

Assessing the Impact of Online Information and Social Networking on the Practice of Law

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Abstract: While there is a growing amount of research on the way the internet and social networking effect multiple areas of government and politics, most research on the impact of these tools to the practice of law center on the internet as the subject of law or ethics questions the internet poses for relationships between attorneys and clients or attorneys and the broader public. Little has been done to assess how professionally oriented online social networking tools, like discussion boards and listservs, and general internet tools, such as Google and Facebook, are changing how attorneys build cases. Before assessing the kind of impact these developments will have on the content of the law, an assessment needs to be made of how widespread the usage of such resources are. This paper presents preliminary results of a survey of attorneys and their use of the internet and online social networking tools for how they practice the law.

Introduction

The rise of the internet and social networking in particular has significantly changed the way Americans work and communicate (Aral and Walker 2011; Houghton and Joinson 2010; Neff 2005). The Pew Research Center found in one study that the use of social networking sites by adults had doubled between 2008 and 2011 (Raine, et. al. 2011). As the way Americans communicate and work changes, a reasonable expectation is that the way lawyers go about their work would also change.

The field of political science has looked at the impact of the growth of internet usage and social networking in politics from a variety of standpoints. Researchers have considered the development of e-governance (Yang and Melitski 2007) and its impact on citizens (Dawes 2008), the evolution of the White House's use of the web and social media (Owens and Davis 2008), the impact of the internet on patterns of political participation (Best and Krueger 2005; Scholzman et. al. 2010), and the impact of the internet and social networking on campaigns (Gurevitch et. al. 2009; Herrnson, et. al. 2007; Tolbert and McNeal 2003). The general consensus across all these studies has been that while in many ways tried and true theories of understanding politics remain true today, the internet has brought significant changes to everything from local governance to political participation and electoral campaigns.

This paper presents some preliminary findings from the first round of a survey of attorneys regarding their usage of the internet and professional, online social networking opportunities in their practice of the law and phone interviews with a subset of respondents. The survey asks attorneys about the types of resources that they use when working on cases, completing transactions, and resolving issues for clients. Excluded from the interview are questions about advertising and soliciting clients. This is an ongoing survey, which currently has a second

request for participants to complete surveys deployed.

Previous Consideration of the Internet, Social Networking, and Attorneys' Work

Within the arena of the practice of the law, there have been several areas of research regarding how the internet has influenced the work of attorneys. A core area of this research has been to understand the internet as a new area of the law (Reidenberg 2005; Search 1999; Weinberg 2000; Wu 1999). This consideration of the internet and the law seeks to develop an understanding of issues like copyright and ownership within the digital world.

Another area of research is the impact of increased internet usage on attorney-client relationships for both advertising and providing legal advice to clients. In an early commentary on the ethics of attorneys' use of technology to give legal advice online, Lanctot (1999) finds that there are many sources where attorneys interact online with clients or potential clients such as legal newsgroups, listservs, chat rooms, advice columns, emailed requests for information or advice, fee based internet legal advice, and other variations that are found online. In an essay on how the internet is changing the practice of law, Bierman and Hitt (2007) acknowledge the increasing pressure from clients for attorneys to be accessible 24/7 by email and cell phone.

More recently, the discussion of the ethical questions surrounding the internet, attorneys, and the public have centered around Facebook and other social networking media. Some attorneys have started to use Facebook and similar sites for a wide variety of purposes, including: advertising, vetting public sympathy on case situations and arguments, providing generalized advice, and blogging about personal views on the law (Williams 2009; Lackey and Minta 2012). Generally, articles discussing the ethical questions surrounding attorney use of social networking has been warn practitioners 1) to remember that the ethical rules regarding advertising and confidentiality apply to these forums, 2) to guard against any comments that may call into

question the neutrality of the attorney, and 3) to guard against any comments or public friendships that may be construed as improper (i.e., online relationships between attorneys and judges). These ethical questions about the use of the internet in exchanges between attorneys and the broader world continue to be a question with which the legal profession grapples.

