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Online Searches for Jury Selection

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Abstract

The Sixth Amendment guarantees defendants the right to trial by an impartial jury. Attorneys are expected to obtain information about potential juror biases and then deselect biased jurors. Social networking sites may offer useful information about potential jurors. Although some attorneys and trial consultants have begun searching online sources for information about jurors, the privacy rights of potential jurors’ online content has yet to be defined by case law. Two studies explored the issue of possible intrusion into juror privacy. First, an active jury venire was searched for online content. Information was found for 36% of the jurors; however, 94% of the information was found through simple Google searches. Only 6% of the information we found was unique to other sites. We concluded that searching for potential jurors online is feasible, but that systematically searching sites other than Google is generally not an effective search strategy. In our second study we surveyed attorneys, trial consultants, law students, and undergraduate students about ethical and privacy issues in the use of public domain information for jury selection. Participants evidenced concern about the rights of jurors, the rights of the defendant and accuser, and the role of tradition in court processes.

Keywords: social networking site, online information, jury selection, ethics, privacy, internet
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Online Searches for Jury Selection

I. Introduction

Social networking sites have become vehicles in which private information is explicitly or implicitly made public.¹ These sites range from online blogs (e.g., LiveJournal) and dating services (e.g., eharmony), to special interest communities (e.g., BlackPlanet) and sharing sites (e.g., YouTube), as well as general social networking sites (e.g., Facebook, MySpace) and professional networking sites (e.g., LinkedIn).² Profile content often includes demographic, professional, and educational information.³ Users may post detailed personal information relevant to jury selection, such as political affiliation, religious beliefs, and personal views on a variety of topics. Bloggers sometimes use their sites as journals, sharing emotional and personal information about themselves in a public domain.⁴

Recent literature has examined patterns of social networking site use and how information from these sites should be protected or accessed.⁵ Limited information is available regarding the use of social networking sites for other purposes. Research and scholarly commentary examining the privacy rights of users and the ethical considerations involved in accessing and using information posted online has identified many privacy concerns.⁶ No research could be found that examined the use of information from social networking or online sources in jury selection.

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¹ See generally danah m. boyd & Nicole B. Ellison, Social network sites: Definition, history, and scholarship, 13 J. COMPUTER-MEDIATED COMM. 210-28 (2007).
² Id.
³ Id. at 212.
⁴ See generally Erin E. Hollenbaugh, Motives for maintaining personal journal blogs, 14 CYBERPSYCHOL. BEHAV. & SOC. NETWORKING. 13-20 (2011)
⁶ daneh boyd, Facebook’s privacy trainwreck: Exposure, invasion, and social convergence. 14 CONVERGENCE 13, 13 (2008); Christopher J. Brooks, Social networking sites: The pros and cons of trolling the internet for sources 96 THE QUILL 24, 25-6 (2008); Michael J. Bugeja, Facing the Facebook, 52 CHRON. HIGHER EDUC. C1-4, C1-3 (2006); See
Of course, social networking sites are not the only sources of personal information on the internet. In fact, Adamic and Adar\(^7\) suggested that when trying to find online personal information about people, searching social networking sites can be an inefficient strategy. Other sources such as blogs, online journals, and Google searches can provide personal information. Moreover, Google searches are relatively quick and do not require user membership.

### A. Online Information and Jury Selection

In much the same way that employers, university officials, law enforcement, and the press have used information found online to inform their searches about specific people,\(^8\) attorneys and trial consultants have begun searching for online information about potential jurors for jury selection purposes. Why might attorneys search for information about potential jurors online? The Sixth Amendment guarantees that criminal defendants “shall enjoy the right to a speedy and public trial by an impartial jury…”\(^9\) The Supreme Court has held that the right to an impartial jury is implicit in the Due Process Clause of the Constitution as well, and that civil cases are afforded a right to impartial juries as implied through the Seventh Amendment.\(^10\) Impartiality is defined by the Supreme court as a juror who can “lay aside his opinion and render a verdict based on the evident present in court,”\(^11\) who has a “mental attitude of appropriate indifference,”\(^12\) and who is able to “conscientiously apply the law and find the facts.”\(^13\)

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\(^{9}\) U.S. Const. amend. VI.


