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Social Searching: Using Social Media for Investigation, Litigation & Competitive Intelligence

Carol A. Watson

University of Georgia School of Law, cwatson@uga.edu

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**Social Searching: Using Social Media for
Investigation, Litigation & Competitive Intelligence**

Carol A. Watson

University of Georgia Law Library

Athens, GA

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Social Searching: Using Social Media for Investigation, Litigation & Competitive Intelligence

Carol A. Watson, Director, University of Georgia Law Library

Introduction

Most attorneys and law firms know the value of using social media for marketing and communication. The definition of social media is also well-known to most lawyers. Social media is defined as internet-based platforms that facilitate individuals or businesses interacting with one another by sharing thoughts, photos, videos, and other forms of expression. Lesser known, however, is the value of using social media for research purposes. Attorneys who become familiar with these social media platforms and how to search them will have a competitive edge whether seeking information for investigative research, litigation purposes or business intelligence.

Social media is ubiquitous. None of us is likely to argue against that statement. What we don't always realize is that social media has evolved into a primary communication or conversation tool. Communicating via social media is as seamless as making a cell phone call or sending an email. The difference? Often, a publicly available record is created on social media that gives us an often intimate look or pertinent insight into individuals or businesses. It has been noted that social media makes some users more confident and uninhibited. It's not uncommon for social media users to reveal more about themselves online than they would in a face to face conversation.

The volume of personal insights and data created by social media interactions is vast. According to the Pew Research Center, as of July 2015, 76% of online adults use social networking sites. For a detailed snapshot of social media usage, visit: <http://www.pewresearch.org/data-trend/media-and-technology/social-networking-use/>

According to recent Pew estimates (April 2015), the most popular social media websites used by online adults are:

- Facebook – 72%
- Pinterest - 31%
- Instagram - 28%
- LinkedIn - 25%
- Twitter - 23%

While Facebook is the most used social media platform, significant information that is useful for legal purposes can also be found on other platforms as well. Pinterest and Instagram tend to be more creative outlets, but LinkedIn and Twitter are can provide substantial snapshots of an individual or business' activities.

Make a Plan

Often, attorneys forget that social media research is research, just like legal research. All well-organized and thorough research begins with a plan. To learn more about the elements of a legal research plan, read Caroline Osborne's article, *The Legal Research Plan: A Comprehensive Examination of the Current Approach*, available at:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2033236

In her article, Osborne discusses the need to write down a legal research plan, especially in the beginning when researchers are not as familiar with the research process. As you begin social media research, a written research plan and research log will be critical to your success.

Begin with the facts. What do you know about the subject or target of your investigation? If you are researching an individual, what facts do you know? Hometown? Educational background? Employer? Jot down everything you can think of about the person or business.

Don't forget to consider the spelling of a personal name or business name. Are there name variations? Particularly with an individual, consider nicknames, initials, married vs. maiden names and aliases. On social media, some people use their real names. For example, George Takei, aka Sulu from Star Trek, is a frequent social media poster who is renowned for his sense of humor. On the other hand, some personalities have famous nicknames. For example, Leandra Medine, is a famous fashion blogger known as Man Repeller. She is primarily known and referred to by her nickname and not her personal name.

Once you have identified an individual's username, keep in mind, that users often don't change their usernames across various social media platforms. Having one username is often the key to identifying an individual on several other sites. Knowem.com (<http://knowem.com>) is a website that allows users to check the availability of usernames across various platforms. However, it can also be useful for reverse engineering if you want to determine whether an individual is using the same name on various platforms.

The next step is to brainstorm search terms you plan to use. Synonyms and related terms are critical. You would not research global warming without using the terms greenhouse effect, climate change or environment. Social media research is no different. It can be useful to consult an online thesaurus if you need inspiration for additional terms.

In addition to creating a plan of action, you'll also want to keep a research log. Rule number 1: print and save everything. EVERYTHING. Print early and print often. This rule cannot be emphasized enough. Tomorrow or even in the next hour, the information you are viewing may become unavailable or removed.

If you're concerned about how to introduce social media printouts into evidence, remember Federal Rule of Evidence 1003 states: A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate. Introducing social media into evidence will be discussed in more detail in the litigation section below.

If you don't know how to print or save an item, use your phone to take a picture of the screen. Most web browsers will include a header and footer when printing that includes the web address and date/time information of the web page printing. If headers and footers are missing from your web page printouts, google print options for the browser you are using such as Internet Explorer, Firefox, Chrome, etc. You can find many helpful explanations about printing from browsers.

