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STRATEGIES FOR OVERCOMING CHALLENGES PRESENTED BY THE IMPACT OF SOCIAL MEDIA ON JURIES

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In today's 24/7 information era, the influence of media on jurors is more intrusive than ever before. What began historically as sensational newspaper coverage in the early 1900's has evolved into a world dominated by social media, algorithm-generated content, and an endless stream of information at jurors' fingertips. For legal professionals, this presents significant challenges. Jurors arrive at the courthouse already influenced by external narratives, biases and often misinformation. This article explores the intersection of media and jury behavior, highlighting trends that attorneys must contend with and offers practical strategies to ensure that the judicial system is not undermined by the reach of the social media.

The Evolving Influence of Media

Media influence on juries is not a new problem. Historically, high profile cases like the 1925 Scopes trial, highlight the role media plays in shaping public perception and opening the floodgates for potential juror bias. The Scopes trial, dubbed the "Monkey Trial," drew national attention, with newspapers dictating the national debate on evolution in ways that may have influenced juror perceptions and opinions before deliberations even began.¹

Today, the media landscape is vastly different. Social media platforms like Facebook, Instagram, X (formerly Twitter), and TikTok have amplified public scrutiny of legal cases. These platforms allow millions to engage in real time conversations about ongoing trials. A single tweet can reach millions within minutes, creating narratives that jurors may consciously or even unconsciously internalize. Unlike traditional media, which operates through centralized editorial oversight, social media lacks regulation, enabling misinformation and bias to proliferate.

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Key Trends in Social Media Influence on Juries

The rise of social media has transformed how jurors are exposed to information, creating new issues in maintaining impartiality in the courtroom. These trends illustrate how the modern media reality is changing juror behavior and decision-making.

Algorithms, Armchair Experts and Google Searches

Although courts now regularly provide strict instructions prohibiting jurors from seeking information outside of trial evidence, many succumb to the temptation to browse the internet or scroll through social media. Alarming statistics reveal that 46% of potential jurors admit they would search for information about a defendant online before even being empaneled.ⁱⁱ

Social platforms complicate matters even further with algorithm-driven feed content and targeted notifications. Jurors may inadvertently encounter biased opinions or speculative theories about cases. In addition, the rise of "armchair experts" on platforms like Reddit or YouTube have amplified these issues. These users post theories and analyses sometimes without any expertise and lack any accountability, creating a dangerous source of "evidence" that can infiltrate jurors' minds.ⁱⁱⁱ

Priming

Priming refers to the process by which jurors' decision-making is impacted by what they have witnessed and read in the media, even before they enter the courtroom. The information they are exposed to may consciously or unconsciously cause them to weigh some facts or evidence more heavily than others during the deliberation process.^{iv}

For example, in the trial of Johnny Depp versus Amber Heard jurors who already viewed men more often as the aggressors and women more often as the victims, came to the case primed with those beliefs and looked for evidence and facts that supported this preconceived world view. A primed viewpoint is not only shaped by social media, but also by a juror's personal experience. However, social media algorithms expertly track the types of stories and opinions that users gravitate toward and then curate similar posts to fill their feed. This results in a reality where social media works overtime to supercharge bias.^v

Group Think

Studies show that jurors reach higher dollar verdicts as a group than they do deliberating as individuals. This is referred to as "Group Think" or the "Persuasive Arguments Theory."^{vi} This phenomenon occurs as jurors share their points of view and slowly move others in the group to a more polarized, extreme position. Social media also exacerbates this reality by making extreme points of view readily available for consumption on a daily basis.^{vii}

Confirmation Bias

Another way social media impacts jurors is conformation bias. Confirmation bias means that "humans have a natural tendency to seek information that confirms their existing beliefs."^{viii} Social media feeds that reinforce users' thinking and core values potentially increase bias- ether conscious or unconsciously. This interferes with their capacity to consider facts and evidence objectively. It is crucial that attorneys ask questions not only about news sources, but also regarding how often the potential juror consumes news per day. Studies show that prolific news consumers are more likely to have their objectivity compromised by bias.^{ix}

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Generational and Cultural Shifts

Digital natives are individuals who grew up with smartphones and social media. This younger group consumes information differently than older generations. Platforms like Instagram and TikTok curate content through algorithms, exposing younger jurors to targeted narratives. Attorneys must adapt their strategies to account for these differences in media consumption.

