

Social Media Evidence: She Put What on Facebook?! Or, Instagram, Twitter, or YouTube?

Hennepin County Law Library CLE

September 20, 2019

John J. Carney, Esq.

Carney Forensics



Social Media Revolution



<https://www.youtube.com/watch?v=2lcpwISszbQ>

Social Media Evidence Agenda

- Social Media Sites
- “The New Confessional”
- Law Enforcement Usage
- Social Media Case Examples
- Social Media Investigations
- Social Media Discovery
- Social Media Evidence
- Social Media Ethics



Popular U.S. Social Media

facebook®

You Tube

 Instagram

twitter 

Linked in

 reddit

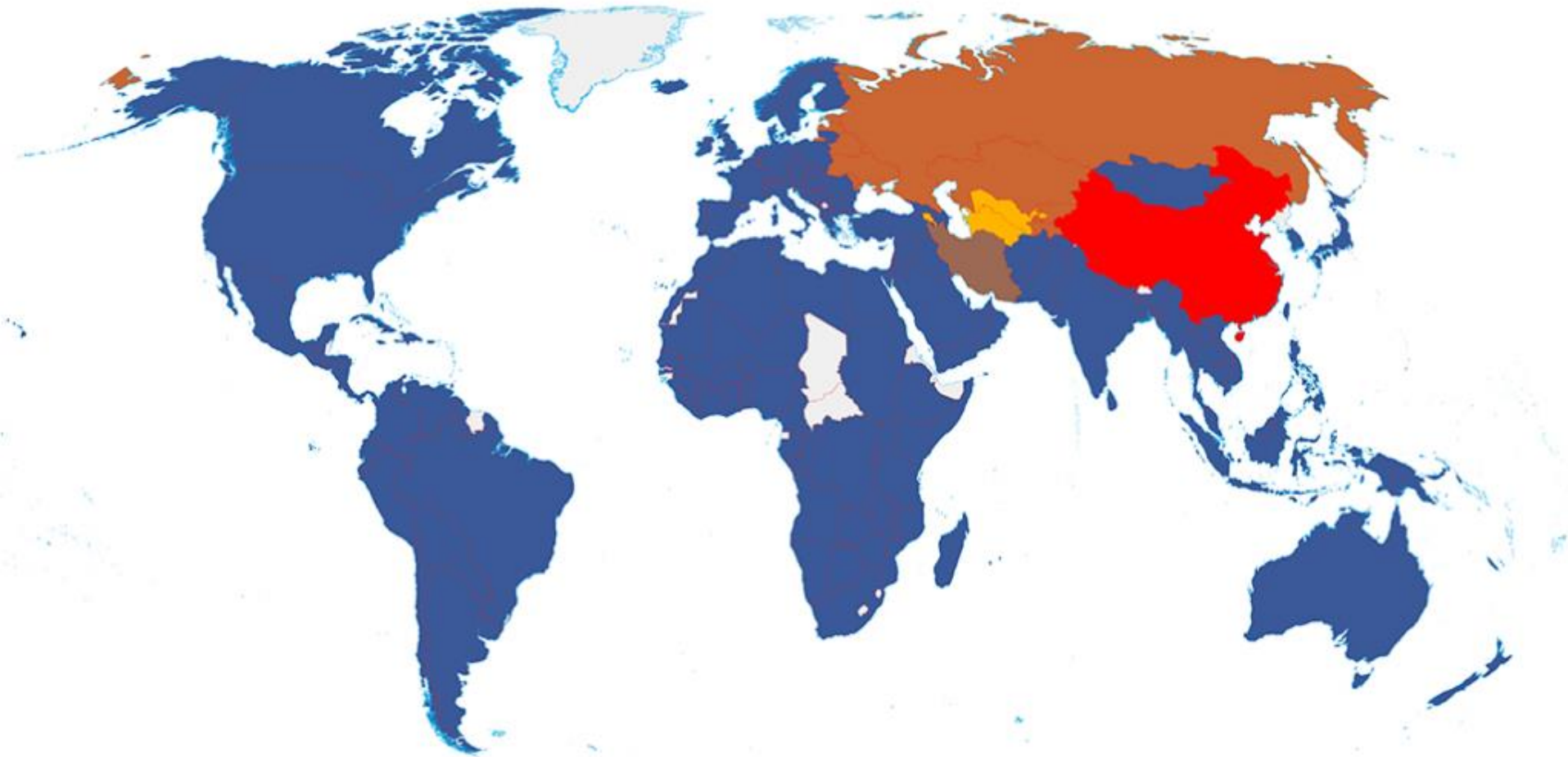


Pinterest



WORLD MAP OF SOCIAL NETWORKS

January 2019



Facebook

QZone

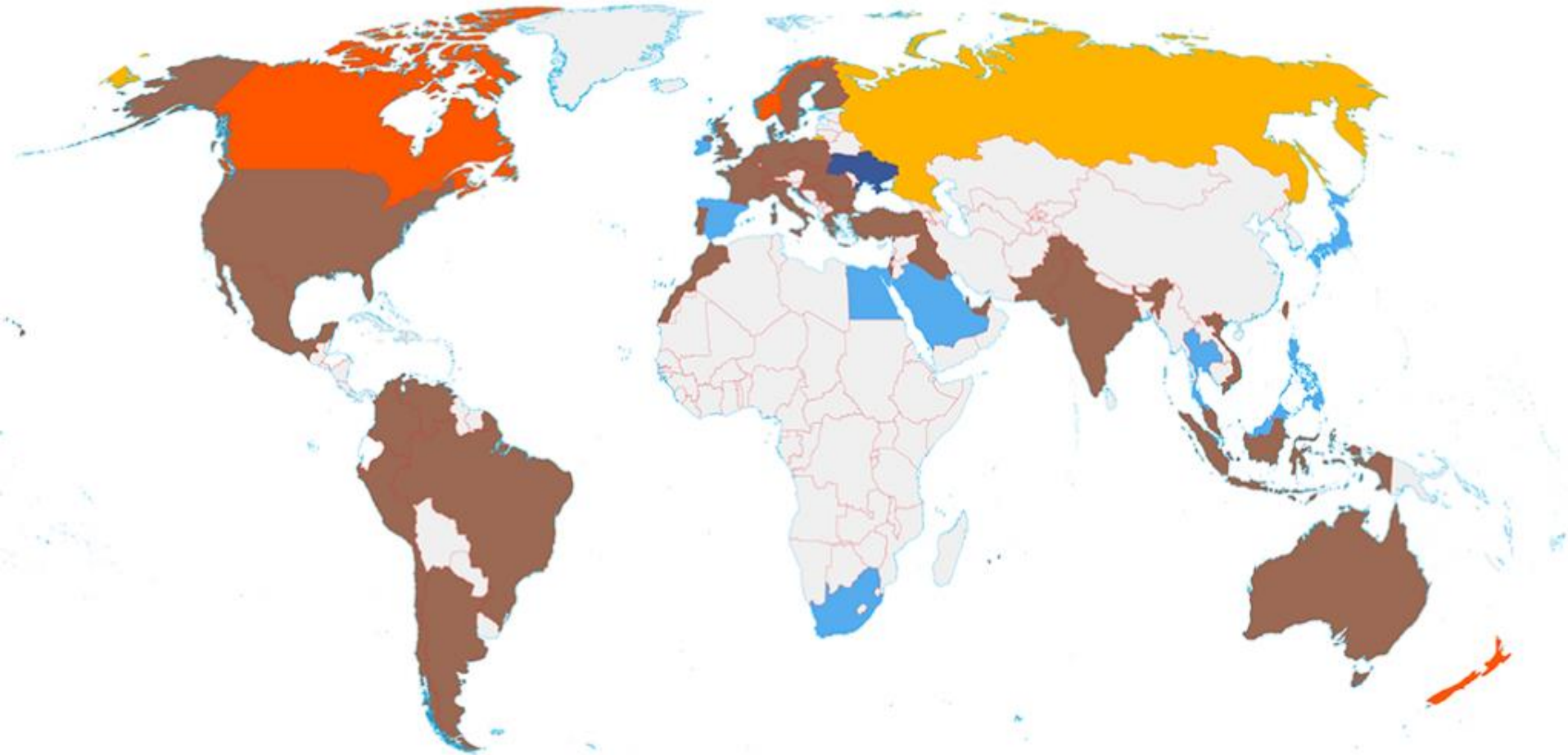
V Kontakte

Odnoklassniki

Instagram

WORLD MAP OF SOCIAL NETWORKS

Ranked 2nd - January 2019



Instagram

Twitter

Reddit

Odnoklassniki

Facebook

Picture-Sharing Social Media



facebook®



flickr™



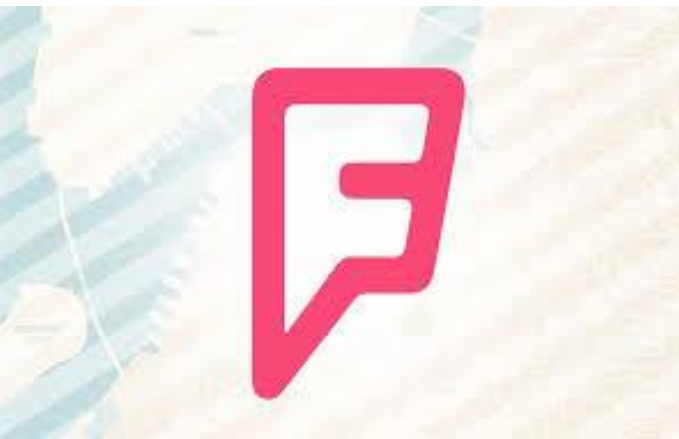
iCloud

photos

The Amazon smile logo, a white curved arrow pointing to the right, is positioned below the word "photos" on a blue background.

Google Photos

Local Social Media



Dating Social Media



Direct Messages - “DM me”



facebook
Messenger



Instagram



Google+



Pinterest

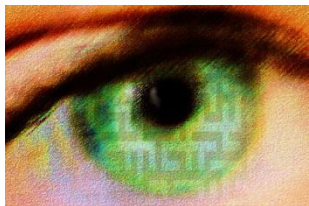
Messages in Multiplayer Games



Professional Social Media



WORDPRESS



Company Collaboration





facebook

December 2011

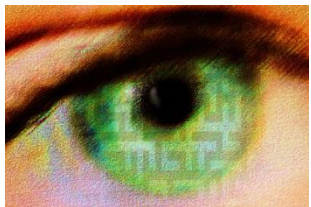
Facebook Produces Evidence

- Party Admissions - What Facebook data?
 - **Posts, E-mail, Friends**
- State of Mind - What Facebook data?
 - **Status Updates**
- Witness Credibility - What Facebook data?
 - **Posts, E-mail, Places, Friends, Contact Info**
- Witness Character - What Facebook data?
 - **Photos, Videos, Likes, Apps**



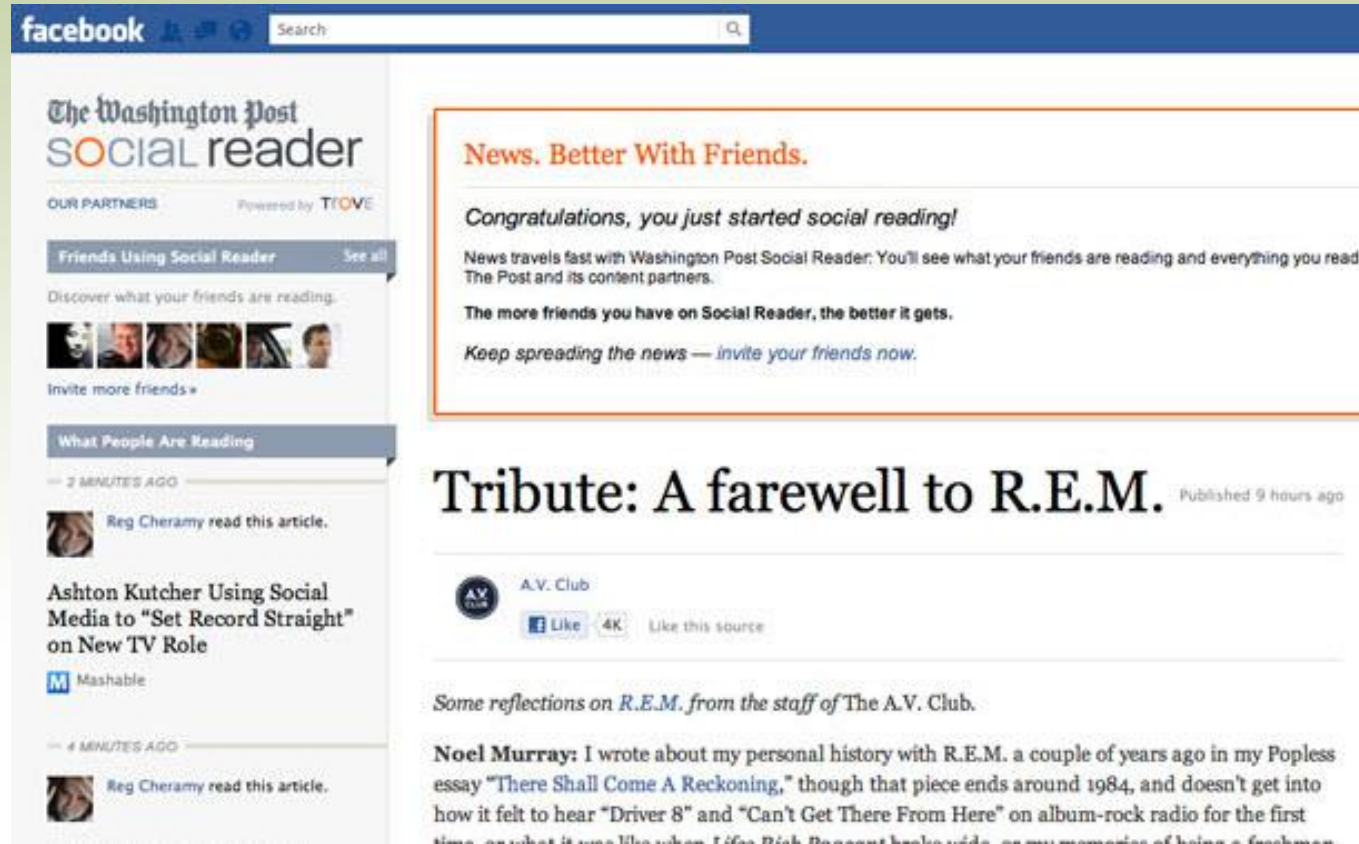
Why is Facebook the New Confessional?

- Speed and breadth amplify communication velocity
