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**JURY SELECTION IN THE SOCIAL
MEDIA ERA**

**Journalism, Social Media & the
Courts: A New Frontier**

Presented By:

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Akron-Canton Barristers
The courts and social media

Journalism, social media and the courts: A new frontier

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Time of presentation: 90 minutes. Includes a presentation with PowerPoint and about 20-30 minutes for questions.

Presentation Summary

- Brief history of high-profile media coverage of trials – and sudden, recent change in how the coverage works.
- How and why social media are now crucial for journalists and why you need to understand iterative reporting
- Social media on trial: Impact on jurors and court rulings
- Social media on trial: Lack of research on impact on witnesses and trials overall
- Social media on trial: Pros and Cons
- Question and answer

Presentation

Intro: Journalism and the media have long been fascinated with courts and trials.

- Built-in drama
- Colorful characters
- Story arc: Good guy, bad guy and an outcome.
- Reader/viewer interest.

We've had more Trials of the Century than we've had centuries.

- The courts – particularly trial court – have long been great fodder for media coverage.
- For just as long, we've had tension between the Sixth Amendment right of a criminal defendant to receive a fair trial and the First Amendment right of the press to publish news about trials.

- Let's walk through some famous trials as they played out in the media. I think you'll see many similarities in the coverage – and, suddenly and very recently, a change.

BEGIN SLIDE SHOW

- **The Lindbergh Baby or Bruno Hauptmann trial**
 - o Riveted the nation. This was truly an era when newspapers ruled as a primary source of news.
 - o There were 15 newspapers in New York City alone at the time. Cleveland had 3.
 - o 500-700 reporters at the trial, including 120 cameramen.
 - o The Hearst newspaper chain paid the legal fees of Hauptmann's attorney in exchange for the exclusive right to interview Hauptmann's wife during the trial.

- **The Sam Sheppard trial.**
 - o SLIDE 4: In early morning hours of July 4, 1954, Marilyn Sheppard was bludgeoned to death. Husband Sam, a prominent Bay Village doctor, maintained that Marilyn was murdered by a bushy-haired intruder. Sam was charged and put on trial for murder.
 - o Massive press coverage ensues. The Cleveland Press embarked on a mission demanding quick action in the Sheppard case. That included a front-page editorial with the headline: "Why No Inquest? Do it now, Dr. Gerber!" Later that day, Coroner Sam Gerber announces he is calling an inquest to begin the next day.
 - o At voir dire, every juror except one testifies to reading or hearing about the case in the news media.
 - o The trial draws journalists from around the nation, including the most famous like Walter Winchell and Dorothy Kilgallen, a regular on the TV quiz show "What's My Line?" (And you thought celebrity journalists were a modern phenomenon. See? There really is nothing new.)
 - o The press is given virtually free rein in the courtroom, including reading and photographing documents on the prosecution and defense attorney tables.
 - o SLIDE 5: The judge does not order sequestering of the jury. Jurors' names and photos appear in newspapers more than 40 times.
 - o Jurors received anonymous letters to their home addresses and direct requests for statements from the press – during the trial.
 - o SLIDE 6: Jury deliberates four days and is sequestered for first time. But jurors are permitted to make unsupervised calls to their homes.
 - o One of my old papers here, the Detroit Free Press, gave it big coverage. Note the Browns lost. That also falls under the heading of how things don't really change.
 - o SLIDE 7: Jury verdict: Murder in second degree.
 - o U.S. Supreme Court concludes Sheppard did not receive a fair trial, calling it a "carnival atmosphere" and orders murder verdict invalid. Acquitted at second trial. Died of liver cancer shortly after.
 - o By Sheppard, radio was well entrenched as a provider of breaking news. And TV was just getting a toehold. Newspapers, though, still were the way we marked really big news events.

