

Discovery and Use of Social Media – Facebook/Twitter and Texts: How to Use the Information and How to Avoid Being Stung

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Electronic Evidence in Plain English



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Internet Statistics

April 3, 2015

- Facebook Users: 1,374,000,000
 - Google Plus Users: 374,000,000
 - LinkedIn Users: 336,000,000
 - Instagram Users: 302,000,000
 - Twitter Users: 645,750,000
- ...and they're all DISCOVERABLE!

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Internet Statistics

Every 20 Minutes:

- Links Shared on Facebook: 1 Million
 - Friend Requests: 2 Million
 - Messages Sent: 3 Million
 - Tweets: 806,000
- ...and they're all DISCOVERABLE!

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Internet Statistics

In One Day

- Email Sent 96,849,032,948
- APPLE AND ANDROID APP DOWNLOADS: 493,827
- TWEETS SENT ON TWITTER 64,814
- VIDEOS WATCHED ON YOU TUBE 831,928
- SEARCHES MADE ON GOOGLE 940,741
- PHOTOS UPLOADED TO FACEBOOK 111,110

- ...and they're all DISCOVERABLE!

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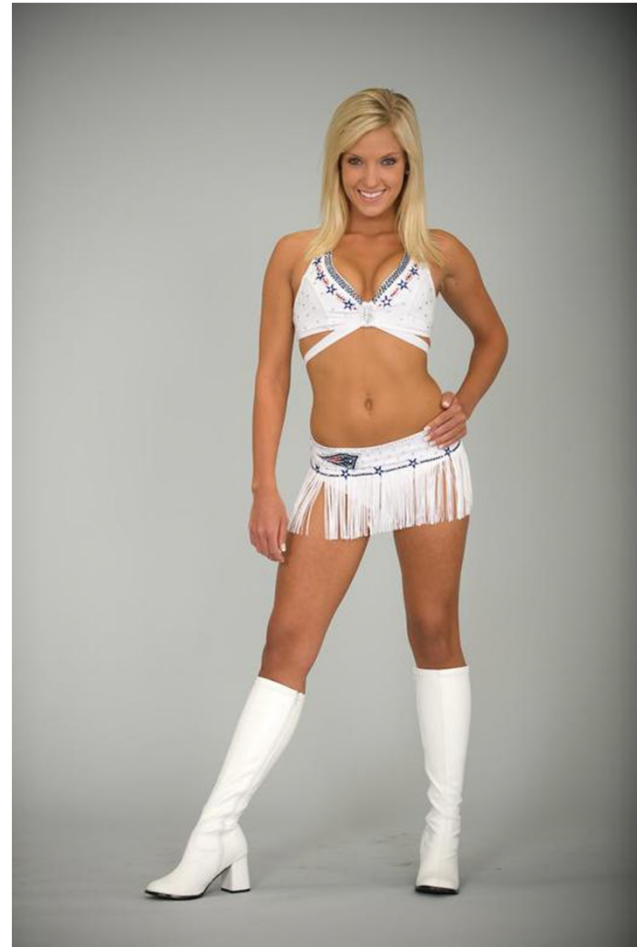
Internet Statistics

- Evidence from social media sites can be relevant to almost every litigation dispute and investigation matter.
- Social media evidence is:
 - Widely discoverable
 - Much of it is public
 - generally not subject to privacy constraints when established to be relevant to a case, particularly when that data is held by a party to litigation or even a key witness.

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Here is what is out there

- ▶ New England Patriots Cheerleader, Caitlin Davis, 18



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Here is what is out there

Caitlin lost her job after photos appeared on facebook showing her holding a Sharpie marker up to a passed out man with offensive graffiti all over him. Davis was booted from the Patriots squad .



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Here is how they use it....



Charlie Barrow's Profile Oxford

Charlie Barrow Oxford Alum '06 London Share +

Sex: Male
Birthday: May 24, 1984
Hometown: London, England

▶ Mini-Feed

▼ Information

Contact Info
Current Address: Soho
Website: <http://www.cant-touch-this.co.uk/morning...>

Personal Info
Favorite Quotes: "Hey Slim, I just drank a fifth of vodka, dare me to drive?"
"per sidera iuro, per superos et si qua fides tellure sub ima est, irivitus, regina, tuo de litore cessi"

"Hey Slim, I just drank a fifth of vodka, dare me to drive?"

