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Gerry Oginski

YOU'VE BEEN GOOGLED. NOW YOU HAVE TO SHUT DOWN YOUR WEBSITE

Urged Defense Counsel

*Breaking news-
Great Neck, N.Y.*

Well, it finally happened. I'd been Googled. Not by my friends, but by my adversaries in a medical malpractice wrongful death case. Their googling apparently caused apoplectic seizures that rippled through the defense firms representing the doctors in my case that was marked final for trial on April 10, 2006 in Kings County.

The first inkling of trouble was a telephone call by adversary #1- someone who up until that time, I thought I had a good working relationship with. "Gerry, I want to give you a heads-up about an order-to-show cause that you'll be getting shortly," he said. "What's it about?" I asked.

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**"YOUR CANCER
IS GONE!"**

Gerry's New Story continued...p. 3

**Come see what all the
fuss is about. I guarantee
there's something there
for you.**

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In This **May** Edition, We Look At

DEFENSE ATTORNEYS AND THINGS THEY DO TO MUDDY THE WATERS

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"Your website. We want you to shut it down for the duration of the trial," he answered. "What are you talking about?" I asked incredulously. "What could my website possibly have to do with a trial that we're supposed to start in one week's time?" I stated, having difficulty controlling my tongue and the tenor of my voice.

"We think that potential jurors might be prejudiced if they read the material on your website, and that's why we want you to shut it down," he responded.

Let me digress a moment. On my website which currently gets over 3000 unique visitors per month, I have over 65 articles that I have personally written, I have 190 frequently asked questions, I have 213 links to other resources, and over 285 news articles about verdicts and settlements across the country. In addition, I have posted deposition transcripts of doctors in cases I have handled that are *de-identified*. I have removed all identifying features in each of the depositions I have posted. The reason I posted these transcripts is to show people what I do, how I do it, and it makes for interesting reading.

If one Google's my name, "Gerry Oginski" you will get 953 sites that refer to me and my website, my blog and other writings I've posted online. If you take off the quotations, you'll get 12,500 references to my name. If you do a

Yahoo search with the same name in quotations, you will get almost 8,000 sites that refer to my name.

The original Google search that my adversary performed "Anesthesia, wrongful death and Oginski" revealed his client's deposition in the very case we were about to try. This was the only posted deposition in an active case. Even though it was de-identified and you could not determine who it involved, he asked me to remove it from my site for the duration of the trial because of the possibility that a juror could find the de-identified transcript while doing a search and read it during the trial. After much debate, and knowing that there *is no case law* on this topic anywhere in New York, I agreed to voluntarily remove the deposition from my site. You would think that my willingness to be courteous and professional to my adversary would have ended this issue. It did not.

He was still insistent that my website be shut down, because there was material on my site, "That if viewed by a potential juror, would prejudice that juror," he wrote in his motion papers.

On April 10, 2006, when we appeared in the Medical Malpractice Trial Ready Part in Brooklyn, my adversary was insistent that the Court shut down my site. He referred to three articles I wrote as being somehow prejudicial: "Insurance Companies and how they protect their profits," "5 Typical Defenses in a Medical Malpractice Case," and "Medical Malpractice: 10 Reasons Why Most Victims Won't Recover a Dime." The last article he cited because I include discussions about jurors biased by the insurance industry, the plaintiff's inability to hire good qualified experts, and the basic premise that 'juries like doctors'.

Defense counsel's arguments were, impressively, based on total

speculation. He argued that a potential juror might ignore the trial judge's instructions not to discuss the case with anyone, that he might go online and perform a search about the attorneys or the topic involved in the case, that he would actually find information about the case, and that he might be prejudiced by reading such material. He wrote:

"We live in the 'Google' world where nearly everyone has access to the internet and many people perform internet searches as a means of obtaining information. Jurors, in fact, often attest to a desire to 'research' the issues or attorneys on the internet. As a result, it is possible or even likely, that at least one juror (or prospective juror) will review the above-describe prejudicial materials on the plaintiff counsel's web site...While an admonishment could be given by the trial judge, it is submitted that that would more likely result in an invitation to go to the aforementioned web site and provide a road map on how to get there."