- **The OJ Simpson trial**

- OJ can be used as a marker for some big changes in media. By OJ, we were well into 24-hour cable news channels. And the Internet was just beginning to be a source for news.
- From NY Times story, Feb. 14, 1995: "Hard to believe, but there are some people who cannot get enough information about the O. J. Simpson murder trial from newspapers, magazines, television, books and radio. The Internet and other computer-based on-line information services are emerging as global repositories of trial news and trivia.
- Times article labeled Simpson "the first trial of the digital century."
- "The O. J. mania in cyberspace has also been fueled by Internet's World Wide Web, which allows advanced Internet users to navigate easily through text files, photographs, sound files and even video clips. One area on the web, as it is called, allows visitors to view, over and over, a video clip of Mr. Simpson pleading not guilty at his arraignment."
- On America On-line, with 1.5 million subscribers, an O. J. forum in the "Court TV" section is abuzz with armchair analysts. (I'll bet that right now 1.5 million people are watching cat videos on their phones.)
- So, yes, some of this seems quaint now. But that Times reporter also was prescient: "Unfortunately for Mr. Simpson, these virtual jurors and judges appear to have already reached their verdicts, posted as collections of on-line comments with subject lines like 'Guilty as Sin,' which is next to one called 'Guilty But Will Walk on a Technicality.' Far fewer are the subject lines that suggest Mr. Simpson is not guilty, like 'Planting the Glove' and 'Another Setup Theory.'"
- SLIDES 8-10: Still, newspapers and newspaper reporting was pretty much the way it had been for decades, going back to the Hauptmann trial. These newspapers, while looking more modern in design, don't look dramatically different.

- **The Casey Anthony trial**

- Finally, here's how the whole world found out about the verdict in the Casey Anthony trial...SLIDE 11
- I exaggerate. A little. Kim Kardashian didn't break this story. But she has 30 million followers on Twitter and 27 million on Instagram.
- The Casey Anthony trial in 2011 provides another marker in the story of how media covers trials. Time magazine called it "the social media trial of the century."
- Reputable mainstream newspapers like the Orlando Sentinel went all in covering the trial via Twitter. And lots of others followed.
- At the time Anthony's not guilty verdict was read, CNN Live's website had 30 times more viewers than its daily average the previous month.
- Coverage on Twitter, the use of Facebook, Snapchat and other social media sites now is an expectation for newspaper reporters when covering news events like a trial. I would argue THAT is a more dramatic change in the newspaper reporting process than anything that happened between the Bruno Hauptmann trial and Casey Anthony.
- And you're all right in the middle of it, living it.

WHY?

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- Coverage of trial on Twitter now is expectation. Why?
 - o Immediacy. Given print reporters tool never had.
 - o Establishment of reporter as authority on subject.
 - o Ability to reach readers who otherwise would never come to story – from literally around the world.
 - o Twitter one of key tools in process called iterative reporting.

- What is iterative reporting?
 - o Single most profound change in journalism, I believe, in decades. Because it has blown up a fundamental tenet: Don't run story until you have the story. If involved with media in any way, you need to be aware of and understand this trend.
 - o Getting the story meant getting to as many people from as many different sides who could corroborate story as possible. Held stories for additional interviews. We flew places to track down people who didn't want to talk. Set minimum number of contacts. Sent registered mail.
 - o "Spotlight" example. Remember how the editor held the story after confirmation that a bishop was aware of one priest? "We want system." Offer that would happen very differently today. Those stories were published in 2002. And 2002 is an eon ago in the world of media.
 - o Now: "Having" the story is very different. Go with story when you have basic facts of story. You still have to be right. You just don't have to have input from all the key players. Why?
 - Being first is more crucial than ever for readership. (Search.)
 - Can flush sources that way.
 - Start conversation with readers right away. Get questions. Tips. Engagement. Opens journalism up.
 - Bad side: Lazy journalism excuse. Partial stories. Can be frustrating for readers, who trying to cobble a complete story together from pieces.
 - Good reporter, by the way, will go back and add you to that first story when you do finally call back. Or do a new story. Here's a dirty little secret, though. Initial story dominates search. And usually will continue to do so for days.
 - Updating story with your side doesn't really get your side out. Impact of reading on phones.
 - If put in this position, ask for a new story, with a new headline.

