



The Jury

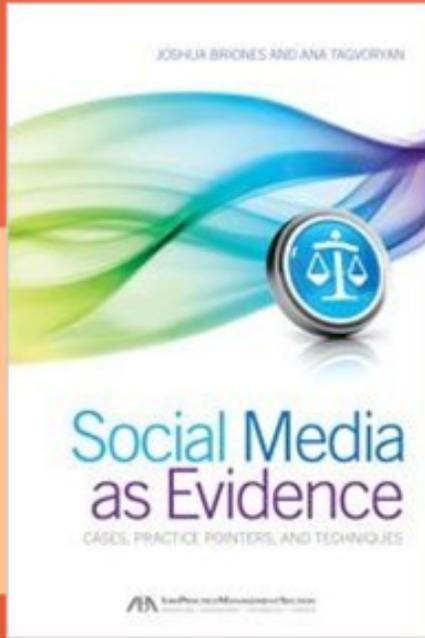
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# EXPERT

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## THE JURY EXPERT BOOK REVIEW

### SOCIAL MEDIA AS EVIDENCE: CASES PRACTICE POINTERS AND TECHNIQUES

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Review by Rita Handrich, Ph.D.

*Social Media as Evidence: Cases, Practice Pointers, and Techniques* by Joshua Briones and Ana Tagvoryan Publisher: [American Bar Association](http://www.americanbar.org), \$79.95, 100 pages.

The social media landscape shifts quickly and keeping up with changes in platforms, privacy settings, and case law is more than a full-time job. Websites used for juror research may be purchased by other websites and, suddenly, their results are identical. You can spend hours doing painstaking research and inadvertently “make contact” with a juror because you don’t understand how different social media websites notify users of who has looked at their social media profiles. You may think you are being very, very careful, and yet leave a trail behind you—sometimes called “cyber crumbs” or “electronic footprints” that can unintentionally identify you as having peered into the social media life of someone you (likely) do not know.

Now, two attorneys at DLA Piper have written a book they plan to update routinely so it remains relevant and useful. “The proverbial ‘smoking gun’ document of the pre-Internet era, which had given way to smoking gun email, has now given way to the smoking gun social media post”, say the authors.

The book (*Social Media as Evidence*) introduces the various social media platforms (something which, if you are reading this book, you likely do not need) and then covers case law in various civil areas. Even if you are fairly well-informed on social media discovery, I think you will learn a number of new pieces of information from this book.

You’ve probably read about the evidentiary gold mine awaiting you by searching social media sites for evidence in insurance fraud cases, for impeaching witnesses or undermining the litigation position of a company. Stories are published routinely of attorneys searching Facebook and LinkedIn for information relevant to pending litigation, and of the searching of Twitter for tweets with relevance to attitudes, beliefs and values that could prove useful for either side in a dispute headed for the courtroom. Some of these searches are actually conducted in violation of the fast-evolving case law, much to the distress of both the attorneys and the courts.

While we are likely all familiar with the idea of social media discovery, many of us are not well-versed in the myriad ways it can go horribly wrong. The authors address this knowledge gap

and educate the reader on the pitfalls of social media discovery by summarizing recent case law (which is, at times, inconsistent and even contradictory), discussing ethical considerations, providing tips and tricks for various types of litigation discovery, and even describing challenges surrounding data authentication and retention in litigation.

For trial lawyers and consultants who work in trial courts, this book is a handy reference tool. The Appendices are a treasure trove of samples for jury instructions, preservation notices, litigation holds, and even sample questions you may wish to ask during discovery. There is however, one major drawback to the information presented in this brief but informative book.

The main dilemma for books like *Social Media as Evidence* is the nature of book publication timelines and the lightning speed at which the technology changes and shifts. One example of how quickly things change is the lack of information in this book on avoiding “inadvertent contact” when searching LinkedIn for information on potential jurors. This tip has been widely circulated in the past year but is not mentioned in the book itself—probably because they went to press before this was widely appreciated.

In the event you do not know about this issue, LinkedIn has a feature where they tell the user who has looked at their profile in the recent past. Unless you change the privacy settings on your own account, the LinkedIn user will be given notice that you looked at their account. This has been ruled “[inadvertent contact with a juror](#)” by the NY Bar Association, and is barred. Obviously something you want to avoid.

FYI: To avoid this sort of “cyber footprint”, go to your Privacy Settings in LinkedIn and select the option about what someone sees when you have looked at their account. Set your privacy setting to “you will be completely anonymous”. And then you will not be revealed to the LinkedIn user when you peruse their profile.)

[Rita Handrich, Ph.D.](#) is the Research Director for Keene Trial Consulting (which focuses on civil litigation and white collar crime). She is also the Editor of The Jury Expert. She contributes regularly to the ABA-recognized [Jury Room blog](#) at Keene Trial Consulting and reads voraciously on all things at the intersection of the social sciences and the law.

Another shortcoming for me in this book was the focus on education and case law without a real set of information “tools” one can use for social media discovery. There is no list of tools, strategies, or resources for actual juror research that would make this a truly stellar resource for the practicing attorney who needs to know the latest in social media discovery. They tell the reader ‘why’ but give very little information on ‘how’. This book tells you about potential strategies and questions for social media discovery but leaves you longing for guidance on how to make use of the resources out there.

One thing I especially liked was the author’s mention of blog posts and blog comments as a useful source of information. They point to the Supreme Court citing online posts in their opinions and comments that inform regarding debate in the legal arena. They also add that comments from potential jurors in online forums can be truly instructive. While the authors are presumably referring to the content of the comment for potential indications of attitudes, beliefs and values, there is also new information available on the *kind of people* who actually post comments on internet news websites. We [blogged about this recently](#) at our firm blog (*The Jury Room*) and concluded this:

“As an aside, it can be worthwhile in voir dire to inquire about whether anyone has ever posted a comment on an internet news site. If you find someone who has done it more than a couple of times, you probably have a fairly kooky person of one type or another.”

In sum, this book is a useful reference tool and a fast overview of the social media discovery arena. I hope the authors will consider incorporating a list of social media discovery tools they find useful in upcoming editions of the book and updating those with each new issue as well. That addition of the ‘how’ in social media discovery would transform this book from a ‘good resource’ into a ‘must have reference’ for your library. ©