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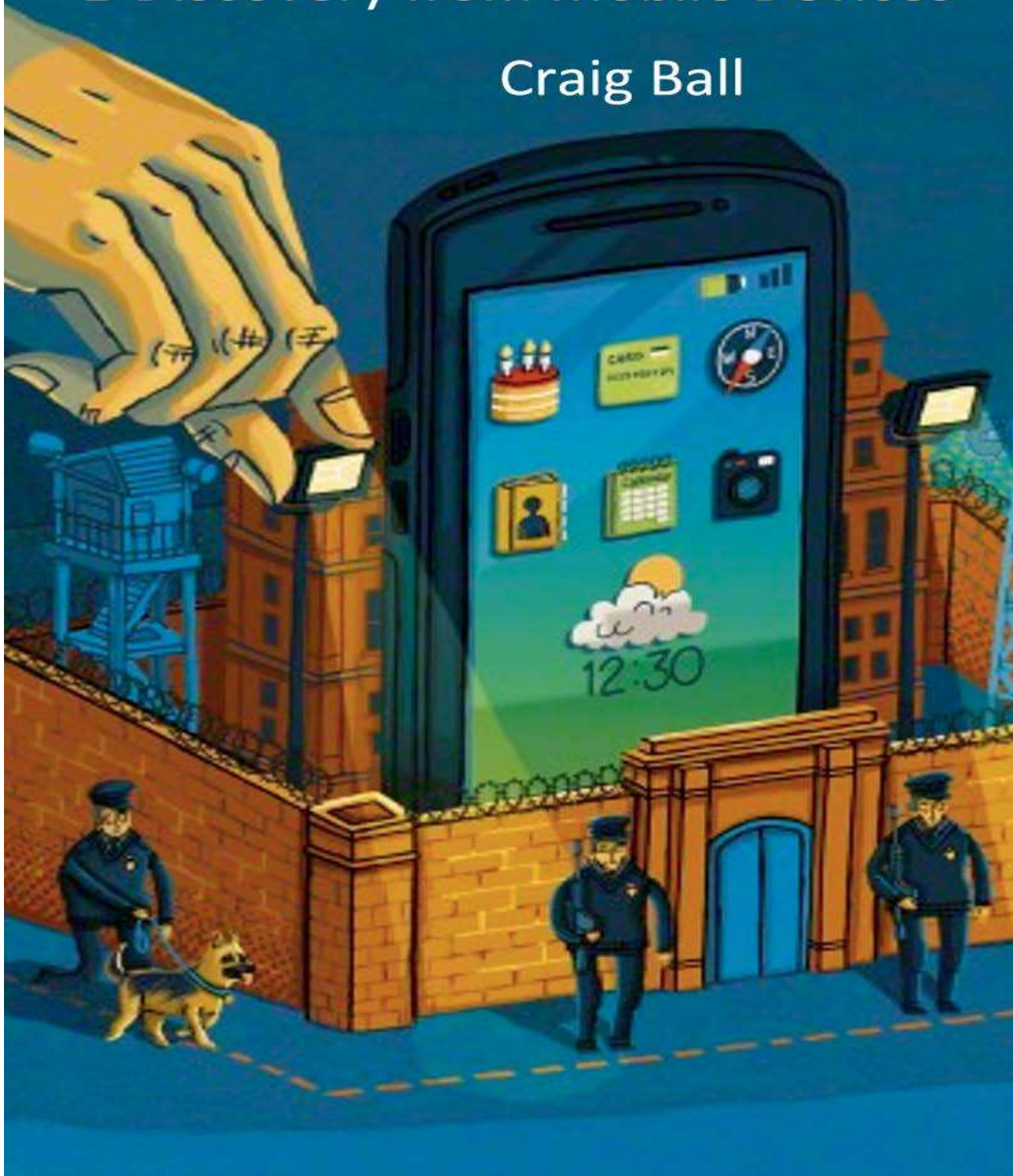
**Austin, Texas**

**Opportunities and Obstacles:  
E-Discovery from Mobile Devices**

**Craig Ball**

# Opportunities and Obstacles: E-Discovery from Mobile Devices

Craig Ball



# Opportunities and Obstacles: E-Discovery from Mobile Devices

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Do you live two lives, one online and the other off? Millions lead lives divided between their physical presence in the real world and a deeply felt presence in virtual worlds, where they chat, post, friend, like and lurk. They are constantly checking themselves in and checking others out in cyberspace. In both worlds, they leave evidence behind. They generate evidence in the real world that comes to court as testimony, records and tangible items. Likewise, they generate vast volumes of digital evidence in cyberspace, strewn across modern electronic systems, sites, devices and applications.