- Insecure communication
 - Privacy controls constantly changing and often misunderstood
 - Risk of impersonation by fake profiles – e.g. defamation
- Rapid, short and snappy communication
 - Not reviewed, nor proofread; often grossly inaccurate
 - Lacking context and precise meaning
 - Interpretation often left to reader
- Lack of control over content – often “goes viral”
- Tacitly encourages candor as key social behavior
 - Evidence often surprisingly relevant, incriminating, and powerful for impeachment

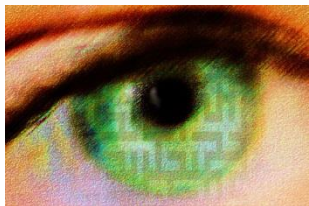


“Frictionless Sharing” – Oversharing w/ Automatic, Passive, Real-Time Updates

- Logging into web sites with Facebook identity can trigger automatic sharing on Facebook of activity on external sites:
 - Yahoo! News, Washington Post, The Guardian
 - Spotify, Rhapsody
 - Netflix, Hulu



The screenshot shows a Facebook Social Reader interface. At the top, the Facebook logo and search bar are visible. Below that, the "The Washington Post SOCIAL reader" header is present, along with "OUR PARTNERS" and "Powered by TLOVE". A section titled "Friends Using Social Reader" shows a list of friends' profile pictures and an "Invite more friends" link. Below this, a section titled "What People Are Reading" displays a list of articles. The first article is titled "Tribute: A farewell to R.E.M." and is published 9 hours ago by "A.V. Club". The article has 4K likes. The text of the article begins with "Some reflections on R.E.M. from the staff of The A.V. Club." and mentions "Noel Murray" and his personal history with R.E.M.



facebook Timeline

facebook



Search



Jane Smith

Home



Jane Smith

Update Info

View Activity



- Works at IDEO
- Studied at Stanford University
- Lives in Palo Alto, California
- Knows English, Spanish

About



Friends 116



Photos 6



Map 15



Likes 74

5

Now

August

July

2011

2010

2009

2008

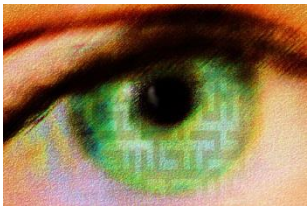
2007

2006

Born

Facebook – Privacy?

