



# **Modern Litigation Practices Using Social Media**

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# How can searching social media benefit your case?

- **Discovery on Plaintiff / Claimant / Parties**
- **Discovery on Witness / Expert**
- **Monitoring / Evaluating Jury / Judges / Arbitrators**

# Ways an Individual Can Show Up on the Internet

## Social Networking



Instagram



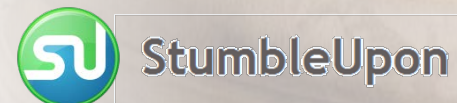
## Blogs and Microblogs



## Blog Search Engines



## Bookmarking Sites



# Social Networking: What Can You Do With The Information?

## Key is using only “Public” information!

- Is the claimant(s) or party in a law suit telling the truth?

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- Used for impeachment of a party

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- Any finding during trial relevant to jurors must be turned over

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- Be careful what you wish for!



ClaimScout will monitor the internet to determine if a party or witness is telling the truth about their claim. By using a proprietary methodology we are able to search the web for postings, pictures and comments to determine the validity of claims.

## Claim Scout Monitor:

- Facebook, MySpace and other social networks
- Blogs and Journals
- Online Communities, Twitter and other microblogs
- Message Boards
- Digg, Reddit and other social news sites
- Business networks
- Personal Web sites
- and much more



## ClaimScout Case Study:

On **September 6, 2008** the plaintiff was rear-ended by the defendant. The accident was described by the police report as being of moderate severity. As a result, The plaintiff supposedly suffered a left shoulder rotator cuff tear that required surgery in June of 2009 and again in July of 2010. In addition, cervical abnormalities required a cervical discectomy in 2009.

## Reason for ClaimScout digital profile

To determine if the injuries suffered by plaintiff were,

- a) A result of the accident and not a preexisting condition
- b) If the injury was as severe as the plaintiff claimed

## Claims –

- ✓ Completely Disabled
- ✓ Inability to walk
- ✓ Can't raise arm above waist due to extreme pain
- ✓ Can't play with Grandchildren
- ✓ Can't go on vacations

## Plaintiff Deposition Testimony

Q: Are you able to use your left arm for day to day activities?

A: No, it is difficult to move even on good days

Q: How high are you able to raise your arm?

A: I can't raise it at all, it is too painful. If I try really hard I can lift it about 6 inches

Q: Ok, so you have limited to no mobility in your left arm?

A: Yes

## Identify the user basics



Plaintiff is Identified as having an online presence. Identity is then verified using basic information

## Match Account



Plaintiff was found to have an active profile on Facebook but was not accessible to the public

## Locate Other Accounts



No other accounts were able to be verified

## Identify Aliases



No aliases were identified but several family members with unlocked profiles were also identified on Facebook allowing us to gain access to additional information and posts

## Search using Pairs and Variations



Additional searching was performed with limited results

- Photo Number 28: This photo establishes Plaintiff's presence in Washington, DC. It also shows the plaintiff **did not use a wheelchair** or additional assistance to make her way around the city. Position of the left arm is bent at the elbow.



Added October 22, 2009

- Photo Number 53: This photo shows the potential mobility of the “injured arm”. While the weight of the item in her left hand cannot be determined, it does show the range of motion (*with the arm raised to a forward 90 degrees from the body*).



What do you think this is?

Added October 22, 2009

- Photo Number 26: The Lincoln Memorial has 98 steps from the Reflecting Pool to the statue. Even if Plaintiff took the ramp to the top, it is still a significant walk for someone with neck and back injuries.



Added October 22, 2009

# Cyber-Surveillance- Jurors



- Voir Dire
- During Trial- Be careful what you wish for!
- Appellate Issue Identification

# Arguments For & Against Searches

- Jurors learning of searches will stray from court's instruction to refrain from conducting internet searches
- Facilitate improper personal appeals to particular jurors
- Protect the privacy of the venire
- ABA Opinion No. 466- online searches are ethical
- Does not hinder the selection process

# Courts and Social Networking

## Michigan Juror Ousted for Posting 'Guilty' Verdict on Facebook

**Twitter** Home Profile Find People Settings Hel

"So, Johnathan, what did you do today?"  
Oh, nothing really. I just gave away  
**TWELVE MILLION DOLLARS** of  
somebody else's money!  
2:09 PM Feb 26th from Ping.fm

**johnathan**

**Facebook** Hadley Jons

**Hadley Jons**  
Add as Friend

Write something...

**Hadley Jons**  
gooooooooooooooooodnight :)  
7 hours ago

**Hadley Jons** actually  
excited for jury duty tomorrow. it's  
gonna be fun to tell the defendant  
they're **GUILTY**. :P  
9 hours ago

**Hadley Jons** :(  
9 hours ago

**Hadley Jons** well...i got

**Twitter** Login Join Twitter!

Oh, and nobody buy Stoam. It's bad  
mojo, and they'll probably cease to  
exist, now that their wallet is \$12M  
lighter. <http://www.stoam.com/>  
2:43 PM Feb 26th from Ping.fm




**johnathan**

# Issues with Attorney Searches of Jurors

## LinkedIn Search Nearly Upends BofA Mortgage Fraud Trial

By Richard Vanderford

0 Comments

Share us on:   

Law360, New York (September 27, 2013, 8:10 PM ET) -- A first-year associate on Friday came close to derailing the high-profile Manhattan fraud trial over a [Bank of America Corp.](#) unit's mortgage lending practices, after a juror complained that the attorney had cyberstalked him on [LinkedIn](#).