Information available through the internet may be indicative of the kind of juror a particular person would be. This information could yield insight into partiality on part of a potential juror. Social networking sites could provide attorneys with information they would not be permitted to ask during voir dire or might be hesitant to ask potential jurors so as not to alienate them. For example, attorneys are usually not permitted to ask jurors about their past voting history or reading habits; however, this information is routinely made public in online profiles. The potential intrusion into the privacy of potential jurors during voir dire is an unresolved issue.

i. Juror Privacy Rights

Do jurors have a right to privacy precluding the use of online information for jury selection purposes? This specific issue has not been addressed in case law. Hodge, however, noted that courts are beginning to recognize that people sharing information on social networking sites do not expect to lose all privacy. He made the analogy that because a person invited another person into her home yesterday, she does not expect that her residence can no longer be considered private and can be searched at any time. People do realize that the internet is not completely private; by creating a profile to show some of their information to intended others they know they may expose some information to unintended others. Whether a person has a reasonable expectation of privacy in releasing this information is difficult to determine, but Hodge argues most people signing online are not willing to give up all protections of privacy.

The broader issue of whether jurors have a constitutional right to privacy during the jury selection process has no clear answer. Legal scholars continue to debate the issue and the Supreme

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16 Hodge, *supra* note 6, at 122.
17 *Id.*
18 *Id.* at 123.
Court has thus far failed to answer the question. In her legal analysis of the privacy rights of jurors during the jury selection process, Rousseau concluded that jurors do not have a constitutional right to privacy with respect to matters of juror bias, but they do have a legitimate interest in limited disclosure of such information that the court should accommodate when practicable. Further, she concluded jurors do have a constitutional right to privacy with respect to matters not related to bias, and that trial court judges should appropriately limit such exploration. In her legal analysis of the same issue, Monsen noted jurors have different expectations of privacy depending on the type of trial. The higher stakes in criminal cases as compared to civil cases leads to a reduced expectation of privacy; in civil cases jurors might enjoy a higher expectation of privacy.

An example was recently seen in the 2011 trial of Conrad Murray, Michaels Jackson’s physician. Attorneys in this case reportedly “scrutiniz[ed] what prospective jurors may have said outside the courthouse and online about events surrounding the June 2009 death of pop star Michael Jackson.” Attorney Thomas Meseareau predicted both sides would “hire competent people to explore every aspect of social media to try and find out whatever they can about these jurors, and also to see if these potential jurors have communicated with anyone else about this case.”

B. The Present Research

Our study was designed to 1) explore the feasibility of searching for (and finding) information about potential jurors online and 2) identify the ethical and privacy issues involved in using public domain information. The first part of the study sampled real-world potential jurors in *voir dire* with available information in the public domain. The second part surveyed three different groups of

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19 Karen Monsen, *Privacy for prospective jurors at what price? Distinguishing privacy rights from privacy interests; Rethinking procedures to protect privacy in civil and criminal cases.* 21 REV. LITIG. 285-308, 289 (2002); Rousseau, supra note 14, at 288.
20 Rousseau, supra note 14, at 288.
21 Id. at 289.
22 Monsen, supra note 19, at 287.
24 Id.
people (trial consultants and attorneys, law students, and undergraduate students) about the use of online information in jury selection.

II. Study 1 Method

A. Participants

Study one sampled real-world potential jurors with information available in the public domain. From an active jury venire from a county in the state of Alabama, we obtained the names of 155 jurors who ranged in age from 20 to 93 years old ($M = 48.67, SD = 4.64$). Participants were representative of this population, with 57% of the potential jurors being female and the ethnic composition being 66% Caucasian, 30% African-American, <1% Hispanic, <1% Asian, and 3% Other. Institutional Review Board (IRB) approval was obtained before the names were searched online. Participants had no knowledge they were part of the study: all data were catalogued in deidentified and aggregated form; that is, none of the information we collected in our database was identifiable and everything was analyzed by group.