- Are Facebook wall postings discoverable?
- **Yes, regardless of privacy settings or controls, but why?**
- **ESI – Electronically Stored Information**
- No “Facebook privilege”; *Mackelprang v. Fidelity National Title Agency of Nevada, Inc.* 2007 WL 119149 (D. Nev. – 2007.)
- Information likely relevant to explore claims put at issue by government or opposing party*
- Overall trend judiciary moving toward greater permissiveness of social media e-discovery*
- Strong likelihood privacy concerns will be outweighed by weight and relevance of social media information



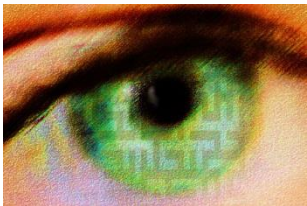
Social Media – Law Enforcement

“As a prosecutor, the first thing I do when I get a case is to Google the victim, the suspect, and all the material witnesses. I run them all through Facebook, MySpace, Twitter, YouTube and see what I might get. I also do a ‘Google image search’ and see what pops up. Sometimes there’s nothing, but other times I get the goods – pictures, status updates, and better yet, blogs and articles they’ve written.”

- A former Deputy District Attorney for Los Angeles County

“You find out about people you never would have known about before.”

- Dean Johnston, California Bureau of Narcotics Enforcement



Social Media – SMILE Conference

“Representatives from Twitter and Facebook say they regularly cooperate with police and supply information on account holders when presented with a search warrant.”

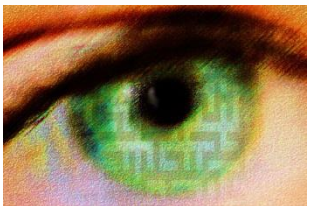
- Associated Press

SMILE
CONFERENCE

SOCIAL MEDIA the INTERNET and LAW ENFORCEMENT

Using Social Media to Improve
Law Enforcement and Engage Citizens

About the SMILE Conference: The SMILE Conference is the leading conference devoted to social media, Internet and law enforcement initiatives. The SMILE Conference has pioneered the adoption of social media by law enforcement agencies across the world for public outreach, crime prevention, and forensics. In conjunction with the ConnectedCops website, <http://connectedcops.net/>, the SMILE Conference has become both the go-to and most trusted source by law enforcement agencies worldwide.





Social Media – IACP

International Association of Chiefs of Police

- 81.1% of agencies surveyed use social media
- 66.8% of agencies have a Facebook page
- 35.2% of agencies have a social media policy
- 61.6% of agencies not using social media are considering adopting it



IACP
CENTER FOR
SOCIAL MEDIA



SUPPORTING THE NEEDS OF LAW ENFORCEMENT ONLINE

Search »

GETTING STARTED

TECHNOLOGIES

TOPICS

RESOURCES

DIRECTORY

NEWS

ABOUT THE INITIATIVE

BLOG

HOME | GETTING STARTED

+ SHARE THIS

SOCIAL MEDIA: AN INTRODUCTION

STRATEGY DEVELOPMENT

POLICY DEVELOPMENT

GETTING STARTED WITH SOCIAL MEDIA

There are several points to consider when developing a social media presence for your agency. This page breaks down the development process into four areas.

Prosecutors' Social Media Stories

Brash Facebook Posts Lead to Bank Heist Arrests

- Two people charged in staged Texas bank heist
- Facebook status update postings landed pair in custody
- Two days before robbery – “Get \$\$\$”
- Day after robbery – “Wipe my teeth with hundreds (sic)”
- Day after robbery – “U have to past the line sometimes!! To get dis money”
- Two days after robbery – “I’m rich”

- CNN.com, April 22, 2011 8:54 p.m.

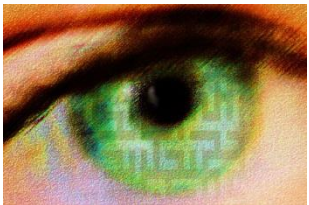


Prosecutors' Social Media Stories



MySpace Page Used Against Gang Suspect

- Charged with felony assault and misdemeanor weapons possession
- Defendant released on \$5,000 bail
- Prosecutor introduced 10 pages of MySpace photos
 - Wearing gang clothing
 - Giving gang signs
 - Standing with others in gang colors
- Based on photos and other evidence supporting likelihood of conviction
- Judge raised bail to \$50,000

- Buffalo News, Jan. 23, 2009



Social Media and OFP/HRO Violations

- Facebook “Poke” 
 - Tennessee woman subject OFP Oct. 2009
 - Poked female petitioner via Facebook
 - Arrested and charged with violating OFP
- Facebook “Friend Request”
 - Florida man contacted ex-wife twice
 - Arrested for violating OFP Aug. 2010
- MySpace “Friend Request” 
 - Constitutes violation OFP in Staten Island, NY
 - New York judge: MySpace simply different conduit for forbidden communication
 - People v. Fernino, 851 NYS2d 339, Feb. 13, 2008.



Criminal Defense Example – Robbery

FG/CH News November 11, 2009, 11:10 AM

His Facebook Status Now? 'Charges Dropped'

By DAMIANO BELTRAMI



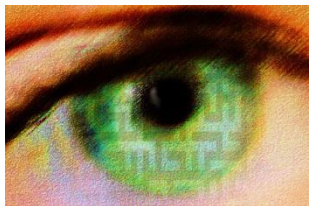
Damiano Beltrami

Facebook has become more than a diversion for Rodney Bradford.

Where's my pancakes, read Rodney Bradford's Facebook page, in a message typed on Saturday, Oct. 17, at 11:49 a.m., from a computer in his father's apartment in Harlem.

At the time, the sentence, written in indecipherable street slang, was just another navel-gazing, cryptic Facebook status update — words that were gobbledeygook to anyone besides Mr. Bradford.

But when Mr. Bradford, a skinny, short 19-year-old resident of the [Farragut Houses](#), was arrested the next day as a suspect in a robbery, the words took on a level of importance that no one in their wildest dreams — least of all Mr. Bradford — could have imagined. They became his alibi.

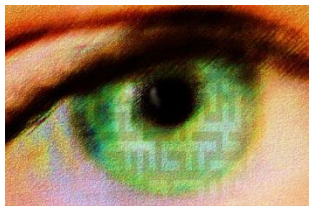


Criminal Defense Example – Statutory Rape

In *Ohio v. Gaskins*, a statutory rape case, the trial court permitted the defendant to introduce evidence that an underage complainant had held herself out on her MySpace page as an eighteen-year-old with experience in adult sexual relationships. Photos of the girl that she had posted were admitted along with witness testimony about their authenticity.

- John G. Browning, *The Lawyer's Guide to Social Networking*

State of Ohio v. Gaskins, 2007 WL 2296454 (Ohio Ct. App., Medina County, 2007).



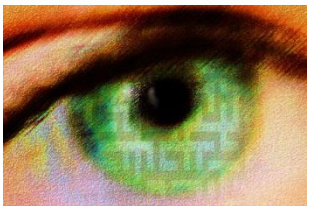
myspace
.com

Criminal Defense Example – Assault

D. Jesse Smith, a solo practitioner in Tucson, Ariz., said social networking sites can be helpful for defense lawyers. In a recent misdemeanor assault case, Smith said he was able to prove someone other than his client was the aggressor who started the fight because his MySpace page contained a video of him beating someone up.

“I think that’s why he was found not guilty”, Smith said of his client. “It’s a great source of potential impeachment evidence against witnesses being called by the state.”

