



“ANY DETECTABLE AMOUNT OF ALCOHOL” TAKING A BREATH OR BLOOD SPECIMEN OF A JUVENILE

BY PAT GARZA

When it comes to driving while intoxicated, a law enforcement officer can take a child into custody under the same laws and circumstances as an adult.¹ The same elements that must be proved to convict an adult in adult court would be required to adjudicate a juvenile in juvenile court. But for a law enforcement officer, how he or she obtains the evidence may be quite different than that for an adult. In the usual child custody situation, the Family Code establishes strict restrictions on law enforcement interactions with children.² It delineates exactly what an officer can do with a child once he or she is in custody, where he or she can be taken, the amount of time he or she can spend with an officer, as well as who must be notified and when.³ But the Code also contains certain special provision just for children involved in operating a motor vehicle under the influence. These special provisions don't do away with the strict Family Code requirements of juvenile arrest; they only postpone them. For our discussions in this article, the term “child” or “children” apply to a person between the ages of 10 and 17.

The Texas Alcoholic Beverage Code Section 106.041 provides that:

- (a) A minor commits an offense if the minor operates a motor vehicle in a public place, or a watercraft, while having any detectable amount of alcohol in the minor's system.⁴

This is not a DWI or a DWI-related offense. This offense is committed by a minor who operates a motor vehicle in a public place while having "any detectable amount of alcohol" in his or her system. Thus, all the elements are identical to a DWI offense except that any detectable amount of alcohol constitutes an offense rather than having the alcohol consumption rising to the level of intoxication. This distinction will be important later in this article.

The Texas Transportation Code Section 724.012(a) authorizes the taking of a person's breath or blood if they are arrested for operating a motor vehicle while intoxicated or if a minor operates a motor vehicle with any detectable amount of alcohol in their system.⁵

AUTHORIZATION FOR A CHILD'S BREATH OR BLOOD SPECIMEN

The Texas Family Code Section 52.02(c) provides that: A person who takes a child into custody and who has reasonable grounds to believe that the child has been operating a motor vehicle in a public place while having any detectable amount of alcohol in the child's system may, before complying with Subsection (a):

- (1) take the child to a place to obtain a specimen of the child's breath or blood as provided by Chapter 724, Transportation Code; and
- (2) perform intoxilyzer processing and videotaping of the child in an adult processing office of a law enforcement agency.

This provision provides directions to an officer as to where he or she can take a child when there has been a determination that the child has been operating a motor vehicle in a public place with "any detectable amount of alcohol" in his or her system (which would also include a DWI). This provision authorizes a child to be taken to a place to obtain a specimen of the child's breath or blood as provided by Chapter 724, Transportation Code, and that the child may be videotaped in an adult processing office as opposed to a juvenile processing office.

This provision does not dispense with the strict requirements of Section 52.02(a). To take a statement from a child, the officer would still need to comply with Texas Family Code Sections 52.02 and 51.095. Section 52.02(c) simply allows a procedure for the collection of a breath or blood specimen prior to compliance with Section 52.02(a).⁶

BREATH SPECIMEN: CHILD CAN SUBMIT OR REFUSE WITHOUT ATTORNEY

The Transportation Code Section 724.013 states: *Except as provided by Section 724.012(b), a specimen may not be taken if a person refuses to submit to the taking of a specimen designated by a peace officer.*⁷

The Texas Family Code addresses a child's consent to a specimen in Section 52.02(d), which states:

- (d) Notwithstanding Section 51.09(a), a child taken into custody as provided by Subsection (c) may submit to the taking of a breath specimen or refuse to submit to the taking of a breath specimen without the concurrence of an attorney, but only if the request made of the child to give the specimen and the child's response to that request is videotaped. A videotape made under this subsection must be maintained until the disposition of any proceeding against the child relating to the arrest is final and be made available to an attorney representing the child during that period.⁸

The first phrase of this provision, "Notwithstanding Section 51.09(a)," creates a special exception to the strict lawyer requirement as set out in Section 51.09(a).⁹ As a result, the provision allows a child to submit to the taking of a breath specimen or refuse to the taking of a breath specimen without an attorney if the request and response is videotaped. While the provision clearly makes an exception to the attorney requirement for a breath specimen, no such exception in the statute is made for a blood specimen.

BLOOD SPECIMEN: CHILD CAN SUBMIT OR REFUSE WITH ATTORNEY ONLY

Clearly, without a similar provision creating an exception to the strict requirement of Section 51.09(a), the requirements of Section 51.09(a) must be met. This would mean that before a child could voluntarily submit to a blood specimen, the child and his or her attorney would have to agree to give up the child's rights.¹⁰

We can then conclude that a child can submit or refuse to submit to the taking of breath test without an attorney [under the requirements of Texas Family Code Section 52.02(d)] and that a child can submit to a blood specimen only with the acquiescence of an attorney [under the requirements of Section 51.09(a)].

MANDATORY BLOOD SPECIMEN

The mandatory blood specimen provision is contained in the Texas Transportation Code Section 724.012(b).¹¹ The first

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part of section (b) sets out the base requirements for the statute.

(b) A peace officer shall require the taking of a specimen of the person's breath or blood under any of the following circumstances if the officer arrests the person for an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle or a watercraft and the person refuses the officer's request to submit to the taking of a specimen voluntarily:¹²

Only individuals who have been arrested for an offense under Chapter 49 of the Penal Code can be forced to submit to a blood specimen under this provision. The remainder of the provision and its list of additional factors apply to juveniles just as it would apply to adults.

However, it is important to remember that a child who has been arrested under Section 106.041 of the Alcoholic Beverage Code (any detectable amount of alcohol in his system) cannot be required to submit to a blood specimen under this provision.¹³ As a result, under which statute a law enforcement officer has taken a child into custody becomes important when considering a mandatory specimen.

Section (b) also has a requirement that before a mandatory specimen can be obtained, the person has had to have refused the officer's request to submit to the taking of a specimen volun-

tarily.¹⁴ As stated above, for a child to voluntarily refuse a breath test the officer must comply with Texas Family Code Section 52.02(d) (the request and the refusal have been videotaped)¹⁵ and for a child to voluntarily refuse a blood test the officer must comply with Texas Family Code Section 51.09(a) (the child consult with an attorney before consenting or refusing).¹⁶

The most likely mandatory blood draw of a child would be where the officer arrests a child for DWI (or its related offenses) and videotapes the request and the refusal by the child to take a breath specimen, and one of the factors contained in Texas Transportation Code Section 724.012(b)(1)-(3) exist.

SEARCH WARRANT

The Texas Code of Criminal Procedure Art. 18.02(10) provides: A search warrant may be issued to search for and seize:

(10) property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense;¹⁷

The Texas Code of Criminal Procedure Art. 18.01(j) provides: (j) Any magistrate who is an attorney licensed by this state may issue a search warrant under Article 18.02(10) to collect a blood specimen from a person who:

- (1) is arrested for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code; and
- (2) refuses to submit to a breath or blood alcohol test.¹⁸

A search warrant for a blood draw of a child is valid if the child is arrested for DWI or its related offenses under Section 49 of the Penal Code and the child has validly refused the taking of a breath (videotaped) or blood test (acquiescence of attorney) as provided by the Family Code and as discussed above.

NOTES

1. Texas Family Code §52.01(a)(2)
2. Texas Family Code §52.02
3. Texas Family Code §52.02(a)(b)
4. Texas Alcoholic Beverage Code §106.041
5. Texas Transportation Code §724.012(a)
6. Texas Family Code §52.02(c)
7. Transportation Code §724.013
8. Texas Family Code §52.02(d)
9. Texas Family Code §51.09(a)
10. Texas Family Code §51.09(a)
11. Texas Transportation Code §724.012(b)
12. Texas Transportation Code §724.012(b)
13. Texas Transportation Code §724.012(b)
14. Texas Transportation Code §724.012(b)
15. Texas Family Code §52.02(d)
16. Texas Family Code §51.09(a)
17. Texas Code of Criminal Procedure Art. 18.02(10)
18. Texas Code of Criminal Procedure Art. 18.01(j)

PAT GARZA

is an associate judge in the 386th District Court of Bexar County. He is a former adjunct professor of law at St. Mary's Law School in San Antonio and is editor of the State Bar Juvenile Law Section's *Juvenile Law Reporter*, which is published quarterly and can be found at juvenilelaw.org.

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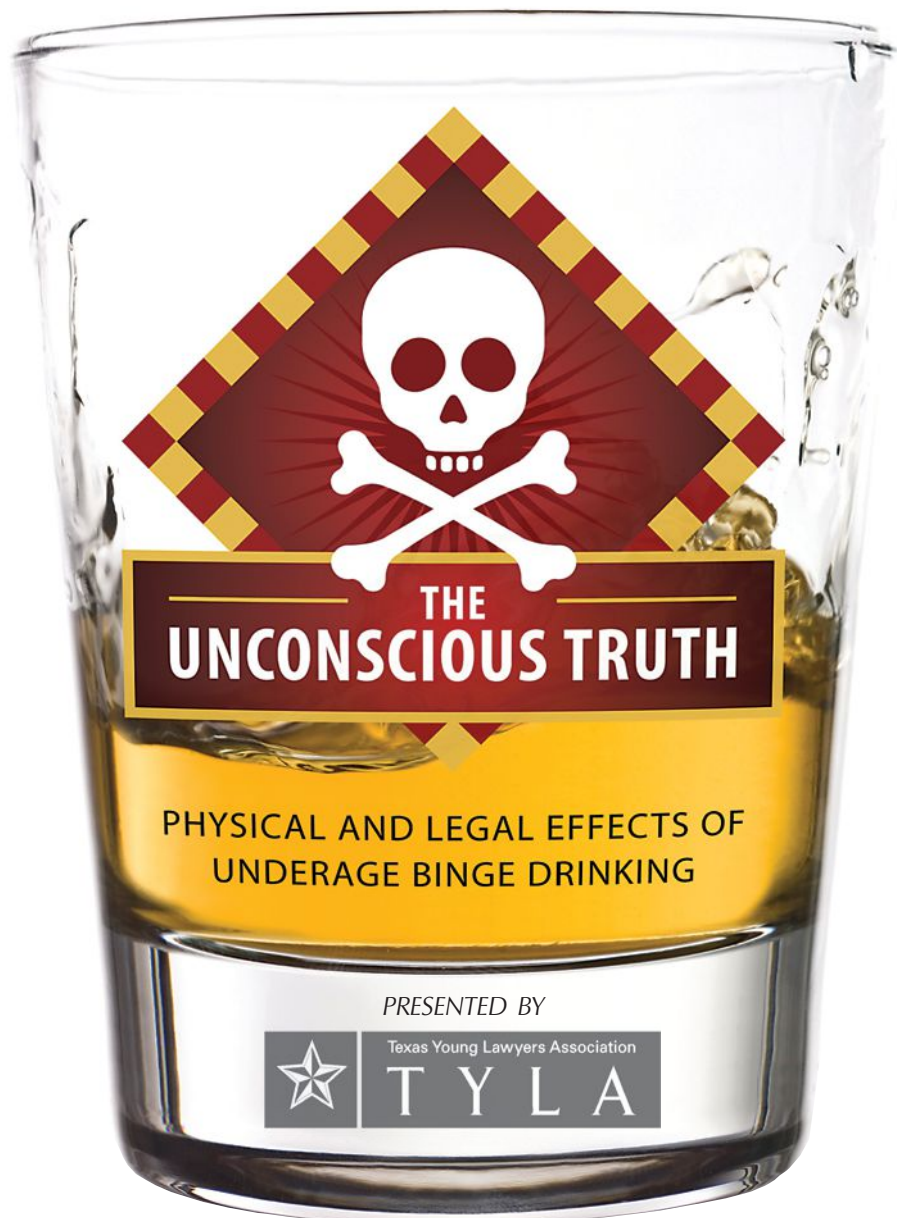
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THE UNCONSCIOUS TRUTH

TYLA INITIATIVE ADDRESSES UNDERAGE BINGE DRINKING

BY ELLEN CARNES

In February, the Texas Young Lawyers Association (TYLA) unveiled *The Unconscious Truth: Physical and Legal Effects of Underage Binge Drinking*. The new initiative is designed to educate adults and teenagers about the consequences — both physical and legal — of underage binge drinking.

