁶ case provides an example of an attorney attempting to learn what potential jurors knew about his client from information found online. The petitioner murdered a woman after he escaped from a prison work detail. During his trial, Mu'Min submitted 64 proposed voir dire questions to the trial judge. Some required questioning on the content of news stories that jurors might have read regarding his case. Petitioner argued that his rights were violated when the trial judge refused to question prospective jurors about the specific contents of reports to which they had been exposed. The United States Supreme Court held that the Constitution does not require voir dire inquiries into the specific content of pretrial publicity to which a potential juror has been subjected.²⁷ It does, however, allow for the ability of defense counsel to inquire as to what forums the juror was exposed to, which includes online mediums. The task of uncovering specific information viewed is the responsibility of defense counsel; not the court. This statement makes online juror investigation essential.

*B. To Select Prospective Jurors that are Sympathetic
Towards Your Client*

One of the attorney's objectives is to determine if the potential juror would be one that is more favorable to their client's position. Clues are therefore used to fathom how that individual might vote during deliberations. These clues were formally solely based on questionnaires, voir dire responses and hunches. The Internet now allows jurists to base these assessments on more concrete data. For instance, a pretrial Internet search revealed a potential juror's membership in a claustrophobics support group. This caused one attorney to select that person for a products liability case. The claim involved an allegation that the plaintiff was injured after he was forced to clean a machine in a confined space. With this juror as the jury foreperson, a verdict was rendered in favor of the plaintiff.²⁸

*C. To Confirm the Accuracy of Information Provided
by Prospective Jurors*

Another advantage of conducting online juror investigation is its usefulness in confirming the accuracy of information included on questionnaires and during voir dire. It helps in discovering omitted information or occasions when someone simply lies. During the 2005 corruption trial of former Illinois Governor George Ryan, *Chicago Tribune* reporters discovered such deceit during the eighth day of deliberations. The Internet search revealed that two jurors had lied about prior criminal

convictions. Both were convicted felons but each provided answers to the contrary on their questionnaires. Convicted felons are prohibited from serving on Federal cases. The court substituted alternate jurors during deliberations. Ryan was found guilty and sentenced to six and a half years in prison.²⁹ “Once jurors realize that many of their voir dire answers can be verified online, they will likely be more truthful or request dismissal from the case.”³⁰

While conducting online searches, an attorney must keep in mind that, “...there are a number people who post who they want to be, as opposed to who they are.”³¹ There may also be many people online with the same or similar names. Finally, posted information may be inaccurate. It is therefore important that all potential data found online be verified.

D. To Competently Represent a Client

“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”³² Does this mean that attorneys have a duty to conduct online research of potential jurors in order to be considered competent?³³ This question is answered by reviewing the Rules of Professional Conduct. It states that, “Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners.”³⁴ Comment 6 of Rule

1.1 advises, "In order to stay abreast of changes in the law and its practice, lawyers should have a basic understanding of technology's benefits and risks."³⁵ A lawyer's competence, moreover, includes awareness of technological developments that may affect the practice of law.³⁶ Commentators have also suggested that Rule 1.3 regarding diligence, may require counsel to investigate opposing parties and witnesses through social media sources as a matter of due diligence as well.³⁷ An attorney who fails to use technology to investigate potential jurors does his client a disservice. The accessibility of information online does not make searching for this information an option, but an obligation.

V. ATTORNEY PRETRIAL USE OF SOCIAL MEDIA TO INVESTIGATE POTENTIAL JURORS

The Internet is used to conduct legal research as well as a fact-finding mission to uncover important data for evaluation in the practice of law. "[A]nalysis of social media to conduct investigations of potential jurors can yield important information."³⁸ It is imperative that an attorney investigate a venireman before and during the voir dire stage of the criminal justice process. Preparation is the key, and therefore it is wise to scrutinize would-be jurors as soon as the court provides their names and *their* responses to questionnaires. An online investigation begins with the use of several search engines. An individual's name is typed in the search window of a site such as Google, Bing, MSN, or Yahoo. Once the enter key is hit, a variety of related information is retrieved. Web sites, like

Facebook, Twitter, LinkedIn, Instagram, Blogger and Pinterest, which contain the potential jurors' name as well as images, are located; provided that their privacy setting is disabled. Users often indicate their favorite television shows, books, movies, genre of music, and other interests on social network sites. Forums for denoting religious and political views and association memberships are also available. Facebook enables one to learn of individual's web screen names, relatives, people they admire and events they have attended or plan on attending. Social Networks allow users the ability to express themselves by posting videos, photos and articles found on other web pages. They can specify likes and dislikes by simply providing comments or opinions. These posts provide insight into a juror's experiences and ways of thinking. Most importantly, viewpoints can be gleaned from what is posted and shared with others.

