My new book

Available now on Amazon.com
In 2014, 74% of American adults use social networking sites.

Up from 52% in 2011.

Significantly more Americans have a social media profile than do not.
Consumers continue to spend more time on social networks than on any other category of sites – 16 minutes per hour in the U.S.

Social media has overtaken pornography as the No. 1 internet activity.
35% of couples married between 2005 and 2012 met online.
Facebook has 1.28 billion monthly active users.

(U.S. population is 314 million)

25% of Facebook users don’t bother with privacy settings.
72% of online adults visit Facebook at least once a month.

Facebook users “Like” 4.5 billion items daily.

23% of Facebook users check their account five or more times every day.
On a typical day, more than 500 million Tweets are sent on Twitter, averaging 5,700 per second.

The fastest-growing group on Twitter is the 55-64 age bracket.
YouTube reaches more US adults aged 18-34 than any cable network.

After Google, YouTube is the second largest search engine.
Top Ten Fastest Growing Social/Messaging Apps in 2014

Source: Global Web Index
BASICS OF SOCIAL MEDIA
Law Enforcement & Third-Party Matters

How does Facebook work with law enforcement?

How do I tell law enforcement to get in touch with Facebook?

How can I report a convicted sex offender?

Does Facebook notify users prior to responding to subpoenas?

Where can I learn more about Facebook’s Privacy Policy?

What’s the difference between the Facebook Safety Center and the Help Center Security section?

Information on Civil Subpoenas

May I obtain contents of a user’s account from Facebook using a civil subpoena?

Federal law prohibits Facebook from disclosing user content (such as messages, timeline posts, photos, etc.) in response to a civil subpoena. Specifically, the Stored Communications Act, 18 U.S.C. § 2701 et seq., prohibits Facebook from disclosing the contents of an account to any non-governmental entity pursuant to a subpoena or court order.

Parties to civil litigation may satisfy discovery requirements relating to their Facebook accounts by producing and authenticating contents of their accounts and by using Facebook’s “Download Your Information” tool, which is accessible through the “Account Settings” drop down menu.

If a user cannot access content because he or she disables or deleted his or her account, Facebook will, to the extent possible, restore access to allow the user to collect and produce the account’s content. Facebook preserves user content only in response to a valid law enforcement request.
May I obtain any information about a user’s account using a civil subpoena?

Facebook may provide basic subscriber information (not content) to a party in a civil matter only where: 1) the requested information is indispensable to the case and not within the party’s possession; and 2) you personally serve a valid California or federal subpoena on Facebook. Out-of-state civil subpoenas must be domesticated in California and personally served on Facebook’s registered agent.

Parties seeking basic subscriber information as set forth above must specifically identify the account by providing the email address, Facebook user ID (UID) and vanity URL (if any) names, birthdays, locations, and other information are insufficient to identify a Facebook account. UIDs and/or vanity URLs may be found in the uniform resource locator available in a browser displaying the account in question. For example, in the URL http://www.facebook.com/profile.php?id=12345678910, 12345678910 is the UID.

When will I receive a response to my civil subpoena?

Facebook requires a minimum of 30 days to process a civil subpoena for basic identifying information. Additional time may be required depending on various factors. Delivery may be delayed if you fail to include Facebook’s processing fee in your request.

Do I need a Facebook representative to testify at a civil trial?

No. The account owner, or any person with knowledge of the contents of the account, can authenticate account content. Further, under federal and California law, business records produced by Facebook are self-authenticating.
ADMISSIBILITY
What kinds of evidence?

- Facebook
- Social Media
- Texts
- Voicemail
- Digital Photos
- Screenshots
- Videos
- Recorded Calls
- Websites
- Emails
- Chats / IMs
Why?
Wow there is nothing like sitting at home with your kid who would rather play outside then watch kid movies n watch u take beer bongs by yourself the joys of my life!!! Literally — 😞 feeling lonely.

Be the first person to like this.
Hahaha changd lillys diaper n found a roach stickin to her butt lmao! Looks ok ta smoke tho so were good!
lol mom driving drunk 🙄рус
My step daughter [redacted] such an embarrassment to this family. I'm sorry for the stuff she posts on here. Please unfriend her so you don't have to read her "pour pitiful me stuff all the time". She messed up in the head.

Like · Comment · Share

[Stepdad] and [Stepdaughter] like this.

[Stepdaughter] this makes you look like an idiot..