“We wanted to make young adults and their parents aware of the liabilities,” said TYLA Community Education Committee Chair **Brooke Ulrickson Allen**. “Not only the legal liabilities involved with underage binge drinking, but also the more tragic physical consequences, like death or permanent brain damage, that can result from alcohol poisoning.”

TYLA President **Natalie Cobb Koehler** first became interested in the issue of underage binge drinking last year, when she read about the 2008 death of Shelby Allen. Allen was a vivacious and articulate 17-year old — an athlete and an honor student whose personal motto was “Dig life.” On the first night of winter break, Allen attended a party at a friend’s house where she drank 15 shots of vodka. When she became ill and passed out, her friends let her “sleep it off.” In the morning, Allen was pronounced dead. The cause was acute alcohol poisoning.

Binge drinking is generally defined as consuming five or more drinks for males and four drinks or more for females during a two-hour time window. A standard measurement for a drink is 14 grams of pure alcohol — a 12-ounce beer contains one standard drink; a bottle of wine contains five.

According to a January 2012 report by the Centers for Disease Control, more than 38 million American adults binge drink regularly. Binge drinking is a leading preventable cause of death in the United States and is responsible for more than half of the 79,000 excessive drinking-related deaths each year.

Teenagers are following the example set by adults. According to the Substance Abuse and Mental Health Services Administration, in 2008, 2.3 million people between the ages of 12 and 20 engaged in binge drinking five or more times per month.

The National Institute on Alcohol Abuse and Alcoholism has called out colleges and universities for cultivating a “culture of drinking.”

Alcohol poisoning occurs when a person’s blood alcohol concentration becomes dangerously elevated, which can slow — or stop — involuntary actions such as breathing, heart beat, and gag reflex. “Death by alcohol poisoning is very preventable,” said Steven L. Smith, M.D., F.A.C.P., of the Medical Clinic of North Texas. “If a friend calls 911 in time, the person can be intubated and given intravenous fluids. As long as the hospital can keep them breathing through the night, they’re usually fine. That’s why it’s so important to know the signs of alcohol poisoning.”

After learning about the devastating impact of alcohol poisoning on the Allens’ lives, Koehler decided that TYLA could help educate communities about the consequences of binge drinking. She reached out to Allen’s parents, Steve and Debbie Allen, who run Shelby’s Rules, an alcohol poisoning education foundation. The Allens worked with Koehler, Ulrickson, and the rest of the TYLA Community Education Committee to create *The Unconscious Truth*. “They have been a huge help with this endeavor and we are very thankful for their guidance,” Koehler said.

The project consists of a 15-minute video loosely based on the circumstances of Allen’s death and a discussion portion,

where TYLA members can engage teenagers in a debate about the laws and consequences related to underage binge drinking. Also included in the program is information about Texas Sen-



Scenes from *The Unconscious Truth*

ate Bill 1331, the “911 lifeline” law that grants immunity from prosecution to 911 callers who suspect someone is suffering from alcohol poisoning. The bill was sponsored by Sen. **Kirk Watson**, a former TYLA president.

The video follows “Hannah,” a high school student who is throwing a party. With her parents’ permission, beer is being served. “We just don’t want you drinking and then getting into a car and hurting yourself and/or someone else,” Hannah’s father says. “We’d rather have you be here, in a controlled environment where nobody can get hurt.”

After Hannah’s parents go to bed, Hannah breaks into their liquor cabinet. Eventually, Hannah’s friend “Shelby” has too much to drink, falls unconscious, and is found dead in the morning. The video ends with the possibility of criminal charges for Hannah and her parents.

The Unconscious Truth not only takes pains to point out the signs of alcohol poisoning — stupor, vomiting, seizure, slow or irregular breathing, pale skin, low body temperature, and unconsciousness — but to raise questions about responsibility. After the video, students are asked questions like, “If you were

a criminal prosecutor, what criminal offenses, if any, would you charge Hannah and her parents with?” TYLA has partnered with the VITALS program at Texas Christian University, a campaign to promote alcohol poisoning awareness. Together, they hope to take *The Unconscious Truth* to college campuses nationwide, with specific guided discussions relating to each state’s statutes. TYLA will also be presenting *The Unconscious Truth* at the Texas Law-Related Education conference in February.

“We walked a fine line with this project,” Ulrickson Allen said. “We obviously don’t want to condone or endorse underage drinking, but at the same time, we know this happens and we want people to be aware of the potential dangers. Our hope is that this project could save the life of someone like Shelby Allen.”

The Unconscious Truth will be available online at tyla.org and on DVD. If you would like a copy for your school, contact the TYLA office at (800) 204-2222, ext. 1529.

ELLEN CARNES

is assistant editor of the *Texas Bar Journal*.

INFORMATION ON ALCOHOL ABUSE

KNOW THE SIGNS OF ALCOHOL POISONING

Alcohol poisoning occurs when someone has consumed more alcohol than his or her body can safely metabolize. The VITALS program encourages students to use the acronym “VITALS” to remember the primary signs of alcohol poisoning:

- Vomiting
- Incoherence
- Temperature
- Absence of color
- Lack of response
- Seizure

Call 911 right away if you suspect alcohol poisoning.

TEXAS LAWYERS’ ASSISTANCE PROGRAM

The Texas Lawyers’ Assistance Program (TLAP) provides confidential help for lawyers, law students, and judges who have problems with substance abuse and/or mental health issues. TLAP’s experienced and professional staff is available by phone and email to answer your questions about substance abuse, mental health, and wellness issues. You may place a confidential phone call to TLAP at any time of day or night at (800) 343-8527.

THE TRUTH ABOUT TEENAGE DRINKING

- According to a 2008 survey, 92 percent of 12th graders, 81 percent of 10th graders, and 64 percent of 8th graders reported that alcohol would be “fairly easy” or “very easy” to obtain.
- 65 percent of 10- to 18-year-olds who have consumed alcohol report that family and friends are the leading source from which they get alcohol.
- According to a 2005 survey, 84 percent of college students had drunk alcohol in their lifetime.
- 66 percent of college students had drunk alcohol in the past month.
- Almost 30 percent of college students reported binge drinking.
- 58 percent of college students ages 18 to 20 reported drinking an alcoholic beverage in the past month.
- 74 percent of youth report that their parents are the primary factor in their decision to drink or not drink.

Statistics from the Texas Alcoholic Beverage Commission, www.tabc.state.tx.us.

Reference Link #11

Emerging Legal Issues in Social Media: Part I

LINKS

the article below can be found in its entirety at the links below

<http://www.stumbleupon.com/su/26zEoR/www.llrx.com/features/legalissuessocialmedia.htm>

<http://su.pr/26zEoR>

Emerging Legal Issues in Social Media: Part I

By Ken Strutin, Published on February 6, 2011

Social media is engaging masses of people in unprecedented ways. At the same time, the diversity of social networking applications has permeated and extended the range of legal investigation, discovery and litigation. As human activity is played out and recorded online, the laws governing cyber-behavior, privacy and discovery continue to evolve. And the distinction between public and private discourse blurs as the demand grows to fill limitless self-published cyber-columns.

Noteworthy means "worthy of notice or attention; notable; remarkable" -- literally jotting something down because it was worth remembering. This descriptor came into vogue barely a century after the birth of movable type, when self-publication and distribution were still daunting tasks. The advent of the printing press changed society by multiplying the written word exponentially, and it occurred before there was any reckoning of the avalanche of information to follow.¹ The technologies of our era have put the power of the printing press into millions of hands. And they are creating a new environment for the practice and administration of law.²

The materials collected in this article aim to provide a sense of the emerging issues created by the crosshatch of social media and legal practice. They represent a current sampling of notable developments in law enforcement, law practice, civil and criminal litigation, and technology's influence on human behavior. Hopefully, these materials will offer some insights into the changes being wrought by the user dominated stage of the Information Revolution.³

Due to the breadth of this topic, the article will be published in two parts. Part I covers select statutes, case law, ethics opinions, and news media. Part II will address pertinent materials appearing in professional journals and blogs, law reviews, reports, books and secondary resources.

STATUTES

Computer Fraud and Abuse Act (CFAA), 18 U.S.C. S1030 et seq.

"The Computer Fraud and Abuse Act ('CFAA'), 18 U.S.C. S 1030

(<http://www.law.cornell.edu/uscode/18/1030.html>), is an amendment made in 1986 to the Counterfeit Access Device and Abuse Act that was passed in 1984 and essentially states that, whoever intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains information from any protected computer if the conduct involved an interstate or foreign communication shall be punished under the Act. In 1996 the CFAA was, again, broadened by an amendment that replaced the term 'federal interest computer' with the term 'protected computer.' 18 U.S.C. S 1030 (<http://www.law.cornell.edu/uscode/18/1030.html>). While the CFAA is primarily a criminal law intended to reduce the instances of malicious interferences with computer systems and to address federal computer offenses, an amendment in 1994 allows civil actions to be brought under the statute, as well." See Chp 7 Privacy and Data Collection (b)(iii) Computer Fraud and Abuse Act (CFAA) in Internet Law Treatise (last modified Feb. 12, 2010)

Electronic Communications Privacy Act (ECPA), 18 U.S.C. S2510 et seq.

"The Electronic Communications Privacy Act of 1986 ('ECPA'), Pub. L. No. 99-508, 100 Stat. 1848 (1986), comprised three titles. Title I amended the 1968 federal wiretap statute to cover electronic communications. Title II of ECPA created a new chapter of the criminal code dealing with access to stored communications and transaction records, commonly known as the 'Stored Communications Act' or 'SCA.' Title III of the ECPA covers pen registers and trap/trace devices." See Chp 7 Privacy and Data Collection (b)(2.1) Electronic Communications Privacy Act of 1986 in Internet Law Treatise (last modified Feb. 12, 2010)

Stored Communications Act (SCA), 18 U.S.C. S2701 et seq.

