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Spoliation, defamation, stalking, and insurance fraud are just a few examples of issues that may require factual evidence necessary to persuade a jury at trial. The methods of obtaining this evidence have dramatically improved over the years and many vendors are now becoming savvy at forensically collecting data from social media sites (SMS), such as LinkedIn, Facebook and Twitter. The number of testifying experts has increased significantly with regard to the defensibility, chain of custody, and the methodology of the collection itself, however, where are the experts regarding the actual use and behavior of those using social media and how utilizing this may impact the outcome of the trial? Moreover, how do lawyers address the employee theft of intellectual property and/or trade secret information such as client lists and client relationship management (CRM) contacts? Perhaps attorneys need to recognize the value of a social media expert.

Although direct evidence of impropriety is difficult to maneuver around, there may be instances where a person's deviant behavior is not cut and dry or black or white. For example, say an issue arises where a defendant is stalking a co-worker and he "checks-in" at the same restaurant that she is dining at after work and makes unwanted advances towards her. Later, the defendant disables the Four Square application to his Facebook Page and turns over the login, password, etc. to the judge pursuant to a court order. Facebook most likely will not allow access to that "check-in" from its site, but a social media expert would advise his client to obtain the defendant's Four Square login credentials and collect from its site as well.

There are numerous ways users of SMS make mistakes by thinking that their privacy settings completely restrict access to others from viewing their profile, yet they forget that when they comment, share, and post on other people's profiles, their activity is visible to the public. For example, an employee could update her Facebook status by stating that she is glad that it is Friday and a co-worker whose profile is protected, could post some defamatory comments about their company and someone from human resources sees the posts and fires the co-worker. Even if the co-worker tried to delete the post on his profile, the original employee could still provide a copy of the post from hers.

Furthermore, the intersection between employers' CRM tools such as Salesforce.com, Zoho.com, etc. and employees' personal LinkedIn accounts is becoming much more congested. The conventional use of LinkedIn is making it more and more difficult to decipher who an employee's connections truly belong to and would they have made these connections if they were not employed by their employer. It is important to know how sales people normally meet contacts, how they add them to their respective CRM tools, and how easily the contacts can be exported to various mediums nearly undetected. Retaining an expert can be advantageous either for non-disclosed purposes or for testifying at trial to assist the attorney with providing the appropriate context of the pivotal issues of the case for the jury.

Overall, the legal system is being bombarded with cases involving social media on a frequent basis. Not only are the courts dumbfounded about how to deal with social media, but many of the lawyers and judges trying and hearing these cases do not even have SMS profiles or any clue of how SMS work. Attorneys should invest in understanding the nuts and bolts of social media so that they can articulate to a jury what the true triable issues of fact are in their cases. Believe it or not, this may be an area where the jury could actual turn the tables on the lawyers since they live and breath social media daily.

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