You might also consider using commercial applications to preserve internet information. Snagit (<https://www.techsmith.com/snagit.html>) is a popular tool for capturing images or videos. Snagit is available for Mac or PC and sells for \$49.95 for a single user license. If you're not sure whether it would be a useful tool for you, a 15 day free trial is available.

When organizing your screen captures, it can be helpful to include notes on how you found the information. Create a list of links visited. Document search terms you used. If you followed various links, what path did you take? Think about how you would explain how you found social media information in an affidavit. Above all, keep your research clean. Stick to publicly available information and don't employ deception to investigate an individual or business.

Finally, be a critical consumer of information. Don't forget common sense rules. "Interesting if true" is an old journalism adage cautioning against unverified news. Consider the source of your information. Is it likely to be accurate? Can you verify the author of the information? Is there a date associate with the information? Is it current or outdated?

Summary of Popular Social Media Tools

Social media is constantly evolving. Don't get stuck on one search strategy or one platform. New social media platforms pop up regularly. For example, there are numerous apps aimed at attracting the teen market such as Kik Messenger, Snapchat, Whisper, Yik Yak and so on. You can't be a master of all of them. Your best bet is to know the most popular apps and understand how you keep stay abreast of the latest search techniques. Even more mainstream social media apps such as Facebook or Instagram are constantly changing their search algorithms. For example in 2013, Facebook announced its new graph search feature with great fanfare. Within a year, Facebook had abandoned most of the search principles of graph search and folded it into regular searching.

With all social media platforms, searching will be the most efficient if you establish a social media account with the platform you wish to search rather than relying upon Google search results or searching a social media platform as a non-user or when not logged in. You can establish a social media account even if you never intend to post or participate in discussions. Lurking is perfectly acceptable. Note that often you can only use advanced search options on social media platforms if you are logged in to the service.

Facebook

As noted by the Pew Research Center previously, people spend more time on Facebook than any other social media site. It is the most popular social media network and probably the one most of

us are familiar with. Knowing how to search Facebook effectively should be your top priority. Since Facebook regularly changes its search protocol, you can always review the latest Facebook searching tips in the Facebook Help Center: <https://www.facebook.com/help/>

What is Facebook and what can you search for on it? After registering and creating a user profile, Facebook users add other users as "friends", exchange messages, post status updates and photos, and share videos. Additionally, users may join user groups with common interests and categorize their friends into lists such as "People From Work" or "Close Friends". On Facebooks, you can search for people, information posts or updates, photos, videos, businesses, and events. Facebook's archive contains more than 2 trillion public posts from 2006 to present (English language only).

Keep the following two caveats in mind when searching Facebook:

1. An individual's privacy settings affect the search results you're able to see. If an individual or business only shares information with close friends, you will not be able to see their posts.
2. Facebook does not offer a consistent search protocol. You cannot use Boolean search logic or quotations to indicate a phrase. Facebook mixes personal and standardized search algorithms. In other words, your results will be ranked by posts from your own friends, followed by posts from "top sources" (highly ranked news sites, etc.) and then you will see public posts from everyone else.

Tip: Once you enter a search into Facebook, don't forget to filter by the categories on the top bar. Choices include: Top, Latest, People, Photos, Videos, Pages, and Places. Don't overlook the More category. Groups, apps, events are all lumped together in the More category.

Pinterest

Pinterest allows users to share and categorize images found online. Users can add a "Pin it" button to their browser and then "pin" online images to virtual pinboards, which are used to organize categories such as recipes, travel or weddings. Pinterest has been described as a visual bookmarking tool. Pinterest requires brief descriptions but the main focus of the site is visual. Surprisingly 85% of Pinterest users are estimated to be female. Don't underestimate the power and influence of Pinterest, however. A quick search for the terms *LLP Law* demonstrates that some law firms have Pinterest boards with information such as relevant subject specific news articles, attorney profiles and law firm descriptions.

Tip: It isn't always easy to find a person on Pinterest because the platform is designed to inspire users to meander through inspiration images and ideas. To locate an individual, after completing a search such as "*Martha Stewart*," click the PINNERS search filter at the top of your screen to obtain results that include personal names of Pinterest users.

Instagram

Instagram, which was acquired by Facebook in 2012, is primarily used for sharing photos. Filters providing a variety of effects make Instagram photos even more popular platform for sharing images. Users post approximately one photo per week and usually share their geographic location. Instagram is useful for research because it indicates a user's interests and sometimes their geo-location.