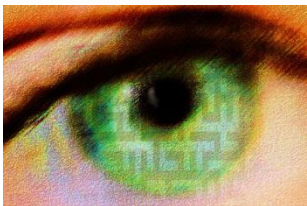
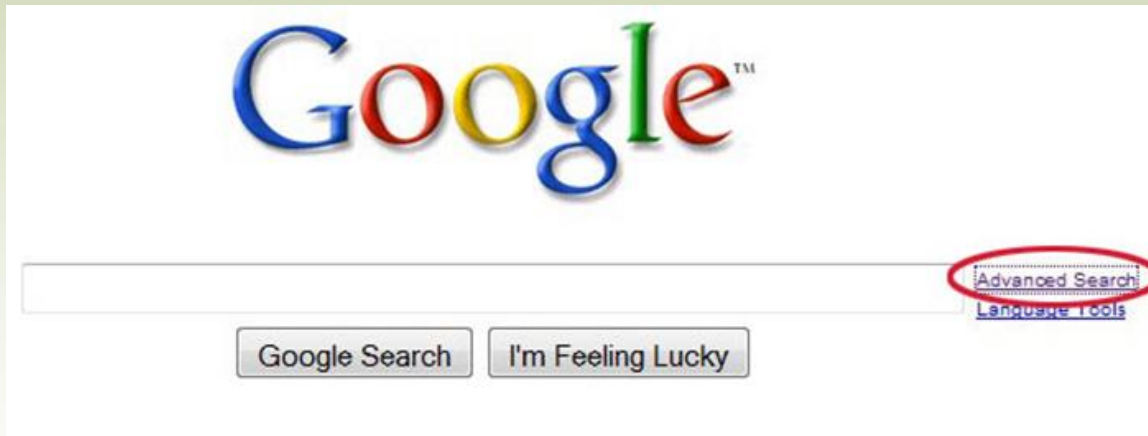
- Vesna Jaksic, “Finding Treasures for Cases on Facebook”, The National Law Journal, October 15, 2007



myspace
.com

Social Media Case Investigations

- Analysis
- Information Bases
- Online Preservation and Collection
- Admissibility

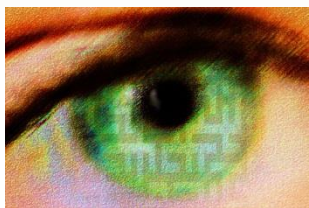


Internet Archive

- Wayback Machine
- web.archive.org
- Retrieve Copies of Public Web Pages Removed in the Past



- Admitted Based on Statement or Affidavit from Internet Archive Representative with Personal Knowledge of Contents
 - Procedure Available for Obtaining Affidavit
 - Useful Sample Available
- Or, Authenticated by a Knowledgeable Employee of Web Site



facebook

Graph Search

f Groups joined by people who like International Security Drive... 🔍

Larry Home 1 Find Friends 🌐 1

Larry Snow
Edit Profile

FACEBOOK

GRAPH SEARCH

- 14 Events
- Saved
- business
- isda
- Security
- International
- Business
- Police Driving 6
- EP Job Search 3
- Security Driver Mag... 20
- BlogAid Webmaster... 1
- Vehicle Dynamics I...
- Pages Feed 20+
- Live Video
- St. Joseph School ... 9

Public Group

William Montanaro is in this group · William likes International Security Drive...
Toniann Scotti Snow, Tony Scotti and 38 other friends are in this group...

Executive Security International

Closed Group
This group is for those interested in the happenings at Executive Security International. Ben Rakhman is in this group · Ben likes International Security Drive...
Tony Scotti, Steven Dana and 26 other friends are in this group

Executive Security and Close Protection

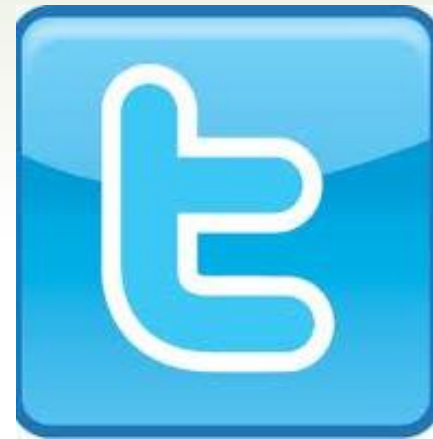
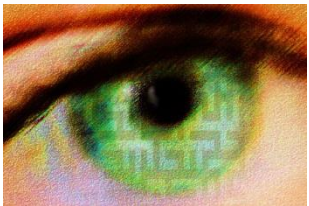
Closed Group

- TRENDING
- Abby Wambach**
1.8K people talking about this
 - Gable Tostee**
140K people talking about this
 - Darth Maul**
10K people talking about this
 - Chili's**
130K people talking about this
 - 2018 Buick Regal Wagon**
49K people talking about this
 - Sarah Hyland**
7K people talking about this
 - Voronezh, Russia**
16K people talking about this
 - Halo**
12K people talking about this
 - Cro**
14K people talking about this
 - Ch**
14K people talking about this
- SUGGESTED



Twitter Archive @ U.S. Library of Congress

- Every Public Tweet
- Between Twitter's inception in March 2006 and December 2017 archived digitally at Library of Congress
- Selective Tweets archived after January 1, 2018
- Twitter says, "very exciting that tweets are becoming part of history."
- New York Times: "your indiscretions will be able to be seen by generations and generations of graduate students."





Timeline

Timeline Flipbook List Map Embed

Add an Event

92% of police commanders from agencies...
Apr 8, 2010 11:40 PM

Mobile phone users comprise 91% of th...
May 24, 2010 5:01 PM

80 percent of U.S. mobile phone users...
Jul 2, 2010 2:30 PM

Mobile phone penetration will reach 100...
Apr 11, 2010 10:32 PM

Three-quarters of 12- to 17-year olds ...
Apr 23, 2010 10:08 AM

A study at University of Queensland...
Jun 11, 2010 2:59 PM

Volume of text message usage is doublin...
Apr 11, 2010 10:34 PM

Although teens make or receive about fiv...
Apr 23, 2010 10:09 AM

CNN reports that one in three teens se...
Jun 11, 2010 3:01 PM

Texting: The New Talk: Text messages ...
Apr 11, 2010 10:59 PM

Teenage girls send and receive about 80...
Apr 23, 2010 10:10 AM

The center of financial gravity in the c...
Jun 23, 2010 7:47 AM

81% of police commanders from agencies...
Mar 31, 2010 10:59 PM

22.7% of U.S. households are "wireles...
May 24, 2010 5:02 PM

CNN reports that in addition to texti...
Jul 2, 2010 2:32 PM

Deleted text messages and photos can be ...
Apr 28, 2010 10:11 AM

Within three years sales of smartphones ...
Jun 23, 2010 7:50 AM

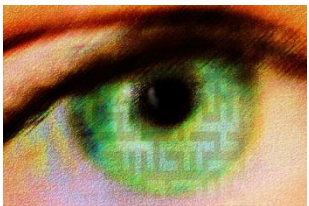
Europol and European Commission stud...
Mar 29, 2010 7:19 PM

"Textual harassment" is a growing aspect...
Jul 2, 2010 2:37 PM

April May June July

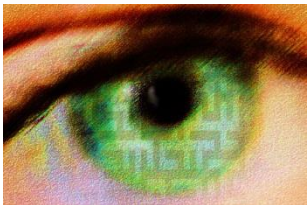
Online Preservation & Collection

- Attorneys are Capturing Basic Evidence by Printout
- Admission Possible, but Challenges are Increasing
- Legally Defensible Collection Issues are Mounting
 - Constantly changing content like wall posts, status updates, news feeds, and timelines
 - Capture of dynamic content like audio, video, voice, and animations
 - Capture of large size and scrolling content
 - Capture of application and app data



Online Preservation & Collection

- Foundation and Hearsay Problems Often Exist
 - Neutrality – Capture by litigants or counsel give rise to questions about integrity of collection; also counsel cannot serve as witness
 - Process – Accuracy of collection and proper documentation on consistent and repeatable methods used for capturing and securing content
 - Chain of Custody
 - Missing Metadata or References to Authenticate
 - Social Media Site name
 - Uniform Resource Locator (URL) a.k.a. web address
 - Date/Time Stamps from U.S. Atomic Clock; not collection PC
 - Internet Protocol (IP) address and geolocation data
 - Hash Codes for digital signature of evidence collection
 - Log files of tool actions; Key logging of investigator actions



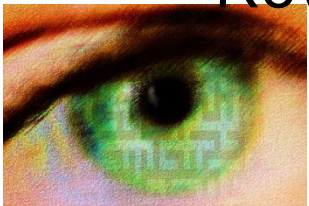
Social Media Admissibility?