"The Stored Communications Act, 18 U.S.C. S 2701 (<http://www.law.cornell.edu/uscode/18/2701.html>) et seq., (the 'SCA') regulates when an electronic communication service ('ECS') provider may [disclose] the contents of or other information about a customer's emails and other electronic communications to private parties. Congress passed the SCA to prohibit a provider of an electronic communication service 'from knowingly divulging the contents of any communication while in electronic storage by that service to any person other than the addressee or intended recipient.' S.Rep. No. 99-541, 97th Cong. 2nd Sess. 37, reprinted in 1986 U.S.C.C.A.N. 3555, 3591. As courts have held, the SCA 'protects users whose electronic communications are in electronic storage with an ISP or other electronic communications facility.' *Theofel v. Farey-Jones*, 341 F.3d 978, 982 (9th Cir. 2003). It 'reflects Congress's judgment that users have a legitimate interest in the confidentiality of communications in electronic storage at a communications facility.' *Id.* at 982. Under 18 U.S.C. S 2701 (<http://www.law.cornell.edu/uscode/18/2701.html>), an offense is committed by anyone who: '(1) intentionally accesses without authorization a facility through which an electronic communication service is provided;' or '(2) intentionally exceeds an authorization to access that facility; and thereby obtains...[an] electronic communication while it is in electronic storage in such system.' 18 U.S.C. S 2701(a)(1)-(2). However, it does not apply to an 'electronic communication [that] is readily accessible to the general public.' 18 U.S.C. S 2511 (<http://www.law.cornell.edu/uscode/18/2511.html>)(2)(g). See, e.g. Orin S. Kerr, A User's Guide to the Stored Communications Act, and a Legislator's Guide to Amending It, 72 *Geo. Wash. L. Rev.* 1208, 1220 (2004)." See Chp 7 Privacy and Data Collection (b)(ii) Privacy: Stored Communications Act in Internet Law Treatise (last modified Jan. 30, 2010)

'Unauthorized Access' and the Computer Fraud and Abuse Act, N.Y.L.J., Oct. 12, 2010

"The Computer Fraud and Abuse Act (CFAA), 18 U.S.C. §1030 et seq., was enacted in 1984 (and amended multiple times thereafter) to target hackers who accessed computers to steal information or disrupt network functionality. Over 25 years later, the interpretation of the statute continues as litigants attempt to expand the act's reach to new factual scenarios in a rapidly changing computerized world. . . . This article discusses the CFAA generally and the definition of 'unauthorized access' under the act as it relates to employees' misappropriation of company information and licensees' sharing of login credentials for proprietary databases with unauthorized third-party users."

CASE LAW

Barnes v. CUS Nashville, No. 3:09-cv-00764 (M.D. Tenn. June 3, 2010)

"In order to try to expedite further discovery regarding the photographs, their captions, and comments, the Magistrate Judge is willing to create a Facebook account. If Julie Knudsen and Michael Vann will accept the Magistrate Judge as a 'friend' on Facebook for the sole purpose of reviewing photographs and related comments in camera, he will promptly review and disseminate any relevant information to the parties. The Magistrate Judge will then close this Facebook account."

Crispin v. Christian Audigier Inc., 2010 U.S. Dist. Lexis 52832 (C.D. Calif. May 26, 2010)

"With respect to webmail and private messaging, the court is satisfied that those forms of communications media are inherently private such that stored messages are not readily accessible to the general public. Thus, the court reverses Judge McDermott's order with respect to the Media Temple subpoena and the Facebook and MySpace subpoenas to the extent they seek private messaging. The Media Temple subpoena and those portions of the Facebook and MySpace subpoenas that sought private messaging are therefore quashed. With respect to the subpoenas seeking Facebook wall postings and MySpace comments, however, the court concludes that the evidentiary record presented to Judge McDermott is not sufficient to determine whether the subpoenas should be quashed. . . . Given that the only information in the record implied restricted access, the court concludes that Judge McDermott's order regarding this aspect of the Facebook and MySpace subpoenas was contrary to law. Because it appears, however, that a review of plaintiff's privacy settings would definitively settle the question, the court does not reverse Judge McDermott's order, but vacates it and remands so that Judge McDermott can direct the parties to develop a fuller evidentiary record regarding plaintiff's privacy settings and the extent of access allowed to his Facebook wall and MySpace comments."

McCann v Harleysville Ins. Co. of N.Y., 2010 NY Slip Op 08181 (4th Dep't Nov. 12, 2010)

"In appeal No. 2, defendant appeals from an order denying its subsequent motion seeking to compel plaintiff to produce photographs and an authorization for plaintiff's Facebook account information and granting plaintiff's cross motion for a protective order. Although defendant specified the type of evidence sought, it failed to establish a factual predicate with respect to the relevancy of the evidence (see *Crazytown Furniture v Brooklyn Union Gas Co.*, 150 AD2d 420, 421). Indeed, defendant essentially sought permission to conduct "a fishing expedition" into plaintiff's Facebook account based on the mere hope of finding relevant evidence (*Auerbach v Klein*, 30 AD3d 451, 452). Nevertheless, although we conclude that the court properly denied defendant's motion in appeal No. 2, we agree with defendant that the court erred in granting plaintiff's cross motion for a protective order. Under the circumstances presented here, the court abused its discretion in

prohibiting defendant from seeking disclosure of plaintiff's Facebook account at a future date. We therefore modify the order in appeal No. 2 accordingly."

McMillen v. Hummingbird Speedway, Inc., 2010 Pa. Dist. & Cnty. Dec. LEXIS 270 (Pa. Ct. of Common Pleas, Jefferson Cty. Sept. 9, 2010)

"A Pennsylvania Court of Common Pleas has ordered the production of a plaintiff's social network account passwords and usernames in the recent decision of *McMillen v. Hummingbird Speedway, Inc.*, Case No. 113-2010 CD (Pa. Ct. of Common Pleas, Jefferson Cty. September 9, 2010)." See *No Privilege for Information Posted on Social Network Sites -- Court Orders Production of Plaintiff's Social Network Account Usernames and Passwords*, E-Discovery Law Alert, Nov. 29, 2010

Romano v Steelcase Inc., 2010 NY Slip Op 20388 (Sup. Ct. Suffolk County Sept. 21, 2010)

"Defendant Steelcase moves this Court for an Order granting said Defendant access to Plaintiff's current and historical Facebook and MySpace pages and accounts, including all deleted pages and related information upon the grounds that Plaintiff has placed certain information on these social networking sites which are believed to be inconsistent with her claims in this action concerning the extent and nature of her injuries, especially her claims for loss of enjoyment of life.

Thus, it is reasonable to infer from the limited postings on Plaintiff's public Facebook and MySpace profile pages, that her private pages may contain materials and information that are relevant to her claims or that may lead to the disclosure of admissible evidence. To deny Defendant an opportunity access to these sites not only would go against the liberal discovery policies of New York favoring pre-trial disclosure, but would condone Plaintiff's attempt to hide relevant information behind self-regulated privacy settings."

United States v. Forde, No. 09-4704 (4th Cir. Jan. 10, 2011)

"Forde's string of possibilities about the origin of the Twitter posting -- that the foreperson possibly talked to her husband, who possibly talked to his friend, who possibly took to Twitter in response to what the husband possibly told him -- is nothing but speculation and thus falls far short of establishing reasonable grounds for investigation. The district court therefore did not err by denying Forde's request for an evidentiary hearing to investigate his claim." See *Tweet by Friend of Husband of Jury Foreperson Did Not Taint Jury Trial*, Internet Cases, Jan. 13, 2011

United States v. Wineman, No. 10-1121 (8th Cir. Nov. 29, 2010)

"In this case, we agree with the district court that the Craigslist rant is inconsistent with any acceptance of responsibility by Wineman. In the rant, Wineman places responsibility for his offense on the 'addicts' who bought his product and on the unnamed officials who denied him disability benefits. Wineman's only regret appears to be that law enforcement officers and informants had the temerity to disrupt the methamphetamine 'service' he provided to his community, a service he equates to the local 'gas station or grocery store.' This is far removed from 'a recognition and affirmative responsibility for the offense and sincere remorse.' *Nguyen*, 52 F.3d at 194 (quoting *Knight*, 905 F.2d at 192)."

ETHICS

ABA Standing Comm. on Ethics and Prof. Resp. Op. 10-457 (2010)

"Websites have become a common means by which lawyers communicate with the public. Lawyers

must not include misleading information on websites, must be mindful of the expectations created by the website, and must carefully manage inquiries invited through the website. Websites that invite inquiries may create a prospective client-lawyer relationship under Rule 1.18. Lawyers who respond to website-initiated inquiries about legal services should consider the possibility that Rule 1.18 may apply."

Ass'n Bar City of NY Comm. on Prof. Ethics Op. 2010-2

"A lawyer may not attempt to gain access to a social networking website [of an unrepresented witness] under false pretenses, either directly or through an agent."

NYS Bar Ass'n Comm. on Prof. Ethics Op. 843 (2010)

"A lawyer representing a client in pending litigation may access the public pages of another party's social networking website (such as Facebook or MySpace) for the purpose of obtaining possible impeachment material for use in the litigation."

Phila. Bar Ass'n Prof. Guidance Comm. Op. 2009-02

"Turning to the ethical substance of the inquiry, the Committee believes that the proposed course of conduct contemplated by the inquirer [asking third person to visit opposing witness Facebook and MySpace pages without revealing affiliation or purpose] would violate Rule 8.4(c) because the planned communication by the third party with the witness is deceptive. It omits a highly material fact, namely, that the third party who asks to be allowed access to the witness's pages is doing so only because he or she is intent on obtaining information and sharing it with a lawyer for use in a lawsuit to impeach the testimony of the witness. The omission would purposefully conceal that fact from the witness for the purpose of inducing the witness to allow access, when she may not do so if she knew the third person was associated with the inquirer and the true purpose of the access was to obtain information for the purpose of impeaching her testimony."

ABA Comm'n on Ethics 20/20 Working Group on the Implications of New Technologies (Sept. 20, 2010)

"The Commission seeks to determine what guidance it should offer to lawyers regarding their use of social and professional networking sites, especially when lawyers use those sites for both personal and professional purposes. The Commission's guidance could take the form of a policy statement that could be submitted to the House of Delegates for its adoption or a white paper that explains the extent to which lawyers' use of networking sites should be considered a form of lawyer advertising. Alternatively, or in addition, the Commission could propose amendments to the Model Rules in Article 7 or their Comments in order to clarify when communications on networking sites are subject to the Rules of Professional Conduct as well as the difference between advertising and solicitations in this context. The Commission invites comments on whether it should, in fact, offer guidance in this area, and if so, what type of guidance the Commission should offer." [close date for comments was Dec. 15, 2010]

Ethics of Social Networking Discovery, N.Y.L.J., Nov. 2, 2010

"Just like conducting Westlaw or Lexis due diligence on an individual, social networking sites need to be reviewed as part of discovery protocol when seeking to obtain relevant information concerning a person or entity. Such searches should not be limited to being performed only in connection with personal injury litigations, but equally should extend, for example, to commercial, product liability,

intellectual property, restrictive covenant and employment disputes."

Social Media Data: Discoverability and Ethics, N.Y.L.J., Dec. 14, 2010

"This article discusses social networks generally, the discovery of social network accounts in civil litigation, and the recent ethical opinions of local bar associations seeking to guide members concerning the informal discovery of the social media accounts of unrepresented parties and witnesses."

Disciplining Attorney for Abuse or Misuse of Computer Technology, 46 A.L.R.6th 365

"A lawyer's requirement to adhere to the proper standards of professional responsibility necessarily extends to actions involving computers, e-mail, the Internet, and all modern high-tech devices. Nevertheless, many attorneys have violated various ethical guidelines and disciplinary rules in this area, sometimes because of a mere lack of familiarity with computer hardware or software, but most often because they thought that, due to the solitary nature of computer work, their deliberate activities were secret and would not be discovered. For instance, in *Lawyer Disciplinary Bd. v. Markins*, 222 W. Va. 160, 663 S.E.2d 614, 46 A.L.R.6th 665 (2008), the Supreme Court of Appeals of West Virginia held that a suspension of license to practice law for a period of two years was warranted as a sanction for an attorney in repeatedly accessing the confidential e-mails of seven other attorneys at his wife's law firm without their knowledge or permission, as this action violated a rule of professional conduct deeming it professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, and a rule providing that it was professional misconduct for a lawyer to commit a criminal act that reflected adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. Other courts have reached varying conclusions as to appropriate discipline for an attorney's misconduct in connection with computers and the Internet, as the following annotation illustrates."