VI. ATTORNEY USE OF SOCIAL MEDIA TO INVESTIGATE SITTING JURORS

Internet-based investigations do not end once a case begins. Monitoring jurors' social networking pages during the trial and deliberations is a wise strategy. Doing so may alert the attorneys to instances of misbehavior. Statements posted by sitting jurors on social media websites can give rise to misconduct and the denial of the defendant's right to an impartial jury, thereby resulting in the possibilities of mistrials, motions to dismiss, and motions for new trials.³⁹ For this reason, lawyers should continue to monitor jurors for the

duration of the litigation.⁴⁰ This is achieved by constant review of a juror's social network page, blog, etc. for inappropriate conduct.

Such monitoring took place in the *U.S. v. Fumo*⁴¹ case. There it was learned that while Eric Wuest was a sitting juror he was posting statements about a case on Facebook and Twitter. After reviewing Wuest's online comments, the court held that they were innocuous and provided no information about the trial, much less his thoughts on the trial. Therefore, his postings did not cause a mistrial. His words were characterized as harmless ramblings having no prejudicial effect and were virtually meaningless. Wuest raised no specific facts dealing with the trial, and nothing in these comments indicated any disposition toward anyone involved in the suit."⁴² In contrast, Juror Hadley Jons did make such remarks while hearing a Michigan criminal case. Jons was removed from service after a social media search discovered that she posted, "[A]ctually excited for jury duty tomorrow. It's gonna be fun to tell the defendant they're GUILTY.:P." on her Facebook page.⁴³

VII. ATTORNEY USE OF SOCIAL MEDIA TO INVESTIGATE RELEASED JURORS AFTER A VERDICT HAS BEEN RENDERED

In addition to conducting online juror searches before and during trial, it is also imperative that similar searches be conducted after a verdict is rendered as well. Some forms of

juror misconduct can be the basis of new trials but it must first be uncovered. In some cases, vital information about a juror's behavior while sitting on a case may not be available until after a trial has concluded.

Retrials can be avoided if jurors are honest in their responses to questionnaires and during the voir dire phase. However, accountability does not stop here. The onus is also on counsel to conduct thorough investigations in spite of a belief that a juror has been candid. “[i]f prospective jurors are better scrutinized during voir dire, [it is] more likely . . . to . . . avoid a mistrial.”⁴⁴ The time and effort invested in the *Sluss v. Commonwealth of Kentucky*⁴⁵ case could have been avoided if the jurors were honest and if counsel had conducted social media searches prior to the trial. Appellant was convicted and sentenced to life in prison after crashing his truck into an SUV carrying Destiny Brewer, who died as a result of her injuries. Sluss requested a new trial after conducting a social media search that discovered that two jurors were Facebook friends with Brewer's mother during trial, and made misrepresentations during voir dire. Evidence suggested that jurors, Virginia Matthews and Amy Sparkman-Haney, were “friends” with April Brewer on Facebook during the trial. This, despite their assurances that they did not know the victim or her family. Virginia Matthews also stated that she did not use Facebook.⁴⁶ The court remanded the case to conduct a hearing to determine if the jurors provided false information during voir dire, and the extent of their relationship with April Brewer. At the conclusion of the hearing it would determine

whether the jurors should have been excused from hearing the matter. If so, it would set aside the verdict.⁴⁷ This trial could have taken place with other jurors had Matthews and Sparkman–Haney been honest, and if counsel had conducted a thorough online search before and during trial.