Tip: Instagram is built for mobile usage. You can't easily search Instagram from your desktop. However, there is a Google Chrome extension for searching Instagram that allows you to search hashtags and gps tags. For instructions on how to use Google Chrome's extension to search Instagram, visit: <http://www.wikihow.com/Use-a-Chrome-Extension-to-Search-Instagram>

LinkedIn

LinkedIn is a business-oriented social networking service. This social network's users have the highest median income and generally discuss business-related topics. To effectively search LinkedIn, start with LinkedIn's Advanced Search feature. Note you must be signed in to LinkedIn in order to use the Advanced Search feature. Don't forget to use Boolean search connectors such as AND, OR, etc. Finally, filter your search results by categories such as Location, Industry, Past Companies, and School.

Tip: The most effective search results are available via a LinkedIn Premium account. A Premium account provides access to expanded views of all LinkedIn profiles (not just your 1st or 2nd connection profiles). It also provides access to more filtering options such as Years of Experience, Company Size, and When Joined. You can try LinkedIn Premium free for 30 days.

Twitter

Twitter enables users to send and read short 140-character messages called "tweets". While tweets are up to the minute, views can be skewed and untrustworthy. Twitter messages can seem ephemeral to users so oftentimes messages can be snarky or something an individual does not wish to share with a Facebook audience. There is no obligation for users to respond to or comment to a tweet. Twitter is more about conversation than the identity of the person sending out tweets. Twitter is the most important source for identifying news on social media.

Tip: Twitter results can often be overwhelming due to the huge volume of information. Like all social media platforms, the most effective search options for locating tweets can be found using Twitter's Advanced Search features. Twitter's Advanced Search options display under MORE OPTIONS, after you conduct a Twitter search. You must be logged in to Twitter to see the Advanced Search feature.

Using Social Media for Investigation

Social media information can be useful for a variety of investigative scenarios in legal proceedings. For example, you can locate undisclosed assets during bankruptcy proceedings. Perhaps you can find evidence of activities in personal injury cases. Examples of relationships or questionable activities can be useful in divorce or custody cases. Trademark usage or counterfeit items can be located in social media forums. Screen shots of stolen items have been found on Ebay. The list is endless.

Tips for Investigative Searching on Social Media

- Investigate who an individual or business associates with. For example, on Facebook, who are their friends? In Twitter, who does the individual or business follow or re-tweet? On LinkedIn, what organizations does the individual or business belong to? Once you identify a business an individual likes, you might find a further clue about an individual's activities. For example, if your opponent has a neck injury, but has "liked" a local horse stables, you might discover that the injured individual is riding horses.
- Consider searching for an individual's friends or family members—just because a person has their social media profile locked down with strong privacy settings, doesn't mean his or her friends or family do. To identify the names of other family members, try conducting a search in one of the popular online directories such as www.whitepages.com, www.spokeo.com or www.pipl.com. Alternatively you can generate a list of an individual's associates by checking the tags or names of individuals identified in group photos. Once you have a list of friends or related individuals, you can browse their publicly available social media information for further investigation. If the person you are investigating frequently socializes with the same individuals, you can sometimes effectively use their social media profiles to further research your target.
- Don't leave footprints. One of the most important settings in LinkedIn setting is browsing in private mode. LinkedIn users have a profile option – Who's Viewed Your Profile. To prevent your name from displaying to the individual you are investigating, change your LinkedIn Privacy Setting. To make the change, place your cursor over your profile photo in the top right of your homepage and click Privacy & Settings. Click Select what others see when you've viewed their profile. You'll have the option to display your name and headline or to browse in privacy mode. LinkedIn's default setting is to display your name so you must affirmatively change this setting if you wish to browse anonymously.
- Photographs can be useful for searching.
 - Try Google Reverse Image or Bing Image Match search – If you drag an image into the Google or Bing search box or include an image URL in your search, search results will display sites that include your image and similar images. You can determine if a client's images are being using inappropriately. You can also verify whether an individual's profile is legitimate. Also, many people do not

change their profile images across social media platforms so you can sometimes quickly identify which social media platforms an individual uses.

- If you are suspicious about the authenticity of a photograph, you can upload it to fotoforensics.com to determine if it has been digitally altered. Note there is no privacy for the image once you upload to [fotoforensics](http://fotoforensics.com) so use this website with caution. Also, be sure to use the highest quality image you can find. Fotoforensics will examine the image in great detail to determine if part of an image's scan stands out or looks lighter than the rest.
- Try Google's search algorithm in addition to the advanced search options on social media sites themselves. For example, try a Google search with the person's name, limited to the social media site. The recommended syntax is to include the individual's name in quotes and add site: the name of the social media site.
 - For example: *"John Smith" site: instagram.com*
- Don't forget you can use an asterisk as a placeholder for middle initials or middle names even if you are conducting a phrase search using quotation marks.
 - For example: *"Lisa * Green"*
- Sometimes Google changes your search results based upon your previous search history. If you want to conduct a "fresh" search that aren't skewed by your Google history, use the Google Chrome browser and open an incognito window (Shift + CTRL + N) so it doesn't factor your Google search profile in results.
- Don't forget to type slowly when entering a search on Facebook, LinkedIn, Pinterest or Twitter. You'll see a list of suggested search terms which can save time and provide hints on the best search strategies.

