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Legal Research in the Age of Social Media

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Introduction

We live in a time when Facebook, Twitter, and other social media networks have become so integrated into daily life that it is critical for attorneys to maintain a basic understanding of the most popular platforms and how they can benefit his or her legal practice. Social media has made it easier to gather information about litigants and other professionals in the legal field. This paper provides an overview of the most popular social media platforms used by adults in the United States and gives insight into how attorneys can use them to conduct legal and investigative research.

Summary of Popular Social Media Networks

Social media is constantly evolving. A network that was popular a few years ago may very well be viewed as irrelevant today. There are a few platforms that have been consistently used by adults in the U.S. and have experienced an increase in usage over the past five years.

Facebook

Founded in 2004, Facebook's mission is "to give people the power to share and make the world more open and connected." People use Facebook to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them.[1] As of September 2016, Facebook had 1.18 billion daily active users making it the most popular social media site in the world. With such a staggering number of users, it is important that attorneys are familiar with this platform and its search features if no other. Fortunately Facebook has an online help center which comes in handy when the site makes changes to its searching or privacy parameters (which is fairly often): https://www.facebook.com/help/. Facebook allows users to add other users as "friends", exchange messages, post status updates and photos, and

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[1] https://www.facebook.com/pg/facebook/about/ [accessed January 3, 2017].

share videos. Users may also join common interest groups and organize their friends into lists such as "coworkers" or "family" in order to safeguard what information they want to share with particular people. Facebook allows you to search for people, business reviews, photos, videos and events.

When searching Facebook, it is important to remember that an individual or business's privacy settings can impact the search results you're able to see. If an individual or business has restricted their profile to "Friends Only", you will not be able to see their posts. Facebook provides filters that aid in sorting search results. Some of these filter options include People, Top (most liked, shared or viewed), Latest, Places, Photos, Videos, and Pages. Facebook has also integrated the use of the hashtag symbol (#), made popular by Twitter. This is an easy way to locate related posts and events. For example, searching for #coachella would create a results list of every post where a user tagged a video, event, or status with #coachella. Many users are intentional about adding hashtags to their posts for this reason.

LinkedIn

LinkedIn operates the world's largest professional network on the Internet with more than 467 million members in over 200 countries and territories.[2] There are more than 40 million students and recent college graduates on LinkedIn. They are LinkedIn's fastest-growing demographic. Posts and articles on LinkedIn generally focus on business-related topics. To effectively search LinkedIn, you can use the Advanced Search feature. This can only be used by registered account holders as you must be signed in access this feature. Unlike Facebook, LinkedIn allows you to use Boolean search connectors such as "AND" and "OR" or put quotation marks around phrases. You can also filter your search results by location, school

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[2] https://press.linkedin.com/about-linkedin? [accessed January 3, 2017].

attended, or industry. It is also important to note that premium account holders, who pay to upgrade to this status, have more search and filter options such as Company Size, Date Joined, and Years of Experience. As of December 2016, a premium LinkedIn account is $29.99 per month after a free 30-day trial for "Job Seeker" users. Accounts for businesses and sales professionals are more expensive.

Instagram

Instagram's founders describe the app as "a fun and quirky way to share your life with friends through a series of pictures."[3] The platform is used by taking photos with your mobile phone, then choosing a filter (photo editing) to transform the image into a memory to upload and share with your network. There are approximately 500 million monthly active users on Instagram as of Summer 2016. Instagram was acquired by Facebook in 2012, so a lot of people use Instagram to update photos on their Facebook page. Linking your Facebook and Instagram accounts allow you to add photos to both platforms at the same time.

Instagram is useful for research because it can provide information about a user's interests, activities, and their location at a given point in time since the app uses the GPS on a user's cell phone or tag their location. Similar to Facebook, an Instagram user has the option to restrict access to their photos by opting to have a private account. If a user has opted to have a public account at any point in their user history, many of their images will be archived on Google Images or on other websites that store Instagram photos such as Pandsta or Websta. Instagram also uses the hashtag symbol (#), made popular by Twitter. This is an easy way to search and locate photos from the same event or on related topics.

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[3] https://www.instagram.com/about/faq/ [accessed January 3, 2017].

Twitter

Twitter declares that its mission is "to give everyone the power to create and share ideas and information instantly, without barriers."[4] Twitter users interact with each other using 140-character messaged called 'tweets.' You do not have to be a registered user to read public tweets, but you have to have a Twitter account to contribute to the conversation. Twitter prides itself in being a platform where the world gets breaking news. As of January 2016, Twitter publishes that it has 313 million active monthly users.