VIII. JUDICIAL ATTITUDES TOWARDS ELECTRONIC JUROR INVESTIGATION

Attitudes toward conducting Internet juror research vary. Some judges argue that Internet use interferes with the trial process. However, attorneys contend that it is pivotal to jury selection.⁴⁸ Jurisdictions, courthouses, and even individual courtrooms have conflicting policies on use the use of electronic devices for juror investigation. Each judge in state and federal court may set different policies.⁴⁹ There are no iron-clad rules about the use of social media research during voir dire or any other stage of the trial process.⁵⁰

A. Against Use

Electronic juror investigating during voir dire was a major issue in the *Carino v. Muenzen* case.⁵¹ Here, the plaintiff appealed after the dismissal of his medical malpractice lawsuit. During voir dire, Carino's lawyer attempted to use his laptop to investigate potential jurors. Defense counsel objected and the court sustained the objection, thereby halting the search. It reasoned that the ability to conduct the Internet investigation provided plaintiff's counsel with an unfair advantage over the defendant's attorney.⁵² The jury ruled in favor of the defense

and the plaintiff appealed. While the appellate court affirmed the lower court's holding, it nonetheless found that Carino's counsel should have been allowed to conduct juror research on his computer. It concluded, "Despite the deference we normally show a judge's discretion in controlling the courtroom, we are constrained in this case to conclude that the judge acted unreasonably in preventing use of the internet by Joseph's counsel. There was no suggestion that counsel's use of the computer was in any way disruptive."⁵³

Judges in other cases have taken this stance as well. District Judge David Coar banned all electronic searches of prospective jurors in the corruption trial of former Chicago mayoral aide Robert Sorch and codefendant Tim McCarthy in 2006.⁵⁴

B. In Favor of Use

Conversely, other courts have observed that counsel has an affirmative obligation to review publicly available information about potential jurors. Some courts consider juror investigation a mandate. In *Johnson v. McCullough*,⁵⁵ juror Mims failed to divulge that she was at various times, a party to several litigation actions during voir dire. A subsequent investigation revealed the nondisclosure after the verdict in favor of the defendant. The trial court found that Mims' nondisclosure was intentional, and therefore presumed bias and prejudice. The verdict was set aside and a new trial ordered. While the court held that the juror acted improperly, it also noted that litigants should attempt to prevent retrials by

completing investigations early in the process. It indicated that a party must use reasonable efforts to examine jurors selected but not empanelled, and present to the trial court any relevant information prior to trial.⁵⁶

C. Attorneys Must Divulge Information Found

Does an attorney have an obligation to provide the court with the results of its searches of would-be jurors? According to *United States v. Daugerdas, et al.*,⁵⁷ -the answer is yes. Here, defendants moved for a new trial claiming juror misconduct on behalf of Catherine M. Conrad. During voir dire, Conrad was asked about the highest level of education she had attained. She responded that she had a BA in English literature and classics. She also stated that she did not work outside the home but was a stay-at-home wife. Finally, she had specified that she lived in Westchester County all of her life.⁵⁸ All this information was false. Conrad had lied extensively about her educational, personal, and professional background; including failing to disclose her legal education, her suspension from practicing law, and her extensive criminal background. Much of this information was discovered by the attorneys for defendant, David K. Parse. "...prior to voir dire, Brune & Richard had conducted a Google search of the terms "Catherine Conrad" and "New York" and discovered the 2010 Suspension Order, suspending a Catherine M. Conrad from the practice of law."⁵⁹ However, they never divulged this information to the court. The firm conducted further research on Conrad during the course of the trial, and determined that

she had also lied about other information provided during voir dire. It never divulged this information to the court either. The court granted new trials to all defendants except Parse. It found that according to Parse's attorneys' investigation, they knew or should have known that Conrad had lied during voir dire. It held that Brune & Richard should have advised the court of the results of its search. Their failure to bring misconduct to the court's attention tainted the integrity of the proceedings. It also waived Parse's right to challenge the partiality of the jury based on juror misconduct.⁶⁰

IX. ETHICAL CONSIDERATIONS - EX PARTE CONTACT WITH JURORS

A lawyer may read public postings on jurors' social media pages before and during trial. However, professional and ethical standards regarding the access and use of social media must be adhered to. This means that counsel must be armed with knowledge of the mechanics of any social media service or website used. Failure to be adequately equipped with knowledge of site could result in inadvertent prohibited communication with jurors. This type of communication occurs when a juror is aware that an attorney has viewed his social network page or profile, even though no actual dialogue was initiated.⁶¹ Ethical rules forbid the ex parte communication between attorneys and jurors. It states that, "A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;⁶²

This means that an attorney may only monitor social networking accounts passively. They may not "friend," "tweet," "follow," or subscribe to their Twitter or YouTube feeds or channels, view them on LinkedIn (since it automatically notifies a user when someone looks at their profile, with no other action by the user viewing the information),⁶³ message or email venire persons.

