

Bizarro by Dan Piraro



Social Network Evidence

Don Landis and Chuck Sevilla



Facebook

Consider

- More than 500 million active users.
50% of active users log on everyday.
Average user has 130 friends

People spend over 700 **billion** minutes per month on Facebook

All Law Enforcement Check It

Googling, Spokeo, PIPL....

The screenshot shows the Spokeo search interface. At the top, the Spokeo logo is on the left, and a search bar contains the name "Alex Kozinski" with a "SEARCH" button to its right. Below the search bar, there are filters for "USA (2 results)" and "33 Marguerite Dr".

The search results are displayed in a table with two columns: "NAME" and "LOCATION".

NAME	LOCATION
Alex Kozinski 🏠 125 S Grand Ave, Ste 200	City Pasadena, CA
Alex Kozinski 🏠 33 Marguerite Dr	City Rancho Palos Verdes, CA

To the right of the search results is a "MAP" section. It features a map of the Los Angeles area with a red pin marking a location in Rancho Palos Verdes. Below the map is a "Satellite" view showing an aerial image of the same location, with a red pin and a person icon indicating the user's profile location. The map includes labels for various cities and landmarks such as Fillmore, Piru, Santa Clarita, Happy Camp Canyon Park, Moorpark, Simi Valley, Thousand Oaks, Westlake Village, Malibu Springs, Zuma/Tracas Canyons, Malibu, and Angeles National Forest. The map also shows major highways like 126, 14, 23, and 210.

Below the map, there are several tabs for more information: "Basic Info", "Property", "Family", "Social", "Neighborhood", and "Wealth". The "Satellite" and "Bird's Eye" options are also visible.

Client/Witness Interviews

- Do you have a presence on any social networks such as Facebook, Twitter, etc.?
 - ▶ Do you have a website or a blog?
 - ▶ Do you post on Youtube or Craig's List?
 - ▶ Do you have a Flip Video or the like?
 - ▶ Do you email? Instant Message?
 - ▶ Do you text or sext message on your cell?
 - ▶ Do you use Limewire (peer2peer programs?)
 - ▶ On what media do you store files, photos?
 - ▶ Do you upload on cloud storage (Mosy)?

What Can You Say?

Don't talk about the case.

- You can tell them that all of their e-gadgets and e-presence on the web are highly likely to be examined and, if possible, used against them in court.
- Law enforcement is told to say as much to their witnesses.



What You Can't Say

“Mr. Client, Tear Down That Wall”

- Altering the client's site when evidentiary – Penal Code 135 problems:
 - ▶ Every person who, knowing that any book, paper, record, instrument in writing, **or other matter or thing**, is about to be produced in evidence upon any trial, inquiry, **or investigation whatever**, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

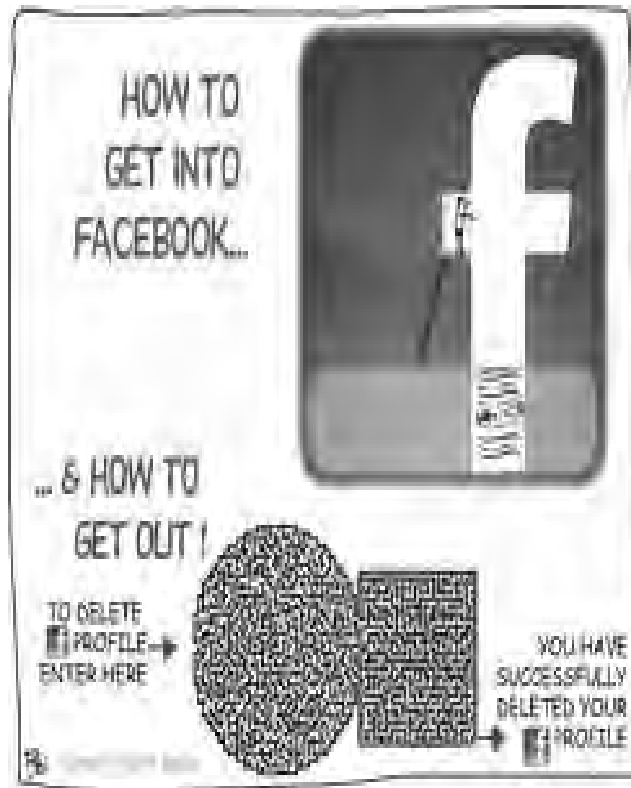


Archive.com

Does anything every disappear from the web?

- Sites are usually crawled within 24 hours and no more than 48. There is a 6-12 month lag between the date a site is crawled and the date it appears in the Wayback Machine. . . .
- If a site owner properly requests removal of a Web site through www.archive.org/about/exclude.php, we will exclude it.