U.S. District Judge Jed S. Rakoff admonished defense attorneys after a juror sent him a note complaining "the defense was checking on me on social media."

"It was a good faith misunderstanding," defense lawyer Marc L. Mukasey of [Bracewell & Giuliani LLP](#) told the judge.

After raising concerns about whether the jury could be "saved" and questioning jurors, the judge ultimately decided to continue the trial, a fraud case in which the federal government alleges that Bank of America subsidiary Countrywide Financial Corp. knowingly sold low-quality loans to [Freddie Mac](#) and [Fannie Mae](#).

Experts have warned about [the danger](#) of social media searches. The social media site, which allows users to post resumes, can let a search target know who is looking at their profile. Lawyers, who are required not to communicate with jurors, are also warned against searching for jurors on social media.

... ..  
[New York State Bar Association](#) guidelines suggest a lawyer can research a juror during voir dire and even while a jury is sitting. The guidelines, though, do not allow a lawyer to "communicate" with a juror, something that can occur accidentally if a search is done by [LinkedIn](#).



Jury Scout and ClaimScout will monitor the internet to assure that the jury is following the judge's orders.

Jury Scout and Claim Scout Monitor:

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- Message Boards
- Digg, Reddit and other social news sites
- Business networks
- Personal Web sites
- and much more



# Florida Bans Jurors From Tweeting, Blogging



cnet news

Latest News CNET River Webware Crave Business Tech Gree

Home > News > Politics and Law

## Politics and Law

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**Armstrong & Carosella PC**  
Get A Lawyer For Your DUI Case. Save \$1000's in Fines Free Consult!  
[armstrongcarosella.com](http://armstrongcarosella.com)

October 29, 2010 9:41 AM PDT

### Florida bans jurors from tweeting, blogging

by Declan McCullagh

Font size Print E-mail Share 19 comments

Tweet

Florida has officially banned jurors from tweeting.

New jury instructions adopted by the Supreme Court of Florida, which judges will pass along to jurors, instruct them not to discuss the case through "electronic communication, such as a blog, Twitter, e-mail, text message, or any other means."

Tweeting (or Facebooking, or blogging) about cases has happened, of course. An Ohio man convicted of drunk driving **unsuccessfully tried to get a new trial** after a juror blogged about the case. A New Hampshire juror was caught calling criminal defendants "riff-raff."

A judge **removed** a juror after she reportedly posted on Facebook: "Gonna be fun to tell the defendant they're guilty." And a Georgia federal judge **banned** even spectators from sending live updates through Twitter from the courtroom.

Here are some excerpts from Florida's new juror instructions released October 21:

During deliberations, jurors must communicate about the case only with one another and only when all jurors are present in the jury room. You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or electronic communication, such as a blog, Twitter, e-mail, text message, or any other means. Do not contact anyone to assist you during deliberations. These communications rules apply until I discharge you at the end of the case. If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the bailiff.

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[http://news.cnet.com/8301-13578\\_3-20021178-38.html#ixzz1486hIO5v](http://news.cnet.com/8301-13578_3-20021178-38.html#ixzz1486hIO5v)

## Identify the user basics



Identify the user basics (full name including middle initial, current and previous address, date of birth)

## Match Account



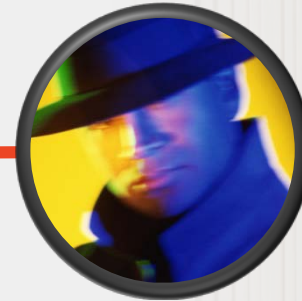
Match one or all of the sides of the basic triangle of identification (name, location, age) to the accounts created on the major social networks (Facebook, Twitter, MySpace, etc)

## Locate Other Accounts



From these found accounts, use the information gathered (i.e., school - former and current, employer former and current), to locate lesser known accounts on the Web (Classmates, MyLife, etc)

## Identify Aliases



Identify any online aliases being used (as a username or a vanity URL) and match those against likewise names on the message board and online group communities

## Search using Pairs and Variations



Search the Web using pairs (name + school attended; name + location; name plus employer; name + age range) and name variations (i.e., John Smith, John Q Smith, John Quinton Smith, Jonathan Smith, Jonathan Q Smith, Johnny Smith, J. Smith, etc)

## Juror 10: Danielle W.

This individual is one of the more tech-savvy of the group. Using three main online aliases, the most popular of which is missxxxxx, Danielle W. has created a number of profiles on the most popular social networking sites currently in use. Of the bunch, she frequents Flickr and Facebook the most, usually updating her own page and commenting other people's posts at least a few times a week. She tends to know the basic implication of online use as the majority of her profiles are set to private. However, she tends to use the same email and usernames, making her movements easy to track. As for function, the majority of her Internet usage tends to be art oriented, specifically related to her hobby of photography. Surprisingly absent from is a blog.