NEWS ARTICLES

Android App Forwards Private Text Messages, NY Times, Oct. 27, 2010

"A new Android application released Wednesday, Secret SMS Replicator, when secretly installed on a cellphone, will forward all text messages to any other phone without the owner's knowledge. . . . Update: While you don't need anyone's approval to get into the Android Market, the dominant store for Android apps, you do need to follow the rules, and apparently Secret SMS Replicator does not do that. A Google spokesman said via e-mail that the application had been suspended effective Wednesday evening because it 'violates the Android Market Content Policy.'"

Be Careful Who You Friend on Facebook, Criminal Justice, Sept. 8, 2010

"When someone says to 'be careful' on Facebook, most people likely interpret that to mean 'don't let your friends tag you in any of those bachelor party pics if you ever want to get a decent job.' But while the consequences of ill-considered social networking decisions can be severe -- dear god, did I just let my ex know I'm watching a Battlestar Gallactica marathon on Saturday night? -- a federal court has upped the stakes, ruling that friending the wrong person online can be enough to put a person behind bars. Meanwhile, a judge in Alabama has ruled that an inappropriate status update can be punished with more than just a snarky comment, but with actual, welcome-to-counterinsurgency! military service. Social networking has moved past the innocent days of LOLcats and cute dog pictures, that's for sure."

California Town Abandons Facebook Page Amid Legal Concerns, ABA Journal Law News Now, Aug. 24, 2010

"The city of Redondo Beach, Calif., is abandoning its Facebook page after hearing about potential legal problems. The city council voted to ditch the page last week after City Attorney Mike Webb outlined his concerns about the First Amendment and state legal requirements, the Daily Breeze reports."

Can Carrier Block Texts Based on Content? T-Mobile Tells Federal Court the Answer Is Yes, ABA Journal Law News Now, Sept. 23, 2010

"In what the Threat Level blog of Wired describes as the first federal case addressing whether wireless providers are permitted to block text messages based on their content, T-Mobile USA Inc. argued in a filing (PDF) yesterday in federal court in Manhattan that it does have this power. The issue arises in battle between the wireless carrier and a texting service, which signs up customers for so-called 'short code' services, in a Southern District of New York case that tests the limits of currently unclear Federal Communications Commission rules about network neutrality."

Can You See Me Now?, Crime Report, Aug. 8, 2010

Location-based social networks using geotagging technology are a cool way of letting friends and family keep track of you—and as a law enforcement tool, they can protect public safety. But when we share, do we really know who's watching?

Canadian Lawyer Told to Hand Over Computer Used to Create False Online Personas, ABA Journal Law News Now, Aug. 20, 2010

"A crusading Canadian human rights lawyer has been ordered to turn over a laptop computer he used to create false personas on far-right websites to search for evidence that he may have secretly authored a racist comment against a black Canadian senator from Toronto."

Cheshire [CT] Appeal Will Point to Twitter, N.Y. Times, Dec. 1, 2010

"There were half a dozen of them typing away in the courtroom rows. Minute by minute, they sent out reports of gruesome testimony via Twitter. In the end, the defense says, there were more than 140,000 Twitter messages about the trial that dealt with rape and children tied to their beds in a house that was set ablaze. . . . One of the most provocative [appeals issues] is that the intense reporting on the trial — including mainstream reporters' extensive use of Twitter — created a 'circus atmosphere' and such widespread, instant saturation with inflammatory details that the jury was improperly swayed by public passions. The claim could force appeals judges to grapple with the question of whether new technology requires new courtroom rules."

Convicted Murderer Justin Walker Used a Blackberry to Talk to Friends on Facebook While in Prison, ABC News, Dec. 1, 2010

"Earlier this week, prison officials were notified by a local television station that [Justin] Walker [convicted of murder and sentenced to thirty years in prison] had managed to maintain a Facebook page from inside his cell at Oklahoma State Reformatory. He has since been transferred to a more secure prison block. His Facebook account chronicles his friendships with people on the outside as well as his life behind bars. Now on his fifth year in prison, Walker has been on Facebook since at least November"

Cop's MySpace Page Cited in Shooting Death, Courthouse News, Jan. 27, 2011

"A Louisiana deputy sheriff who shot a man to death had a 'documented history of unprovoked violence,' and the Livingston Parish Sheriff should have known it because of the violent nature of the deputy's MySpace page, the family of the late Gerald Rice claims in Federal Court."

Cops Use Facebook to Probe 1984 Lynbrook Cold Case, Newsday, Nov. 10, 2010

"Police gained new interest in the Morrissey case recently when they learned that people were reminiscing about their days spent at the Hot Skates Rink on the roller rink's Facebook page - and the cases came up in the chatter."

County Experiments With Monitoring Social Media in Emergencies, Government Technology, Sept. 23, 2010

" Rather than constantly scouring the Web for news and updates during emergencies, Catawba County, N.C., is trying to track that data and other valuable information on Twitter and Facebook. County programmer analyst Lee Yount experimented with the practice during the recent Hurricane Earl that buffeted North Carolina's coast."

DA Will Check Facebook Profiles for Jury Picks, Houston Chronicle, Jan. 17, 2011

"The Cameron County District Attorney's Office will begin utilizing a new tool in the jury selection process, courtesy of social media. The district attorney's office plans to use prospective jurors' Facebook profiles and postings when considering whether an individual is qualified to sit on a jury."

Employers Tread a Minefield, Wall St. J., Jan. 21, 2011

"Facebook gaffes that can cause trouble in the workplace aren't unique to drunken college students anymore. As more companies and their workers tap into the world of blogs, Twitter and Facebook, employers are tripping over legal potholes in social media."

Ex-St. Louis Officer Enters Plea in Illinois Shooting, St. Louis Today, Aug. 30, 2011

"Watkins [defendant's attorney] sought at one point in Pour's criminal case to subpoena records of 22 people from the Facebook social networking web site. They included police officers who investigated the shooting, as well as other potential witnesses, Watkins said. Attorneys for Facebook argued that federal law prevented Facebook from disclosing the material and Associate Judge James Hackett agreed in a July ruling. He said disclosure was barred by the Electronic Communications Privacy Act. He also found that the request was vague and overly broad and would place an undue burden on Facebook."

Facebook Flubs Make for Salacious Legal Cases, St. Petersburg Times, Oct. 15, 2010

"Our obsession with posting every second of life online has brought a wave of serendipity for lawyers. Their jobs have gotten more salacious in the past few years, and easier in some ways. People make it simple. They say child support is too high, then post photos of a new Lexus. They claim to be home with the kids, then turn up tagged in sloppy bar photos."

Facebook in Privacy Breach, Wall St. J., Oct. 18, 2010

"Many of the most popular applications, or 'apps,' on the social-networking site Facebook Inc. have been transmitting identifying information—in effect, providing access to people's names and, in some cases, their friends' names—to dozens of advertising and Internet tracking companies, a Wall

St. J. investigation has found. The issue affects tens of millions of Facebook app users, including people who set their profiles to Facebook's strictest privacy settings. The practice breaks Facebook's rules, and renews questions about its ability to keep identifiable information about its users' activities secure."

Facebook's Social Inbox: Changing Communication Forever, CMS Wire, Nov. 16, 2010

"Is Facebook's new messaging system an e-mail replacement? As CEO Mark Zuckerberg so concisely put it at the platform's official announcement event yesterday, 'No.' What it is, however, is a system that's going to change communication as we know it, forever. Here's a look at why."

Idiot's Guide to Hijacking Facebook Profiles, Atlantic Wire, Oct. 25, 2010

"A small-time Web developer in Seattle has built an easy-to-use software program that allows users to hack into other people's Facebook accounts. The program is called Firesheep and it exists as a Firefox add-on. It gives users full access to other people's accounts, including pictures, wall posts and messages. Amazon, Windows Live, Twitter and scores of other sites are also vulnerable to Firesheep."

In India, Using Facebook to Catch Scofflaw Drivers, NY Times, Aug. 1, 2010

"The [New Dehli] traffic police started a Facebook page two months ago, and almost immediately residents became digital informants, posting photos of their fellow drivers violating traffic laws. As of Sunday more than 17,000 people had become fans of the page and posted almost 3,000 photographs and dozens of videos."

Innocent Until Tweeted: Social Media Tests Rules in Jury Trials, Vancouver Sun, Jan. 7, 2011

"The Canadian Judicial Council, which polices the country's 1,100 federally appointed judges, is looking at how to handle social media in the courtroom, including its use by the media, the public, courtroom staff and even juries, said Martin Felsky, a veteran of the council's technology advisory committee."

Insurers Are Scouring Social Media for Evidence of Fraud, Los Angeles Times, Jan. 25, 2011

"Social-networking websites such as Facebook and MySpace have become the go-to places where employers, college admissions officers and divorce lawyers can do background checks. Armed with the information, police have caught fugitives, lawyers have discredited witnesses and companies have discovered perfect-on-paper applicants engaged in illegal or simply embarrassing behavior. And now insurance companies are exploiting the free, easily accessible websites."

Is Killer Using Facebook From Prison?, CBS 6, Jan. 26, 2011

"The Virginia Department of Corrections has launched an investigation to find out how convicted killer Joey Parrish is posting messages on his Facebook page."

Juror on Hot Seat, Accused of Web-Surfing; Claimed Research May Cause Capital Murder Case Mistrial, ABA Journal Law News Now, Jan. 14, 2011

"A mistrial may have [to] be declared in a Pennsylvania capital murder case over a juror's reported Web-surfing." See Juror Could Face Charges for Online Research, Reuters, Jan. 19, 2011

Keep It Secret...Keep It Safe: Good Advice for Corrections and Social Networking,

Corrections.com, Dec. 20, 2010

"For sometime it has been sound advice not have family pictures displayed in one's office or workstation. This was a safety precaution. After all one didn't want an offender to know about your family or what they looked like just in case they decided to retaliate against them. Likewise, it was professionally not a good idea to discuss personal details or specifics of one's life with their correctional clients."

Lacey Police Arrest Yelm Man After Nude Photos of Ex-Wife Posted on Facebook, News Tribune, Sept. 18, 2010

"Lacey [Washington state] police arrested a Yelm man Thursday on suspicion of felony computer trespass and stalking after he allegedly hacked his ex-wife's Facebook account and posted nude pictures of her on the online social network, where her friends and relatives could see them."

Law Firm Uses Social Network and Billboards to Raise Money for Client's Cause, ABA Journal Law News Now, Oct. 22, 2010

"The environmental law firm Earthjustice is raising money to help endangered species with the help of a generous donor, free billboards and a social networking website."

Legal Debate Entangles Facebook, Juror, Alleged Gang Members, Technorati, Jan. 19, 2011

"A Northern California criminal defense attorney has taken up the cause of a juror whose Facebook postings have put him in a legal wedge between lawyers for the social networking giant and lawyers for reputed members of a street gang."

Live From The Jury Box, It's Steve Martin!, N.Y. Times, Dec. 22, 2010

"Leave it to Steve Martin to turn jury duty into performance art. Tweeting over the last couple of days, the stand-up comedian and movie star has regaled his 380,000-plus followers on Twitter with observations inspired by the legal process unfolding before him."

Mark Zuckerberg's Facebook Page Apparently Hacked, Computer World, Jan. 26, 2011

"Facebook founder Mark Zuckerberg appears to be the second high-profile victim of a hacking attack on his own Facebook page, following a similar account takeover early this week targeting French president Nicolas Sarkozy."

Montgomery County Takes to Twitter, Houston Chronicle, Jan. 6, 2010

"People caught driving while intoxicated in Montgomery County are being busted in more ways than one. The county district attorney's office is now calling them out in the status-sphere by posting their names on its Twitter page for everyone to see."