Eternity in Etherspace



Using the Wayback

Beryl A. Howell "Proving Web History: How to Use the Internet Archive" (Feb. 2006) Journal of Internet Law

- The Archive contains over 100 terabytes and 10 billion web pages archived since 1996

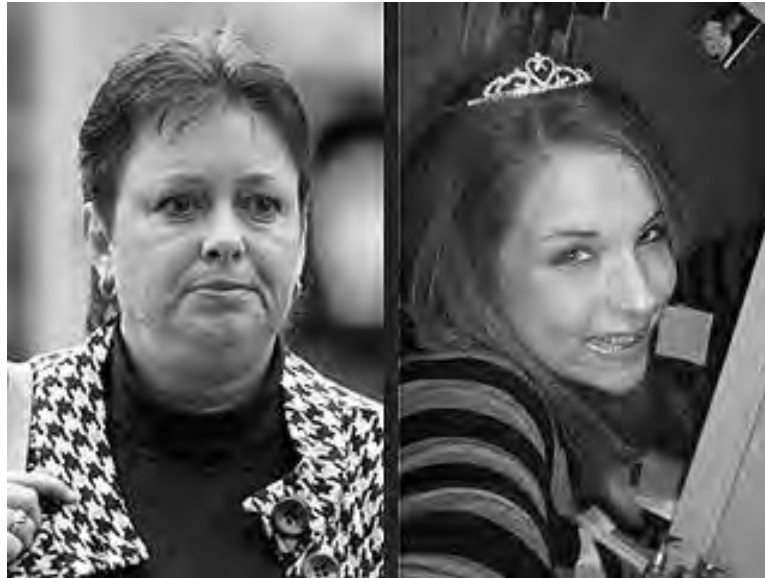


The screenshot shows the top portion of the Wayback Machine website. At the top center, the text "INTERNET ARCHIVE" is written in a small, spaced-out font. Below it, the "WayBackMachine" logo is displayed in a large, stylized, grey font. Underneath the logo is a search input field containing the text "http://". To the right of the input field are two buttons: "Take Me Back!" and "Advanced Search". Below the search area, the text "Surf the web as it was" is centered. At the bottom of the screenshot, there is a paragraph of text: "The Internet Archive Wayback Machine puts the history of the World Wide Web at your fingertips. The Archive contains over 100 terabytes and 10 billion web pages archived from 1996 to the present." followed by another paragraph: "To start using the Wayback Machine to surf the web as it was, just type a URL (a web site address) into the box above, click the Take Me Back button, and start exploring the past." and finally a link labeled "Special Collections".

What You Can't Do

Fall out from Lori Drew Case In LA

- CA Penal Code 528.5 (effective 1/1/11)
 - ▶ Impersonating a person via electronic means to harm, intimidate, threaten, or defraud = misd.



Calif. Penal Code 502(c)

Wobbler for hackers

- Knowingly access w/o permission and make use of any computer data





Computer Fraud & Abuse Act

18 USC 1030

- (a) Whoever intentionally accesses a computer w/o authorization *or exceeds authorized access* and thereby obtains information from any protected computer if the conduct involved an interstate communication
 - ▶ (c) punishment is prison for 5 years if the offense was committed in furtherance of a crime or tortious act

No Phony Name “Friending”

Calif. PC 1054.8

- No attorney or investigator shall **question, interview or speak to a victim or witness** whose name has been disclosed by the opposing party in discovery without first clearly identifying himself or herself, identifying employer and if in person show card or I.D..
- Thus, can't use your “handle” to befriend

What's Public is Fair Game

- Print Screen, screenshot, copy to pdf & CD/DVD

Stanford law graduate who allegedly was a call girl pleads guilty to tax evasion

Cristina Warthen once boasted that she paid off student loans by working as an escort, a search warrant affidavit says.

By Richard C. Paddock, Los Angeles Times January 27, 2009



Reporting from San Francisco -- A Stanford law school graduate who allegedly boasted online that she paid off her student loans by working as a high-priced call girl pleaded guilty Monday to tax evasion and agreed to pay \$313,134 in penalties.