Lawyers cannot access information by getting around any privacy blocks the juror has put in place. They may only view that which has been put on public display.⁶⁴ This rule may not be circumvented by having another person "friend" a juror. "For example, a lawyer who hires a private investigator to "friend" a witness whose profile is generally private may violate ethical rules unless the investigator clearly discloses an affiliation with the lawyer."⁶⁵ "In 2011, disciplinary proceedings were initiated against two New Jersey litigators

whose paralegal friended a represented plaintiff.”⁶⁶ An attorney may not make misrepresentations to obtain information that would otherwise not be obtainable: “In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person.”⁶⁷

X. CONCLUSION

Attorneys cannot disregard the fact that the Internet provides a means of zealously representing a client. Many are relying on it to research prospective jurors and gain an advantage at trial.⁶⁸ It behooves lawyers to take advantage of the opportunity to go the extra mile when engaged in litigation. Lawyers have the authority to perform online investigations and monitor jurors. Bar Associations and the Model Rules agree that this practice is mandatory if one is to competently represent their client. “[A]ttorneys who understand how social media can help or hurt their clients and have well-defined plans for tackling social media issues, will be in the best position to successfully advocate for their clients.”⁶⁹ “In the end, however, the net result of this use of research on jurors to select an unbiased jury may be the creation of a balanced panel.”⁷⁰

ENDNOTES

¹ U.S. Const. amends. V & XIV, §1.

² U.S. Const. amend. VI.

³ Mark Geragos, *Celebrity Prosecutions: The Thirteenth Juror: Media Coverage of Supersized Trials*, 39 Loy. L.A. L. Rev. 1167, 1169 (2006).

⁴ Kristin R. Brown, *Somebody Poisoned the Jury Pool: Social Media's Effect on Jury Impartiality* 19 Tex. Wesleyan L. Rev. 809, 814 (2013).

⁵ Geragos at 1175.

⁶ N.J.S.A. 2B:20-1.

⁷ United States, Sample Juror Questionnaire.

[http://www.fjc.gov/public/pdf.nsf/lookup/dpen0023.pdf/\\$file/dpen0023.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/dpen0023.pdf/$file/dpen0023.pdf)
. Last viewed on July 22, 2014.

⁸ Voir dire, from French "to see to speak, is the questioning of prospective jurors by a judge and attorneys in court. Voir dire is used to determine if any juror is biased and/or cannot deal with the issues fairly, or if there is cause not to allow a juror to serve (knowledge of the facts; acquaintanceship with parties, witnesses or attorneys; occupation which might lead to bias; prejudice against the death penalty; or previous experiences such as having been sued in a similar case). Law.com <http://dictionary.law.com/Default.aspx?selected=2229>. Last visited July 8, 2014.

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¹⁰ Thaddeus Hoffmeister, *Investigating Jurors in the Digital Age: One Click at a Time*, 60 U. Kan. L. Rev. 611, 618 (2012).

¹¹ Thaddeus Hoffmeister, *Applying Rules of Discovery to Information Uncovered About Jurors*, 59 UCLA L. Rev. Discourse 28, 31. (2011).