Mo. Legislator's Facebook Hacked With Unflattering Status Update, St. Louis Today, Jan. 21, 2011

"One freshman Missouri legislator says her Facebook account was compromised Thursday when someone used the account to post an embarrassing status update on her page."

New Court of Shame Is Online, N.Y. Times, Dec. 23, 2010

"Social media is the new court of public opinion. With the freedom to post just about anything — and say whatever without reprisal — online sites like Facebook and Twitter are making it easier to shame people whose behavior might otherwise remain unknown or slip by unnoticed. Police

departments have begun posting the names and photos of people arrested for crimes to inform a global public and deter unlawful behavior."

Ohio Prisons Join Facebook, Columbus Dispatch, Sept. 28, 2010

"Ohio prisons are leaping into social networking by creating a Facebook page. Right now, the content of the Ohio Department of Rehabilitation and Correction page is pretty sparse. But Julie Walburn, the agency communications director, said it will be 'a useful venue to put out worthwhile information to interested stakeholders.' Walburn said the content will include general information about the prison system, including a headcount of the number of offenders in Ohio prisons, plus details on re-entry programs for ex-offenders."

On Social Media, Bad News Spreads Quickly, Baltimore Sun, Oct. 20, 2010

"As social media reach almost every corner of our lives, they're also affecting the way we learn about death. Memorials on social networking sites spring up almost instantaneously, upending the traditional flow of information in situations where privacy and respect for family members have long been valued — in the killings of soldiers, and for victims of airplane crashes and natural disasters, for example."

Reporters Can Twitter, E-Mail in Court, U.K. Senior Judge Says, Bloomberg Business Week, Dec. 20, 2010

"Journalists can now post live updates on Twitter Inc. social-networking service from within U.K. courtrooms, allowing news organizations to provide immediate information about ongoing court proceedings such as last week's bail request by WikiLeaks founder Julian Assange."

SC Inmate in Trouble After Updating His Facebook Page From Prison, GoUpstate.com, Jan. 24, 2011

"South Carolina prison officials say they have seized a cell phone from an inmate who was updating his Facebook page from prison." See 3 SC Inmates' Profiles Pulled From Facebook, Charlotte Observer, Jan. 26, 2011

States, Including Utah, Settle Differences with Facebook, Deseret News, Jan. 5, 2011

"The states began working with Facebook nearly a year ago after discovering a series of issues public agencies encountered while trying to use the site. The new terms mirror a similar agreement the company reached with the federal government more than a year ago, which allowed 33 federal agencies to connect with their constituents through Facebook."

In U.S. Courts, Facebook Posts Become Less Private, Reuters, Jan. 27, 2011

"It's the latest litigation tactic in the online age: U.S. lawyers are trying to mine the private zones of Facebook and other social-media sites for photos, comments, status updates and other tidbits that might contradict what their opponents are saying in court. And increasingly, judges in civil cases are granting access to online caches that had formerly been considered off-limits."

U.S. Tries to Make It Easier to Wiretap the Internet, N.Y. Times, Sept. 27, 2010

"Essentially, officials want Congress to require all services that enable communications — including encrypted e-mail transmitters like BlackBerry, social networking Web sites like Facebook and software that allows direct 'peer to peer' messaging like Skype — to be technically capable of

complying if served with a wiretap order. The mandate would include being able to intercept and unscramble encrypted messages."

Web Browsing Takes a Social Turn, N.Y. Times, Nov. 7, 2010

"At first glance, RockMelt looks like an ordinary browser, a digital windowpane onto the Web. But along the side of its main window are two thin rails with icons, one showing a user's friends on the left, and another displaying a user's favorite social sites, including Twitter and Facebook, on the right."

You've Got to Have (150) Friends, N.Y. Times, Dec. 25, 2010

"Put simply, our minds are not designed to allow us to have more than a very limited number of people in our social world. The emotional and psychological investments that a close relationship requires are considerable, and the emotional capital we have available is limited. Indeed, no matter what Facebook allows us to do, I have found that most of us can maintain only around 150 meaningful relationships, online and off — what has become known as Dunbar's number. Yes, you can 'friend' 500, 1,000, even 5,000 people with your Facebook page, but all save the core 150 are mere voyeurs looking into your daily life — a fact incorporated into the new social networking site Path, which limits the number of friends you can have to 50."

1 See Vaughan Bell, Don't Touch That Dial!, Slate.com, Feb. 15, 2010 ("A respected Swiss scientist, Conrad Gessner, might have been the first to raise the alarm about the effects of information overload. In a landmark book, he described how the modern world overwhelmed people with data and that this overabundance was both 'confusing and harmful' to the mind. The media now echo his concerns with reports on the unprecedented risks of living in an 'always on' digital environment. It's worth noting that Gessner, for his part, never once used e-mail and was completely ignorant about computers. That's not because he was a technophobe but because he died in 1565. His warnings referred to the seemingly unmanageable flood of information unleashed by the printing press.")

2 Social media is also having a significant impact on the affairs of the departed. See, e.g., Jim Lamm, "Live" Funeral Video Broadcasting Over the Internet, Digital Passing, Jan. 31, 2011; Ken Strutin, Disposition of Digital Assets, N.Y.L.J., Jan. 25, 2011, at 5.

3 See generally Ken Strutin, Juror Behavior in the Information Age, LLRX, Dec. 26, 2010; Ken Strutin, Use of Social Media in Sentencing Advocacy, N.Y.L.J., Sept. 28, 2010, at 5; Ken Strutin, Pitfalls of Social Networking for Judges and Attorneys, N.Y.L.J., March 16, 2010, at 5; Ken Strutin, Pretexting, Legal Ethics and Social Networking Sites, LLRX, Oct. 5, 2009; Ken Strutin, Criminal Defense in the Age of MySpace and Facebook, The Defender (Harris County Criminal Lawyers Association), Summer 2009, at 18; Ken Strutin, Social Networking Evidence in a Self-Surveillance Society, N.Y.L.J., March 10, 2009, at 5; Ken Strutin, Criminal Law Resources: Social Networking Online and Criminal Justice, LLRX, Feb. 28, 2009.

Reference Link #12

Emerging Legal Issues in Social Media: Part II

LINKS

the article below can be found in its entirety at the links below

<http://www.stumbleupon.com/su/1tyhno/www.llrx.com/features/legalissuessocialmedia2.htm>

<http://su.pr/1tyhno>

Emerging Legal Issues in Social Media: Part II

By Ken Strutin, Published on March 21, 2011

This is the second installment of an examination of notable and new developments in social media and legal practice. Part One highlighted important statutes, case law, ethics opinions, along with extensive news media coverage of law-related social media issues. Part Two focuses on recent items that have appeared in professional journals and blogs, 1 law reviews, reports, books and secondary resources, along with references to current awareness sources. 2

PROFESSIONAL JOURNALS and BLOGS

Are Social Networking Sites Discoverable?, Product Liability L. & Strategy, Nov. 13, 2008

"In sum, the trends in court decisions regarding the discoverability and admissibility of information located on a social networking site do not bode well for Peggy. Since she posted information about herself and her misadventures on the trampoline to her MyFazer page, her counsel will surely face an uphill battle to prevent its production. The moral of the story for Peggy is the same for all users of social networking sites. Although these sites provide users with a sense of intimacy and community, they also create a potentially permanent record of personal information that becomes a virtual information bonanza about a litigant's private life and state of mind. The converse thus becomes the moral for litigation counsel -- this new generational fount of potentially discoverable information should be high on the list of priorities when evaluating a new matter."

Are Social Media Snake Oil? The Battle Rages On, Nat'l L.J., Jan. 21, 2011

"The time is long past for asking, 'Should we use social media?' The question today needs to be, 'How can we use social media effectively?'"

Banned from the Internet, Nat'l L.J., Oct. 11, 2010

"Prohibiting a defendant on probation from conducting any business online is overly restrictive and not reasonably related to legitimate sentencing goals."

Barry Bonds Trial May Test Tweeting Jurors, Law Tech. News, Feb. 15, 2011

"Knowing the urge will be great to take the case outside the box, lawyers on both sides want a stronger-than-usual warning to jurors to avoid internet research and social media during the trial. U.S. District Judge Susan Illston says she's open to going beyond the usual admonition, though the precise wording has yet to be unveiled."

Blogging & Chatting About Case Strategy Destroys Attorney-Client Privilege, Legal Skills Prof Blog, Dec. 6, 2010

"Be careful about blogging and emailing confidential legal information! U.S. Law Week online reports: A plaintiff who sent e-mails, posted a blog, and engaged in Gmail chat sessions through which she disclosed information about her attorneys' litigation strategy waived the attorney-client privilege for related information, the U.S. District Court for the Northern District of California ruled Oct. 22 (*Lenz v. Universal Music Corp.*, N.D. Cal., No. 07-3783, 10/22/10). The lawsuit complains that Universal Music Corp. sent a wrongful Digital Millennium Copyright Act notice to YouTube, requesting the removal of a video depicting a toddler dancing to Prince's 'Let's Go Crazy.' According to the complaint Universal knew or should have known that the video was a self-evident non-infringing fair use under 17 U.S.C. §107." See also Loose Lips Sink Ships and Can Waive Attorney-Client Privilege, Law Librarian Blog, Nov. 30, 2010.

Court Rules Debt Agency Can't Contact Woman on Facebook, Law.com, March 11, 2011

"A Florida judge has ordered a debt collection agency to not use Facebook or any other social media site in an attempt to locate a woman over a \$362 unpaid car loan."

Courts Grapple with Discovery of Posts, N.Y.L.J., Feb. 15, 2001

"Social media allows users to post their photos and videos online, and discuss their lives, health and interests. Indeed, Facebook recognizes that "one of the primary reasons people use Facebook is to share content with others. Examples include when you update your status, upload or take a photo, upload or record a video, share a link, create an event or a group, make a comment, write something on someone's Wall, write a note, or send someone a message."² Sharing this personal information can be virtually instantaneous and, of course, worldwide. That, as might be expected, can lead to a host of litigation issues, including whether information that parties to a lawsuit have made available via social media is discoverable."

Customer Violated Software License by Letting Attorneys Use Application, Internet Cases, Oct. 27, 2010

"*The Compliance Store v. Greenpoint Mortgage Funding*, — F.3d —, 2010 WL 4056112 (5th Cir. October 18, 2010) A federal court in Texas has decided a case that could have notable implications for both providers and users of software. The court took a narrow view of the rights that licensees of software have to authorize third parties (i.e., independent contractors) to use software on behalf of the licensee."

Defendant's Post-Plea Rant on Craigslist Costs Him Sentence Reduction for Accepting Responsibility, Sentencing Law and Policy, Nov. 29, 2010

"The Eighth Circuit has an interesting little 'new-media' sentencing opinion today in *US v. Wineman*, No. 10-1121 (8th Cir. Nov. 29, 2010) (available here). . . . 'In this case, we agree with the

district court that the Craigslist rant is inconsistent with any acceptance of responsibility by Wineman."

Facebook and the Fear of Worlds Colliding, Nat'l L.J., Nov. 18, 2010

"How do privacy and sharing settings work on Facebook? Basically, they allow you to customize who sees what information on your Facebook page. What this means specifically is that you can create separate lists of contacts — one for friends and another for business contacts. Each will have unique privacy settings. Don't want business contacts seeing the not-safe-for-work (NSFW) pictures your old roommate published to your wall? Want to keep casual acquaintances from seeing pictures of your child's birthday party? With privacy settings, you can create two separate worlds on Facebook. Here's how you do it."