Trial lawyers who know how to marshal and manage evidence from the real world are often lost when confronted with cyber evidence. This article takes an introductory look at discovery from mobile devices.

## The Blessing and Curse of ESI

Even if you don't know that data volume is growing at a compound annual rate of 42 percent, you probably sense it. This exponential growth suggest there's little point feeling overwhelmed by data volumes *today* because we are facing volumes *ten times as great in five years*, and *fifty times* as great in ten years.<sup>2</sup> Today is tomorrow's "good old days."

There's going to be a lot more electronic evidence; but, there's still time to *choose* how you deal with it.

If you're a lawyer, you can curse electronic evidence and imagine you're preserving, collecting and requesting all you need without cell phones, the Cloud and all that e-stuff.

Or, you can see that electronic evidence is powerful, probative and downright amazing, and embrace it as the best thing to happen to the law since pen and ink. Never in human history have we enjoyed more or more persuasive ways to prove our cases.

## Mobile Miracle

According to the U.S. Center for Disease Control, more than 41% of American households have no landline phone. They rely on wireless service alone. For those between the ages of 25 and 29, *two-thirds* are wireless-only. Per an IDC report sponsored by Facebook, four out of five people start using their smartphones within 15 minutes of waking up and for most, it's the very first thing they do, ahead of brushing their teeth or answering nature's call. For those in the lowest economic stratum, mobile phones are the principal and often sole source of Internet connectivity.

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<sup>1</sup> Craig Ball of Austin is a trial lawyer, computer forensic examiner, law professor and noted authority on electronic evidence. He limits his practice to serving as a court-appointed special master and consultant in computer forensics and electronic discovery and has served as the Special Master or testifying expert in computer forensics and electronic discovery in some of the most challenging and celebrated cases in the U.S. A founder of the Georgetown University Law Center E-Discovery Training Academy, Craig serves on the Academy's faculty and teaches Electronic Discovery and Digital Evidence at the University of Texas School of Law. For nine years, Craig penned the award-winning Ball in Your Court column on electronic discovery for American Lawyer Media and now writes for several national news outlets. For his articles on electronic discovery and computer forensics, please visit [www.craigball.com](http://www.craigball.com) or his blog, [www.ballinyourcourt.com](http://www.ballinyourcourt.com).

<sup>2</sup> Market research firm IDC predicts that digital data will grow at a compound annual growth rate of 42 percent through 2020, attributable to the proliferation of smart phones, tablets, Cloud applications, digital entertainment and the Internet of Things.

Last month (September 2015), Apple sold 13 million new iPhones in three days. These will soon hold apps drawn from the more than *1.4 million* apps offered in the iOS App Store, compounding the more than *100 billion* times these apps have been downloaded and installed to date.

Worldwide, phones running the competing Android operating system account for three times as many activations as Apple phones. The United States Supreme Court summed it up handily: *“Today many of the more than 90% of American adults who own cell phones keep on their person a digital record of nearly every aspect of their lives.”*<sup>3</sup>

Within this comprehensive digital record lies a cornucopia of probative evidence gathered using a variety of sensors and capabilities. The latest smart phones contain a microphone, fingerprint reader, barometer, accelerometer, compass, gyroscope, three radio systems, near field communications capability, proximity, touch, light and moisture sensors, a high-resolution still and video camera and a global positioning system.<sup>4</sup> As well, users contribute countless texts, email messages, social networking interactions and requests calls for web and app data.

Smart phones serve as a source of the following data:

- |                         |                    |                        |
|-------------------------|--------------------|------------------------|
| • SIM card data         | • Geolocation data | • Web history          |
| • Files                 | • E-mail           | • Calendar             |
| • Wi-Fi history         | • Voicemail        | • Bookmarks            |
| • Call logs             | • Chat             | • Task lists           |
| • Photographs and video | • SMS and MMS      | • Notes                |
| • Contacts              | • Application data | • Music and rich media |

### **Mustering Mobile**

For the last decade, lawyers have been learning to cope with electronic evidence. We *know* how to acquire the contents of hard drives. We *know* about imaging and targeted collection. We’ve gotten better at culling, filtering and processing PC and server data. After all, most corporate data lives within identical file and messaging systems, and even those scary databases tend to be built on just a handful of well-known platforms. Too, we’ve got good tools and lots of skilled personnel to call on. **Now, let’s talk mobile.**

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<sup>3</sup> *Riley v. California*, 573 U.S. \_\_\_\_ (2014).

<sup>4</sup> In support of 911 emergency services, U.S. law requires the GPS locator function when the phone is on.

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