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- ¹⁸ Erika Patrick, *Protecting The Defendant's Right To A Fair Trial In The Information Age*, 15 Cap. Def. J. 71, 72 (2002).
- ¹⁹ Irvin v. Dowd, 366 US 717, 722 (1961).
- ²⁰ Patrick at 71.
- ²¹ Id. at 89.
- ²² Prospective Juror Questionnaires Made Easy. http://www.thefederation.org/documents/v61n2_daniels.pdf. Last viewed on July 17, 2014.
- ²³ Babcock at 44.
- ²⁴ Id at 45.
- ²⁵ Patrick at 72.
- ²⁶ Mu'Min v. Virginia, 500 U.S. 415 (1991)
- ²⁷ Id. at 431.
- ²⁸ Hoffmeister at 626.
- ²⁹ Jamila A. Johnson, *Voir Dire: To Google or Not to Google*, Law Trends & News. Vo 5. No. 1. Fall 2008. http://www.americanbar.org/newsletter/publications/law_trends_news_practice_area_e_newsletter_home/litigation_johnson.html. Last visited August 26, 2014.
- ³⁰ Hoffmeister at 34.
- ³¹ Robinson at 629.
- ³² Model Rules of Professional Conduct Rule 1.1 (2013).
- ³³ Carole Buckner, "Legal Ethics, Social Media, And The Jury" 55-NOV Orange County Law. 32, 33 (2013).
- ³⁴ Model Rules of Prof'l Conduct R. 1.1 cmt. 5 (2009).
- ³⁵ Model Rules of Prof'l Conduct R. 1.1 cmt. 6 (2009).
- ³⁶ Steven C. Bennett, *Ethical Limitations on Informal Discovery of Social Media Information*, 36 Am. J. Trial Advoc. 473, 478 (2013).
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- ³⁸ Buckner at 35.

³⁹ Emily M. Janoski-Haehlen, *The Courts Are All a 'Twitter': The Implications of Social Media Use in The Courts*, 6 Val. U. L. Rev. 43, 46 (2011).

⁴⁰ Zachary Mesenbourg, *Voir Dire In The #Lol Society: Jury Selection Needs Drastic Updates To Remain Relevant in The Digital Age*, 47 J. Marshall L. Rev. 459, 465 (2013).

⁴¹ U.S. v. Fumo, 639 F.Supp.2d 544 (2009).

⁴² Fumo at 555.

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⁴⁴ Janoski-Haehlen at 62.

⁴⁵ Sluss v. Commonwealth of Kentucky, 381 S.W.3d 215 (2012).

⁴⁶ Id. at 220.

⁴⁷ Id. at 229.

⁴⁸ Janoski-Haehlen at 43.

⁴⁹ Robinson at 610.

⁵⁰ Zachary Mesenbourg, *Voir Dire In The #Lol Society: Jury Selection Needs Drastic Updates To Remain Relevant In the Digital Age*, 47 J. Marshall L. Rev. 459, 465 (2013).

⁵¹ Carino v. Muenzen, 2010 WL 3448071 (N.J. Super. A.D. Aug. 30, 2010).

⁵² Id at 4.

⁵³ Id at 10.

⁵⁴ Anita Ramasastry, *Googling Potential Jurors: The Legal and Ethical Issues Arising from the Use of the Internet in Voir Dire*, May 30, 2010. Findlaw . <http://writ.news.findlaw.com/ramasastry/20100730.html>. Last visited August 26, 2014.

⁵⁵ Johnson v. McCullough, 306 S.W. 3d 551 (Mo. 2010).

⁵⁶ Id. at 558.

⁵⁷ United States v. Daugerdas, 867 F. Supp. 2d 445 (S.D.N.Y. 2012).

⁵⁸ Id at 451.

⁵⁹ Id at 460.

⁶⁰ Id at 484 - 485.

⁶¹ N.Y. County Formal Opn. 743 (2011); N.Y. City Bar Formal Opn. 2012-2 (2012).

⁶² Model Rules of Prof'l Conduct R. 3.5.

⁶³ Maryt L. Fredrickson, *Social Media Competence, Diligence and Other Ethical Issues*, 37-APR Wyo. Law. 28, 29 (2014).

⁶⁴ Brown at 832.

⁶⁵ Hayes Hunt, Brian Kint, and Cozen O'Connor, *Juries and Social Networking Sites*, 37-DEC Champion 36 (2013).

⁶⁶ Maryt L. Fredrickson, *Social Media Competence, Diligence and Other Ethical Issues*, 37-APR Wyo. Law. 28, 29 (2014).

⁶⁷ Rule Model Rules of Prof'l Conduct R. 4.1(a) (2009).

⁶⁸ Gibson at 11.

⁶⁹ Hayes Hunt at 36.

⁷⁰ Robinson at 630.