

PRESENTED AS A

Live Webcast

August 6, 2021

**VOIR DIRE BECOMES VOIR GOOGLE:
ETHICAL CONCERNS OF 21ST CENTURY
JURY SELECTION**

JOHN G. BROWNING

Author Contact Information:

JOHN G. BROWNING

SPENCER FANE LLP

PLANO, TEXAS

jbrowning@spencerfane.com

**VOIR DIRE BECOMES VOIR GOOGLE:
ETHICAL CONCERNS OF 21ST CENTURY
JURY SELECTION**

JOHN G. BROWNING

SPENCER FANE LLP

PLANO, TEXAS

UT LAW CLE

FIRST FRIDAY ETHICS

AUGUST 6, 2021

ETHICAL IMPLICATIONS OF RESEARCHING JURORS ON SOCIAL MEDIA

May lawyers ethically research the social media profiles and online postings of perspective jurors? The answer to this question is generally “yes,” but with some qualifiers and caveats. It’s certainly understandable why lawyers all over the country routinely engage in this practice. After all, in civil and criminal cases, attorneys on both sides probe with their questions during voir dire, seeking to learn more about the prospective jurors and whether or not they might be likely to align with that lawyer’s side of the case, or whether or not the jurors might have a pre-existing bias on a particular issue. Everything from a panelist’s body language during questioning to her television viewing habits translates into more data to be factored into the jury selection process.¹ And while most cases don’t feature the lengthy, detailed questionnaires used in high-profile or complex litigation, the importance of weeding out the “wrong” jurors and seating the “right” jurors has spawned an effort to find out as much about potential jurors as possible and driven the growth of fields like jury consulting.² However, thanks to the internet and the explosive growth of social networking sites like Facebook and Twitter, lawyers and litigants now have a digital treasure trove of information right at their fingertips accessible with the speed of a research engine.³ Welcome to jury selection in the Digital Age, where, with a few mouse clicks, an attorney can learn all about a prospective juror— her taste in movies and music, her political affiliations, education, hobbies, and literally her “likes” and dislikes. But where are the ethical boundary lines drawn for attorneys engaged in such online investigations?

In this section we’ll examine the ethical considerations for lawyers pondering whether to “Facebook the jury,” and will discuss not only ethics opinions, but also cases from around the country that have weighed in on this issue. We’ll also discuss some of the leading reasons why attorneys would want to conduct such online juror research, as well as the potential dangers for attorneys in doing so. As voir dire increasingly incorporates “voir Google,” knowing the risks and rewards of such research becomes vital for any trial lawyer.

THE DANGERS OF CONDUCTING ONLINE INVESTIGATIONS OF JURORS

The most obvious reason that online investigation of jurors can be dangerous is that no trial lawyer wants to alienate a juror or prospective juror by appearing invasive or disrespectful of that individual’s privacy. In the high-profile 2013 “Hustle” mortgage fraud trial in the Southern District of New York, for example, a juror notified the judge when he received an automatic notification from LinkedIn that a junior member of one of the defense teams had viewed his profile on that social media networking site.⁴ Although there were no sanctions dispensed, this incident no doubt made for some uncomfortable moments for that lawyer.⁵

¹ Stephanie Clifford, *TV Habits? Medical History? Test for Jury Duty Get Personal*, N.Y. Times, Aug. 20, 2014, at A1, available at <http://www.nytimes.com/2014/08/21/nyregion/for-service-on-some-juries-expect-a-lengthy-written-test.html>.

² See *id.*

³ *LinkedIn Search in Spotlight At Bank of America Trial*, WALL ST. J., Sept. 27, 2013, <http://blogs.wsj.com/law/2013/09/27/linkedin-search-in-spotlight-at-bank-of-america-trial/>.

⁴ *Id.*

⁵ *Id.*

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Voir Dire Becomes Voir Google: Ethical Concerns of 21st Century Jury Selection

Also available as part of the eCourse

[Voir Dire Becomes Voir Google: Ethical Concerns of 21st Century Jury Selection](#)

First appeared as part of the conference materials for the 2021 First Friday Ethics (August 2021) session

"Voir Dire Becomes Voir Google: Ethical Concerns of 21st Century Jury Selection"