Facebook as a Fundamental Right?, Constitutional Law Prof Blog, Jan. 28, 2011

"It is not only law students who believe facebook and twitter are 'fundamental rights.' State Department Spokesperson P.J. Crowley, speaking to AlJezeera about the situation in Egypt, described 'social media' as a 'fundamental right, as clear as walking into a town square.'"

Facebook: Sex Offenders Need Not Apply!, Corrections.com, Feb. 9, 2011

"[S]ex offenders are prohibited from using Facebook. Take a look at their user agreement. Specifically: Statement of Rights and Responsibilities, 4. Registration and Account Security, Item 6, reflects: 'You will not use Facebook if you are a convicted sex offender.' Facebook goes a step further and provides a method for notifying them of convicted sex offenders on their site."

Facebook Stalking: The Next Big Thing in Law Firm Training, Findlaw, Mar. 2, 2011

"As law students, job applicants and now (hopefully) associates, we all took on the role of Facebook stalker. Want to learn about your interviewer? Facebook stalk them. Want to get in good with your professor or partner? They've all got Facebook these days. Want to take down the suck-up stealing all your glory? Take 'em down with Facebook. It turns out that Facebook's positive uses aren't limited to helping you carry out your nefarious plans or digging up dirt in a divorce. It's actually the next big thing in jury selection, and you already have a leg up."

Facebook, Temporary Release and Preparing a Defense, CYB3RCRIM3, Mar. 4, 2011

"Jeffries' motion asked that the U.S. Magistrate Judge: 'permit his temporary release to his attorneys' custody . . . so that he might prepare his defense. He states that on January 6, 2011, the Government provided previously undisclosed electronic data, purportedly relating to his Facebook account. Defense counsel maintain that they are not able to access the Defendant's Facebook account from their office computers, despite having his password, because of a security feature that requires the identification of photographs.'" United States v. Jeffries, 2011 WL 182867 (E.D. Tenn. Jan. 20, 2011)

Final GINA Regulations (Finally!) Published: Addresses Treatment of Acquisition of Genetic Information Via Social Media, Erickson's Social Networking Law Blog, Nov. 9, 2010

"The Equal Employment Opportunity Commission today (finally!) issued final regulations implementing Title II (the employment provisions) of the Genetic Information Non-Discrimination Act of 2008 (GINA). As I mentioned in an earlier post, Title II took effect on November 21, 2009, the Commission published proposed regulations last year, but the final regulations were delayed.

I also pointed out that employers would have to wait for the final regulations for the EEOC's treatment of information obtained via social networking sites and employees' social media profiles."

FINRA Issues Guidance on Blogs and Social Networking Web Sites, Erickson's Social Networking Law Blog, Jan. 27, 2010

"FINRA -- the largest independent U.S. securities regulator -- issued Regulatory Notice 10-06, Guidance on Blogs and Social Networking Web Sites. The Executive Summary provides: 'Americans are increasingly using social media Web sites, such as blogs and social networking sites, for business and personal communications. Firms have asked FINRA staff how the FINRA rules governing communications with the public apply to social media sites that are sponsored by a firm or its registered representatives. This Notice provides guidance to firms regarding these issues.'"

Government and Social Media--Creating Meaningful Experiences, Corrections.com, Jan. 31, 2011

"The bottom-line of the research? People posting comments on social media sites are as influential as having a face-to-face conversation with someone we know. Mass social commentary through websites can define issues. Mass commentary via social media can dominate mainstream media. What does this mean to those of us who produce websites? Unless we create truly meaningful experiences for people coming to our sites, we risk losing our influence."

Guide to Navigating the Discovery of Facebook Records Within the Boundaries of the Electronic Communications Privacy Act, The Whisper (DRI), Mar. 1, 2011

"Facebook now has more than 400 million users who post status updates, view pictures, and write messages. As a Facebook user, I view Facebook as a way to keep in touch with old friends and connect with colleagues. However, as an attorney, I view Facebook as a gold mine of information about plaintiffs and potential witnesses. My protocol for new cases includes (1) reading the complaint, (2) Googling the plaintiff, and (3) searching to see whether the plaintiff has a Facebook account. But here's the catch -- how do attorneys ethically access information about plaintiffs and witnesses from Facebook?"

How Private Is Facebook Under the SCA?, Law Technology News, Oct. 5, 2010

"In 1986, Congress passed the Stored Communications Act as part of the Electronic Communications Privacy Act to address privacy issues attendant to the advent of the internet. Through the SCA, Congress intended to restrict disclosure of private communications by providers of electronic communications services. However, when Congress passed the SCA, the internet was in its infancy. The few networks available to consumers, such as Prodigy and America Online, were self-contained, and most people had never heard of the term e-mail, let alone utilized the limited form of electronic messaging that existed at the time. The World Wide Web did not yet exist, and it would be nearly a decade before the introduction of the web browser in the mid-1990s. . . . Despite huge technological advancements in the 25 years since passage of the SCA, and the ever increasing prominence of electronic communication in our society, Congress has not amended the SCA to keep pace with changing technology. Rather, courts have had to lead the charge in applying the decades old statute to modern internet technology and electronic communication disclosure issues."

Is It Constitutional to Criminalize Having a Facebook Page?, Sentencing Law and Policy, Jan. 30, 2011

"The question in the title of this post is prompted by this local story from North Carolina, which is headlined 'Lawyers take on Net predator law.'"

It's Time to Level the Playing Field - The Defense's Use of Evidence from Social Networking Sites, *Champion*, Aug. 2010, at 14

"If a client is in the crosshairs of a criminal investigation, chances are that law enforcement has already scoured Facebook, MySpace, Twitter, LinkedIn and other social networking sites to search for incriminating evidence. Several hundred million people have active Facebook and MySpace accounts. Unlike traditional Web sites, where users are limited to passive viewing, social networking sites permit users to create personal profiles; post photographs, videos, and audio clips; write blog entries and status updates; send and receive private messages; and link to pages of others. Across the country, law enforcement agents and prosecutors are effectively mining these sites for inculpatory evidence. But evidence from social networking sites is not just for the prosecution. Evidence from these sites can also bolster the defense."

Judge Uses Facebook To Research Litigant, *Internet Cases*, Mar. 9, 2011

"We've all heard the stories about lawyers using social media to research jurors and to gather evidence about opponents. But here's a new twist: even judges look to Facebook to find information about the parties appearing before them."

Juror's Facebook Postings During Gang Trial Lead to Legal Morass & Suit Against Judge, *Courthouse News*, Feb. 15, 2011

"A juror in a gang-related attempted-murder trial has sued the judge, claiming Superior Court Judge Michael Kenny violated his privacy by threatening to hold him in contempt unless he allows Facebook to give the defendant's attorneys Facebook postings the juror made during the trial. The plaintiff, Juror Number One, says in his federal complaint that Judge Kenny gave him until Valentine's Day to 'execute a consent form sufficient to satisfy the exception stated in Title 18, U.S.C. section 2702(b) allowing Facebook to supply the posting made by Juror No. 1 during trial.'" See also *Calif. Juror Ordered to Turn over Facebook Posts*, *Bloomberg*, Feb. 5, 2011; 18 U.S. Code S 2702(b)(3) and *Facebook*, *CYB3RCRIM3*, Feb. 21, 2011; *Compelled Consents and Facebook*, *CYB3RCRIM3*, Feb. 3, 2011. Cf. *Facebook User Had Standing To Challenge Subpoena Seeking His Profile Information*, *Internet Cases*, Feb. 8, 2011 (*Mancuso v. Florida Metropolitan University, Inc.*, 2011 WL 310726 (S.D. Fla. Jan. 28, 2011)).

Juror Study Shows More of a BlackBerry Effect than a 'CSI' Effect, *ABA Journal Law News Now*, Feb. 8, 2011

"The chief judge of Washtenaw County in Ann Arbor, Mich., had heard a lot about the so-called CSI effect—said to increase jurors' expectations that technology can solve crimes with lightning speed, just as it happens on the television show CSI. But he hadn't seen the evidence. So Judge Donald Shelton devised two studies of people called for jury duty, and found more of a BlackBerry effect, *NPR reports*. 'The more sophisticated technological devices that jurors had,' Shelton said, 'the higher their expectations for the prosecutors to present evidence.'" See also *Generations and Their Gadgets* (*Pew Internet & American Life Project* Feb. 3, 2011)

Labor Board Backs Worker Who Criticized on Facebook, Wall St. J., Nov. 10, 2010

"The National Labor Relations Board [NLRB] is taking a stand on employees' rights to post negative comments about supervisors on social networking sites, alleging that a company illegally fired a worker for criticizing her boss on Facebook. The agency disclosed the complaint last week against ambulance service American Medical Response of Connecticut Inc. . . . The agency said its investigation found that the employee's Facebook postings constitute 'protected concerted activity' and alleges the company maintained and enforced an overly broad blogging and internet policy that contained unlawful provisions." See also NLRA May Protect Your Employees' Facebook Rants (Regardless of Union Status!), Social NetworkingLawBlog.com, Dec. 9, 2010; Labor Board Settles Suit of Woman Fired Over Facebook Posts Criticizing Her Boss, ABA Journal Law News Now, Feb. 8, 2011

Lawyers Scour Social Media to Pick Jurors, 8NewsNow, Mar. 1, 2011

"You use your Facebook profile or Twitter feed to keep friends and family in the loop in your life. But lawyers may be scouring your likes, favorites and tweets to see if you might be best for their jury. It is a nationwide trend that may start taking off in Las Vegas, where both sides of the law use your Facebook posts to get you in the jury box."

Lawyers Suing Over Suspect's Shooting Death Seek Facebook Information for 57 Officers, ABA Journal Law News Now, Mar. 4, 2011

"An Albuquerque, N.M., policeman who listed his job description as 'human waste disposal' on Facebook has caught the attention of lawyers who filed a wrongful death suit against the city for a police shooting in January 2010. The lawyers are asking the city to provide Facebook usernames and passwords of 57 police officers who were at the scene after a police detective shot and killed Iraq war veteran Kenneth Ellis, according to the Albuquerque Journal (sub. req.) and KOAT.com."

Legal Battle Brewing Over Subpoena of Juror's Facebook Page, Juries, Jan. 21, 2011

"Apparently, Facebook has refused a subpoena request from defense attorneys to turn over the Facebook postings of a juror (Arturo Ramirez). Defense attorneys want access to the juror's Facebook page because they believe he may have leaked information about the trial or was influenced by comments made by Facebook friends. The defense attorneys represent reputed members of the Killa Mobb gang who were convicted of assaulting a man at a Sacramento gas station."

Model Jury Instructions for the Digital Age, Juries, Feb. 28, 2011

"To address the growing problem of juror misconduct related to the Internet, Smartphones, Blogs, Social Networking Sites, etc., I [Prof. Thaddeus Hoffmeister] have drafted new jury instructions entitled, Model Jury Instructions for the Digital Age. These instructions, which are reprinted below, will also be published in my upcoming law review article, Google, Gadgets and Guilt: The Digital Age's Effect on Jurors." See also Judges Debate Online Access to Murder Defendants' Cases During Trial, The Morning Journal, Mar. 8, 2011

MySpace Alibi, CYB3RCRIM3, Sept. 29, 2010

People v. Calderon, 2010 WL 3505971 (California Court of Appeals 2010). Defendant raised alibi defense to robbery charge claiming that he was playing poker on MySpace at the time.