12 mins · Like
shocker of the week
FARRAH TAKES A ‘BREAK’ FROM HER 4-YEAR-OLD

These days, former Teen Mom star Farrah Abraham spends most of her time appearing at strip clubs or giving interviews. But she insists time apart from daughter Sophia, 4, isn’t hurting the little girl. “It’s healthy that we have a break,” claims Farrah, 22 (whose dad lives near her and Sophia in Texas). “She has her own life and is doing her own thing, and I’m doing mine.”
BOTTOM LINE

- Use existing rules
- Electronic evidence is not inherently unreliable
- Same uncertainties exist with traditional written documents
- Threshold preliminary authentication, subject to cross examination
Tienda v. State
Feb. 8, 2012
Authentication - Rule 901

“In performing its...gate-keeping function, the trial court itself need not be persuaded that the proffered evidence is authentic. The preliminary question for the trial court to decide is simply whether the proponent of the evidence has supplied facts that are sufficient to support a reasonable jury determination that the evidence he has proffered is authentic.” Tienda
Circumstantial Evidence

- Numerous photos of defendant, showing unique tattoos
- References to victim’s death and funeral
- References to defendant’s gang
- References to defendant’s ankle monitor

- Support a finding that the MySpace pages belonged to defendant and that he created and maintained them
Forgery?

- Possibility that defendant is a victim of “elaborate and ongoing conspiracy”
- State produces a prima facie showing that it was the defendant, not a fraudster, who created the page
- Jury assesses likelihood and weight of this alternate scenario
AUTHENTICATION
Email

- E-mail address
- Unique information contained in email - references to nicknames or other facts
- Similarity of email content to other communications
- Reply letter doctrine
- Business record / trade inscriptions
Texts

- Same factors as emails
- 3rd parties permitted to testify about content of texts on others’ phones
- Objection: “just because text messages were found on a phone in his possession did not mean he sent or received them” …OVERRULED
Hey mom, I'm just going to maddies to do some meth

Uhh... I hope that is a joke syd..

Omg!!! I meant meth!!!!

Meth!

***METH

OMG MATH!! MATH!

Oh thank god!
Any ideas for dads bday

I don't know. Let's thaw him out to eat

Lo!!!

I mean take him out to eat!!
Websites

- 2 separate issues:
  - Authentication as true and correct printouts of a website
  - Evidence showing that what appears on the website was put there by the party
Websites

Foundation:

1. What was actually on the website?
2. Does the exhibit accurately reflect it?
3. Is it attributable to the party?
Social Media

- *Tienda* factors – circumstantial evidence, distinctive characteristics
- Personal facts
- Other friends
- History of sending/receiving messages
Emily Miskel

Emily Miskel is a divorce and family law attorney at Koons Fuller, the largest firm in the southwest practicing exclusively family law.

Emily handles complex divorce matters including property valuation and division, child issues, and pre- and post-nuptial agreements.

In addition to litigation experience, Emily is trained in alternative dispute resolution, including mediation, arbitration, and collaborative law.

Employers:

Koons Fuller, P.C.
Attorney • Sep 2009 to present • Plano, Texas

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Graduate

School

Harvard University
Class of 2006 • Cambridge, Massachusetts

College

Stanford University
Class of 2002 • Mechanical Engineering • Stanford, California

High School

Texas Academy of Math And Science
Class of 1999 • Denton, Texas

Arts and Entertainment

Emily Miskel
Chat / Instant Message

- No ISP / forensic testimony required

- Circumstantial evidence:
  - Party used the screen name
  - When a meeting was arranged with screen name, party showed up
  - Identifying characteristics in chat content
  - Party possessed information given to screen name
  - Computer evidence from party’s computer showed use of screen name
Digital Photographs

- Same as normal photograph – fairly and accurately represents scene depicted

- Digitally enhanced or edited photos – digital enhancement process produces reliable and accurate results (expert)
Voicemail and Audio Recordings

- Opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker
- Witness does not have to identify every voice in the recording
- Witness should recognize voice and connect the recording with circumstances
Stored vs. Processed Data

- Records merely stored in a computer raise no computer-specific authentication issues.

- Computer \textit{processed} data may require more technical authentication – testimony that process yields reliable result.
HEARSAY
Unreflective Statements

- Present sense impression
- Excited Utterance
- Then-existing condition
Reliable Documents

- Recorded recollection
- Records of regularly-conducted activity
- Market reports, commercial publications
Non-Hearsay

- Computer-generated “statements”
- Metadata
- Admissions by party-opponent
OPTIONAL COMPLETENESS
TRE 107. RULE OF OPTIONAL COMPLETENESS

When part of an act, declaration, conversation, writing or recorded statement is given in evidence by one party, the whole on the same subject may be inquired into by the other, and any other act, declaration, writing or recorded statement which is necessary to make it fully understood or to explain the same may also be given in evidence, as when a letter is read, all letters on the same subject between the same parties may be given. "Writing or recorded statement" includes depositions.
TRE 106. REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may at that time introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it. "Writing or recorded statement" includes depositions.
ILLEGAL EVIDENCE
Wiretapping

- **Federal** – 18 U.S.C. 2510-2522
- **Texas** – Tex. Penal Code 16.02
  Tex. CPRC Ch. 123
Stored Communications

- Federal – 18 U.S.C. 2701-2712
Unauthorized Access

- Federal – 18 U.S.C. 1030
- Texas – Tex. Penal Code 33.02
  Tex. Penal Code 33.07
  Tex. CPRC Ch. 143