



Evidence Solutions, Inc.

&

Georgia Trial Lawyers Association

Present:

Using the Internet to Assist During Trial Preparation

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Presented by:

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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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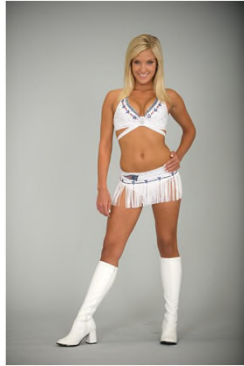
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Here is what is out there

- ▶ 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

	<b>Charlie Barrow</b> <span style="float: right;">Oxford Alum '06 London</span> <span style="float: right;">Share</span> Sex: Male Birthday: May 24, 1984 Hometown: London, England
▶ Mini-Feed ▼ Information	
<b>Contact Info</b> Current Address: Soho Website: <a href="http://www.cant-touch-this.co.uk/morning...">http://www.cant-touch-this.co.uk/morning...</a>	
<b>Personal Info</b> Favorite Quotes: "Hey Slim, I just drank a fifth of vodka, dare me to drive?" "per sidera luro, per superos et si qua fides tellure sub ima est, invitus, regna, tuo de litore cess"	

"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**

- 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

- ▶ 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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