One Verdict Is in for Tweeting from the Courtroom, Connecticut Law Tribune, Oct. 18, 2010

"In an adventuresome experiment, New Haven Superior Court Judge Jon Blue is allowing reporters covering the trial of Steven Hayes to 'tweet' on the Twitter social network from their hand-held smart phones, and from laptop computers."

Political Power of Social Media, Foreign Affairs, Jan./Feb. 2011

"Discussion of the political impact of social media has focused on the power of mass protests to topple governments. In fact, social media's real potential lies in supporting civil society and the public sphere -- which will produce change over years and decades, not weeks or months."

Probation Search Justified by Images on Defendant's MySpace Page, FourthAmendment.com, Sept. 30, 2010

"Probation search was justified by defendant's MySpace page showing gang signs and two guns and cash. The probation search was valid without a search warrant. United States v. Romero, 2010 U.S. Dist. LEXIS 102089 (D. Kan. September 27, 2010)."

Searching for Details Online, Lawyers Facebook the Jury, Wall St. J., Feb. 22, 2011

"Facebook is increasingly being used in courts to decide who is—and who isn't—suitable to serve on a jury, the latest way in which the social-networking site is altering the U.S. court system. Prosecution and defense lawyers are scouring the site for personal details about members of the jury pool that could signal which side they might sympathize with during a trial. They consider what potential jurors watch on television, their interests and hobbies, and how religious they are." See also Internet v. Courts: Googling for the Perfect Juror, N.Y. Times, Feb. 17, 2011; DA Will Check Facebook Profiles for Jury Picks, Houston Chronicle, Jan. 17, 2011

Seduced: For Lawyers, the Appeal of Social Media Is Obvious. It's Also Dangerous, ABA Journal Law News Now, Feb. 1, 2011

"'There's an increase in the number of attorneys running afoul of professional conduct rules when they use social media,' warns Renee N. Knake, who teaches professional responsibility at Michigan State University College of Law. One reason is that more attorneys are using social media such as blogs, Facebook and Twitter. The ABA's 2010 Legal Technology Survey Report found that 56 percent of attorneys in private practice have a presence in an online social network like Facebook, LinkedIn, LawLink or Legal OnRamp. Only 43 percent had such an online presence in the center's 2009 survey and 15 percent in 2008. Another reason so many attorneys are running into ethics problems is that they simply don't know what they can and can't do in the realms of social media. There's much ambiguity on how the ethics rules apply to these new technologies."

Small Change: Why the Revolution Will Not Be Tweeted, New Yorker, Oct. 4, 2010

"The world, we are told, is in the midst of a revolution. The new tools of social media have reinvented social activism. With Facebook and Twitter and the like, the traditional relationship between political authority and popular will has been upended, making it easier for the powerless to collaborate, coordinate, and give voice to their concerns."

Social Media Goes Viral on Capitol Hill, Roll Call, Feb. 6, 2011

"The role of social media in Congressional leaders' messaging and outreach has exploded over the past few years, whether it be through tweets about floor schedule updates or on Facebook. But

within that trend is a clear — and nonpartisan — divide between the savvy and those still in the dark."

In Social Media Postings, a Trove for Investigators, N.Y. Times, Mar. 2, 2011

"As Twitter, Facebook and other forms of public electronic communication embed themselves in people's lives, the postings, rants and messages that appear online are emerging as a new trove for the police and prosecutors to sift through after crimes. Such sites are often the first place they go."

Social Networking and the Adversary Process (Gallagher Sharp 2010)

"The internet has created a platform for a wide variety of new media. Among the most popular and most prolific is social networking. This type of new media essentially provides a realtime forum for the exchange of personal information in various contexts. These tools, and the information they provide, have had a profound effect on litigation and the adversary system. This presentation explores these effects, including the impact social networking has on claims handling, the obstacles social networking presents at trial, and the ethical concerns social networking raises."

Social Networking Sites: Subject to Discovery?, Nat'l L.J., Aug. 23, 2010

"On May 26, a federal court issued an opinion in a discovery dispute that applies outmoded federal electronic privacy laws from the 1980s to Facebook and MySpace. The ruling could permanently change the way 'social networking' sites are viewed by businesses and those involved in litigation. The decision also appears to offer the first in-depth analysis on the effect of 'privacy settings' found on many social networking sites and whether information is protected from discovery by federal privacy laws."

Social Networks in Personal Injury Litigation, N.Y.L.J., Dec. 17, 2010

"In the personal injury arena, information derived from social networking sites is most frequently sought or employed to contest a claim of physical limitation or emotional suffering, although it has, on occasion, been used by a plaintiff against a defendant as an alternative to more traditional website information in connection with representations concerning professional capabilities, inappropriate comments made by the professional or, in a case involving a University of Texas fraternity, the initiation activities posted by a fellow student which resulted in a student's death."

Study of Facebook Users Connects Narcissism and Low Self-Esteem, Scientific American, Nov. 2010

"Social-networking sites offer users easy ways to present idealized images of themselves, even if those ideals don't always square with their real-world personalities. Psychology researcher Soraya Mehdizadeh has discovered a way to poke through the offline-online curtain: she has used Facebook to predict a person's level of narcissism and self-esteem."

UK Supreme Court Policy on Tweeting Etc. From Court, SLAW, Feb. 3, 2011

"The Supreme Court of the United Kingdom has just released a policy statement concerning 'The Use of Live Text-Based Communications from Court'. The nub of the policy is simple and clear: [A]ny member of a legal team or member of the public is free to use text-based communications from court, providing (i) these are silent; and (ii) there is no disruption to the proceedings in court."

LAW REVIEWS

Civil Discovery of Social Networking Information, 39 Sw. L. Rev. 413 (2010)

"Social networking via the Internet (sometimes called 'Web 2.0') has become, almost overnight, a major social, technological, and business phenomenon, in the United States and elsewhere. Use of new low-cost means to connect with friends, family and old acquaintances, to form new relationships, and to broadcast personal, social, financial, academic, and other information has come to rival even the massive cultural shift involved in widespread adoption of e-mail over the past twenty years. Continued development and expansion of social networking services and uses seem inevitable. For lawyers, the social networking phenomenon presents a new set of challenges. Social networking information can provide vital evidence in connection with disputes and regulatory proceedings. Indeed, such evidence may be the new 'smoking gun' in many cases. This Article briefly addresses issues surrounding the discovery of such information, and suggests some 'best practices' to deal with this new form of evidence."

Criminal and Civil Liability for User Generated Content: Craigslist, A Case Study, 15 J. Tech. L. & Pol'y 85 (2010)

"Congress may have intended to definitively resolve the question of website liability by its passage of the Communications Decency Act of 1996 (CDA), but in light of Craigslist's recent capitulation to legal pressure, the time is ripe to revisit the question of the civil and criminal liability that websites risk by opening forums to the public. This Article argues that recent court decisions have already limited the extent of the protection websites enjoy from civil suits, and that the changes Craigslist has made to its 'Erotic Services' section places the website even further outside the immunity the company has hitherto enjoyed. In reaching its conclusion, this Article proceeds in two sections, considering first the extent of Craigslist's criminal liability, and then considering the nature of the civil liability to which Craigslist is now exposed."

Facebook vs. The Florida Bar (SSRN 2010)

"This piece discusses social networking websites (e.g. Facebook, Twitter and MySpace) and their importance vis-a-vis the First Amendment in terms of communicating ideas (i.e. the market places of ideas), self-expression and discovery, and political expression and discussion. I emphasize the importance of this because the generation of law school graduates currently applying to take the bar is one of the first to grow up with ready access to the internet from a young age.

I go on to examine the recent proposals of the Florida Board of Bar Examiners (FBBE) to screen the social network accounts of certain applicants to the Florida Bar. I argue that the guidelines are unconstitutionally vague and overbroad and as a result will have a chilling effect on speech if not clarified and the information on how the screening process works is then made easily available to bar candidates. I also seek to offer some ways in which it may be possible for a Bar Association to create rules for screen the social networking site accounts of individual applicants without running the risk that such screening will restrict or chill the first amendment rights of applicants. The focus is on the FBBE that is only because they were the first to announce such an ambitious plan. However, I believe the principles would also apply for any bar association seeking to screen the social networking site accounts of applicants."

Fourth Amendment and the Brave New World of Online Social Networking, 93 Marq. L. Rev. 1495 (2010)

"This Comment evaluates whether social networking users maintain a reasonable expectation of privacy in their online social networking activity such that police scrutiny is subject to the Fourth Amendment's warrant requirement. Part II explores the contours of a social networking web site and describes its operation. This Part considers the origins of the social networking phenomenon and examines two of the largest social networking web sites, Facebook and MySpace, in some detail. Part III explains the social benefits derived from social networking and the risks involved, including the increasing risk of police surveillance. Part IV describes the current state of Fourth Amendment search doctrine and explains why it is a poor lens through which to analyze a user's online social networking content. Part V discusses the consequences should courts refuse to protect online user content. Finally, Part VI concludes that courts should recognize, in most circumstances, users' asserted privacy expectations in their online social networking content."

Fourth Amendment and Privacy Issues on the "New" Internet: Facebook.Com and Myspace.Com, 31 S. Ill. U. L.J. 95 (2006-2007)

"This paper will provide a background of the Fourth Amendment issues surrounding the usage of Facebook and MySpace, and discuss the legality of potential searches conducted by police and other law enforcement officials. Section II of this paper will introduce and describe Facebook and MySpace, including the different features, uses, privacy policies, and privacy settings. Section III will then provide a background of Fourth Amendment search and seizure law in the United States and how some of the landmark Supreme Court cases and other relevant decisions might be used in determining Fourth Amendment rights when dealing with Facebook and MySpace profiles. Section IV will apply some of these Fourth Amendment holdings and compare these decisions to how a court would analyze police searches using profiles on the Web sites of Facebook and MySpace. Section V will then discuss whether the privacy policies of Facebook or MySpace may have any additional impact on an expectation of privacy. Section VI will finally conclude with a suggestion on where courts should draw the line between the need to protect individual privacy and the desire not to hinder effective police investigations."

Law School and the Web of Group Affiliation: Socializing, Socialization, and Social Network Site Use Among Law Students, 27 J. Marshall J. Computer & Info. L. 325 (2010)

"Online social network sites ('SNS') have emerged as a significant socio-technical phenomenon in the past several years. Scholars from various disciplines have examined these sites to develop a better understanding of their social significance and implications from a variety of perspectives. Within the burgeoning field of SNS studies, one strand of work focuses on the place of SNSs in students' educational experiences and the potential pedagogical applications of SNSs. However, the SNS phenomenon generally, and its educational/pedagogical significance in particular, have received scant attention from legal scholars. This article examines the place of SNSs within the contemporary law school experience, through a case-study of students at one law school. The article gauges differences in Facebook by students' age, gender, race/ethnicity, and other characteristics and analyzes students' Facebook communications as they pertain to the performance of law student identity and role."

MySpace Isn't Your Space: Expanding the Fair Credit Reporting Act to Ensure Accountability and Fairness in Employer Searches of Online Social Networking Services, 16 Kan. J.L. & Pub. Pol'y 237 (2006/2007)

"The advent and popularity of online social networking has changed the way Americans socialize. Employers have begun to tap into these online communities as a simple and inexpensive way to perform background checks on candidates. However, a number of problems arise when employers base adverse employment decisions upon information obtained through these online searches. Three basic problems or issues accompany searches of online profiles for employment decisions: (1) inaccurate, irrelevant, or false information leads to unfair employment decisions; (2) lack of accountability and disclosure tempts employers to make illegal employment decisions; and (3) employer searches of an employee's online social life violate an employee's legitimate expectation of privacy. . . . The original purposes of the Fair Credit Report Act ('FCRA') permit – and demand – its expansion to cover the potential problems for candidates and employees caused when employers search for a candidate or employee's online social networking profiles. This solution effectively strikes an agreeable balance between an employer's right to know about candidates for employment and its employees and an employee's or candidate's right to privacy and fair employment decision making."