Using Social Media in Litigation

There are many compelling reasons you may wish to explore social media platforms for litigation purposes. A few examples include researching potential jurors during voir dire; documenting criminal activities—theft, assault, or illicit activities; and establishing location for alibis or accident reconstruction. Social media networks are rich with information that can be useful for pre-litigation activities, witness examination and evidence gathering. Social media can even help with tracking down individuals for service of process.

Perhaps you may wish to research jurors for potential peremptory challenges or appealing a jury decision. According to the ABA Standing Committee on Ethics and Professionalism's Formal Opinion 466 (2014), lawyers may research jurors via social media, but cannot communicate directly with jurors. While formal ABA opinions are not binding upon states, they are based upon the ABA's Model Rules of Professional Conduct, which have been adopted by all states except California. Caveat: be cautious about any social media action that might notify the juror you are investigating them. In some states, automatic notifications are communications that are considered juror contact and are an ethical violation.

If you don't have the time to commit to researching jurors online, there are commercial services available that will provide you with profiles of a jury pool's social media footprint. Commercial services will monitor jurors to ensure they are following the judge's orders and not posting information about your case on social media. To locate these services, enter search terms such as *social media jury investigations* into your favorite search engine.

In general, social media research opposing counsel, judges, and others using social networks is permissible as long as the social media information is accessible to the public. No friending and no following. Do not send any type of social media connection request to anyone you are researching. As new social media platforms become popular, be cautious. If you do not know the functionality of a social media platform, you should proceed carefully in conducting research.

One of the first questions many lawyers ask is how to introduce social media into evidence. It's relatively simple and judges are becoming increasingly comfortable admitting social media evidence. A photo is still a photo. You can still use the evidence law you learned in law school in this time of evolving technology. In general, social media is treated no differently than any other evidence. For admission in court, a party must show that it is relevant; authenticate it; address issues of unfair prejudice and probative value; address hearsay (show an exception or non-hearsay use); and demonstrate that it conforms to the original writing (the best evidence rule). Probative value must be weighed against its potential prejudice. You will still have to answer authentication questions.

Example of how to lay a proper foundation for social media:

- Do you have a Facebook page?
- Is it currently active?
- Who has access to this page?
- Does anyone have authorization to update or edit this page other than you?
- How is the page protected?
- (Hand copy of social media page to witness) do you recognize what I just handed you?
- What is it?
- Does it appear to be a fair and accurate representation of your page?
- Does it appear to be altered in any manner?
- **Your Honor at this time I would like to enter _____ into evidence as Exhibit__.

Keep in mind that social media is no different than any other type of information that you might use for litigation purposes -- whether you are introducing the text of a tweet to demonstrate a witness' "state of mind" or a Facebook post to prove a party's admission. And like other evidence, social media is not exempt from spoliation rules. Do not encourage your client to clean up her Facebook account.

Tips for Searching Social Media for Litigation Purposes

- Conduct a social media search as early as you can in the litigation process. It is common for individuals who are involved in litigation to change their privacy settings once proceedings are underway. You are more likely to discover relevant information in the early stages of litigation.
- Send a retention or preservation letter to opposing counsel as soon as possible to prevent the deletion of information from social media accounts.
- Don't forget to request screen names and social media sites used in interrogatories if the underlying subject matter of the dispute provides good faith basis for belief that social media evidence will be relevant for your case.
- Be cautious about having an active or passive relationship on social media with judges. Don't friend or follow them. It's not worth the risk of a recusal request.
- This may seem obvious, but do not share any information about active legal matters on social media platforms.
- For information on what law enforcement and other legal entities can request from social media platform providers, visit:
 - Facebook: <https://www.facebook.com/safety/groups/law/guidelines/>
 - Twitter: <https://support.twitter.com/articles/41949-guidelines-for-law-enforcement>
 - Google (Includes YouTube): <http://www.google.com/transparencyreport/userdatarequests/legalprocess/>
 - LinkedIn: https://help.Linkedin.com/app/answers/detail/a_id/16880/~/LinkedIn-law-enforcement-data-request-guidelines

Searching Social Media for Competitive Intelligence

Social media is also helpful for investigating what your competitors are doing or staying up to date on your client's industry. Listening or eavesdropping on your clients, peers and industry experts is the key to successfully using social media for business analysis. Keeping track of where your clients might go will give you a competitive edge that is often needed in today's overcrowded legal market. You can use social media listening to find conversations that impact your clients, cases and your law firm's reputation. Taking a little time to routinely review the social media strategy of your competitors can inform you on how you stack up against the competition. Competitive business information can help you with a wide range of activities whether you are preparing to meet a potential client, considering adding a new practice area, or cross-selling opportunities with current clients.