Despite efforts to consider the way the internet has changed the way attorneys work, little work has been done to begin to assess the impact of the digital age, in particular online social networking, on attorney to attorney communication in the course of their work to practice the law. Heinz, et.al. (2001) in their assessment of transformations of urban law practices have noted that technological innovations have had an impact on the configuration of practices, but their assessment is limited to the accessibility of fax machines and computers. They do note that in 2001, access to legal research sources such as Westlaw and Lexis Nexis were cost prohibitive for many small firms and solos practices.

But, the cutting-edge technology of a few years ago becomes “old hat” relatively quickly. As Heinz, et. al. (2001) note, as the cost of technology that at one point makes it prohibitive changes in price, it comes into normal use—including within the legal profession. But in addition to costs coming down, groups can make technology more affordable. Professional groups such as bar associations and specialized legal groups such as various trial lawyers associations have begun to offer many internet based resources as a membership benefit. This has meant that resources that were only available to large practices are more readily available and are no longer cost prohibitive. Today a primary benefit that professional organizations for attorneys offer is a set of online tools to aid in legal work. Some organizations provide access to state level case research sites similar to what Lexis Nexis or Westlaw provide at a national level. For instance, the New Jersey Bar Association provides access to NJ Fastcase for its members,

and the Arkansas Bar Association provides access to AR Fastcase for its members.

Another popular tool provided by legal professional organizations is access to listservs and discussion boards that allow attorneys to pose and answer questions to one another. Wasko and Faraj (2005) study contributions to online discussion threads by an un-named legal professional organization to better understand what motivates people to contribute ideas and answers to discussion threads generally. They find that the rate of helpful contributions is a function of individual motivations—such as wanting to be helpful and enhancing professional reputations—and structural factors—such as having social ties with other contributors. What is left to be understood is the extent to which attorneys are starting to incorporate information from listservs and other online professional social networking resources into how they do their work. While few attorneys may contribute (Wasko and Faraj 2005), many more are free-riders of the information provided by listservs and discussion boards. In addition to not providing a good assessment of how extensive attorney reliance on professional online social networking is generally, the literature does not seem to provide a good assessment of the extent to which attorneys depend on such sources for putting together major cases.

This paper presents the results of a survey of attorneys in Arkansas, New Jersey, North Carolina, Texas, and Washington as a first step toward a broader project seeking to understand the ways in which online professional social networking and other methods for facilitating the digital flow of information are impacting the practice of law. If some attorneys are increasingly relying on online professional social networking and listservs for peer advice in practice, this may be a factor that could influence the effectiveness of an attorney's practice. There is evidence that ideas can take on a life of their own in digital spaces. For instance, Onnela, Reed-Tsochas, and Stanley (2010) argue that in social networking with endogenous features (the user is in

control of who they interact with or “friend”), like Facebook, behaviors such as using an application can be the result of spontaneous occurrences of social influence. The authors find that the impact of the social network to adopt a behavior is either “on”—meaning that social influence is deterministic of people engaging in a behavior (installing applications), but below a critical threshold it is “off”—social influence does not have an impact on behavioral choice (installing an application). This is useful for thinking about attorneys and social networking because if the information environment attorneys are using becomes more endogenous (i.e., using professional listservs to solicit advice on a case), some kinds of strategies or arguments may have this self-perpetuating popularity rather than being externally shown to be good strategies (i.e., people consistently win with them). This study provides a beginning to understand who uses online resources and online social networking opportunities and how such resources are used by attorneys today.

Method

Surveys were sent to 1150 attorneys across Arkansas, New Jersey, North Carolina, Texas, and Washington. Surveys were sent to a stratified random sample of attorneys in private practice. Attorneys were randomly selected from the Yellow Book, an online yellow pages service, from selected communities in each state. These communities included the state capital, the two largest cities in the state, and a subset of rural communities selected randomly. The survey tool was developed to assess the key variables of interest (internet and social networking usage in legal practice) as well as other control variables (gender, type of law practiced, etc.) and future dependent variables of interest (self-reported measures of success in legal practice).