He also argued,

"...the limitation on free speech must apply to written statements disseminated by plaintiff's counsel *in a medium known to be viewed by prospective jurors, such as the website of plaintiff's counsel in the very matter set to be tried before them.*"

My argument was simple:

1. Shutting down my site would have absolutely no effect on a juror intent on ignoring the Court's instructions from doing online research,
2. All of the material posted on my website is freely available on the internet, and was originally posted on the internet first, and then added to my site later,

3. If the Court felt compelled to shut down my site, then logically, it would have to shut down every lawyer's website (including all defense attorneys) in every case that came on for trial in every County in the State of New York. (The Courts' response was, I think, facetious, "Maybe I will have to shut down every lawyer's site...")
4. Shutting down my website would not only be unconstitutional- a judicial lockdown of my right to free speech, but would create undue hardship financially since I receive all of my direct cases from my online presence,
5. The information posted online is truthful and provides consumers with abundant information they need to know *before* they hire an attorney,
6. The Courts' curative instruction to any potential juror would be all that was needed to address potential extracurricular research on the attorneys or the topic involved in the trial,
7. A decision that required me to shut down my site, regardless of the duration, would have significant implications in the legal community, and would simply make bad law.

The Court initially wanted to have the trial judge address this issue in chambers, before starting the trial. However, with persistent urging by the defense, he relented and agreed to render a decision on this novel issue 60 days after receiving opposition papers. Because of this personal attack on my website, the trial would not proceed forward until this issue was resolved.

Note: At the time of this writing, the Court has not yet rendered a decision on this novel issue.



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Three days later it happened again. Dr. Daniels was summoned to the fourth floor, where he was met by the entire team of surgical and medical residents, 16 in total.

They ushered Dr. Daniels into their conference room and presented the films to him for Michelle, a 65 year old woman with advanced colon cancer. This patient, according to the residents had a life expectancy of 3 months. Follow up films showed the cancer was gone. "What the hell is going on here?" Dr. Daniels asked everyone, without really expecting an answer. One resident raised her hand and suggested a conspiracy with the company that made the scanning machines and the technician. This theory was quickly brushed aside as nonsense.

"I want everyone here to review each of these three patient's charts in detail. I want every inch of their file and records gone over with a fine tooth comb. I want to know how these patients, friends and family are related or connected. I want answers now!" he screamed. "This is medically impossible," Dr. Daniels roared. "Cancer cells, by their very nature grow and spin out of control. Current science doesn't have the answer to stop these cells without also killing off the good cells too," he continued. "This cannot be real, yet here we are, standing around like idiots, wondering how three patients with advanced terminal cancer, have walked out of this hospital with a totally clean bill of health." "Preposterous," Dr. Daniels remarked as he stormed out of the

room to see the President of the Hospital.

A few days later, Dr. Daniels was called by Dr. David Dunlop at the 2nd Opinion Hospital. Dunlop was his counterpart, and was Chief of Cancer Surgery at 2nd Opinion. "Jack, I've got to tell you, I don't understand why you sent these three patients to me, Sandy, Michelle and Donna. They're all fine. No cancer anywhere. What's going on?" asked Dr. Dunlop. "Dave, sit down for a second. Let me tell you a story," he replied. Five minutes later Dr. Dunlop said "I'm coming over this afternoon. I'd like to see the original films for each of the three patients." "O.K., see you then," replied Dr. Daniels.

In the meantime, the 16 surgical and medical residents were busy scouring the three patient's medical records for any connection that would explain these bizarre findings. Nobody could find anything. They each had standard treatment; surgery, chemotherapy, and radiation therapy. Family members were contacted; friends of the patient were also contacted. Nothing unusual anywhere.

Unknown to any of the doctors at the Cancer Center, Donna had a follow-up gynecology appointment with her private doctor on Long Island. Upon entering the room, Donna profusely thanked her gynecologist for coming to visit her at the Cancer Center in Manhattan a few weeks ago with her husband.