- Promotion of stories (including trial stories) on Facebook, with encouragement to comment now is common practice.
 - o Facebook is THE most dependable driver of readership/traffic to news stories. Only about 40 percent of readers come to stories through home page. Rest through search, bookmarking and social media – primarily Facebook.
 - o Again, all about "engagement." Engagement used to be measured in one way: Check or cash you sent us to keep getting paper. Now measured in number of clicks on story, time on site, number of comments. And iterative reporting is a key part of that engagement.

SOCIAL MEDIA ON TRIAL

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There has been a fair amount of attention paid to impact of social media on jurors and the jury process.

SLIDE 12: Probably because of trial results like this:

- Michigan, 2010: Juror removed after posting a “guilty” comment on Facebook before the conclusion of trial.
- Arkansas, 2011: Death row inmate’s murder conviction tossed because of juror’s tweets during trial.
- Kentucky, 2012: Murder conviction reversed when two jurors Facebook-friended the victim’s mother during trial.

So, I understand it’s now common for judges to include social media when talking to juries about what to avoid, including staying off of social media.

In May 2010, the Ohio Bar Association admonition to jury instructions included: “WARNING ON OUTSIDE CONTACT. Finally, you must not have contact with anyone about this case, other than the judge and court employees. This includes sending or receiving email, Twitter, text messages or similar updates, using blogs and chat rooms, and the use of Facebook, MySpace, LinkedIn and other social media sites of any kind regarding this case or any aspect of your jury service during the trial. If anyone tries to contact you about the case, directly or indirectly, do not allow that person to have contact with you. If any person persists in contacting you or speaking with you, that could be jury tampering, which is a very serious crime. If anyone contacts you in this manner, report this to my bailiff or me as quickly as possible. “

Of course, judges don’t really know if the jurors are meeting that request:

SLIDE 13: Late last year (2011), 79% of judges who responded to a survey question by the Federal Judicial Center said they had no way of knowing whether jurors had violated a social-media ban. Legal experts say someone would need to have access to a juror’s postings and flag it to the court.

Calm down?

Slide 14: Thaddeus Hoffmeister, an associate professor who researches juries at the University of Dayton School of Law, says judges should bring jurors into the fold on this subject. He offers that the technology is new – but the issue of jurors and outside information is not. And, he says, we’ve dealt with it more effectively than not for years: “Courts need to acknowledge that ‘some people just can’t stop’ using social media. Jurors should be equal partners in the courtroom – tell them why they can’t do things. No question social media and social networking can impact the justice system. So could telephones and the public library 60 years ago. We didn’t monitor whether jurors went to the library during a 2 week trial nor did we wiretap their phone conversations. We trusted jurors to do the right thing by imparting on them just how important a role they played in rendering justice in this country. The same will be the case for social media and social networking.”

Judge Mark Bennet of the United States District Court for the Northern District of Iowa, in an interview with the ABA Journal recently offered this perspective: "I thought the public's right to know what goes on in federal court and the transparency that would be given the proceedings by live-blogging

outweighed any potential prejudice to the defendant. . . . I allowed it because of my belief that we are the most mysterious branch of federal government and we need to find ways to be more transparent."

Pros

- Bridge gap between no media coverage and opening up courtroom to cameras.
- Social media lot less obtrusive than cameras.
- Opens court and practice of law to new audience that might otherwise pay no attention to courts.

Cons

- Testimony reported and widely circulated that may ultimately be stricken from record. And as we all know, once it's on social media, there are no take-backs.
- Who's a journalist? Courtroom full of people with smartphones out tweeting? In Florida trial court, wife of defendant posed as journalist to use video camera in court. Court PIO cited a Florida statute that outlines what is a "professional journalist." In Ohio? Needed? How would you do that?
- At murder trial in Knoxville, video coverage permitted but not to include graphic photos of victims used during testimony. Reporters tweeting could describe with no limits.
- Impact on witnesses? Imagine this scenario: Witness testifies. Break in trial before cross-examination. During lunch, witness reads social media coverage and public reaction. Does that change his or her future testimony?