Out of the original 1150 surveys mailed, 150 responses were returned. Of these surveys only 45 were valid surveys. The 105 invalid surveys included attorneys declining to participate or key sections of interest left blank or incomplete. While efforts to increase the participation rate are underway, this paper presents some preliminary results of surveys and interviews. Respondents were also asked if they would like to participate in long phone interviews to follow up on survey results. Ten of the 45 respondents were interviewed about their use of online resources and social networking.

Preliminary findings

High use and low use attorneys

There is a lot of variation in the usage of internet resources and professional social networking by attorneys. Using responses to a series of questions about 1) the use of online resources generally, 2) the types of technology used in daily work, 3) the usage of online resources provided by professional associations, and 4) how often attorneys use online resources, an index of technology usage was created. Ranges of the index were collapsed into high internet usage in the practice of law, moderate usage, and low usage. Even with the limited response rate, some patterns in usage were found.

Herrnson, et. al. (2007) have found that younger citizens are more likely to access information, including political information, online and to be influenced by social media such as Facebook. This pattern of influence could easily hold true for young attorneys practicing the law. Younger attorneys are more likely to have grown up using new technologies but also went to law school during a period of major technological and communications innovations. As a result of being part of the generation that has ushered in the social media revolution in personal

communication, I considered whether these attorneys will be more likely to use these technologies professionally. Older attorneys, who may be at the end of their careers, have less reason to change their method of working since the investment in learning to use new tools and to effectively navigate new information environments may be costly in terms of time.

Table 1 is a cross-tabulation of internet usage and age. The expected pattern is affirmed with young attorneys having the smallest percentage of attorneys who have low usage of the internet (10% of those 33-45 and 26% of those 46-59), while older attorneys have the largest percentages of low internet usage in practicing law (43% of 60-67 year olds and 100% of those over 68).

Table 1. Internet Usage in Legal Practice by Age

	<u>33-45</u>	<u>46-59</u>	<u>60-67</u>	<u>68 and over</u>
Low	10%	26%	43%	100%
	1	5	6	2
Moderate	50%	42%	36%	0%
	5	8	5	0
High	40%	32%	21%	0%
	4	6	3	0
Total	100%	100%	100%	100%
	10	19	14	2

Young attorneys have the largest percentage of high internet usage, with 40% of respondents aged 33-45. The number of attorneys who score as high internet usage steadily declines with 32% of those aged 46-59, 21% of those 60-67, and 0% of those over 68 scoring this rating.

Attorney responses to surveys and subsequent interviews identified several key ways in which the internet and professional online social networking has become a key part to how they go about the business of practicing law. A common tool that attorneys discussed is the move of legal research from libraries and books to online resources such as Westlaw, Lexis-Nexis,

Fastcase, and Cornell Law Legal Information database of Supreme Court decisions. While Heinz, et.al. (2001) note that at one time the move to online legal research was considered to be cost prohibitive for many attorneys, the advent of the information age has been a great equalizer for law firms' access to online information.

Second, many attorneys noted that an increasingly integral part of making decisions about how to proceed in a case or how best to help a client has been the rise of the legal listserv. Everyday social networking has moved from bulletin boards and listservs to chat rooms to social networking websites like Facebook and Twitter. In the legal community, social networking has flourished though the old technology of email listservs. Attorneys are able to become members of various, topic-specific email based listservs through professional associations. As members of these listservs, attorneys are able to 1) solicit advice or pose questions, 2) respond to questions either publicly to the listserv or privately to individual attorneys posing the question, 3) post information believed to be of interest to the listserv community, and/or 4) passively consume the information from the conversation posted to the listserv.

Listservs can be a place where general mentoring about both cases and the profession can take place. One woman from Washington in her fifties explained that mentoring on listservs has been helpful for her throughout her career. She explained that she would both give and receive information about how best to deal with all areas of her practice. Advice that she found helpful ranged from case briefing samples to explanations of how case law updates would impact future cases. As result of these well-developed mentoring relationships, this attorney was one of the many attorneys I found that participated on listservs every day.

