



Streamlining Juror Research

BY CAROL L. BAUSS

Public records, Google, and social media sites have become common sources to gather information about prospective jurors to assess bias in addition to what is learned in voir dire or when voir dire conditions are limited—such as in federal court. This research can be labor-intensive and expensive. However, technology can streamline the process by doing these searches in a matter of minutes. Voltaire is one of several companies with proprietary software that can save time and money and provide valuable insights to help attorneys make informed decisions when exercising peremptory challenges and selecting jurors.¹

To comply with ethics requirements for juror research, Voltaire looks at publicly available data only and does not alert any jurors that it has viewed their social media profiles, which would violate ABA Model Rule of Professional Conduct 3.5.² For example, Voltaire does not search LinkedIn profiles directly but instead searches a data warehouse

of public profiles and uses third-party indexes that also search for these profiles.³ Always be sure to check your jurisdiction's rules and ethics obligations before engaging in juror research.

How It Works

After setting up an account⁴ and providing information about the type of case, nature of the claims (such as personal injury or medical negligence), and venue, send the jury list or juror questionnaires to Voltaire to have someone enter identifying information about each juror, including first and last name along with any maiden name, middle name, or middle initial if available; date of birth or age; and the city of residence. One issue with juror research has been verifying that the person found online is the juror you're looking for. While the software is not perfect, with the identifying information, it typically can pinpoint the right person in the venue.

Within minutes, a record is generated for each juror containing voter registration, signatures on petitions, property ownership, criminal and civil litigation history, professional licenses, links to social media pages, names of relatives, and articles written by or about the person. You can view these juror records online on your computer or tablet in an easy-to-read-and-navigate format.

Each record is broken into seven headings: Overview, Insights, Politics, History, Licenses, Finance, and Social. The Overview page lists all of the headings with any information found and any internet links. You also can click on each heading to see the information in that section. Again, Voltaire searches publicly available information only and does not communicate with jurors.

Voltaire also uses artificial intelligence and algorithms for behavioral analysis to offer insights about personality traits, biases, and opinions that can be a starting point for what to look for in the data. For example, Voltaire may flag that the prospective juror has a conservative worldview or may exhibit traditionalist or patriotic/nationalist views based on the juror's social media posts and likes. But evaluating how any juror will view the facts of your case requires a human eye.

The more time you have to review the Voltaire records, the better. Ideally, jurors complete a questionnaire and the judge gives counsel overnight or longer to review the questionnaires—and that time also can be spent synthesizing the Voltaire data.

However, Voltaire can be helpful when jury selection lasts one day with no questionnaires. On the morning of jury selection, take a picture of the jury list as soon as it is available and transmit it to Voltaire. Within a short time, someone

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Doe, Jane

26, Female

Insights	1	2	4	>
Politics			4	>
History			12	>
Finance			3	>
Social			22	>

on the trial team can start reviewing Voltaire records to learn more about those jurors who are difficult to read.

Social media. In general, LinkedIn and Facebook are the two most helpful social media sites, and Voltaire saves you the time of searching for each juror on each of these sites. Sixty-nine percent of U.S. adults are on Facebook, and three-quarters of them use Facebook daily.⁵ Facebook's personal bio feature makes it easier to verify the juror's identity by comparing employment and education history and city of residence to the juror's questionnaire or voir dire answers. The "Likes" section of a Facebook page can offer insights into political or religious affiliations, special interests, and community involvement. LinkedIn allows you to see a juror's entire work history, skill set, and job duties—more detailed information than is often provided in voir dire.

How It Helps

Background research is one more piece of the puzzle in understanding the juror, but it's important to know its limits. The most important information still comes from a juror's responses on a questionnaire or in voir dire. A juror who has reservations about awarding damages for pain and suffering is not likely to change his or her mind based on anything you learn from Facebook.

The research can be most helpful when you know very little about the prospective juror even after voir dire. For example, knowing a juror's political affiliation from political contributions, petition signatures, Facebook posts and likes, and tweets can be helpful. And jurors who have made career changes may be asked in jury selection about their current occupation only, while LinkedIn or Facebook may provide a more complete picture of career history.

For instance, a juror may currently work as a real estate agent but may have worked as a nurse in the past, or a juror may work for a small company now but came from a long corporate career.

Research also can help determine leadership potential. Jurors may be outspoken in Facebook or Twitter posts or may be involved in leadership positions in their church, homeowners association, children's school, community, or professional organizations.

Don't put too much emphasis on a single Facebook post or tweet. It is easy to fall victim to a focusing effect when so little is known about the juror that any tidbit of information takes on more importance than may be warranted.

Have realistic expectations: Some jurors have no online presence while others set their social media profiles to private. Some have a Facebook page with a few likes of their favorite bands and post the occasional meme, providing little meaningful information. And some names are so common it is nearly impossible to narrow down juror "John Smith" from all the John Smiths in the venue. Using software to facilitate juror research is just one tool that can help identify potential bias concerns and prioritize peremptory challenges. ■

NOTES

1. See Voltaireapp.com for more information. See also Vijilent.com for a similar service.
2. ABA Formal Opinion 466 (April 2014) delves into the ethics of juror research under the Model Rules of Professional Conduct, including Rule 3.5 (Impartiality and Decorum of the Tribunal covering ex parte communication with a juror).
3. For a more in-depth analysis, see Carol L. Baus, *Technology in Focus Groups and Jury Selection*, 2018 ABA Annual Convention Reference Materials.
4. You can purchase Voltaire on a one-time use or ongoing subscription basis.
5. Andrew Perring & Monica Anderson, *Share of U.S. Adults Using Social Media, Including Facebook, Is Mostly Unchanged Since 2018*, Pew Research Ctr. (Apr. 10, 2019), <https://tinyurl.com/yya2afsf>.