B. Procedure

We developed a standardized search protocol to follow when searching for each name. Sites searched included Google, MySpace, Facebook, LinkedIn, and GoogleBlogSearch. We chose these sites for several reasons. First, starting with a widely used search engine (i.e., Google) would yield a broad range of information sources. MySpace and Facebook were searched because they were two popular social networking sites. We searched LinkedIn because it was a professional social networking site offering work-related information potentially unobtainable from other sites. GoogleBlogSearch appeared to be the best option for searching the availability of blog entries across the internet. We searched for blogs because the information provided might be unique and relevant to jury selection, assuming entries could be linked to the names in our juror sample.

The first three authors were involved in the search process; each of whom searched for one-third of the jurors online. We used four standardized search terms on each of the five sites described
above. First, we searched for the full name provided on the juror information sheet. Then, we searched the full name “+ [state]”, followed by full name “+ [city]”, and finally, full name “+ [date of birth]”. Each of the sites required different ways of searching and the standard search methods were based on the structure of each site. Some sites required advanced search and filter options, for instance, while others allowed for advanced searches via a single search bar. MySpace, Facebook and LinkedIn required us to join the sites prior to searching.

We counted information as a “match” if the information obtained exactly matched the person in our juror list; for instance, if the name was spelled exactly the same, and/or if the birth date matched, and/or if the city or state name appeared relevantly within the result. We compiled descriptive statistics in an Excel database for obtained data: the percentage about whom personal information was found; their mean age and age range; percentages regarding the gender, ethnicity, political orientation, religious orientation, and occupation. We compiled number of friends, number of comments/wall posts, number of groups to which s/he belonged, job/career, education history, and personal website addresses from the social networking sites. For the few blogs that matched exactly, the entry was noted, as well as the number of blogs found for a given person. Finally, in an open-ended section in the database for each site we included other information with potential interpretive value for jury selection purposes (e.g., favorite quotes, movies, interests).

C. Results

We were able to find online information for 36% of the potential jurors’. Of the five sites, Google was by far the most productive: 94% of the information was obtained through Google. From the Google results lists, we obtained links to a wide variety of data about potential jurors, such as involvement in lawsuits, companies worked for, scholarly accomplishments (e.g., graduation and dean’s lists announcements), military history, criminal history, sorority/fraternity membership, protest rally membership, church membership, firefighters honored for heroism, books authored,
football players spotlighted in local newspapers, organizations to which money was donated, organizations volunteered for, and links to PDF versions of curriculum vitas. It should be noted that Google also yielded information available through other sites (e.g., Facebook profiles, blogs, etc.). Only 6% of the total information we found was not present in the Google results.

On Facebook, we found profiles for 9% of the pool; however, 70% of these profiles had privacy settings such that only “friends” could access the information. The information we found uniquely from Facebook included educational status and achievements, sorority/fraternity membership, marital status, political orientation, interests (e.g., “hunting,” “fishing,” “Alabama football,”), and photographs. We found 5% of the pool with MySpace profiles, half of which were “open” for all MySpace members to view. Unique information from MySpace included military history, educational status and history, religious and sexual orientation, and one profile included poems written by the user. Two profiles, in particular, yielded information potentially relevant for jury selection. For instance, one identified herself as a “Christian,” provided several favorite bible quotations, and had ecumenical phrases in her profile name. A second juror indicated he had served in the Marine Corps in Iraq and he blogged on MySpace about morality and actions deserving consequences.

Four percent of the potential jurors had LinkedIn profiles, all of which were “open” to LinkedIn members. This site yielded information primarily regarding the employment or career of the juror. Other LinkedIn information included educational history and accomplishments, previous positions, and professional contact information. Two jurors’ blog sites were found. One of the blogs discussed a plant species, and the other documented the early history of a particular religious group.

