

# Mobile Discovery Workflow Overview

Mobile Collection, Processing, and Hosting Walkthrough

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UT LAW CLE

TEXAS  
The University of Texas at Austin  
School of Law

## Discoverability of Mobile Devices, New Technology and Social Media Platforms

Moderator:  
**Andrea L. D'Ambra**  
Norton Rose Fulbright US LLP  
New York, NY

**Geoffrey David**  
Rio Tinto  
New York, NY

**Bryan Foster**  
Deloitte LLP  
Houston, TX

E-DISCOVERY ESSENTIALS

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## Mobile Device Risks

### Data Leakage

It's possible confidential company data could be shared in forums outside the company's control

### Data Loss

Accidental or intentional spoliation of data required to be preserved

Company trade secret information/privileged information

Loss of control over business communications that should be retained per Retention Schedule (FCPA risk)

### Increased Costs of Collection

Texts

Other messaging applications

## Spoliation Risk

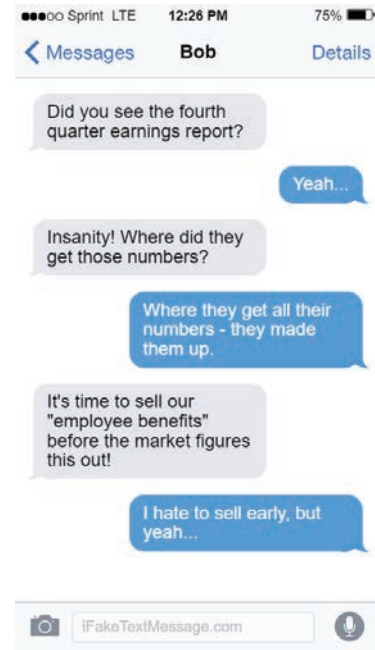
*Shawe v. Elting*, 157 A.3d 142, 149-51 (Del. 2017), in a corporate dispute, Defendant ordered to pay over \$7 million in attorneys' fees and expenses for a series of litigation abuses to include the deletion of relevant text messages.

In *Benefield v. MStreet Entm't, LLC*, the court imposed a spoliation instruction where defendant failed to preserve potentially relevant text messages stored on the *personal* phones of key officers and employees. No. 3:13-CV-1000, 2016 WL 374568 (M.D. Tenn. Feb. 1, 2016).

*Schmalz v. Vill. of N. Riverside*, No. 13 C 8012, 2018 WL 1704109 (N.D. Ill. Mar. 23, 2018), a police department failed to preserve relevant text messages about the Plaintiff. The court found gross negligence, but not intent to deprive. Still permitted Plaintiff to tell the jury about the spoliation and the likely relevance of the texts.

## Mobile Device Discovery is on the Rise

- Attorneys know these days that Mobile Device preservation/collection is a huge Achilles heel (compliance is hard)
- Constantly being requested because communications are often less guarded than in email
- More business simply is being conducted on mobile devices



## Mobile Device Risks

How are companies managing those risks?

- Offering enterprise solutions for messaging applications
- Limiting who can use messaging applications for business purposes
- Requiring express written agreement (at least in the US) to devices—including obtaining passwords
- Other restrictions

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