Not all attorneys found the listservs and similar resources provided by professional associations to be useful. For instance, one attorney wrote on his survey, "Social networking is

just bullshit! (Please excuse the language, but it is an accurate reflection of my views). I am not representative of the legal profession.” Others are critical of the usage of public forums to discuss cases, citing issues with confidentiality and ethics. One male attorney, age 33-45 argued, “Discussing cases on an open, insecure forum such as Twitter, Facebook, or similar social networking forums is unethical and a violation of the rules of professional conduct. Listservs are better but they are still problematic. Other attorneys can see what you are posting and will use what you're concerned about against you.” While these positions were uncommon in this study, clearly the move to utilizing open communication has its detractors.

General legal research

All attorneys engage in legal research as part of practicing the law. While once legal research meant having access to a legal library with print copies of journals and books, today much of legal research has moved to digital formats online. One of the most common tools for legal research is subscription services for legal databases such as Lexis-Nexis or Westlaw. Individuals using these services must pay for them. While use of subscription services were extensive, they were not universal. Sixty-two percent of attorneys reported using subscription based legal services. A few attorneys reported using other kinds of subscription based services for case specific research such as Accurinit which is a fee-based service that helps attorneys to conduct skip traces to track down individuals. While not exactly a fee based subscription, attorneys who maintain their professional association memberships are given access to online, general legal research resources. For instance in every state surveyed, attorneys noted that state bar associations provided access to state based subscriptions to Fastcase, which is a broad-based legal research resource.

As one attorney noted, “I have found that I can find just as much relevant legal material by using free internet search browsers as paid ones.” Many attorneys, both those who reported using subscription based services and those who did not, reported using general internet search engines to conduct legal research and find case materials. A couple of attorneys noted that instead of using pay services, they utilize free resources such as the Cornell Law Legal Information website. In particular, Google was extensively referenced as an important source of legal research. For instance, an attorney who has practiced in the area of tax controversy for nine years highlighted how Google has been a key source for legal research for his practice. In his interview, he reported, “Google is a wonderful research tool if you know what to look for. I search Google daily for news related to some of the sub-practice in tax controversy.” He argued that the price of many subscription based services were not worth the cost if an attorney had solid skills at searching the internet. There were diverse sets of information that attorneys reported finding with general internet research. This included finding jury verdicts and settlement ranges or values in similar cases, finding resources for clients, finding maps and geographic information relating to the case, topics, assessing policy changes that affect a case, and more.

In addition to general internet search engines and subscription based services, attorneys report that state government and court websites are useful tools in the practice of law. For instance, one gentleman in his sixties found, “Court websites are useful. The availability of statutes and ordinances online can be used to refer clients.” What he found is that oftentimes clients wanted more information about what was happening in their case and the court websites were a useful tool. Thirty-one percent of respondents reported using court websites regularly in their work. These attorneys specified that court websites provide extensive resources ranging

