



F9 Social Media and the Justice System

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After attending this session, attendees will better understand of the impacts that the use of social media is having on our justice system, particularly by law enforcement, lawyers, litigants, and jurors. Attendees will see examples of the consequences of that use and of the various techniques that can be utilized to cope with those impacts.

This presentation will impact the forensic science community by providing a better understanding of the way in which modern technology is having a forensic impact on the quality of our justice system.

The use of social media has become a huge part of our culture. The justice system is directly impacted by this technological phenomenon. This presentation focuses on some of the impacts that social media is having on the American justice system, including its usage by police and lawyers, and especially the juror misconduct problems it presents.

Law Enforcement: According to 2014 research conducted by Lexis Nexis, 81% of law enforcement professionals actively use social media as a tool in investigations, 26% use social media to investigate daily (a 16% increase since 2012), and 73% believe that using social media can help solve crimes more quickly. Users of social media post incriminating comments, photographs and videos. Gang members boast about crimes or post photos or videos holding firearms or drugs. Many agencies have covert monitoring programs for such media, often using fictitious names. When a user posts information to the public, it is generally not protected by the Fourth Amendment. "Government officials may use public information to justify an arrest or conviction, and without Fourth Amendment protection, users may be subject to criminal liability based on personal photographs, location check-ins, or status updates posted on social networking websites."

Lawyers: Criminal defense lawyers have an ethical and legal duty to investigate the alleged crime and witnesses, and many believe that includes a duty to conduct surreptitious online investigation of social media postings; however, there are several unresolved ethical issues, especially when the investigation may constitute improper contact with parties or witnesses. Attorneys also face significant issues regarding online investigation of jurors.

Jurors: Jurors accessing or communicating on the internet, whether through social networking or using the internet to research the case or witnesses, can undermine basic concepts of due process. If judgments are based on information that the defendant and the prosecution are not able to see, this contradicts elementary judicial principles. The internet has replaced both newspapers and television as primary sources of information. The beauty, or some would say the terror, of the internet is that it comes without any filter of authenticity or accuracy. But jurors want and expect to use these same online resources they use to address any other question they have.

Judges "instruct" jurors not to do what they want to do. Most jurisdictions recommend that the instruction be specific, telling jurors, for example, not to use Google® or Bing®, not to post to Facebook® or Twitter®, or blog about the trial. Some recommend that jurors be specifically told that violations of the instruction will result in them being found in contempt of court and facing criminal sanctions. But judges need to tell jurors why it is so important. A video of a sample instruction will be shown.



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There are those who advocate that we do nothing. They argue that the world has changed and that the courts need to simply accept and accommodate that change. They would allow jurors free access to the online sources they use in the rest of their lives and then trust the so-called “democracy of the internet” and the free exchange of ideas among the jurors to reach a just result. To do so would abrogate our basic commitment to justice that is not based on bias or prejudice.

Social Media, Jurors, Internet