- State v. Eleck
 - 2011 WL 3278663 (Conn.App. 2011)
 - Defendant charged with assault in first degree
 - Defense attorney impeached witness with printout of Facebook messages
 - Court rejected messages on authentication of authorship grounds citing “the general lack of security of the medium....”
 - Court advised, “it was incumbent on the defendant to advance other foundational proof to authenticate that the proffered messages did, in fact, come from Judway and not simply from her Facebook account.”



Social Media Admissibility?

- Griffin v. State of Maryland
 - Court overturned murder conviction
 - Pages allegedly printed from MySpace were not properly authenticated pursuant to Maryland Rule 5-901
 - Because someone other than the purported creator could have created the profile
 - And posted comment in question, when the State identified only date of birth of creator and her photograph
- Other Courts Erring on Side of Admissibility
 - Authentication Decided on Totality of Circumstances
 - Concerns about Contradictory Testimony on Identity of Posting Author Are Left for Jury to Weigh
 - Reversed Judge in Griffin Did the Same



Social Media – Discovery

- What ESI Available for Review?
- Evidence Strategies – Computer and Mobile Devices
- Requests for Evidence



Social Media:

What ESI Can We Get For Review?

Content

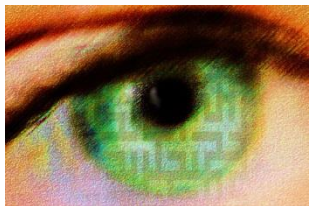
- Friends, Friends of Friends, Connections, Followers, etc.
- Status Updates, Relationship Status
- E-mail, Chat, Text Messages, Friend Requests, Pokes
- Timeline (Profile) – Name, Picture, Gender, Contact, Birthday
- Wall, Posts, Comments, Tags
- Likes, Reads, Views, Listens, etc.
- Networks, Groups, Events
- Photos, Videos, Audio, Music, Tags
- Apps, App Data, Games

Pushed Content

- E-mail Notifications with Metadata
- RSS Feeds with Metadata

Metadata

Site Names, Uniform Resource Locators (URLs)
Date/Time Stamps, Geolocation Information (Check-ins)
IP Logs, Login/Logout Logs



facebook

Evidence Example



John Carney

Facebook Profile: <http://www.facebook.com/profile.php?id=529647239>

Current City: Saint Paul, Minnesota

Website: www.carneyforensics.com

Email: jjc@alum.mit.edu

Birthday: 03/09/1954

Sex: Male

Interested In: Female

Relationship Status: In a relationship

Hometown: Saint Petersburg, Florida

Education: Boca Ciega High School

MIT

User Centered Design, Course IV - Media Lab, Computer Graphics

Hamline University School of Law - 2006

Computer and Technology Law, Dispute Resolution

Employers:

Hamline University

Adjunct Professor

Saint Paul, Minnesota

Professor of legal technology. Teach both introductory and advanced law office technology courses in Legal Studies program. Advise other faculty on the incorporation of technology offerings in the curriculum.

Carney Forensics

President

Saint Paul, Minnesota

Technology consultancy that focuses on mobile phone forensics, small scale digital device forensics, document and web mail forensics, telephony and audio forensics.

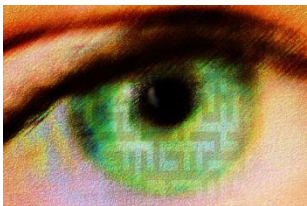
Profile

[Wall](#)

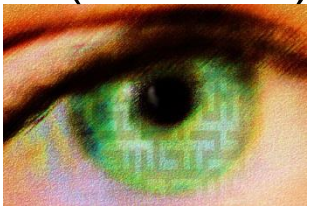
[Photos](#)

[Friends](#)

[Messages](#)



- Your profile (timeline) information (ex: your contact information, interests, groups)
- Wall (timeline) posts and content that you and your friends have posted to your profile (timeline)
- Photos and videos that you have uploaded to your account
- Your friend list
- Notes you have created
- Events to which you have RSVP'd
- Your sent and received messages
- Any comments that you and your friends have made on your Wall (timeline) posts, photos, and other profile (timeline) content



- **IP addresses:** Any IP addresses we have stored (this won't be all of the IP addresses that have ever accessed your account)
- **Login info:** A list of the logins we have stored (this won't include every login during your account's history)
- **Log out info:** The IP addresses from which you logged out
- **Pending friend requests:** Friend requests you sent and friend requests you received but haven't accepted or denied
- **Account status changes:** Dates when your account was reactivated, deactivated, disabled or deleted
- **Poke info:** Information about the pokes you've exchanged
- **Events info:** Events you accepted, declined, and responded maybe to
- **Other profile (timeline) info:** The **mobile phone numbers** you've added to your account
- Your **city and hometown** (whatever is currently listed)
- The names of the **family members** you've listed on your account
- Your **relationship info** (names and statuses)
 - A list of the **languages** you've added to your profile
 - A history of any changes you've made to the **name** on your account



Evidence Strategies - Computer

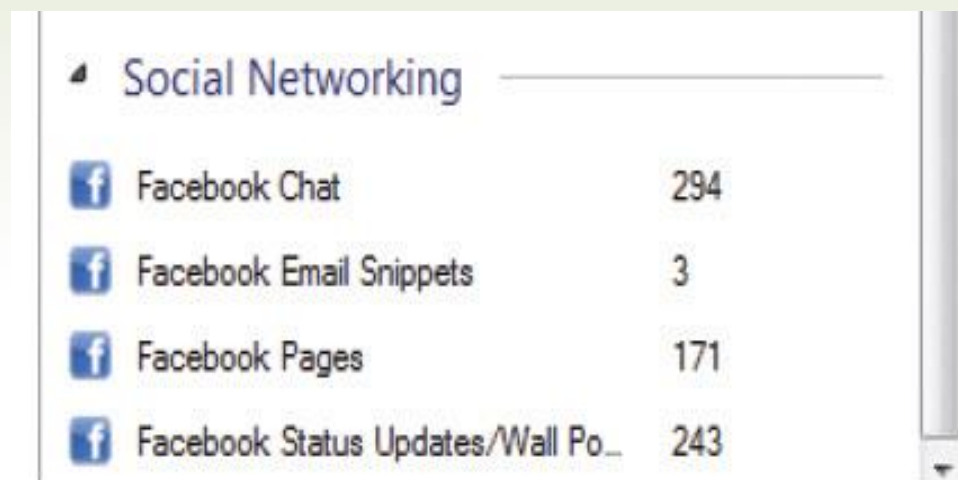
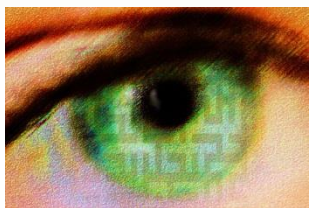
- If Opposition's Evidence is Insufficient
 - Social Media Evidence is Missing
 - Evidence Destruction is Suspected
- Then Look Outside Facebook
 - E-mail Notifications
 - RSS Containing Content & Time Stamps Pushed Out by Social Media Site
- Or, Move for Warrant / Court Order for Computer Forensic Analysis of Opposition's Hard Drives
- And Recover Social Media Evidence
- What Evidence? What Will It Look Like?



Social Media Evidence Recovery

Scan Computer Hard Drive to Recover Lost and Deleted Social Media Evidence:

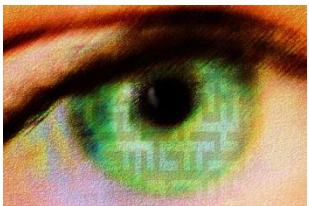
- Facebook Status Updates
- Facebook Wall Posts
- Facebook Emails
- Facebook Email Snippets
- Facebook Chat Messages
- Facebook Web Page Fragments – Photo Galleries, Groups
- Google+ Live Chat
- Twitter Status Artifacts
- LinkedIn Email Fragments
- Flickr Photo Uploads



Social Networking	
Facebook Chat	294
Facebook Email Snippets	3
Facebook Pages	171
Facebook Status Updates/Wall Po...	243

Evidence Strategies - Mobile

- If Opposition's Evidence is Insufficient
 - Social Media Evidence is Missing
 - Evidence Destruction is Suspected
- Then Look Outside Facebook
 - E-mail Notifications
 - RSS Containing Content & Time Stamps Pushed Out by Social Media Site
- Or, Move for Warrant / Court Order for Mobile Device Forensic Analysis of Opposition's Phones & Tablets
- And Recover Social Media Evidence
- What Evidence? What Will It Look Like?