"Thank you so much for visiting. You are so wonderful. It meant so much to see you. I can't thank you enough," Donna stated with true joy. Her gynecologist was the one who actually recognized that Donna had the beginning stages of lung cancer, and not her treating internist or lung specialist. For that, Donna was forever grateful to her gynecologist.

"So, how are you feeling?" asked Dr. Abby.

"You're never going to believe it, but

I'm cured!!" said Donna.
"What?" asked Dr. Abby incredulously.
"Yes, I'm cured. No more cancer. Can you believe it? One day I'm dying, the next day I have no cancer," replied Donna.
"How can that be?" asked Dr. Abby. "Cancer doesn't just go away, even with the best outcome, there's still a chance of recurrence..." said Dr. Abby.

"Not here. It's gone. Totally. That's what Dr. Jack Daniels told me himself. I have the films to prove it. I also had films done at 2nd Opinion Hospital, and they confirmed it too. YAHOO! No more cancer," Donna said triumphantly.
"Wow. That's amazing. I've never heard of that before. Congratulations, and I'm happy for you. Say, would you mind if I call Dr. Daniels about this. I'm fascinated, and would really like to get more information," stated Dr. Abby. "Sure, no problem, talk to him all you want," answered Donna.

After Donna's visit, Dr. Abby called Dr. Daniels. The two had known each other for years as colleagues and respected each other greatly for their professional work. Dr. Abby had often referred patients in whom she had diagnosed cancer to Dr. Daniels for treatment. "Jack, it's Allison Abby, how are you?" she asked. "Just peachy, Allison. What's happening?" asked Dr. Daniels in his brusque and firm manner.
"Listen, I'm calling about a mutual patient of ours, Donna. She just saw me for a gyn exam, and told me that her lung cancer is totally gone. Is this true?" asked Dr. Abby.

"Believe it or not, it is true Allison. It's the strangest thing. One day we're treating her for metastatic disease, the next day she has absolutely no sign or trace of cancer. We can't figure it out, and believe me we've been wracking our brains out to explain it," noted Dr. Daniels. "Oh wait...you're going to love this...she's not the only one," continued Dr. Daniels. "What do you mean, she's not the only one?" inquired Dr. Abby. "We have two other patients who the same thing happened to within days of each other," he answered.

"Wait a second, would those two other patients be Sandy and Michelle?" Dr. Abby asked hesitatingly. "Yes they would! How...how did you know?" Dr. Daniels asked.

"They're also my gynecology patients. I saw them at your hospital a few weeks ago when I came by to pay a social call on each of them. My husband and I were going into the City to see a show, and I dragged him with me to stop by and say hello. My husband actually knows each of them, and it was a real mitzvah coming in to spend a few minutes with each patient. I know they like the visit and they appreciate knowing that I went out of my way to come visit them," answered Dr. Abby.

"You say both you and your husband spent time with each of these patients?"
"Yes," said Dr. Abby.

"Tell me what you did, what you saw, and what observations you made with each patient," inquired Dr. Daniels.

"Donna was her usual uplifting self, perky, good outlook on her condition. Her family members didn't have the

same outlook. They knew she was dying. I held her hand, my husband spoke with her, and he held her hand a few minutes. Then we told them we had to leave, and that was it. Her IV was running fluids into her arm. She looked OK, I didn't see any problem," said Dr. Abby.

"Michelle was also in good spirits, and again, we did the same thing, spoke to her, held her hand, comforted her and left. The same with Sandy."

"It just doesn't make sense. Do these three patients know each other?" asked Dr. Daniels. "No, I don't think so," replied Dr. Abby.

"We're looking for some connection that might explain this, and we can't find it. Do me a favor, think about this some more, and if you have any ideas, call me immediately," demanded Dr. Daniels.
"Sure, no problem," answered Dr. Abby.

The heads of the departments were updated on the investigation now informally code-named "Cancer Cure". "What a name for a file," thought Ramona Ortega, a second year surgery resident who helped brief the Chiefs. At the conclusion of the briefing, the President of the Hospital, Dr. John Peppermill, III approached Dr. Ortega. "A moment of your time, Dr. Ortega," said Dr. Peppermill.

Tune in next month when we continue our new story! 

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