HEADNOTES

E-DISCOVERY

Social Media: #RealDiscovery

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Social media have made a grand entrance onto the litigation stage. Stories abound about the tweet or the Facebook page that won or lost the case, sank or saved counsel, or was missed or lost. Lessons abound reminding us of the power of social media and how to get the "killer" social media artifact into evidence.

Few cases, however, are won or lost on the "smoking gun" document that magically appears on counsel's doorstep. Lovely when it happens, but rare that it occurs. Real social media e-discovery is not a "one and done" event; it is a process that mirrors traditional e-discovery. Social media e-discovery corroborates, punctuates, and enhances your litigation story.

The volume of electronically stored information—ESI, to those in the know—drove the first crushing wave of e-discovery. There was simply too much of it to put human eyes on every email, slide, instant message, and word processing document collected from the computer archives of even a modest-sized business. An army of reviewers could work for weeks, months, even years without getting to the top of the ESI mountain. But ESI provided the solution to the volume problem it created: The tools of machine search and information retrieval evolved, making the process manageable, if expensive.

The same volume explosion is now taking place with social media. Facebook is 10 years old and has expanded exponentially. It is not uncommon for any particular Facebook account to have thousands upon thousands of pictures, messages, comments, timeline entries, and other electronic artifacts. We have now passed the social media e-discovery tipping point: Lawyers cannot manually review social media artifacts effectively. Clients can't afford to have us scroll through tens of thousands of the client's (or opposition's) social media pages to find the relevant and important artifacts. Like business ESI, social media ESI needs to be intelligently searched with e-discovery software tools.

Four new social media e-discovery principles are now center stage:

- First, end the manual review. Self-collection of business ESI is a high-risk, universally criticized practice.

Illustration by Sean Kane

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The same is now true of social media artifacts. Social media must be searched electronically. Ironically, a software search will do a better job than human manual review. Do you really want your client telling you which social media pages are relevant? Or does your client want to pay thousands of dollars or more for an associate to look through a Facebook "diary"? No! Load the social media data into an e-discovery tool and search them.

- Second, gone are the days of capturing social media pages with screen shots. Social media contain important metadata just like other ESI. Use social media e-discovery software to collect and analyze those metadata. You wouldn't ask your client to forward you screen shots of email.
- Third, social media artifacts must be reviewed in conjunction with other ESI. Let the data tell the story. You can do this only by reviewing social media data when they are integrated with your business and traditional ESI in the same e-discovery software platform. The litigation story is accentuated and punctuated—and, sometimes, only discovered—by review of nearly contemporaneous data from varied sources. For example, I may want to see the interplay between improper conduct at work and the social media posting from home. I can bolster and better understand the context of an allegedly discriminatory oral statement at work that the "Old guy can't keep his eyes open anymore!" if I also have the social media posting from home of an age-related joke or pictures of a snoozing Santa Claus.
- Fourth, social media e-discovery requires e-discovery tools. No one today would think of doing e-discovery without the right software. So why are we pecking away at social media sites like chickens looking for treats on the barn floor?

Social media evidence has arrived. We all know that. Now start thinking about genuine social media e-discovery, and choose your social media collection and review software carefully. And make sure the opposition does the same so that you get the data you deserve. ■

MARKETING

To Blog or Not to Blog? That's a Question?

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With the advent of social media, law blogs or "blawgs" have become mainstream in the twenty-first century. A great blog can give a lawyer's practice a personal voice and significant presence. But the onslaught of social media can make even veteran lawyers jumpy. With hundreds of law blogs in the blogosphere, lawyers hoping to separate their blog from the pack must learn the ins and outs of blogging.

First, what is a "blog"? A blog is more than just a publication. It's a form of indirect marketing in the crowded landscape of social media. Meaning that, to grab attention, you should generate content that adds to the discussion in your area of law. A blog is attractive to readers and includes content that others want to share. Whether you practice family law or corporate law, personal injury or intellectual property, you need to establish your blog as the go-to place online for reliable yet unique content on current issues.

What about the format of your blog? For starters, although you may be used to writing wordy briefs and treatises, the length of a blog posting typically ranges from 300-1,500 words. This is short enough to keep the attention span of a busy reader while piquing the interest of current and potential clients.

More importantly, a blog posting should do more than just report information. Make your blog interesting. Drop the stuffy legalese for which lawyers are famous (and ridiculed). For example, if your area of expertise is estate planning, don't simply write a post about "how to prepare a will." Instead, blog about estate planning lessons that can be learned from recent celebrity wills. If you practice bankruptcy law or creditors' rights, blog about Detroit's recent bankruptcy status and what went wrong. No matter what your practice area, make sure your blog topics are fresh and give the readers enough to take away a few practical pointers.

And don't be shy about making yourself the subject by blogging about an award you received, an article you authored, or an interview you gave discussing your insights on a recent case or event. When possible,

take readers directly to the source by linking to the original site that published your article, first reported on the interview, or announced the award you received.

Another way to attract visitors is to identify and use certain keywords in your blog posts (known as search engine optimization or SEO by the techies). Using these optimal words will help your blog rank higher in searches conducted by your target audience of potential clients. Think about the online searches your potential clients are conducting and make sure those keywords appear frequently in your blog.

How can you make your post go the extra marketing mile? Repurpose it. In other words, extend its life by offering your blog content in different formats. Popular and effective ways to do this include converting your post into an article for the law firm newsletter, e-blast, or local bar journal, or even converting your blog topic into a webinar, video, or white paper. And don't forget about other social media platforms. Fresh blog content can quickly be converted into tweets, or posted on your LinkedIn page, on your firm's Facebook page, and even on Google+.

What about converting blog visitors into clients? Put a contact form on your blog and ask the reader what type of content they want. Create a subscriber list by collecting the email addresses of potential clients. Or utilize a more interactive approach by making sure your blog is set up to allow for reader comments. All of these methods provide access to your readers' contact information so you can keep in touch with them, notify them about new posts, and increase the odds they'll come back.

A final point about blogging: success requires commitment. Bloggers must commit to posting no less than twice a week, if not more. And advertising your blog, researching and selecting the right topics, and writing interesting and valuable posts all take time and patience. But aspiring bloggers who follow these tips should see a return on their "blawging" investment. ■

REPLY BRIEF

State Courts Are Not Second Class

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Ken Nolan's "The Appearance of Impropriety" (LITIGATION, Summer 2014) not only expresses a bias favoring federal courts, but also in the process maligns state court judges. His statements should not go unchallenged.

After calling the federal system "special," Nolan writes, "I realize that favors, often granted in state courts, occur in those majestic [federal] courtrooms as well. . . . Yet, there's a belief that in federal court you'll litigate before a judge who will listen and rule equitably."

Does he really mean to imply that state court judges plug their ears and rule indiscriminately, while their federal counterparts sit in "majestic courtrooms" and render real justice?

His broad characterization of state court judges raises a larger concern. What is the public to think if lawyers consider state court judges as second-class judges?

Surely Mr. Nolan meant no disrespect. But, the perception he relates—all too common among lawyers—originates in an implicit bias about the quality and performance of federal versus state court judges.

The public's sense of justice depends on trusting the integrity, fairness, and competency of our judiciary. Whenever lawyers disparage judges generally or a class of judges specifically, the public's sense of justice suffers. And, so too, a distinctive strength of our legal systems. ■

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