Unknowns

- Judges and lawyers can see reporters' thoughts and analysis and public weighing in as the proceeding is taking place. (Has anyone done that? Would you?)
- If I'm reporter and check Twitter or Facebook feeds of jurors – but don't actually attempt to call or write them - is that considered "contact" and therefore possibly tampering?

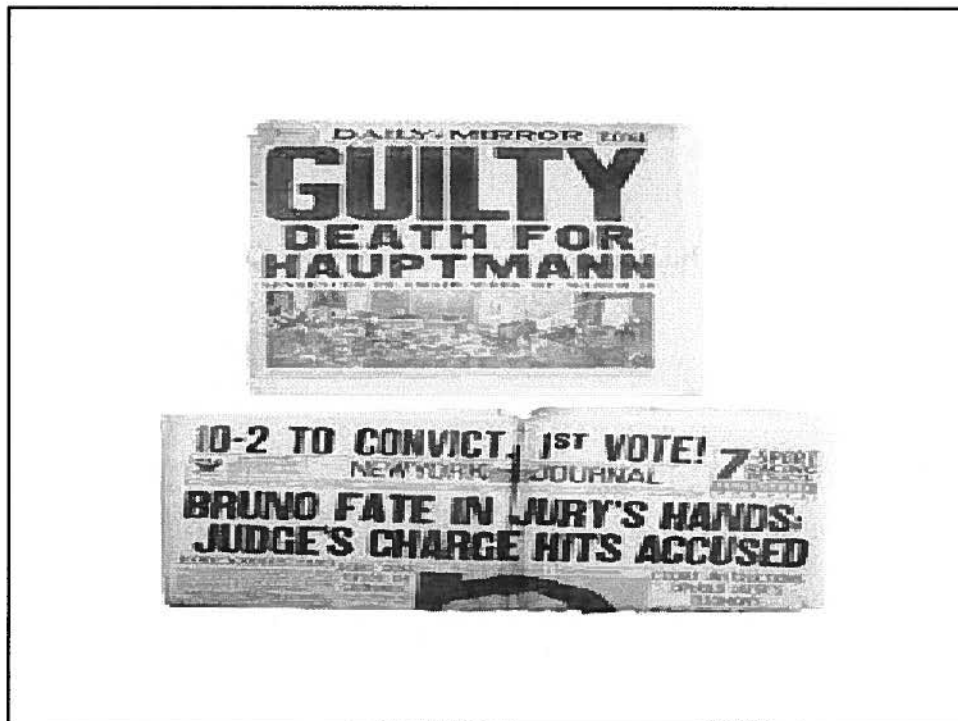
Bottom line: Astonishingly little hard research as to effect on trials of live coverage on Twitter or other social media. And other than these high-profile cases that get flipped on appeal, very little research on effect of use of social media by and on jurors, witnesses, attorneys and judges.

That, I would offer, is the next frontier.



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EXTRA

Los Angeles Times

Simpson Not Guilty
He Is Freed After 15 Months in Jail

Voices
 This was ...
 ...
 ...
 ...



World
 ...
 ...

San Francisco Chronicle

O.J. SET FREE



As whole world looks on, he is found not guilty

Prisoners See no Cause for Own Stand of Weight

Jury United, But Nation Remains Divided



Social media on trial

- Michigan, 2010: Juror removed after posting a “guilty” comment on Facebook before the conclusion of trial.
- Arkansas, 2011: Death row inmate’s murder conviction tossed because of juror’s tweets during trial.
- Kentucky, 2012: Murder conviction reversed when two jurors Facebook-friended the victim’s mother during trial.

Wall Street Journal, 2012

- Late last year (2011), 79% of judges who responded to a survey question by the Federal Judicial Center said they had no way of knowing whether jurors had violated a social-media ban. Legal experts say someone would need to have access to a juror's postings and flag it to the court.

Calm down?





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