Tweets are helpful in seeking up to the minute information, but since tweets aren't screened for accuracy, they can be biased and untrustworthy. News outlets often tweet information about major events in real time and have to follow up with retractions and adjustments as more accurate information becomes available. Twitter allow users to share more stream of consciousness thoughts that may not be appropriate for Facebook or other platforms. It is not uncommon for a person to post dozens of tweets in one sitting, but this behavior would be viewed as strange on Facebook. Many users enjoy live-tweeting events such as award shows, election results, and even personal life events such as giving birth to a child.

Twitter has an Advanced Search option for registered users to help sort through the endless sea of tweets. The hashtag (#) was made popular by Twitter and is the best way to know what's trending right now in a particular geographical region. For example, #SCOTUS is often a top trending hashtag on days when high profile Supreme Court decisions are being argued. Searching for this hashtag allows you to see the thoughts of all Twitter users who are tweeting and using this tag. A user can opt to protect his or her tweets using Twitter's privacy settings. As with many things on the Internet, if a user has ever had their profile set to public at any point in

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[4] https://about.twitter.com/company [accessed January 3, 2017].

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their user history, those tweets may still be visible through Google searches and other websites that archive tweets.

Pinterest

Pinterest advertises itself as "the world's catalog of ideas."[5] The platform is a popular way to find and save ideas and inspiration. Pinterest allows users to share and categorize images found online onto virtual collages that are organized into self-created categories. Although this platform is often used for recipes and other craft projects, it is important to note that many law firms have Pinterest boards with information on various legal topics, news articles, attorney profiles, and law firm descriptions. Pinterest allows you to search by keyword then filter results by Category, Board, or Person.

Using Social Media for Investigation

Since social media platforms are constantly changing, it may be challenging to maintain an expert knowledge of all of them at one time. It is more important to know the kind of information you are seeking and to be able to identify which platform will best allow you to obtain that information. This can be done by constructing a research plan before you begin your searches. Start with your known facts. What do you know about the subject of your investigation? Are you familiar with their birthplace, employer, or educational background? Does this person have a nickname or do you know their maiden name? Note anything that comes to mind, as all of these things can prove to be useful during your search. If you have an individual's username on one platform, there is a good chance that they are using the same or similar name across various platforms.

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[5] https://about.pinterest.com/en/press/press [accessed January 3, 2017].

The next step is to brainstorm search terms to use for your search. Synonyms are important, as is noting whether Boolean search connectors can be used during your search. As you move from outlining your plan to beginning your search, it is imperative that you create a research log and document everything you find either by printing or saving a screenshot. Information on social media is ever-changing. It is not uncommon for a user to delete unfavorable information, to be suspended from social media sites, or to deactivate their accounts either temporarily or permanently. As you organize your screen captures and print offs note how and when you found the information. Document the website's link and the path you used to get to the information if it required you to drill down through several pages. As you are documenting your findings think about how you would explain how you located the information in an affidavit. With this in mind it is important to be honest in how you obtain information. Creating fake profiles to access information can be considered unethical. Also don't forget to assess the validity of the source. How current is the information? Can the author be verified?

More Tips for Investigative Searching on Social Media

Below you will find a list of tips to help you begin brainstorming about the many ways that social media can meet your legal research needs. This is not an exhaustive list, but it is intended to provide you with ideas on how to use the popularity of social media to your advantage in your legal practice:

• A good place to start is to conduct a Google search with an individual's name or username and the name of a social networking site, for example "john smith instagram." This may allow you to pick up quotes, posts, and images that may be missed on the actual social media site due to changes in privacy settings. Please note that sometimes Google changes your search results

based upon your previous search history. Be sure to clear your search history or search in private or incognito mode to avoid this.

- Connect the dots between relationships and/or business associations. For example, who are the individuals Facebook friends? Who do they follow or consistently re-tweet on Twitter? What events have they participated in recently? You may be able to find out information about the individual's activities that may be contrary to what they are representing in a claim. For example, you may discover that a person who has represented themselves as having an injury may be engaging in activities that point to the contrary.

- Consider searching for a person's friends or family members. If the person you are investigating frequently socializes with the same individuals, you can often use those social media profiles to further your research. Even if the individual you are searching has restricted privacy settings, he or she may have a family member with a public profile. You can gather this information by examining tagged photos or status updates. Some platforms such as Facebook, will allow you to designate a family member's role in your life by selecting that they are a parent, sibling, or spouse. This can be especially helpful when investigating family law matters.