Object information



Facebook

Object details:

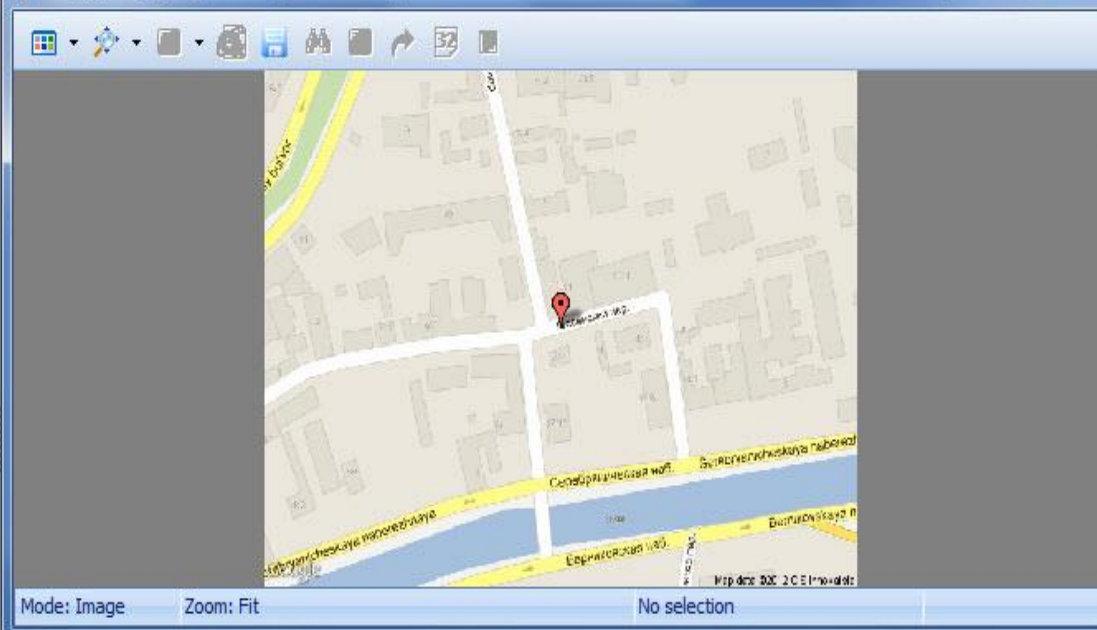
Source Table: user_values
 Source File: fb.db
 Time stamp (UTC): 26.09.2011 6:05:14
 Coordinates: [55.7504807;37.64888](#)
 Location: Arthouse Squat Forum
 Street: Тессинский переулок, 2-6/19
 City: Moscow
 Country: Russia
 ZIP: 109028
 Venue URL: <http://www.facebook.com/p/>
 Details: С 24 сентября по 22 октября, в рамках спецпроектов 4-ой Московской биеннале современного искусства, в уникальном для Мос...
 Description: Искусство/Развлечения/Ночная жизнь • 25 были здесь.
 Image URL: <http://profile.ak.fbcdn.net/hp/>
[View full text](#)

Source files (2)

[fb.db](#)
[webviewCache.db](#)

User data (30) Application files (12)

Time stamp (UTC)	Coordinates	Location	Street	City	Country	ZIP	Category
26.09.2011 6:05:14	55.7504807;3...	Arthouse Squat Forum	Тессинский переулок, 2-6/19	Moscow	Russia	109028	Account (1)

<http://maps.google.com?q=55.7504807,37.64888> - External view window


Mode: Image

Zoom: Fit

No selection

Time stamp (UTC): 26.09.2011 6:05:14
 Coordinates: [55.7504807;37.64888](#)
 Location: Arthouse Squat Forum
 Street: Тессинский переулок, 2-6/19
 City: Moscow
 Country: Russia
 ZIP: 109028
 Venue URL: <http://www.facebook.com/pages/Arthouse-Squat-Forum/265566903470637>
 Details: С 24 сентября по 22 октября, в рамках спецпроектов 4-ой Московской биеннале современного искусства, в уникально...
 Description: Искусство/Развлечения/Ночная жизнь • 25 были здесь.
 Image URL: http://profile.ak.fbcdn.net/hprofile-ak-snc4/276985_265566903470637_5828806_n.jpg

Last check-in (1)
 Friends (12)
 User profiles (1)
 Messages (2)
 Hans C. Palacios (1)
 Madonna Stevens (1)
 Web cache (13)
 application/x-javascript (4)
 text/css (2)
 image/png (6)
 image/gif (1)

Category description

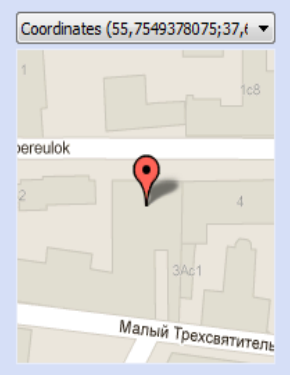
Last check-in category displays the information about the last check-in of the user.
Time stamp (UTC) column shows the date and time of the last check-in.
Coordinates column indicates the geo coordinates of the place where the last check-in was made.
Location column displays the place where the last check-in was made.
Street column shows the street where the last check-in was made.
City column indicates the city where the last check-in was made.

Object information



Object details:
 Source table: threads
 Source File: threads_db
 ID: 12
 Remote Party: Madonna Stevens
 Sender: Patrick Payge
 Text: What about going to the cinema?
 Source: mobile
 Time stamp (UTC): 06.12.2011 13:00:47
 Coordinates: [55.7549378075;37.64529469](#)

Maps



Source files (3)

[prefs_db](#)
[threads_db](#)
[users_db](#)

Application files (17) User data (48)

ID	Remote Party	Sender	Text	Source	Time stamp (UTC)	Coordinates	Category
4	Alain Pascua	N/A	N/A	N/A	N/A	N/A	Account (1)
5	Alain Pascua	Patrick Payge	Hi alain	mobile	06.12.2011 12:39:50	N/A	Activity (4)
6	Alain Pascua	Patrick Payge	How are you?	mobile	06.12.2011 12:41:07	N/A	Contacts (12)
7	Alain Pascua	Patrick Payge	This is the view from my window	mobile	06.12.2011 12:43:09	55,7503175;37,6451264	Messages (31)
8	Madonna Stevens	N/A	N/A	N/A	N/A	N/A	
9	Madonna Stevens	Patrick Payge	What's up?	web	26.09.2011 6:04:28	N/A	
10	Madonna Stevens	Patrick Payge	Meet as usual	mobile	07.11.2011 11:25:04	N/A	
11	Madonna Stevens	Patrick Payge	How is your business?	mobile	06.12.2011 12:45:11	55,75042915;37,64787765	
12	Madonna Stevens	Patrick Payge	What about going to the cinema?	mobile	06.12.2011 13:00:47	55,7549378075;37,64529469	
13	Patrick Payge	N/A	N/A	N/A	N/A	N/A	
14	Patrick Payge	Patrick Payge	Holla friend!	mobile	23.11.2011 8:44:57	N/A	
15	Patrick Payge	Patrick Payge	A nice evening out there	mobile	25.11.2011 12:33:09	55,655489328757;37,744223...	
16	Patrick Payge	Patrick Payge	Are you kidding?!	mobile	25.11.2011 12:34:07	N/A	
17	Patrick Payge	Patrick Payge	No i am seruos	mobile	06.12.2011 12:51:08	55,7503175;37,6451264	
18	Patrick Payge	Patrick Payge	Are you ok	mobile	06.12.2011 12:59:36	N/A	
19	Patrick Payge	Patrick Payge	Here is my new phone	mobile	06.12.2011 13:00:15	55,7549378075;37,64529469	
20	Tel Burdeos	N/A	N/A	N/A	N/A	N/A	
21	Tel Burdeos	Patrick Payge	Hey how are you girl?	mobile	06.12.2011 13:02:55	55,7549378075;37,64529469	
22	Kikosu Umaru	N/A	N/A	N/A	N/A	N/A	
23	Kikosu Umaru	Kikosu Umaru	Hope you are doing well! Have smth new for you. Call me!	web	16.09.2011 7:23:30	N/A	
24	Kikosu Umaru	Patrick Payge	I lost my phone cant call	mobile	06.12.2011 12:44:09	55,7503175;37,6451264	
25	Kikosu Umaru	Patrick Payge	Hey guys	mobile	06.12.2011 13:05:23	55,7549378075;37,64529469	
26	Kikosu Umaru	Kikosu Umaru	too bad my dear	web	09.12.2011 9:21:59	N/A	
27	Kikosu Umaru	Kikosu Umaru	what are you doing this weekend?	web	09.12.2011 9:22:17	N/A	
28	Kikosu Umaru	Patrick Payge	Very busy	mobile	09.12.2011 9:42:27	55,7503175;37,6451264	
29	Kikosu Umaru	Patrick Payge	My keyboard	mobile	09.12.2011 9:45:13	55,7503175;37,6451264	
30	Kikosu Umaru	Patrick Payge	my home	mobile	09.12.2011 9:46:27	55,7503175;37,6451264	

