

# 2016 HOSPITALITY LAW CONFERENCE

FEBRUARY 22-24, 2016,

# SOCIAL MEDIA INVESTIGATION TO BEAT LIABILITY & DRIVE DOWN DAMAGES

Presented by:

Michael J. Noordsy, Partner



# PRESENTER



## Michael J. Noordsy

Partner, THE BASSETT FIRM

### ❖ Areas of Practice:

- ❖ Transportation Litigation
- ❖ Products Liability
- ❖ Personal Injury
- ❖ Premises Liability
- ❖ Criminal Defense
- ❖ Business Litigation

### ❖ Bar Admissions:

- ❖ Texas, 1993



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# OVERVIEW

- ❖ What will we cover today:
  - ❖ Google
  - ❖ Facebook
  - ❖ Twitter
  - ❖ Ethical Considerations
  - ❖ Using Social Media in Litigation
  - ❖ Additional Tips & Resources



# GOOGLE

## Why use Google?

- ❖ **It's FAST.**
  - ❖ A fraction of a second.
- ❖ **It's CHEAP.**
  - ❖ No additional cost. Just have internet access.
- ❖ **It DELIVERS.**
  - ❖ Powered by one of the most advanced and effective search algorithms in the world; identifies most relevant results. Helps identify social media activity.
- ❖ **It's EASY.**
  - ❖ Type what you want in a natural language search, and its there.



# GOOGLE

## ❖ The Key:

- ❖ Google does an amazing job of locating relevant results...
- ❖ BUT, you must be sure that you are using correct and relevant search words.

## ❖ You must:

- ❖ Spell the name correctly
  - ❖ Try different name variations
  - ❖ Robert – Bob; William – Bill; Samantha – Sam
  - ❖ John Doe – John J. Doe – John Jones Doe
- ❖ Use “\*” as a wildcard
  - ❖ Ex: “William \* Jones”
- ❖ Keep Digging!
  - ❖ Don’t give up if results don’t immediately appear



# GOOGLE

- ❖ The Churchill Case
  - ❖ Case resulted from a 3-car accident
  - ❖ The Plaintiff's attorney asked for an extension for discovery responses; mentioned he was having trouble getting ahold of his client.
  - ❖ Via various Google name searches, we ultimately found Plaintiff in federal prison on a life sentence.
- ❖ The Lesson:
  - ❖ So you tried "John James Doe" and got nowhere. – Keep Digging!!
  - ❖ Have you tried:
    - ❖ "John J. Doe";
    - ❖ "John Doe";
    - ❖ "Doe, John James";
    - ❖ "Doe, John J.";
    - ❖ "Doe, John"
    - ❖ "Doe, J."; or
    - ❖ "J. Doe"?
  - ❖ Remember: \* as a wildcard
- ❖ **Even though Google usually brings forward the best information, you need to try EVERY combination of a name when doing your search!**



# GOOGLE

## ❖ Bonus Tips:

### ❖ Google Images:

- ❖ Pictures uploaded to public social media accounts will often be searchable.

### ❖ Google News:

- ❖ Is there an article about the incident?

### ❖ E-Mail:

- ❖ If you know the target's e-mail address, search Google for everything BEFORE the "@\_\_\_\_.com."

### ❖ Google Alerts:

- ❖ Provides email alerts when new internet resources are published containing a specific keyword.





# FACEBOOK

- ❖ By far the BEST site to locate and learn about someone.
- ❖ Simply search by name, phone, email, location, etc.
- ❖ You can even mix it up.
  - ❖ E.g., searching “John Doe in Jacksonville” will only pull up John Does who have listed that they lived in Jacksonville.
- ❖ **Public v. Private Accounts.**
  - ❖ Private accounts will not be helpful because lawyers are generally forbidden from requesting access to this information (i.e., sending a “friend request”).
  - ❖ BUT, if their list of friends is publicly viewable, review the friends accounts for information pertaining to John Doe.



# TWITTER

- ❖ Very, very public forum for expressing political beliefs, opinions, and activities.
- ❖ Public v. Protected Tweets.
  - ❖ Similar to Facebook
  - ❖ However, protected tweets are not used very often because they defeat the purpose of Twitter
- ❖ Twitter users often “compete” for more and more followers.
- ❖ Because of this, users are incentivized to post outlandish, eye-catching things.
- ❖ Such postings can be devastating to a person’s credibility in litigation.



# EXAMPLES – THE “GOTCHA” SOCIAL MEDIA

## ❖ The Smith Case

- ❖ Plaintiff was playing softball at a tournament hosted by our client.
- ❖ Plaintiff was *not* wearing a helmet; got hit by a softball and suffered severe facial injuries.
- ❖ Soon after, the Plaintiff posted on social media a picture of herself *once again* playing softball without a helmet, with the caption “Fall off the horse, you get back on...”

## ❖ The Jones Case

- ❖ Plaintiff was rear-ended by our client, breaking the Plaintiff’s ankle.
- ❖ Accident occurred on the eve of Plaintiff’s high school graduation; argued that accident “ruined” her first year of college.
- ❖ Plaintiff’s social media was replete with pictures of her having a wild, friend-filled, and enjoyable first year of college.



# ETHICAL CONSIDERATIONS

- ❖ When doing research on an individual's social networking accounts, **DO NOT**:
  - ❖ *Befriend the individual* to gain information;
  - ❖ *Create fake user accounts* and befriend the individual to gain information;
  - ❖ *Steal passwords* to user accounts or otherwise gain access to user accounts;
  - ❖ Initiate *any form* of communication with a person represented by an attorney.
- ❖ Because membership access to these social websites is usually unrestricted, many people have been known to create fake user accounts with fake names for the sole purpose of spamming other users and other illegal uses.
- ❖ Evidence gathered *unethically* could adversely affect your case because it may not be admissible as evidence. Further, it could subject you to sanctions or disciplinary issues.



# USING SOCIAL MEDIA IN LITIGATION

## ❖ Social Media Can Be Used to:

- ❖ Impeach an opposing witness.
- ❖ Locate other parties who might have information about the case or incident and identify their relation to the Plaintiff.
- ❖ Assess pre-injury activity and dispute post-injury damages.
- ❖ Dispute Plaintiff's alleged physical impairment/pain & suffering/mental anguish/etc.
- ❖ Acquire impeaching photographs of the Plaintiff or the incident.
- ❖ Learn about prospective jurors.
- ❖ Further your discovery efforts.

## ❖ Always remember to:

- ❖ Utilize all available information when making your searches, including email addresses, phone numbers, aliases, etc.
- ❖ Immediately preserve all search results; users can easily undo their postings.



# ADDITIONAL TIPS & RESOURCES

- ❖ Parents Talk
  - ❖ Mothers, in particular, tend to be vocal on social media regarding their families
- ❖ PIPL.com
  - ❖ This site analyzes data from several different social media platforms and databases.
  - ❖ It also shows family members, current location, and other identifying information.
- ❖ SpyDialer.com
  - ❖ Allows you to “call” a person’s voicemail without actually calling the person
  - ❖ Uses social media account connected to the cellphone # to locate the person
- ❖ FitBit or other wearable technology
  - ❖ Devices that record steps, distances ran/walked, calories burned, etc. can be very useful when comparing pre- and post-injury activity levels
  - ❖ Sometimes, users will upload this information to a public online profile



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