To explore the demographic characteristics of the people for whom online information was found, we calculated the average age of “found” jurors for each site, as well as the gender and the ethnic composition of the users we found. Facebook had the youngest average age of user (M=
33.43, $SD=14.75$), followed by MySpace ($M=36.63, SD=15.40$), bloggers ($M=38.29, SD=8.56$), and LinkedIn ($M=46.83, SD=8.75$). The average age of jurors for whom information was obtained through Google was 44.94 years ($SD=17.83$). More information about women than men was obtained on most sites, although MySpace was evenly split in this sample. Caucasians were overrepresented in the “found” juror pool for every site except LinkedIn, which was equally divided between Caucasian and African-American participants.

**D. Discussion**

This study was conducted to investigate whether and how easily information about potential jurors could be found online through a standardized search protocol. The majority of information obtained was through Google, much of which may be relevant for the *voir dire* process. Rich information with potential relevance for attorney decision-making was also obtained through MySpace and Facebook. Although the blogs identified as being written by potential jurors in this particular sample may not be relevant for jury selection purposes (e.g., native plant species and the history of a religious group), it is likely that some blogs from jurors in other samples will contain useful information.

The amount of time invested into searching these sites systematically for every juror name was substantial. The practical reality of limited time for practicing attorneys and consultants will generally preclude the kind of systematic search for potential jurors online we performed in this study, except in high stakes cases with adequate resources. However, some of the information discovered could be useful for routine jury selection purposes. Searching Google for a person’s name is a quick process compared to the searches required for some of the other sites. Because most of our matches were through Google, and because the search engine is relatively easy to use, using Google to search for potential jurors is a time efficient investment strategy for attorneys and consultants to search for information regarding potential jurors. It should be noted that Google often displays a link
to existing Facebook, MySpace, and LinkedIn profiles associated with the searched name. Further, blogs sometimes showed up through Google searches.

One limitation is that even if information is found, one can never be certain the information truly corresponds to the sought person. People may have the same names, may live in the same county and/or may have the same birth date. Even for social networking profile pages, many people have privacy settings to prevent information-seekers from obtaining information unless they are “friends” with the user. These and other issues will be elaborated upon in the general discussion to follow.

III. Study 2 Method

We surveyed three samples for the second study: undergraduate students, law students, and practicing attorneys and trial consultants. The survey was designed to obtain participants’ familiarity with and use of social networking sites as well as attitudes toward the use of such information in jury selection. We included these three groups to draw on different perspectives. People currently conducting jury selections (e.g., practicing attorneys and trial consultants) are likely to be older and possibly less familiar with social networking compared to the other groups. Law students are likely to be younger and more familiar with these sites. Law students could be helpful to provide a glimpse into the future of using social networking sites in jury selection, while surveying practicing attorneys and consultants could yield information about current practices. Undergraduate students provided information about how some jury-eligible young adults feel about the use of their online information.

A. Materials

We developed a survey to obtain participant’s familiarity with, membership in, and personal use of such sites; demographic information to determine characteristics of those who use such sites; attitudes toward the use of information from social networking sites for jury selection purposes;
prevalence of use of online communities as sources of information (if applicable); and opinions about the ethical and privacy issues involved (see Appendix).

B. Participants

Although we had three samples, we analyzed the data collectively because two of the samples were limited in size.

i. Sample 1. Undergraduate students \((n=175)\) enrolled in Introductory Psychology at a large university in the southern U.S. participated. The mean age was 20.00 (\(SD=1.60\)). The gender composition was 74% female and 26% male. The ethnic composition was 74% Caucasian, 22% African-American, and 4% from a different racial background. Recruitment took place through the psychology department’s internet-based subject pool. Course credit was provided for participation.

ii. Sample 2. Participants \((n=27)\) were law school students recruited through an electronic mailing list at a southern U.S. law school. The mean age was 26.11 (\(SD=4.85\)). The gender composition of the sample was 56% male and 44% female. The ethnic composition was 70% Caucasian, 11% Asian, 4% African-American, 4% Latino/a, and 11% from a different racial background.

iii. Sample 3. The survey for practicing trial consultants and attorneys was sent electronically through a list-serve to all (approximately 500) American Society of Trial Consultant (ASTC) members; 11 responded. The mean age was 48.27 years old (\(SD=9.57\)). The gender composition was 54% female and 46% male. One hundred percent of the sample was Caucasian.