Strategies for Attorneys

Navigating the influence of media on juries requires attorneys to be more proactive than ever in protecting the integrity of the trial process. The following strategies illustrate how attorneys can address media-related challenges before, during, and after trial.

Before Trial

Managing the narrative surrounding a case before it reaches the courtroom can mitigate the risk of jurors encountering biased or misleading information:

- **Requesting Gag Orders:** Attorneys can petition the court for gag orders that restrict public statements by involved parties. While controversial, these orders can help control the flow of information to the media.
- **Monitoring Media Coverage:** By keeping tabs on local and national reporting about the case, attorneys can anticipate how jurors might be influenced by coverage and adjust trial strategies accordingly.
- **Public Relations Strategies:** In high-profile cases, engaging a public relations professional can help attorneys manage media narratives in a way that supports the case while staying within ethical boundaries.
- **Mock Juries and Focus Groups:** Before trial, attorneys can use mock juries to test how different demographics and media-consumption habits might shape perspectives on the case. This insight helps attorneys refine their approach and messaging during voir dire.
- **Jury Consultants:** These professionals analyze jurors' potential biases by examining public information, including social media activity, past affiliations, and behavioral patterns. Their insights can guide jury selection and trial strategy.

Enhanced Jury Selection Techniques

Voir dire has become a critical tool in identifying potential juror biases influenced by social media exposure. Attorneys can employ the following approaches:

- **Supplemental Juror Questionnaires:** These questionnaires provide privacy and allow prospective jurors to disclose media habits, news consumption patterns, and social media activity. Attorneys can use these questionnaires to identify jurors who may be particularly susceptible to external influences.^x
- **Direct Voir Dire Questions:** During live questioning, attorneys can delve deeper into the potential jurors' perceptions, asking their opinions about specific high-profile cases, their feelings toward media coverage, and whether they have seen or read about the case or parties at hand.

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Trial Management

Once the trial begins, attorneys can continue to take steps to minimize the impact of external influences:

- **Sequestering the Jury:** Although costly and logistically challenging, sequestering jurors in high-stakes cases shields them from media exposure and public opinion. This is almost a last resort option as it is disfavored by jurors and legal professionals alike.
- **Expert Witnesses:** Attorneys may introduce expert testimony to explain how media coverage or social media algorithms can influence perceptions and create implicit biases. This can help jurors critically evaluate their own objectivity.
- **Dynamic Trial Narratives:** Attorneys must craft compelling and clear narratives that resonate with jurors while preemptively addressing misinformation or preconceived notions they may have absorbed from the media.

Strengthening Jury Instructions

Effective jury instructions can reduce the likelihood of jurors being swayed by media during the trial.

- **Explicit Guidance on Media Use:** Judges should provide clear instructions that highlight the risks of using social media, searching for information about the case, or discussing the trial outside of deliberations.
- **Reinforcement at Key Stages:** Instructions should be repeated at regular intervals, particularly after breaks, before deliberations, and in response to any instances of misconduct.
- **Model Instructions:** Updated model jury instructions, such as those released by the federal judiciary in 2020, are tailored to address modern media challenges. These emphasize the risks of disinformation and the importance of impartiality.^{xi}

Controlling Emotional Dynamics Throughout the Process

Attorneys can employ emotional strategies to counteract the effects of negative media portrayals:

- **Humanizing Clients:** Attorneys should present clients in a way that fosters empathy, countering any harmful stereotypes or negative impressions jurors may have formed through the media.
- **Emotional Appeals:** Telling compelling stories about the parties involved can create a deeper connection between jurors and the facts of the case, reducing the impact of outside narratives.

Leveraging Technology and Data Analytics

- **Incorporating advanced tools** can help attorneys stay ahead of media challenges.
- **AI tools for bias detection:** Artificial intelligence can analyze prospective jurors' social media activity to detect potential biases or disqualifying behaviors. This evolving area is still up for debate as far as the boundaries of what constitutes ethical behavior and what may infringe on privacy rights.
- **Monitoring Juror Compliance:** Technologies could be developed to ensure that jurors adhere to instructions regarding media and social media during trial.