Details:

ID: 12
 Remote Party: Madonna Stevens
 Sender: Patrick Payge
 Text: What about going to the cinema?
 Source: mobile
 Time stamp (UTC): 06.12.2011 13:00:47
 Coordinates: [55.7549378075;37.64529469](#)

Object information



YouTube

Purchase date: N/A
 MD5 Hash:
 b609e71f7c6982e0600cc405823dc310

Object details:
 URL: <http://www.youtube.com/watch>

Application log (1)

17.04.2011

Source files (3)

[applicationstate.plist](#)
[ADDDataStore.sqliteb](#)
[com.apple.youtube.plist](#)

Applications		Applications activity					
Icor	Name	Identifier	Container	MD5 Hash			
15	Fring	com.Fringland.Fring	c:\private\var\mobile\Applications\com.Fringland.Fring	07628060dc8d1256edf1898282cbfc46			
1	Sup Live Journal	com.sup.livejournal	c:\private\var\mobile\Applications\com.sup.livejournal	57dfa81ec4e9d747b8f204959c26c1ab			
3	AIM	com.aol.aim	c:\private\var\mobile\Applications\com.aol.aim	c0c078f4d0f639df6c198f8c10f63a7			
0	Twitter	com.atebits.Tweetie2	c:\private\var\mobile\Applications\com.atebits.Tweetie2	6104b434e13918f6aa11c2737f4cac3d			
1	YouTube	com.apple.youtube	N/A	b609e71f7c6982e0600cc405823dc310			
2	LinkedIn	com.linkedin.LinkedIn	c:\private\var\mobile\Applications\com.linkedin.LinkedIn	992f71deae7cad59c62622c46f773727			
1	Echofon for Twitter	net.naan.TwitterFon	c:\private\var\mobile\Applications\net.naan.TwitterFon	1e52a0c35bb1f5ccf48141c2d94c7d73			
1	eBuddy	com.ebuddy.pushmessenger	c:\private\var\mobile\Applications\com.ebuddy.pushmess...	baac34b9beb837178bb0512b946d41c7			
3	Google Earth	com.google.b612	c:\private\var\mobile\Applications\com.google.b612	daeb691190e22d9cd3990a5edc514472			
0	MySpace	com.myspace.iPhone	c:\private\var\mobile\Applications\com.myspace.iPhone	6cc35a15eb1d4178740488235d510e7c			
0	ICQ	com.icq.icqfree	c:\private\var\mobile\Applications\com.icq.icqfree	6486dc2ec7eac85f34f79a21fa2bd82			
1	Flamingo	com.iconfactory.Flamingo	c:\private\var\mobile\Applications\com.iconfactory.Flamingo	c944bf131e6a7d2fe326dfc5054a2f28			
0	Price Negotiator	com.priceline.negotiator	c:\private\var\mobile\Applications\com.priceline.negotiator	4448e99e0b64b3977ae0606b601e62b9			

YouTube

User data (5) Application information (1) Application files (3) Application log (1)

URL	Category
http://www.youtube.com/watch?v=eXOnYckqMJU	History (5)
http://www.youtube.com/watch?v=UcJspaD4rKI	
http://www.youtube.com/watch?v=bbhGZRny...	
http://www.youtube.com/watch?v=dDpb81HaOs	
http://www.youtube.com/watch?v=8d6voO-r...	

Object information



Object details:
 First name: Galina
 Venue name: The Hard Rock Cafe Times Square
 Coordinates: 40.756659;-73.986421
 Time stamp (UTC): 14.05.2011 0:07:39
 Full name: Galina
 User profile: https://foursquare.com/...
 Mayor: No

Application information (43) Application files (10) Application log (19) **User data (2787)**


First name	Venue name	Coordinates	Time stamp (UTC)	Lat	Category
Galina	Шоколадница@Домодедово	55.413944;37.902258	13.05.2011 6:20:42		Account (1)
Galina	The Hard Rock Cafe Times Square	40.756659;-73.986421	14.05.2011 0:07:39		Contacts (494)
Galina	toy R us	40.756689;-73.986265	14.05.2011 0:11:37		Friends (4)
Galina	Hard Rock Cafe Orlando	28.4737181569987;-81.4675283432007	15.05.2011 3:07:46		Other (490)
Galina	Hard Rock Live Orlando	28.473773;-81.468224	15.05.2011 3:09:36		Check-ins (110)
Galina	Universal Studios Florida	28.474915891274;-81.4667558670044	15.05.2011 3:11:31		Owner (57)
Galina	Hard Rock Hotel	28.4727002333333;-81.46646095	15.05.2011 3:16:22		Friends (8)
Galina	Lagoon Pool @ Loews Royal Pacific R...	28.4676391;-81.4671354	15.05.2011 17:10:52		Other (45)
Galina	Loews Royal Pacific Resort	28.4684932360669;-81.4671206474304	15.05.2011 17:12:38		Top places (10)
Galina	CEIC Digital Investigations Conferen...	28.467238;-81.465719	15.05.2011 17:24:26		Shouts (3)
Galina	Loews Royal Pacific Resort	28.4684932360669;-81.4671206474304	15.05.2011 17:26:59		Owner (2)
		28.46568;-81.467409	15.05.2011 17:27:39		Friends (1)
		28.467238;-81.465719	15.05.2011 17:28:28		Tips (436)
		28.467238;-81.465719	15.05.2011 17:31:50		Owner (7)
		28.3712239380494;-81.5150409936905	15.05.2011 21:44:09		Other (429)
		28.3713513802273;-81.5159046649933	15.05.2011 21:44:35		Venues (1732)
		28.371869;-81.516859	15.05.2011 21:48:29		Categories (1487)
		28.467238;-81.465719	16.05.2011 13:22:00		Photos (73)
		28.467238;-81.465719	16.05.2011 13:41:31		Other (172)
		28.467238;-81.465719	16.05.2011 16:41:45		Google analytics (session) (1)
		28.4684932360669;-81.4671206474304	16.05.2011 16:46:45		
		28.469302;-81.467556	16.05.2011 16:50:41		
		28.467238;-81.465719	16.05.2011 16:51:20		
		28.467238;-81.465719	16.05.2011 17:55:59		
		28.467238;-81.465719	16.05.2011 20:36:15		
		28.467238;-81.465719	17.05.2011 17:23:38		
		28.467238;-81.465719	17.05.2011 17:27:58		

- Account (1)
- Contacts (494)
 - Friends (4)
 - Other (490)
- Check-ins (110)**
 - Owner (57)
 - Friends (8)
 - Other (45)
- Top places (10)
- Shouts (3)
 - Owner (2)
 - Friends (1)
- Tips (436)
 - Owner (7)
 - Other (429)
- Venues (1732)
 - Categories (1487)
 - Photos (73)
 - Other (172)
- Google analytics (session) (1)

http://maps.goo... 40.756659, -73.986421 - ...