- Use Google's reverse image search by dragging pictures into the Google search box or by searching the image URL. This will help you locate where the image is being used across the Internet. Many people use the same profile picture on multiple social media platforms. This can help you verify the legitimacy of an account and discover other social media platforms that are using the same photos even if a user has multiple usernames. Reverse image searching can also show you whether another party is using a client's images inappropriately or fraudulently.

- When searching on Facebook, Pinterest, LinkedIn, or Twitter, you will receive a list of suggested search terms which can save you time and provide you with hints on the best keywords to use.

- When using LinkedIn, don't leave evidence of your lurking. Be sure you are browsing LinkedIn in private mode. LinkedIn users have the option to see who has viewed their profile. To prevent your name from being displayed to the individual you are investigating, update your settings under "Privacy & Settings" if you' would prefer to browse anonymously.

Tips for Researching Social Media in Litigation

Attorneys are recognizing the value of searching social media during litigation. Below you will find a list of tips to aid you in brainstorming about the many ways that social media can support your research during litigation. This is not an exhaustive list, but it is intended to provide you with ideas on how to use the popularity of social media to your advantage in your legal practice:

- Begin conducting your social media searches early in the litigation process. It is common for people who are involved in litigation to change their privacy settings once proceedings begin. You are more likely to discover relevant information in the early stages of litigation before any attempts to scrub profiles are made. Determine early on whether it would be beneficial to send a retention letter to opposing counsel to prevent the deletion of information from their client's social media accounts.

- Be careful about having social media relationships with judges. It may be best to avoid friending or following them to prevent recusal requests. Stay up-to-date on how your jurisdiction handles such matters.

- Request usernames and social media information in your interrogatories if you have reason to believe the evidence will be relevant to your case.

- Look into the guidelines on what information law enforcement and legal professionals can request from social media providers:
    - Facebook: https://www.facebook.com/safety/groups/law/guidelines/
    - Twitter: https://support.twitter.com/articles/41949
    - Google/Youtube: https://www.google.com/transparencyreport/userdatarequests/legalprocess/
    - Instagram: https://help.instagram.com/494561080557017
    - LinkedIn: https://www.linkedin.com/help/linkedin/answer/16880/linkedin-law-enforcement-data-request-guidelines?lang=en

- Some other uses for social media in litigation include:
    - Researching potential jurors during voir dire.
    - Establishing location for alibis or accident reconstruction.
    - Noting criminal activity.
    - Pre-litigation activities such as witness examination and evidence gathering.
    - Locating individuals for service of process.

The American Bar Association's Standing Committee on Ethics and Professional Responsibility's Formal Opinion 466 (2014) permits lawyers to research jurors via social media, but they cannot communicate directly with jurors.[6] While formal ABA opinions are not binding, they are based on the ABA's Model Rules of Professional Conduct which have been adopted by nearly all states. Please be mindful to avoid any social media interaction that notifies the juror that you have reviewed their profile, such as "pokes" or "likes." This can be considered juror contact, so proceed with caution to ensure that you have not accidently "liked" any posts or done anything that could notify the individual of your investigation. Social media research of opposing counsel, judges, and other parties is generally permissible as long as the information is accessible to the public. As a cautionary measure do not add or follow any of these parties.

Conclusion

Social media has expanded the world of legal and investigative research. It has provided so much information that attorneys can use to conduct background research, keep up with legal trends, learn more about clients and competitors, and research jurors. In summary, use this wealth of information with caution and integrity. Always use information that is publicly available. Refrain from impersonating another party to obtain information. Take advantage of online help guides to stay current on changes on social media platforms. Maximize your search results by using the Advanced Search feature when available. And finally, be familiar with the ethics rules surrounding social media practices for your jurisdiction. [7]

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[6] ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 466, Lawyer Reviewing Jurors' Internet Presence, April 24, 2014 http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinion_466_final_04_23_14.authcheckdam.pdf, [accessed January 3, 2017].

[7] Some ideas for this presentation were adapted and updated from previous CLE presentations by the University of Georgia School of Law librarians, most significantly the 2016 ICLE presentation by Carol A. Watson entitled "Social Searching: Using Social Media for Investigation, Litigation & Competitive Intelligence" (January 29, 2016).