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Post-Trial Considerations

- Attorneys should remain vigilant even after the verdict is reached.
- Protecting the Verdict- If evidence emerges that jurors were influenced by external media or social media, attorneys must be prepared to file motions for a mistrial or appeal.
- Debriefing Jurors: Where permissible, post-trial interviews with jurors can offer insights into how media influenced their deliberations and inform strategies for future cases.

Updated Model Jury Instructions

In 2020, the Judicial Conference of the United States issued an updated set of model jury instructions to address the growing influence of social media on jurors' impartiality and the integrity of the trial process.^{xii} These revisions expanded on guidelines originally released in 2012 and reflected the profound technological and cultural changes that had occurred in the interim. The updated instructions aimed to mitigate the risks posed by jurors using social media to research or communicate about cases. They emphasized how digital platforms can compromise impartiality and recommended that judges deliver these instructions at multiple stages of trial- before, during, and after deliberations- to consistently remind jurors of their responsibilities and the dangers of external influences.^{xiii}

The original 2012 guidance was developed when social media was less pervasive, and the number of platforms was far more limited. At that time, the instructions focused primarily on curbing direct communication about cases on Facebook and Twitter. By 2020, however, social media was an integral part of daily life. Platforms like TikTok and Snapchat, which were either non-existent or emerging in 2012, had risen to prominence, and the algorithms driving these platforms had become increasingly sophisticated targeting users with tailored content. This evolution created new challenges for jurors, who could now encounter unsolicited pop-ups or notifications related to trial subjects, even if they were not actively seeking information. Social media also emerged as a tool for disseminating information, enabling precise targeting of messages designed to influence public opinion.^{xiv} Acknowledging these modern threats, the 2020 instructions warn jurors explicitly about the risks they may encounter in today's digital world.

To reinforce these safeguards, the 2020 instructions recommend repeated reinforcement throughout the trial process. Jurors are first educated about the risks of social media before the trial begins and reminded not to seek outside information or engage with digital content related to the case during the proceedings. Finally, they would be urged during deliberations to focus solely on the evidence presented in court, avoiding any external influences that could jeopardize the trial's fairness.

This updated approach addresses the unique pressures of a media-saturated era where jurors face constant exposure to notifications and targeted content, often shaped by algorithms beyond their control. It also highlighted the judiciary's awareness of the potential for deliberate misinformation campaigns designed to influence public opinion or interfere with legal processes. By explicitly addressing these modern challenges, the 2020 instructions sought to safeguard the impartiality of jurors in an environment where access to information-and misinformation- is more pervasive than ever.

Conclusion

The relationship between media and juries continues to evolve, posing challenges the legal system must meet head on. From social media's ability to shape public perception to generational shifts in how jurors consume information, the trial process is increasingly influenced by social media. However, with proactive strategies attorneys and judges can counteract these external

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influences and protect our legal process. Overcoming these challenges requires the ability to adapt traditional viewpoints of juror behavior and work to help jurors understand the importance and proper method for delivering impartial jury decisions as they have in the past. Moving forward enhanced jury instructions and education of jurors will be instrumental in upholding the pillars of impartiality that are essential in maintaining a fair judicial system for all.

i Arnold-Forster, Tom. Rethinking the Scopes Trial: Cultural Conflict, Media Spectacle and Circus Politics. Cambridge University Press. May 12, 2021.

ii Melnitsky, Rebecca. Social Media Can Change Outcomes in the Courtroom. (NYSBA 10/24/23).

iii *Id.*

iv The Power of Media Coverage-How it Shapes Jurors' Perceptions and How Scientific Jury Analysis Can Help Mitigate Bias. (Jury Analyst Blog 5/19/23).

v Kravitz, Jeffrey. Addressing Social Media's Influence on Jurors. Daily Journal (October 15, 2024).

vi *Id.*

vii *Id.*

viii The Power of Media Coverage-How it Shapes Jurors' Perceptions and How Scientific Jury Analysis Can Help Mitigate Bias. (Jury Analyst Blog 5/19/23).

ix *Id.*

x Jury Analyst Blog. *Id.*

xi Kravitz.

xii New Jury Instructions Strengthen Social Media Cautions. (United States Courts News 10/20).

xiii *Id.*

xiv Hill, Amy. The Challenge of Fair Trials in the Age of Media Saturation. (JD Supra, 10/8/24).