Ms. Whitney is likely to be a **very opinionated plaintiff-oriented** juror. Based on her profile pictures, she appears very artistic and "**anti-establishment.**" In personal injury cases, she is likely to be very **sympathetic to plaintiffs**. As she went to a wealthy private school, she is likely to award high damages in these cases. She is likely to be extremely dangerous in these cases as she appears very opinionated in her views.



## Juror 10: Danielle W.

Full Name:

Current Address:

Hometown:

Phone Number: XXX-XXX-XXXX

Age: 29 (01/1982)

Gender: Female

Email Address: [xxxxxxx@gmail.com](mailto:xxxxxxx@gmail.com)

High School(s):

Online Names: missxxxxx , tigerxxxxx

Bankruptcy: 1 Found; Voluntary – Date Filed  
03/13/2008 (Case Number 0810686)

Liens and Judgments: None Found

Facebook Profile:

<http://www.facebook.com/profile.php?id=743894369>

Profile Privacy Settings Locked minus the following information: Sex, Current City, Hometown, Likes and Interests, Friends (238 total)

MySpace: <http://www.myspace.com/missxxxxx>

Profile Privacy Settings: Set to Private. Friends Only

Flickr: <http://www.flickr.com/photos/missxxxxx/>

(Joined April 2008)

Livestrong:

<http://www.livestrong.com/profile/missxxxxx/>

MyLife: <http://www.mylife.com/tigerxxxxx>

Ebay: <http://myworld.ebay.com/missxxxxx>

Greek Restaurant Review:

<http://www.menupix.com/providence/restaurants.php?id=670138> (comment posted under missxxxxx name)

Best Nim Chow in Providence?:

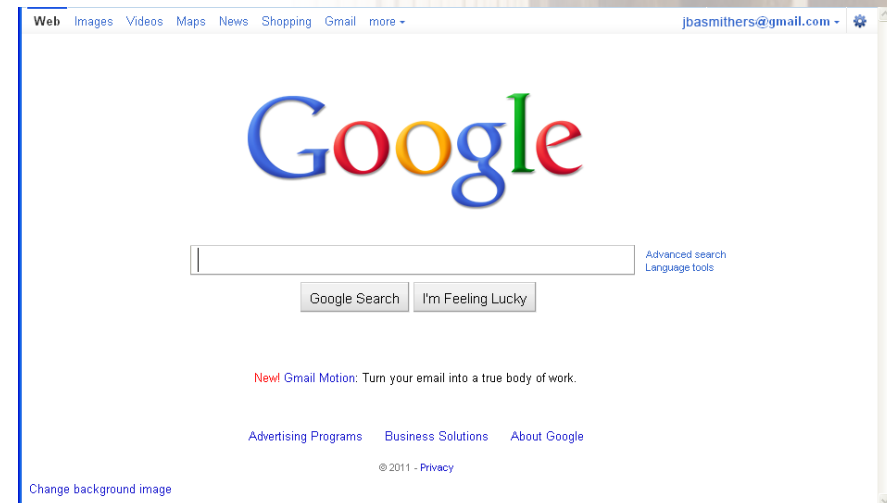
<http://chowhound.chow.com/topics/465545>  
(comment posted under missxxxxx name)



# Google Research Causes Mistrial

*United States v. Hernandez, Docket No. 07-CR-60027 (S.D. Fla. filed Feb. 2, 2007)*

- Defendant charged with illegally selling prescription drugs.
- Eight-week trial went to jury.
- Juror confessed to judge that he had done outside research on the case using Google.
- Judge questioned other jurors and 8 more admitted to using Google, Wikipedia, or other online sources to get information about the case.
- Judge declared a mistrial.
- Defense counsel stated "It's the first time modern technology struck us in that fashion, and it hit us right over the head."





So... **Jury duty** was a experience. Took all day. And now I have to go back tomorrow cause a few f\*\*\*\*ers wouldn't agree with us. Back at it at 9. Another day of work missed. F\*\*\*\*!!!!!!

5 hours ago via Facebook for iPhone



**Jury Duty!** What a day!!! I do not get it. why a sex offender needs to go to trial if he broke the law by not registering as sex offender in the area where he lives now????

Didn't he break the law by not getting registered as sex offender? I am glad I was not picked up. Sex offenders, child molesters, rapists, murderers must go to prison. they are treated too good in this country.

about an hour ago



likes this.



Totally agree!

36 minutes ago



well one of my brother's was picked for grand **jury** and decided to go for lunch one day while on **jury duty** and decided to have a few mojitos and a jager bomb, well he did not make it through the day, i wish i could of been there when he asked to be excused from the court house, dam that is too funny especially after i found out he got sick too

2 hours ago

# Admissibility “hurdles” in some jurisdictions

- The Information must be Relevant
- The Information must be Authenticated
- The information is subject to the “hearsay” rule
- The information must comply with the “original writings” rule
- The probative value is substantially outweighed by the danger of unfair prejudice