C. Procedure

Participants were asked to read and sign an informed consent statement before filling out the survey. All participants received a debriefing statement upon completion.
D. Results

Grounded theory analysis was used to analyze the qualitative data.\textsuperscript{25} This method of data analysis is comprised of four stages in which elements of the qualitative data are constantly compared to the whole of the data available. The data is first organized by repeating ideas, then into themes, then constructs, and finally into higher-order abstract theory.\textsuperscript{26} The participants described ethical issues that fell into four domains: 1) juror rights, 2) defendant/accuser rights, 3) court processes, and 4) the sites themselves. Several participants had privacy concerns regarding juror rights. Many participants indicated privacy settings and posted information online on social networking sites should exclusively serve the purpose of social networking. These participants argue the information used for any other purpose represented an intrusion into the privacy of the person. However, there were also participants with the opposite viewpoint, who held that information posted in the public domain held no reasonable or legal expectation of privacy. These participants suggested people can choose to raise privacy settings or not post information online to protect their privacy.

With regard to defendant and/or accuser rights, participants noted that a fair, impartial jury is a constitutional right. However, participants disagreed as to how a fair and impartial jury should be impaneled; some argued searching online profiles for information is unethical because attorneys might “rig” the jury to be biased. Others argued the search for such information is ethical and ferreting out and deselecting biased jurors should be allowed. Several participants indicated attorneys have a responsibility to represent their clients as best they can. These participants suggested that within our adversarial system, learning as much about potential jurors as possible is competent lawyering.

Third, ethical issues regarding court processes were reported. Some participants relayed their belief that the jury selection process should be uniform. Because not all jurors have information

\textsuperscript{26} Id.
available online, it would create an unfair level of scrutiny for some jurors. Others felt that
traditional, thorough voir dire procedures should be sufficient for jury selection purposes. However,
most participants recognized that more and better information can sometimes be obtained through
online sources than through traditional voir dire, and further, that this information can often be
obtained relatively quickly to identify potential juror biases. People may be willing to post online
information they would not offer in court.

The results revealed several arguments that social networking information could make
efficient use of the court’s time: information could be obtainable outside of court and some motions
for cause could be made in advance of jury selection. Another point raised was that searching these
sites is not substantively different than searches conducted by some attorneys during jury selection
via other publically available information (e.g., criminal histories, newspaper articles). A few
participants noted that as valuable as this method might be for jury selection, it is not feasible for
attorneys or consultants in most cases due to time and/or financial constraints.

Finally, regarding the sites themselves, many participants argued that using the sites for
purposes other than social networking is antithetical to their purpose. Others highlighted the
questionable reliability of information obtained from such sites, and still others pointed out that even
if a prohibition were put in place, enforcing it would be nearly impossible. Nevertheless, many
people recognized the material on these sites is in the public domain and legally and freely obtainable
by anyone.

E. Discussion

The qualitative results yielded information about the ethical implications of online searching
for information about jurors during voir dire. Participants evidenced concern about the rights of
jurors, the rights of the defendant and accuser, and the role of tradition in court processes.
Limitations of this study include the small sample sizes for the law student and attorney/TC samples.
Nevertheless, the results of this study offer preliminary and qualitative data. Future research can garner larger samples to replicate and extend this work through hypothesis testing.