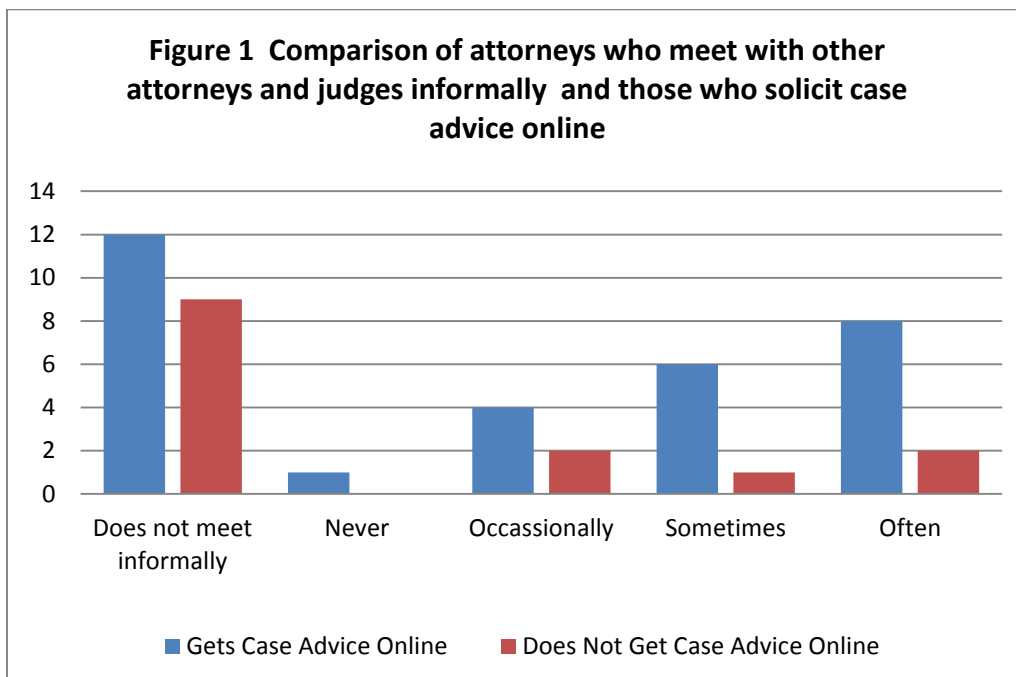
from opinions to calendars to forms and other information. While not specifically asked in a survey question, in the open response section of the survey, many attorneys reported using other e-government features for developing case material or getting information critical for their practice. This includes online filings found with secretaries of state, Uniform Commercial Code searches, searches for federal or state tax liens, county recorders' websites to determine owner of property, state police WATCH websites, and websites for local jails.

Case advice

The survey asked respondents questions regarding their use of professional, online social networking opportunities including listservs. In the initial survey responses, 31 respondents (68.9%) report that they use professional association discussion boards or listservs to get find advice about cases. Additionally, twenty respondents (44.4%) reported using discussion boards or listservs to try to find arguments that were tried successfully in a similar case. During interviews, many attorneys underscored that listservs were an important part of developing case materials. For instance, a criminal defense attorney from New Jersey, in practice for fourteen years, stated, "Listservs give me insight into issues and perception. For instance, discussion about similar cases can help me figure out if I am missing something." This sentiment was echoed by others. For instance, one male attorney in his sixties from North Carolina was discussing how listservs have helped him in his work on estate planning, probate, and estate administration. He found that listservs were most useful for "developing strategies and ideas." Several individuals articulated that they regularly turn to listservs as a place to get help to find cases with similar issues or to find "cases which supported the issues in the case."

While many attorney's used online forums such as email based listservs to solicit case advice, not all attorneys did so. While many factors may account for this, two different theories

may relate to social interactions. A reasonable expectation is that those who are more social in discussing their practice at informal gatherings of attorneys and judges would be more likely to solicit case advice in online forums such as listservs. These individuals may be more social in how they work, consistently seeking feedback from multiple sources. Second, a reasonable expectation would be those who do not attend informal social gatherings of attorneys and judges may be more likely to utilize online forums for case advice since their social circle may not provide opportunities for soliciting advice at social gatherings. Figure 1 provides a comparison of how often attorneys meet informally and discuss cases and attorneys who solicit case advice online. We find that the relationship functions as expected with those who do not meet informally having the highest levels of case advice online, and with those who often discuss cases informally having the second highest number of attorneys seeking case advice online. As the number of cases in the survey increases with additional respondents after the second request for participation, this relationship will be further assessed for significance and level of association.



Case advice can be more than help with legal research. Developing case strategies may be a product of having a good understanding of the proclivities of the judge hearing the case or the opposing counsel. Additionally, attorneys may be looking for expert witnesses who can dependably perform on the witness stand regarding general assessments of a situation. Many respondents used listservs to gather such additional information to aid in developing their cases and completing transactions, including information about the idiosyncrasies of judges, other attorneys, and expert witnesses. Eighteen respondents reported using listservs and discussion boards to solicit references for expert witnesses. Additionally, just over one-fourth of respondents (12 respondents) solicited advice about dealing with a particular judge, and twelve respondents solicited advice about dealing with opposing counsel. In addition to using listservs, many attorneys reported that the internet generally has provided a wealth of information about judges, adversaries, and experts. For instance, an attorney from Texas discussed his use of other law firm's websites. He regularly would look at the law firm's websites to study the biographies posted for opposing counsel and read newsletters from other firms to gain clues to what opposing counsel strategy may be like.

