1. Effectively Using Social Media at Trial

We will discuss the effective use of social media, both during the discovery phase of litigation and at trial. The process begins with obtaining information via requests for production, interrogatories, requests for admissions, depositions, etc. If used effectively, social media discovery can become an effective defense strategy that will withstand objections and scrutiny at trial.

Social media evidence is important information to explore, especially considering most people (Plaintiffs) tend to have no filter when it comes to posting information about: relationships with their family, romantic interests, employers, prior medical history, who has done them wrong, friends, lawyers, meals, and the list goes on. People also like to share their personal opinions on just about anything – Nike, Chic-Fil-A, NFL protests, etc.

Social media information is potentially important as an admission against interest, assuming the information is relevant. Information a party or witness puts on the internet can potentially be used against them in cross-examination at trial or during discovery. Litigators have never had this type of ready access to so much of what a party or witness says, does or thinks.

Once suit is filed, you need to have a strategy for obtaining social media evidence and how you are going to use it. The first step is to perform an investigation. The second step is to use your discovery tools. The third step is to get the evidence admitted. And the fourth step is ethical considerations. Developing a good social media investigation strategy does more than just provide you with information. It helps you craft discovery requests that ask for specific information, a requirement that now exists in federal courts and that will soon exist in state courts. The specific information requests can help you compile the discovery, comply with discovery requirements, and help you drill down to obtain the facts you need in order to help your case.

2. Defending Cases in High Crime Areas

Depending on where you do business, crime and its associated consequences may simply be a cost of doing business. Unfortunately, savvy Plaintiff's lawyers have carved out a niche practice by targeting businesses in high crime areas of our inner cities/Plaintiff-friendly venues. Frequently hotels, restaurants, bars, and the like find themselves as repeat targets in premises liability lawsuits. And oftentimes the victims' injuries are catastrophic – murder, rape, assault, emotional trauma, physical injury.

The general theme Plaintiff's lawyers use in these cases is that the Defendant, in an effort to maximize profits, skimped on security measures that would have made the premises safe – i.e. crime free, risk free, covered in bubble wrap with no sharp edges or tripping hazards. To drive up the value of these cases and advance the argument the Defendant was 'on notice', Plaintiff's lawyers rely on the crime statistics for the premises being sued as well as the surrounding community. Police call logs, news articles, social media postings, and the like are used to paint a picture that management was aware of the problem but disregarded the risk to its customers.

Once the groundwork has been laid for the 'profits over people' theme, the focus of the case shifts to deterrent measures – security guards, security lights, fences, other barriers, cameras, etc. From a defense perspective, the key is to focus on the word 'deterrent'. More often than not, the criminal perpetrator, if identified and caught, will have an extensive criminal history. For such a person, the fear of going to prison is no deterrent. By focusing on the history of the criminal, you may be able to demonstrate that he/she has committed crimes despite the presence of 'appropriate' deterrent measures. Another factor to focus on is the deterrent measures used by other similarly situated businesses in the community. Again, experience tends to show that most businesses follow the same or similar security protocols.

Another effective tool in rebutting the deterrent argument is to place the local criminal justice system on trial in the civil case. What happens to the criminal Defendants charged with these crimes? Are the local judges tough or too lenient on crime? How effective/proactive is the DA in prosecuting these cases? In other words, do criminal Defendants have anything to fear? Unfortunately the answer is oftentimes 'No'. Instead of relying on or fixing the system, Plaintiff's lawyers would have the businesses in the community become fortresses impervious to the realties facing the average taxpayer in the community.

Defending businesses in high crime areas is a challenge. Very rarely does the opportunity to blame the victim arise. In addition to presenting positive evidence of the security measures implemented and associated costs, educating the jury as to the realties present in the community, including uncontrollable obstacles that exist when trying to provide a safe premises, can have a positive effect. At a minimum, it should result in a settlement well below policy limits, which is so often not the outcome in these cases.