



Evidence Solutions, Inc.

&

Paralegal Division of the Maricopa County Bar 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/LinkedIn & More: Using the Internet to Assist During Trial Preparation

Faculty:

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Electronic Evidence in Plain English



Internet Statistics

2016

- Internet Users 3,424,971,237
- 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!

Internet Statistics

Every Second:

- Instagram Photos 754
- Tumblr Posts 1,184
- Skype Calls 2,367
- Traffic in GB 39,998
- Google Searches 57,511
- YouTube Videos Viewed 136,678
- Friend Requests: 2 Million
- Emails Sent: 2,544,180
- Tweets 7,428

• ...and they're all DISCOVERABLE!

Internet Statistics

Totals....

- Websites: 1,000,000,000
- Most Popular Websites:
 - Google
 - Facebook
 - YouTube

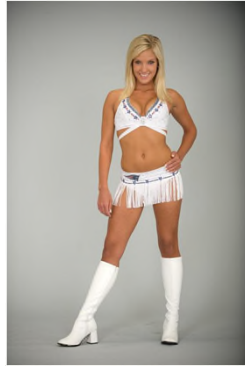
• ...and they're all DISCOVERABLE!

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.

Here is what is out there

- ▶ New England Patriots Cheerleader, Caitlin Davis, 18



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 .



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, invitus, regna, tuo de litore cess"

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

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.




Lester v. Allied Concrete



Capturing the data Social Media Sites

- Specialized tools
 - Using computers
- Your Client(s)
 - Have them do a complete dump
- Subpoenas
 - Entire Dump of the account

Dump of Scott Greene’s Facebook



Scott Greene

Profile <http://www.facebook.com/scott.greene.1910>

Email scott@evidencesolutions.com

Registration Date Sunday, January 13, 2008 at 7:01pm MST

Birthday 12/14/1963

Gender Male

Current City Tucson, Arizona

Hometown Tucson, Arizona

Relationship Status Married to Kelly Kirkham Greene

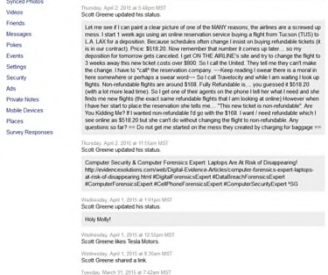
Family Patrick Schwan (Daughter), Bill Greene (Brother), Sydney Greene (Daughter), Brandon Greene (Daughter), Claire Nicole (Daughter), Parker Nether (Nephew)

Education Special Projects 1981, University of Arizona

Alma Mater Phoenix Community College

Employers Evidence Solutions, Inc. - Truck Accident Experts March 2012 to present, Chief Examiner Officer, Truck Data Specialist, Denver Site Consultants, Inc., Truck Accident and Safety Consulting, Evidence Solutions, Inc. - Digital Forensics Division January 1991 to present

Dump of Scott Greene’s Facebook



Served Photos [View photos](#)

Videos [View videos](#)

Friends [View friends](#)

Messages [View messages](#)

Photos [View photos](#)

Events [View events](#)

Settings [View settings](#)

Security [View security](#)

Apps [View apps](#)

Privacy Notes [View privacy notes](#)

Mobile Devices [View mobile devices](#)

Places [View places](#)

Survey Responses [View survey responses](#)

Thursday, April 2, 2015 at 11:35am MST
Scott Greene updated his status.

Let me start off by stating a clear picture of one of the BMMB members, the article says it crossed up me, I used a link to search and make information services being a right from Tucson (DT) to L.A. and not at all possible. Because information when copied from an unencrypted device is as it is not correct. Price \$10,000. How remember that number if comes up later. As my dependent for someone else involved. I got the 100,000,000. I've made by to change the age to 3 weeks away this new link costs more \$500. So I left the link. They let me they can make the change. There is no information company. It's made making sense here. I'm afraid to have someone or perhaps a worse word. So I left the link and when I am waiting look up rights. Non-refundable rights are around \$100. So, refundable is... you get around \$100 (20 days and then back then). So I got one of their agents on the phone but he had what he needed and she had me the right. The next same refundable rights. That was not at all what I wanted when I had not used to pay for the information and the link. The link is not refundable. And you looking for it? I would not refundable I go with the \$100 I want. Next refundable which I have online for \$100 (20) but she said she wanted the right 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 11:35am MST
Scott Greene updated his status.

Computer Security & Computer Forensics Expert Livestats Are At Risk of Disappearance!
<http://evidencesolutions.com/Computer-Forensics-Expert-Livestats-Are-At-Risk-of-Disappearance/>
At risk of disappearing from digital forensics. Computer Forensics Expert Livestats Are At Risk of Disappearance. Computer Forensics Expert Livestats Are At Risk of Disappearance. Computer Forensics Expert Livestats Are At Risk of Disappearance.

Wednesday, April 1, 2015 at 1:15pm MST
Scott Greene updated his status.

How Many?

Wednesday, April 1, 2015 at 11:35am MST
Scott Greene likes Todd Murray.

Wednesday, April 1, 2015 at 11:35am MST
Scott Greene shared a link.

Tuesday, March 27, 2015 at 7:24pm MST

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	Public
FAVORITE_FOODS	Public

Capturing the data Social Media Sites

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

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.

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.”

Getting it admitted

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

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.

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.

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.

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.'

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.

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.

Getting it Admitted

Metadata for Facebook includes:

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

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

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.

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.

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

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)

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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Seminar Evaluation Form

Date: _____

	Poor	Ok	Good	Very Good	Excellent
1. Was the material informative?	1	2	3	4	5
2. Was the material easy to understand?	1	2	3	4	5
3. Was the material appropriate?	1	2	3	4	5
4. Was the material interesting?	1	2	3	4	5
5. Was the medium used to present this subject effective?	1	2	3	4	5
6. The material presented in the seminar will be of use to me.	1	2	3	4	5
7. The material presented was properly sequenced.	1	2	3	4	5
8. Was the speaker effective?	1	2	3	4	5
9. The seminar was well worth my time.	1	2	3	4	5
10. Have you relied on computer forensics in your previous experience?				YES _____	NO _____

12. General impression of material presented? _____

13. Why did you attend this seminar today? _____

14. Would you like someone to contact you about computer forensics? YES _____ NO _____

Name: _____

Address: _____

Mailing Address: _____
 (if different)

Email: _____

Phone: () _____ Fax: () _____

Comments may be used on EvidenceSolutions.com. Please let me know if you object.