

# Current Issues Impacting State and Federal Juries

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## Internet Research of Jurors by Attorneys





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## Judge reignites debate over researching jurors online

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Mining prospective jurors' Facebook, Twitter and other social media accounts is common practice for many attorneys looking to spot biases that might cost their clients a fair trial.

The **American Bar Association** has said the searches are ethical, and a ruling by the Missouri Supreme Court bolstered arguments that attorneys have a duty to do online research of prospective jurors. Still, some judges have deemed the online searches invasive and banned them.



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# The Rules

- **ABA Model Rule of Professional Conduct 3.5(b)**
  - Prohibits *ex parte* communication with jurors
- **ABA Formal Opinion 466 (April 24, 2014)**
  - Permits internet research that does not involve communication
  - The fact that a juror may become aware of the research does not constitute communication in violation of Rule 3.5(b)
  - Judge may ban searches
- **State Rules Vary on the Issue**
  - New York: permits internet research, but prohibits notifications to juror
  - Oregon: allows lawyers to ask jurors for permission to access social media profiles as long as lawyer honestly represents his role

## Tex. Disciplinary Rule of Professional Conduct 3.06

- (a) A lawyer shall not:
- (1) conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of a venireman or juror; or
  - (2) seek to influence a venireman or juror concerning the merits of a pending matter by means prohibited by law or applicable rules of practice or procedure.

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