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Here is how they use it....



- ▶ A juror posted details of the case she was serving on. The she wrote, "I don't know which way to go, so I'm holding a poll."
- ▶ An anonymous tip resulted in the woman being immediately dismissed from the jury.

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Lester v. Allied Concrete



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Capturing the data Social Media Sites

- Specialized tools
 - Using computers
- Subpoenas
 - Entire Dump of the account

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Dump of Scott Greene's Facebook



Scott Greene

Profile	http://www.facebook.com/scott.greene.1610
Email	scott@evidencesolutions.com
Registration Date	Sunday, January 13, 2008 at 7:01pm MST
Profile	
Contact Info	
Wall	
Photos	
Synced Photos	
Videos	
Friends	
Messages	
Pokes	
Events	
Settings	
Security	
Ads	
Private Notes	
Mobile Devices	
Places	
Survey Responses	
Profile	12/14/1963
Gender	Male
Current City	Tucson, Arizona
Hometown	Tucson, Arizona
Relationship Status	Married to Kelly Kirkham-Greene
Family	Patrick SirSean (Daughter) Bill Greene (Brother) Sydney Greene (Daughter) Brandon Weinstein (Stepson) Diane Netzel (Sister) Parker Netzel (Nephew)
Education	Special Projects 1981 University of Arizona Pima Community College
Employers	Evidence Solutions, Inc. - Truck Accident Experts March 2012 to present Chief Executive Officer, Truck Data Specialist (www.daconsultants.net) Truck Accident and Safety Consulting Evidence Solutions, Inc. - Digital Forensics Division January 1981 to present

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Dump of Scott Greene's Facebook

- Synced Photos
- Videos
- Friends
- Messages
- Pokes
- Events
- Settings
- Security
- Ads
- Private Notes
- Mobile Devices
- Places
- Survey Responses

Thursday, April 2, 2015 at 5:48pm MST
 Scott Greene updated his status.

Let me see if I can paint a clear picture of one of the MANY reasons, the airlines are a screwed up mess. I start 1 week ago using an online reservation service buying a flight from Tucson (TUS) to L.A. LAX for a deposition. Because schedules often change I insist on buying refundable tickets (it is in our contract). Price: \$518.20. Now remember that number it comes up later... so my deposition for tomorrow gets canceled. I get ON THE AIRLINE's site and try to change the flight to 3 weeks away this new ticket costs over \$800. So I call the United. They tell me they can't make the change. I have to "call" the reservation company. --Keep reading I swear there is a moral in here somewhere or perhaps a swear word-- So I call Travelocity and while I am waiting I look up flights. Non-refundable flights are around \$168. Fully Refundable is... you guessed it \$518.20 (with a lot more lead time). So I get one of their agents on the phone I tell her what I need and she finds me new flights (the exact same refundable flights that I am looking at online) However when I have her start to place the reservation she tells me... "This new ticket is non-refundable". Are You Kidding Me? If I wanted non-refundable I'd go with the \$168. I want / need refundable which I see online as \$518.20 but she can't do without changing the flight to non-refundable. Any questions so far? == Do not get me started on the mess they created by charging for baggage ==

Thursday, April 2, 2015 at 11:55am MST
 Scott Greene updated his status.

Computer Security & Computer Forensics Expert: Laptops Are At Risk of Disappearing!
<http://evidenceresolutions.com/web/Digital-Evidence-Articles/computer-forensics-expert-laptops-at-risk-of-disappearing.html> #DigitalForensicsExpert #DataBreachForensicsExpert #ComputerForensicsExpert #CellPhoneForensicsExpert #ComputerSecurityExpert *SG

Wednesday, April 1, 2015 at 1:01pm MST
 Scott Greene updated his status.

Holy Molly!

Wednesday, April 1, 2015 at 12:55pm MST
 Scott Greene likes Tesla Motors.

Wednesday, April 1, 2015 at 8:35am MST
 Scott Greene shared a link.

Tuesday, March 31, 2015 at 7:42am MST
 Scott Greene updated his status.