How to Get the Material

update, update, update

- **Friends Give You Data on Friends**
- **Ask the Subscriber**
 - ▶ Facebook Accounts-Setting-Download
- **Joint Prosecution/Law Enforcement/Defense Effort**

Discovery Motion

- Informal/Formal Discovery Motion (PC 1054/1054.1; F.R.C.P. Rule 16.)
 - 1. Defendant's Statements
 - 2. Real Evidence - Photos
 - 3. Written/Recorded Witness Statements
 - 4. Exculpatory Evidence - Brady

Subpoena Social Network Companies/Non-party Witnesses

PC 1326; F.R.C.P. Rule 17



Rosita Martinez
Custodian of Records
Compliance@mayspace-inc.com
407 N. Maple Drive
Beverly Hills, Ca 90210
888-309-1314
Fax - 310-356-3485 - Best to Fax

Subpoena

facebook

- Corporation Services Company
Custodian of Records
2730 Gateway Oaks Drive, Suite 100
Sacramento, Ca 95833
916-641-5100
- Don't pay \$500 **civil** subpoena fee

The Subpoena Arguments

18 U.S.C. 2701

- Stored Communications Act - apply?
- Certainly if the network site is wide-open; see Crispin v. Audigier, 717 F.Supp. 965 (CD Ca. 2010) (but not if settings are “private”)
- Doubtful the Act applies to a stand alone computer & whether it is a “facility.” See Hilderman v. Enea TekSci, Inc., 551 F.Supp.2d 1183, 1204-05 (SD Ca. 2008)



Consent/Waiver Letters

Defendant/Non-party Witnesses

- Compelling consent by court order; see O'Grady v. Superior Ct. (2006) 139 Cal.App.4th 1423, 1446 (civil case party)
- Under federal rules, if a **party** has a legal right to the document from another source, they have control and can be required to get it. Mercy Catholic Med. Ctr. v. Thompson, 380 F.3d 142, 160-161 (3d Cir. 2004)

Requests on the Subpoena

- 1. picture, audio, and video files
- 2. meta data
- 3. information concerning certain URLs
- 4. internet protocol address and other location identifiers
- 5. Internet Service Provider address and internet subscriber information
- 6. abuse reports
- 7. site terms of use

Subpoena Request Cont'd

- 8. Social networking site profiles of witnesses, defendants, friends, groups
 - a. Photos
 - b. Likes/Dislikes, Favorites, Books, Music, Authors, Sayings
 - c. Email
 - d. Text/IM
 - e. Walls

Subpoena Request Cont'd

- 9. business and personal activities of witnesses or defendants
- 10. frequency of postings/use
- 11. social, business, and other group affiliations
- 12. information uploaded to website

How to Use it/Exclude it

Motion to Suppress/Exclude

- **1. Constitutional Grounds - 4th, 5th, 6th, 14th Amendments**
- **See U.S. v. Warshak case, 2010 US App Lexis 25415 (6th Cir. 12/14/10), holding that the gov't must have a court issued warrant to go to an ISP and demand customer emails.**

How to Use it/Exclude it

- 2. Statutory Grounds
 - a. SCA - 18 U.S.C. § 2701
 - b. Communications Assistance For Law Enforcement Act
 - c. Electronic Communications Privacy Act - 18 U.S.C. §§ 2701-12
 - d. Federal Wiretap 18 U.S.C. §§ 2510-22; State Wiretap laws CA PC 632
 - e. Legal privileges - Atty/Client; Patient/ Psych/ Doctor; work product; marital.

Motions In Limine

- **1. Relevance or collateral EC 210/350;
F.R.E. 501**
- **2. Authenticity**
 - a. Writings - EC 250**
 - b. Computer information -EC 1552**
 - c. Images on Video or Digital Medium -EC
1553**
 - d. Judicial Notice - EC 450**
 - e. Chain of Custody**
 - f. Self Authentication - EC 1421**
 - g. Reply Doctrine - EC 1420**

Motions in Limine

Continued

- **3. Hearsay - offered for substantive truth - EC 1200; F.R.E. 801**
- 4. Secondary/Best Evidence - original or iteration - EC 1521; F.R.E. 1001-1008**
- 5. Probative/Prejudicial - probative value outweighed by prejudicial effect -EC 352; F.R.E. 403**

Authentication Issues

Courts are all over the map on the issue

- Easy street: cross-examination admission
 - ▶ Clark v. Indiana (2009) 915 N.E.2d 126
 - ▶ or a statement from the person who took the screenshot.
- Perfect 10 case cited in material based on circ. evidence of dates and web address

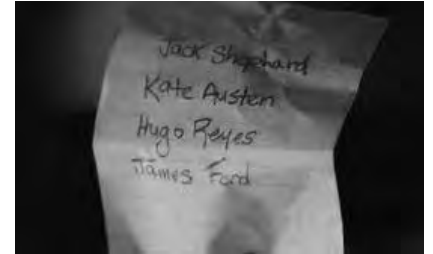
Harder: affidavit from webmaster

- ▶ In re Homestore, 347 F.Supp.2d 769, 782-782



People v. Beckley

(2010) 185 Cal.App.4th 509



- **The challenges to authentication
(The gang sign photo and roster)**
- **no one testified the photo was not a composite or faked**
- **insufficient evidence to show roster was
was it purported to be (authentic), i.e.,
who created it and with personal
knowledge?**