Researching and keeping track of competitors can be time-consuming, however. Many businesses use social listening tools to organize and analyze the actions of others. Some of these tools can be quite expensive. Examples of typical annual budgets include the following range:

- Basic (Twitter only): \$250 – \$1200
- Mid-level (good query, limited analysis): \$15,000 – \$20,000
- Top-tier (excellent query & analysis): \$25,000 – \$50,000 or more

Don't be discouraged. There are also many free tools for monitoring social media activity. The most obvious free tool is Google Alerts. For detailed instructions on how to set up a Google Alert, visit: https://support.google.com/alerts/topic/3246333?hl=en&ref_topic=3246446

A few other examples of free or low-cost social media monitoring tools include:

- Social Searcher - <http://www.social-searcher.com> – Social Searcher is a free social media search engine that allows users to search for content in social networks in real-time. Social Searcher also provides deep analytics data. Users can search without logging in for publicly posted information on Twitter, Google+ and Facebook. Users can also save searches and set up email alerts. You don't need to establish an account or login to use Social Searcher.
- twXplorer - <https://twexplorer.knightlab.com/> - A twitter search tool, twXplorer, was developed by a journalist and in conjunction with Northwestern University's Knight Lab. The journalist wanted to see tweets related to the First Lady, Michelle Obama, but was daunted because he had to sift through thousands of search results. The Knight Lab's tool allows users to see search results in 4 ways:
 - Up to 500 recent tweets containing the terms entered
 - A bar graph showing the most popular other words that appear
 - The most popular hashtags included in tweets containing search terms
 - The most popular links in tweets containing search terms.

Note you must be logged in to Twitter to use twXplorer.

- Mention – <http://mention.com> – Mention is similar to Google alerts. Mention searches for social media mentions and can send email alerts. Mention provides one alert for one user and up to 250 mentions per month for free.

Tips for Using Social Media for Competitive Intelligence Research

- Identify and make a list of your competitors and clients. What other law firms, attorneys or businesses do you want to keep track of? Who or what could make your law practice obsolete? Most of businesses will provide icon links to the social media platforms that they use on their law firm website. Use these icons to evaluate a business' social media strategy.
- LinkedIn is the best tool for competitive intelligence. You can investigate who is being hired by other firms, what type of expertise is the most valuable or if a firm is hiring experts in a new practice area. Don't limit your use of LinkedIn to competitors. Be sure to follow your clients or potential clients on LinkedIn as well. LinkedIn has evolved into a discussion board for many business topics that are relevant for the practice of law. Keeping up with discussions of the latest legal business trends is similar to following individuals on Facebook.
- Use Google AutoComplete to determine what google search trends that demonstrate what searchers are people thinking.

- Example: *Is DLA Piper a ...* offers the suggested searches: Is DLA Piper a good law firm? Is DLA Piper a Magic Circle law firm?
- Don't forget to look for promotional information, business services videos, presentations in: YouTube, Slideshare, Pinterest, and Instagram from competitors, clients and potential clients.
 - Example: The search results for the terms: *Baker & McKenzie LLP* in YouTube include videos such as an advertisement for Baker & McKenzie, a 50 year history of the law firm, and a singing comedy video card from Christmas 2008.
- Pinalerts.com will notify you if someone pins an image from your website to Pinterest. Use Pinalerts to gauge your law firm's social media reach.

Conclusion

Social media provides a vast amount of information that can be useful for attorneys whether you are conducting background researching, involved in litigation or keeping tabs on competitors. With all of the nuances that are involved in each of the platforms, there are a few universal truths that can be summarized. Always use publicly available information only. Never impersonate or use an alias to obtain social media information. No matter which social media platform you are searching, using the advanced search options is always a wise practice. If you are unfamiliar with a social media platform, look for help screens that explain how to use it. Most importantly, be sure you are familiar with the ethical rules and opinions for your jurisdiction. Many bar associations have prepared advice documents regarding the use of social media. Stay informed about best ethical practices.