

# SOCIAL MEDIA INVESTIGATIONS: DON'T MISS THE BOAT

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SOCIAL MEDIA INVESTIGATIONS  
SURVEILLANCE/ SUBROSA  
RECORDS RETRIEVAL  
PROCESS SERVING  
ASSET LOCATES  
COURT FILING

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## OBJECTIVES

- Help you see why SMI's are important
- Help you see why they need to be done properly
- Provide you with some basic tools and skills

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## WHY SHOULD YOU BE CONDUCTING SMI'S

- Facebook: 2 billion active monthly users 
-  ➤ Twitter: 1.3 billion registered users, 100 million daily users
- Instagram: 500 million monthly active users 
-  ➤ LinkedIn, Pinterest, Snapchat, Flickr, YouTube, Reddit, Vine, Tumblr, Google+, VK, and on and on.....

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## WHAT KINDS OF THINGS ARE PEOPLE POSTING?

- Where they are going
- What they are doing
- Family relationships
- Social relationships
- Work information
- Romantic relationships
- Religious views
- Political views
- Racist viewpoints
- Crimes they are committing



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## HOW EVIDENCE COLLECTION HAS CHANGED

- Surveillance v. SMI
  - SMI produces the same and sometimes better intel
  - SMI make surveillance more productive
- The "Person of Interest" effect
  - This is basically the same kind of work we've always done, just in a different way.
- Anything found with SMI is **EVIDENCE!!!**



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## HOW TO LOCATE EVIDENCE

- Avoid using unlawful methods
  - i.e. "friending" represented parties or guessing passwords
  - **DO NOT** use your personal account
  - Either use a blank account or a good "decoy"
- **REAL** internet searching
  - Using OSINT tactics
  - Boolean search terms - use your "\*" and "
- Thoroughly searching the accounts of friends and family members
- Searching for "no-public" content

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## HOW TO LOCATE EVIDENCE

For those who think their Facebook content is "Private"

<https://findmyfbid.com/>

- [www.facebook.com/search/usernumber/photos-of](https://www.facebook.com/search/usernumber/photos-of)
- [www.facebook.com/search/usernumber/photos-commented](https://www.facebook.com/search/usernumber/photos-commented)
- [www.facebook.com/search/usernumber/stories-by](https://www.facebook.com/search/usernumber/stories-by)
- [www.facebook.com/search/usernumber/stories-tagged](https://www.facebook.com/search/usernumber/stories-tagged)

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## HOW TO FIND DELETED POSTS

- Deleted content won't be available on most of the major platforms.
- Look for who else might have what you're looking for.
- Can't retrieve, but active monitoring may be able to preserve them.
  - Ms. Drunk and disorderly and her uncle
- The way back machine

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## PROPER PRESERVATION

- **NO SCREEN PRINTS!!!**
- Document who found the evidence, when they found it, and how they found it
- Extract metadata
  - MD5 Hash = 32 character hexadecimal string AKA digital fingerprint
  - The who, when, and where of the post

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## HAZARDS OF DOING AN "AMATEUR" SMI

- By the time the information becomes relevant, it might be gone
- Ineligibility to testify
- Good content missed
- Information mis-interpreted
- Authentication issues



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## CASE LAW RE: INTERNET/SOCIAL MEDIA INVESTIGATION

- **Moroccanoil v. Marc Anthony Cosmetics**- Screenshots of Facebook posts are inadmissible
- **Tienda v. State Of Texas**- Specific indicia used to authenticate social media evidence
- **Thompson v. Autoliv asp, Inc.**- Requests for production must be narrowly construed
- **Romano v. Steelcase Inc.**- Parties must turn over posts if requested properly
- **Katz v. United States**-use of decoy accounts is acceptable

[www.boscolegal.org/case-law-relevant-social-media-investigations](http://www.boscolegal.org/case-law-relevant-social-media-investigations)

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## SUBPOENAS FOR SOCIAL MEDIA INFORMATION

- Stored Communications ACT – SCA (18 U.S. Code 2701)
  - Protects personal information stored by ISP's
  - Prohibits ISP's from knowingly disclosing information—18 U.S. Code 2702(a)
  - Only exception is disclosure to government for criminal investigations
- Can Only Be Issued For Subscriber Information:
  - Name, Address, IP Address, Length of Service, and Telephone Number
- Ways Around It:
  - Federal Rule of Civil Procedure 34: communication subject to discovery
  - Flagg v. City of Detroit: court can compel originator to direct ISP to release information as normal discovery procedure
  - Court may compel ISP provider to produce information

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## ATTORNEY'S - CLIENTS AND LEGAL ADVICE

- Lester v. Allied Concrete Co., a Virginia state court reduced a jury award by over \$4 million dollars and ordered the plaintiff and his counsel to pay the defendants over \$700,000 in fees and expenses because of deliberate deletion of Facebook photos responsive to discovery requests
- Rule of Professional Conduct 4-3.4
  - A lawyer can't be involved in concealing evidence
- Clients should be advised to preserve Social Media Evidence (preservation letter is your CYA)

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## CONTACT INFORMATION

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## ADDITIONAL RESOURCES

- **Google** Subpoena Information Link:  
<https://support.google.com/faqs/answer/6151275?hl=en>
- **Facebook** Subpoena Information Link:  
<https://www.facebook.com/help/473784375984502>
- **Instagram** Subpoena Information Link:  
Same as Facebook now that it owns Instagram
- **Twitter** Subpoena Information Link:  
<https://support.twitter.com/articles/41949>

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## ADDITIONAL RESOURCES

- Overview of why SMI is important  
<https://www.boscolegal.org/legal-services/social-media-investigations>
- In depth article including additional case law  
<https://www.boscolegal.org/social-media-investigations-the-facts/>
- Comparison of Surveillance and SMI  
<https://www.boscolegal.org/files/2016/04/The-New-Surveillance-v5.jpg>

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