IV. General Discussion and Conclusions

These two studies addressed the debate over social networking sites in jury selection. Study one indicated that rich information is available about some potential jurors online, but it is not always easy to obtain. Social networking and blogging sites likely contain the richest personal information; however, there is a low hit rate in finding a particular person’s content in these domains. Google searches are faster, easier, and yield a higher hit rate than searching other types of sites. Therefore, we conclude that systematically searching various sites other than Google for potential juror information during voir dire is not a wise search strategy except in high profile, high stakes trials when personnel resources, time, and money are available. With financial resources, pay-for information searches could obtain this or similar information, or a professional investigator could be paid to find this information.

Most participants stressed that users have a responsibility for the information they post online. They suggested users must remain aware of and take responsibility for their online content, avoid posting anything potentially harmful to themselves or others, take steps to keep information private (e.g., increase privacy settings), and avoid posting “anything you wouldn’t want your grandmother to see.” People were perceived to be accountable for the information available about themselves online. With awareness of how such information can be used, people may show more caution about their online content.

These findings add to the limited literature about the use of social networking sites for purposes other than the users may intend. Results shed light on the ethical considerations involved in accessing and using information posted online as well as the privacy rights of potential jurors. The
courts, practicing attorneys, and jurors themselves might consider these findings in regards to their social network usage practices.
APPENDIX

Sample of Questionnaire Items

Please indicate below with which online social networking sites you are familiar:

- MySpace.com
- Facebook.com
- Xanga.com
- Twitter.com
- YouTube.com
- Blogging sites (accessed through Google Blog Search)

Please indicate below which sites you are a member, have ever been a member, or have posted:

- MySpace.com
- Facebook.com
- Xanga.com
- Twitter.com
- YouTube.com
- Blogging sites (accessed through Google Blog Search)

If you have previously been a member of a site but have removed yourself from membership, please explain your reasoning for doing so: ________________________________

How long ago did you FIRST join a social networking site?

- Never have
- < 1 mo ago
- 1 mo to 1 year ago
- 1 to 2 years ago
- 2 to 5 years ago
- 5 to 10 years ago
- > 10 years ago

How much time per week do you spend on these sites?

- 0 hr
- Up to 1 hr
- 2 - 4 hrs
- 5 - 7 hrs
- 8 - 10 hrs
- More than 10 hrs

If you are a member of social networking sites, please rate the average privacy settings you have protecting your postings, where 10 is “completely private” and 1 is “no restriction.” Please indicate which number is your answer.

- Completely private
- 10
- 9
- 8
- 7
- 6
- 5
- 4
- 3
- 2
- 1
- No restriction

If you are a member, for what purpose did you become a member of the site(s)? (Please indicate all that apply).

- To find old friends online
- To connect with new people
- Keep up with current friends and family
- Start up groups to communicate information
- To network professionally
- To share information about yourself
- To be better able to search for information others post online
- Other (please explain) ________________________________
Have you heard of attorneys using online social networking sites as sources of information about potential jurors during *voir dire*?  __Yes  __No

Do you think attorneys should be allowed to search online networking sites to obtain information about potential jurors to aid them during *voir dire*?  __Yes  __No  ___Under some circumstances (please explain)_________________________

Please describe why you answered the way you did.  _____________________

What ethical issues do you think this presents to attorneys and trial consultants during jury selection?______________________________________________________________________

What privacy issues do you think this presents to users of these sites?
- Intrusion of privacy
- Abuse of personal information
- Harassment
- Identity theft
- Other (please explain)__________________________________________

Do you think there should be rules and/or guidelines about how such information should be used?  
__Yes  __No  ___Maybe (please explain)_________________________

If you answered “yes” or “maybe,” please give your suggestions as to what rules and/or guidelines should be in place for the use of information posted by social networking users in the public domain.  ____________________________________________

Has answering this questionnaire made you more aware of how information you post about yourself can be used?  __  Yes   __ No

Has answering this questionnaire made you decide to change your privacy settings or posted information? __ Yes  __ No  ___Maybe

If you answered “yes,” please explain what you will change:____________________________