While no attorney discussed using Facebook to get case advice on the survey, during interviews one attorney discussed a unique use of Facebook to get case advice from everyday people on her "friends list." She discussed how oftentimes an attorney's view of a case and understanding of the facts is very different from the common citizen who may be serving on a jury. She reported that she would regularly ask generalized questions to her Facebook friends regarding how a regular person would view a situation. For instance, in one post she posed the question of whether a person should be ticketed for public intoxication if they were choosing to walk home rather than drive home drunk. This was an argument she was considering using in a

case where her client was fighting a ticket for public intoxication. She said that the feedback was really helpful, and as a result she continues to pose generalized questions with no information that may identify her client. While the usage of social networking for this attorney may be a novel case, it demonstrates the ways in which social networking and online resources are evolving the way in which attorneys develop and test arguments before using them in court or in other legal transactions.

Gaining the informational upper hand

In addition to strictly using the internet for legal research, many attorneys noted that the internet, Facebook in particular, is a useful tool in gaining information about witnesses, opposing parties, and their own clients that may have bearing on a case. This information was provided through open comments and interviews. Several attorneys discussed their ability to find information about locations of individuals, witnesses, and the opponent using online search engines such as Google as well as social networking forums such as Facebook, dating websites like Match.com, and outreach forums such as Classmates.com. For instance in discussing his use of Google and Facebook, one attorney wrote, “If you put it online, it could and likely will be found.” A second attorney explained her use of Facebook and Match.com in researching opposing parties, “It's [the internet] great for research on adversaries and creating a psychological profile.” She found that she was able to better understand the motivations for various parties in the case (both her client and the opponent) by reading their profiles on both Facebook and on online dating services they may subscribe to. In one interview, an attorney from North Carolina explained that she used Facebook postings in multiple ways. First, she would often find postings by an opposing party that could be used against them in court. She

also found that Facebook was very useful in tracking her own clients, making sure they were following her advice about activity during proceedings (i.e., being quiet about divorce proceedings, following a restraining order, etc.). Finally, she used Facebook to find people that may have a bearing on the case by using “friends lists” for clients and opponents. Such techniques were confirmed by others such as a younger male attorney from New Jersey who argued that Facebook was a great way to get information about opposing parties including background information and cross-examination material.

In this survey, the most common area of law practiced by those who used Facebook was family law (divorce, custody, etc.) and criminal law. Some attorneys noted that they do not just use Facebook to find information potentially pertinent to cases, but also that they warn their clients of such a potential. One family law attorney from Texas explained, “I tell my clients not to mention anything about their divorce or ex or soon-to-be ex-spouse on Facebook, etc. Some actually listen!” In an era in which many people place details about their personal life online, many attorneys have double duty in representing their clients. They must also be concerned with the public presence of private information.

Conclusion

This paper presented some preliminary findings of a survey on the use of online social networking by attorneys. This initial look at the first round of respondents provides some insights to how the practice of law is increasingly dependent on online resources and social networking. The general trend is that while some attorneys are skeptical of the ways in which the internet and online social networking can be useful, the majority of respondents have found that the internet has had a significant impact on how they go about practicing the law. In line

with the findings of other studies of the influence of the internet on how governance works, the shift to online research has changed the nature but perhaps not the substance of how attorneys practice the law. Despite webpages replacing libraries and Facebook changing the nature of private investigation, attorneys are still engaging in the same substance of legal research and discovery of evidence for a case. The biggest change may be the rise of the legal listserv. While throughout the past professional associations have fostered groups for discussing legal issues both formally through continuing legal education seminars and informally through social events, the legal listserv allows advice and ideas to circulate more quickly and more often. Continued research on the impact of the legal listserv will be needed to assess whether ideas and arguments become self-perpetuating, in the same way ideas and behavior have become self-perpetuating in every day social networking.

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