Web Images Videos Maps

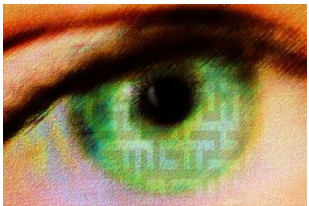
Google maps



2011 Google Map data ©2011 Google, Sanborn - Terms of Use Report a problem

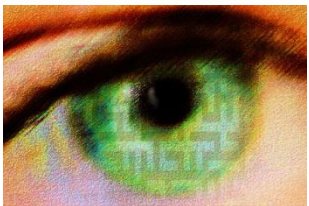
Requests for Evidence

- Social Media Evidence is Electronically Stored Information (ESI) and Discoverable
 - E.E.O.C. v. Simply Storage Management, LLC
- Can Place Litigation Hold on Social Media with Preservation Letter to ISP for Evidence Protection
- Obtain Warrant/Court Order for Opposition's Production of Social Media Evidence



Requests for Evidence

- Defense Can Move to Compel Signed Consent Releases from Subscriber or Party to Communication for Subpoena
 - Flagg v. City of Detroit
 - O'Grady v. Superior Court
- Defense Can Request Government's Social Media Evidence
 - FRCP 16(a)
 - MRCP 9.01
 - Brady v. Maryland (SCOTUS 1963)



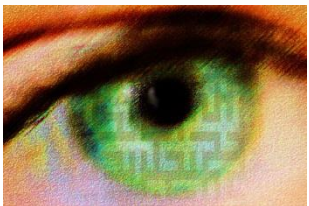
Requests for Evidence

- Or, Obtain Court Order for Opposition's Disclosure of Account Identification
 - Username
 - Password
 - 2FA token/code
- With Order Expert Can Forensically Collect Evidence Directly from Social Media Account



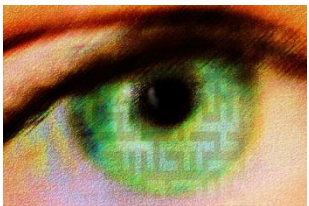
Search Warrants

- Social Media ISPs are Cooperative with Government
- Compliance Guides Written for Law Enforcement
- Explain How to Respond to Types of Processes
 - Subpoenas
 - Search Warrants
 - National Security Letters
 - 2703(d) Orders
 - Wiretap Orders
 - Trap-and-Trace Orders
 - Available from Facebook, Instagram, Twitter, Microsoft, Skype, Google, YouTube, Snapchat, Pinterest, Tumblr, Photobucket, Craigslist, Yahoo!




Subpoenas

- Stored Communications Act, 18 U.S.C. § 2701 (1986)
 - Disclosure Only to Governmental Entities
 - Prohibits Disclosure of “Communications Content”
 - Does Not Prohibit Disclosure of New Information Types Not Contemplated by Statute
 - Images and Photos
 - Audio and Voice
 - Video
 - Links
 - Metadata, e.g. IP Logs

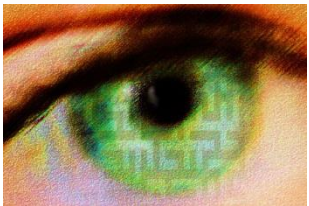


Subpoenas

- Move for Court Order for Subpoena to Serve Social Media ISPs for Production of Documents and Data
 - FRCP 17(c) MRCP 22.01
 - ISPs Uncooperative, Except by Subscriber Consent
 - Social Media Subpoena Compliance Lawyers Resist All but Law Enforcement
 - “We’re itching for that fight. We don’t want to have to deal with these requests.” –Facebook General Counsel
 - Signed Consent Release from Subscriber or Party to Communication Might Help
 - Facebook Subpoena Must Be Domesticated in Calif.
-  Facebook Charges Substantial Fees
- Per User Account
 - For Notarized Declaration

Social Media – Legal Ethics

- Communications with Represented Party
- Communications with Unrepresented Third Party
- Use of Agents, Non-lawyer Assistants
- Advice to Clients on Use of Social Media
- Failure to Preserve Relevant Evidence
- Remember to Check Terms of Service



Social Media – Legal Ethics

- Should Lawyer “Friend” Opposing Party to Get Past Privacy Controls to Obtain Facebook Evidence?
- Should Your Paralegal or Investigator Do It?
- What Else is Practice Called?
 - “Faux Friending”
 - “Pre-texting”
 - “Opposition Research”
- Is It Ethical?
- Will You Be Sanctioned?
- Will Your Evidence Be Admissible?



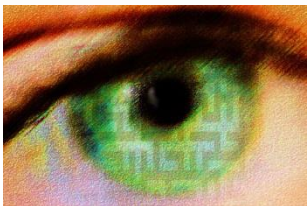
Social Media – Legal Ethics

- Lawyer may not attempt to gain access to social media site under false pretenses, with fictitious identity
- Violates Rule 8.4(c) on dishonesty, fraud, deceit
- Violates Rule 4.2 on communications with represented party without other lawyer's consent
- Rules 5.3 & 8.4(a) eliminate agents (paralegal, investigator)
- Oregon Ethics Opinion 2013-189
 - Viewing publicly accessible content of represented party is fair game
 - Like reading a book or magazine article
- San Diego County Bar Assoc. Opinion 2011-2
 - High ranking employees of corporation are treated as represented parties, cannot "friend" to get access



Social Media – Legal Ethics

- What about unrepresented third parties or witnesses?
- May violate Rule 4.3 on communications with unrepresented third parties or witnesses based on lawyer's role or partiality
- Could violate Rule 8.4(c) on dishonesty, fraud, deceit
- Ethics opinions in Oregon, Kentucky, and New York do not permit agents to engage in false or deceptive tactics to circumvent social media privacy settings
- Oregon Ethics Opinion 2013-189
 - Viewing publicly accessible content of unrepresented party is fair game
- Philadelphia & San Diego County Bar Associations
 - Lawyers must affirmatively disclose their reasons for communicating with third parties



Social Media – Legal Ethics

- Should lawyers advise clients on their use of social media?
- EEOC v. Original Honeybaked Ham shows damaging outcome of publicly sharing posts on social media
- New York County Lawyers' Association Ethics Op.745
 - Obligation may exist in competent representation to review social media and advise client
 - Turn on or maximize privacy restrictions
 - What information is wise to post or not post in public or private social media pages
 - What may be kept or removed from client's pages



Social Media – Legal Ethics

- Balance duty to review and advise with failure to preserve relevant social media evidence
- Avoid sanctions and adverse inference instructions
- Use care to avoid spoliation by deleting or cleaning
- Be careful with deactivating a Facebook account
- Use care changing Facebook profile picture
- Don't let clients make mistakes with their social media
- Don't fail to preserve rare, but relevant social media
 - Games, Dating, Company Collaboration
 - Messages, Locations, Audio, Documents



Facebook – Terms of Service

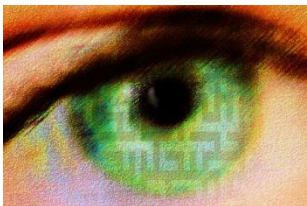
Who can use Facebook

When people stand behind their opinions and actions, our community is safer and more accountable. For that reason, you must:

- Use the **same name** that you **use in everyday life**.
- Provide **accurate information** about yourself.
- **Create only one account** (your own) and use your timeline for personal purposes.
- **Not share your password**, give access to your Facebook account to others, or **transfer your account** to anyone else (without our permission).

We try to make Facebook broadly available to everyone, but **you cannot use Facebook** if:

- You are under 13 years old.
- You are a convicted sex offender.
- We previously disabled your account for violations of our terms or policies.
- You are prohibited from receiving our products, services, or software under applicable laws.



Lawyers Impact Admissibility

- **Awareness** - Digital Evidence is Everywhere
- People's Lives are in Social Media and Web Mail Accounts, their Mobile Phones, and Computers
- Evidence is Often Relevant, Pivotal to Litigating Cases
- Have You Thought about Where Potential Admissible Evidence Might Be?



Lawyers Impact Admissibility

- **Timeliness is Everything!**
- Impacts Online Evidence Capture, Authentication, and Admissibility
- Find, Collect, and Analyze Evidence Early – Before:
 - Volatile and Impermanent Content Changes
 - Privacy Controls are Tightened
 - Cooperative, Third Party Witnesses are Defriended
 - Wall Posts, Photos, Videos, Messages are Deleted
 - Social Media Account is Terminated



Questions & Answers

Carney Forensics

“Digital Evidence is Everywhere”

Cell Phones / Smart Phones

Smart Tablets

Computer Forensics

GPS Devices

Social Media / Web Mail

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