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Dump of Scott Greene's Facebook

Privacy Settings

ABOUT_ME	Your friends
ACTIVITIES	Public
AUTO_GENERATED_FB_EMAIL	Your friends
BASS_ADS	Only Me
BIRTHDAY	Only Me
BIRTHYEAR	Only Me
BLURB	Your friends
BOOKS	Public
CAN_COMMENT	Your friends
CAN_FRIEND	Public
CAN_MESSAGE	Public
CLOTHING_BRANDS	Public
CURRENT_ADDRESS	Your friends
CURRENT_CITY	Your friends
CURRENT_COMPOSER	Public
CUSTOM_GENDERS	Your friends
DASHBOARD_ACTIVITY	Your friends
DEFAULT_COMPOSER	Your friends
FAMILY	Your friends
FAVORITE_ATHLETES	Your friends
FAVORITE_FOODS	Public

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Capturing the data Social Media Sites

- Depositions
- Interrogatories
- Requests for Production
- Consultants
- Investigators
- 15 year olds

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Getting it admitted:

- Recent court decisions reflect that the main pressing concern for attorneys, eDiscovery practitioners and forensic investigators is the authentication of social media data for admission into evidence in court.

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Getting it admitted:

- Under Rule of Evidence 901, a proponent of evidence at trial must offer “evidence sufficient to support a finding that the matter in question is what its proponent claims.”

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Getting it admitted

- Unless uncontroverted and cooperative witness testimony is available, the proponent must rely on other means to establish a proper foundation.

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Getting it admitted

- A party can authenticate electronically stored information (“ESI”) per Rule 901(b)(4) with circumstantial evidence that reflects the “contents, substance, internal patterns, or other distinctive characteristics” of the evidence.

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Getting it Admitted

- Many courts have applied Rule 901(b)(4) by ruling that metadata and file level hash values associated with ESI can be sufficient circumstantial evidence to establish its authenticity.

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Getting it Admitted

- Given the transient and cloud-based nature of social media data, it generally cannot be collected and preserved by traditional computer forensics tools and processes.

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Getting it Admitted

- ▶ Mere printouts are not enough:
 - In of State of Connecticut vs. Eleck, the Facebook evidence in the form of a printout was rejected for failure of adequate authentication.
 - ‘it is incumbent on the party seeking to admit social media data to offer detailed “circumstantial evidence that tends to authenticate” the unique medium of social media evidence.’

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Getting it Admitted

- ▶ Authentication:
 - State of Texas v Tienda the prosecution successfully admitted key MySpace evidence over the defendant's objection, laying a foundation through various circumstantial evidence.

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Getting it Admitted

- ▶ Key circumstantial evidence included:
 - relevant metadata fields
 - The username (consistent with their commonly known nick name)
 - email addresses
 - User ID number
 - Stated location (City)
 - Posted communications with other suspects
 - Photos with associated date and time stamps.

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Getting it Admitted

Metadata for Facebook includes:

- Unified resource ID
- Item Type
 - Wall Post
 - News Item
 - Photo
- Message recipients
- Method used to post
 - Cell phone
 - Browser
- Poster's Unique ID
- User's Unique ID
- User's Display name
- Date & Time Created
- Date & Time Last revised
- Number of comments
- Etc

Twitter and LinkedIn items have their own unique but generally comparable metadata.

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Getting it Admitted

- In addition it is important that MD5 hash values of each social media item are generated at the time of their collection
- Also, unique case information is generated to support a proper chain of custody.

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Getting it Admitted

- Most currently used methods do not meet these requirements.
- Screen capture tools and many archive services fail to collect most available metadata or generate hash values for individual social media items upon collection.

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Getting it Admitted

- ▶ Additional Documentation:
 - How was the information accessed
 - How was the information gathered
 - What tools were used
 - Are the tools reliable
 - What experience does your expert have
 - What preservation steps were taken after collection

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Getting it Admitted

- ▶ Back to the Future:
 - Lorraine v. Markel American Insurance Co. and New Findings on Admissibility of Electronically Stored Information. 42 Akron 357 (2009)

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Getting it Admitted

- ▶ Lindroth Associates v. Amberwood Development, CV 06-00426-PHX-NVWAR (D. Ariz 2007):
 - A surprisingly low and lenient bar for authentication of electronic data in a copyright case.

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