



Smarter Discovery™

Producing Social Networking Profiles: What Court has Jurisdiction?

A Facebook user in Massachusetts was facing criminal charges in Massachusetts for criminal harassment and threats to commit a crime from Facebook messages. *Skerry*, 2009 U.S. Dist. LEXIS 38804, 1-2 (D. Cal. 2009). The Petitioner's defense was that someone had improperly used his account to send the Facebook messages. *Skerry*, 4. The Petitioner sought the emergency deposition of Facebook's "recorder keeper" because of the concern Facebook periodically purged its information system. *Skerry*, 2-4.

The petitioner's criminal defense attorney emailed Facebook for ESI pertaining to the petitioner's profile. Facebook replied they were creating a preservation order, but they required a formal subpoena to produce any ESI or Documents. *Skerry*, 2.

The Petition filed a pro se motion to compel a deposition of Facebook's record keeper to perpetuate testimony before any action been filed according to Federal Rule of Civil Procedure 27(a).

The Petitioner had two major problems: 1) There was no adverse party in the Northern District of California and 2) The Petitioner did not seek to perpetuate testimony "about any matter cognizable in a United States court." *Skerry*, 4

The Petitioner fell victim to the United States District Court for the Northern District of California not having any Federal jurisdiction. The case was a Massachusetts criminal case with a Massachusetts victim of the alleged crime. There was no Federal Question for the Federal Court to hear the case, but rather a state criminal action from Massachusetts. *Skerry*, 4-5. Since the Court did not have jurisdiction, there was no relief to grant.

While the Court did deny the motion, the Federal Magistrate Judge did not state any opinion on what a California state court would do with such a request. *Skerry*, 5-6.

The Petitioner's issue goes back to *Marbury v. Madison*: A Federal Court needs jurisdiction to hear a case. When dealing with social networking sites based in one state that provide services to the entire country, the issues of proper venue, choice of law and even state vs Federal court must be considered when seeking legal relief.

