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LITIGATION CONSULTANTS

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Social Media and the Internet vis-à-vis Litigation (Part I)

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Introduction

This newsletter is the first installment in a series addressing the issues associated with the use of social media and the Internet in the legal setting. Part I of this series explains how an attorney can advantageously use social media and other online sources in preparing for jury selection.

Making Beneficial Use of Social Media in Jury Selection

Although much of the basic information about jurors can be obtained from the jury summons forms filled out by potential jurors before entering the courtroom, the information provided on these forms is not always accurate and is, more often than not, limited or incomplete. These forms generally ask potential jurors to provide only certain limited information (*e.g.*, marital status, occupation, years in the occupation, hobbies/interests, children’s occupation). They rarely ask potential jurors for information pertaining to their age, political affiliations, organization affiliations, publications, blogs, and prior occupations - information that, if known, could prove extremely helpful with discovering sources of potential juror bias.

If potential jurors’ names can be obtained before trial, social media and other online sources, *e.g.*, Westlaw or Lexis Nexis, can be used to investigate potential jurors prior to jury selection. If names cannot be obtained ahead of time but are obtained just before jury selection begins, then information can be collected during voir dire and throughout the trial by “Googling” potential jurors and researching their views and experiences via blogs, online comments, Facebook, MySpace, LinkedIn profiles, and Twitter feeds (assuming these are set to be viewed publicly). Conducting a more thorough search through the use of public databases *e.g.*, Westlaw and Lexis Nexis, (usually available for a fee) can also identify jurors’ litigation histories, criminal backgrounds, liens, mortgages, car registrations, etc.

Online sources are not only beneficial when it comes to information-gathering about particular jurors, they can also prove valuable in learning about the online community’s attitude towards certain issues in a given case. For instance, social media and the Internet generally, can be used to evaluate the public perception of

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a company involved in your case. Blogs, tweets, and online reviews about people’s experiences with a company and the prevailing sentiment about a company can be remarkably insightful.

Additionally, research has shown that active social media users are vocal about their opinions and influential amongst their “friends”. According to Nielsen’s 2011 Social Media Report, active adult social networkers are more likely than the average adult Internet user to be found commenting on current events and attending political rallies, rating products and reviewing entertainment, and even interacting publicly, offline, with friends and acquaintances. See <http://blog.nielsen.com/nielsenwire/social/>. So how does this help counsel with jury selection? By incorporating questions about potential jurors’ level of social media activity during voir dire, counsel may be able to determine which jurors possess these leadership traits and will ultimately influence other jurors during deliberations.

However, simply performing this reconnaissance will do the attorney no good. The challenge is for counsel to determine how to make the best use of the information obtained. When the time comes to pick a jury, armed with background information about the individuals in the jury pool, attorneys must estimate which jurors’ attitudes and experiences will work in their favor and, prior to the start of jury selection, they should develop a voir dire strategy that will result in a fair and impartial jury panel.

Conclusion

Fortunately, there is no shortage of sources to rifle through on the Internet. Today, Americans are more than comfortable with sharing their thoughts, opinions, and personal lives on the Internet for all to see. Facebook and Twitter and other social media outlets are littered with individuals’ daily editorials from around the planet opining about the events and issues of our time. There is a well of information on the internet, one that if tapped into, can provide counsel with a wealth of knowledge about his potential jurors that, at the end of the day, may just . . . tip the scales.