On the Precip[ic]e of E-Discovery: Can Litigants Obtain Employee Social Networking Web Site Information Through Employers?, 18 CommLaw Conspectus 487 (2010)

"This Note will address some of the substantive, procedural, and technical problems associated with using e-discovery to obtain information from an employee's social networking Web site activity conducted in the workplace. Little precedent exists for when an employer must produce the information it possesses on an employee's social networking activities at the workplace. Part II provides background information about social networking Web sites and how employee misuse of them in the workplace may impose liability upon an employer, thereby spurring a third party to seek discovery through the employer. Part III examines discovery requests to employers for their employees' social networking Web site accounts, the mechanisms through which the discovery may be produced and difficulties confronted in that process, and why the courts should limit such requests for discovery. Finally, Part IV concludes by outlining the issues that courts and litigants will face in handling discovery requests that seek an employee's social networking activities and suggests principles that should guide future analysis."

Social Networking and the Law, 31 Pace L. Rev. 1-463 (2011)

This special issue of the Pace Law Review is dedicated to current scholarship on social media and its effects across the spectrum of legal practice, law making, constitutional rights and legal ethics.

Social Networking and Workers' Compensation Law at the Crossroads, 31 Pace L. Rev. 1-53

Social Networking and Land Use Planning and Regulation: Practical Benefits, Pitfalls, and Ethical Considerations, 31 Pace L. Rev. 54-94

Your Mayor, Your "Friend": Public Officials, Social Networking, and the Unmapped New Public Square, 31 Pace L. Rev. 95-145

"You already have zero privacy. Get over it!" Would Warren and Brandeis Argue for Privacy for Social Networking?, 31 Pace L. Rev. 146-181

Facebook Fatalities: Students, Social Networking, and the First Amendment, 31 Pace L. Rev. 182-227

Social Media and the Vanishing Points of Ethical and Constitutional Boundaries, 31 Pace L. Rev. 228-290

From Facebook to Mug Shot: How the Dearth of Social Networking Privacy Rights Revolutionized Online Government Surveillance, 31 Pace L. Rev. 291-381

Rulemaking in 140 Characters or Less: Social Networking and Public Participation in Rulemaking, 31 Pace L. Rev. 382-463

REPORTS

Friends, Followers, and Feeds: A National Survey of Social Media Use in State Government (NASCIO 2010)

"During July and August of 2010, NASCIO's [National Association of State Chief Information Officers] Social Media Working Group implemented a survey of social media adoption by state governments to clarify existing use of social media by states, capture best practices, and extend knowledge of how the tools are being deployed in state governments across the country. The survey examined adoption trends, current applications and expectations of social media technologies, the extent to which implementation is governed by formal policies or individual agency initiative, and perceptions of risk associated with social media tool use."

How Federal Agencies Can Effectively Manage Records Created Using New Social Media Tools (IBM Center for the Business of Government 2011)

"Dr. [Patricia C.] Franks' report addresses the challenges of federal recordkeeping in the social media age. She describes the struggle of agency records managers to keep up with the information revolution, as well as the historical evolution of how records management and information technology have become both intertwined and yet separated by 'silos' in many agencies. She identifies the governance challenges, the policy challenges, the technology challenges, as well as the capacity challenges to address these issues. She concludes with recommendations for improving social media records management, and offers a series of best practices based on interviews with dozens of records managers, Web masters, and social media managers across the federal government."

New Media and the Courts: The Current Status and a Look at the Future (SSRN 2010)

"The Conference of Court Public Information Officers [CCPIO] report on new media and the courts finds that more than one-third of state court judges and magistrates responding to a survey use social media profile sites like Facebook, while less than 10 percent of courts as institutions use social media for public outreach and communication. After a year of study and online collaboration, the report reveals a judicial branch that clearly recognizes the importance of understanding new media

but is proceeding cautiously with concerns about effects on ethics, court proceedings and the ability to support public understanding of the courts."

Obtaining and Using Evidence from Social Networking Sites. Facebook, MySpace, LinkedIn, and More (CCIPS 2010)

"The Justice Department released a presentation entitled 'Obtaining and Using Evidence from Social Networking Sites.' The slides, which were prepared by two lawyers from the agency's Computer Crime and Intellectual Property Section [CCIPS], detail several social media companies' data retention practices and responses to law enforcement requests. The presentation notes that Facebook was 'often cooperative with emergency requests' while complaining about Twitter's short data retention policies and refusal to preserve data without legal process. The presentation also touches on use of social media for undercover operations." (Source: Electronic Frontier Foundation (EFF))

Older Adults and Social Media (Pew 2010)

"While social media use has grown dramatically across all age groups, older users have been especially enthusiastic over the past year about embracing new networking tools. Although email continues to be the primary way that older users maintain contact with friends, families and colleagues, many users now rely on social network platforms to help manage their daily communications -- sharing links, photos, videos, news and status updates with a growing network of contacts."

Who Should I Follow? Recommending People in Directed Social Networks (HP 2010)

"A variety of social networks feature a directed attention or 'follower' network. In this paper, we compare several methods of recommending new people for users to follow. We analyzed structural patterns in a directed social network to evaluate the likelihood that they will predict a future connection, and use these observations to inform an intervention experiment where we offer users of this network new people to connect to. This paper compares a variety of features for recommending users and presents design implications for social networking services. Certain types of structural closures significantly outperform recommendations based on traditional collaborative filtering, behavioral, and similarity features. We find that sharing an audience with someone is a surprisingly compelling reason to follow them, and that similarity is much less persuasive. We also find evidence that organic network growth is very different from how users behave when they are prompted to connect to new people."

BOOKS

Find Info Like a Pro, Volume 1: Mining the Internet's Publicly Available Resources for Investigative Research (ABA 2010)

"This complete hands-on guide shares the secrets, shortcuts, and realities of conducting investigative and background research using the sources of publicly available information available on the Internet. Written for legal professionals, this comprehensive desk book lists, categorizes, and describes hundreds of free and fee-based Internet sites. The resources and techniques in this book are useful for investigations; depositions; locating missing witnesses, clients, or heirs; and trial preparation, among other research challenges facing legal professionals. In addition, a CD-ROM is included, which features clickable links to all of the sites contained in the book."

Lawyer's Guide to Social Networking: Understanding Social Media's Impact on the Law (West 2010)

"This product provides a comprehensive look at how social media is affecting the legal system. It examines the myriad ways in which information from sites like Facebook, MySpace, and Twitter is being put to use in everything from criminal and family law matters to personal injury, employment, and commercial cases nationwide. The author illustrates how the pervasive social networking phenomenon is redefining traditional notions of jurisdiction, duty, service of process, and legal ethics while using actual trial- and appellate-level cases to analyze the discoverability and admissibility of social media evidence."

Social Media for Lawyers: The Next Frontier (ABA 2010)

"The world of legal marketing has changed with the rise of social media sites such as LinkedIn, Twitter, and Facebook. Law firms are seeking their companies attention with tweets, videos, blog posts, pictures, and online content. Social media is fast and delivers news at record pace. Social Media for Lawyers: The Next Frontier provides you with a practical, goal-centric approach to using social media in your law practice that will enable you to identify social media platforms and tools that fit your practice and implement them easily, efficiently, and ethically."

SECONDARY RESOURCES

Expectation of Privacy in Internet Communications, 92 A.L.R.5th 15

"The explosion of computer technology and communications has spawned a new area of litigation and legal concerns with regard to the constitutional expectation of privacy in Internet communications. An expectation of privacy has generally not been found to exist with regard to subscriber information provided by service users to their Internet service providers, records on individuals' Internet usage, or as to communications made on Internet websites. Nor, with limited exception, have courts generally found a reasonable expectation of privacy to exist in e-mail or electronic chat-room communications. In *Com. v. Proetto*, 2001 PA Super 95, 771 A.2d 823, 92 A.L.R.5th 681 (Pa. Super. Ct. 2001), no reasonable expectation of privacy was found to exist as to either e-mail messages sent by a man to a 15-year-old girl, nor to electronic chat-room conversations engaged in between such parties. In reaching this result, the court reasoned, with regard to the e-mail messages, that, much like a letter which is private when sealed, but the destiny of which generally lies in the control of the recipient after he or she receives and opens it, because the girl received the e-mail messages and could forward them to anyone, the sender had no reasonable expectation of privacy in them. With regard to the chat-room communications, the court found no reasonable expectation of privacy based, in part, on the reasoning that the communicator did not know to whom he was speaking, and that oftentimes individuals engaging in chat-room conversations pretend to be someone other than who they are. This annotation collects and discusses the cases which have considered the constitutional expectation of privacy in Internet communications."

Electronic Frontier Foundation (EFF)

"From the Internet to the iPod, technologies are transforming our society and empowering us as speakers, citizens, creators, and consumers. When our freedoms in the networked world come under attack, the Electronic Frontier Foundation (EFF) is the first line of defense. EFF broke new ground when it was founded in 1990 — well before the Internet was on most people's radar — and continues to confront cutting-edge issues defending free speech, privacy, innovation, and consumer

rights today. From the beginning, EFF has championed the public interest in every critical battle affecting digital rights."

FOIA: Social Networking Monitoring (Electronic Frontier Foundation (EFF))

"EFF, working with the Samuelson Law, Technology, and Public Policy Clinic at the University of California, Berkeley, School of Law (Samuelson Clinic), filed suit on December 1, 2009 against a half-dozen government agencies for refusing to disclose their policies for using social networking sites for investigations, data-collection, and surveillance."

IACP Center for Social Media (International Association of Chiefs of Police (IACP))

"In partnership with the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, the IACP launched its Center for Social Media in October 2010. The goal of the initiative is to build the capacity of law enforcement to use social media to prevent and solve crimes, strengthen police-community relations, and enhance services. IACP's Center for Social Media serves as a clearinghouse of information and no-cost resources to help law enforcement personnel develop or enhance their agency's use of social media and integrate Web 2.0 tools into agency operations."

Legal Problems Arising from Social Media: Selected Resources, Legal Informatics Blog, April 10, 2010

"Here is a brief list of selected resources on legal problems arising from social media. The resources listed here concern problems for law-related individuals or organizations — such as lawyers, judges, jurors, legal witnesses, civil litigants, those accused of crimes, criminal investigators, courts, etc. — arising from the use of social media or similar digital communications technologies."

Social Media and the Courts (National Center for State Courts (NCSC))

This is a resource guide published by the National Center for State Courts that contains links to materials on social media and its implications for judges, attorneys, juries, and related issues.

Social Media and Trial by Jury: Identifying Problems, Designing Solutions, (Bureau of Justice Assistance (BJA) 2011)*

"People are constantly engaged online — surfing the Internet at home, at work and at the courthouse. While convenience and accessibility to information are unparalleled, our obsession with hand-held devices presents large challenges for the management of jury trials. For example, jurors' use of Internet-enabled devices can cause expensive mistrials, and Internet research done by lawyers may infringe upon the privacy of jurors. What can the bench and the bar do to deal with this new world of social media communication? Can we accommodate the proper use of texting, tweeting and the like during a jury trial? This webinar, moderated by Judge Gregory E. Mize, will help define the challenges and chart practical solutions. Panelists include Judge Dennis M. Sweeney and Professor Caren Myers Morrison."

*The webinar was held on Feb. 8, 2011. To view the video archive, click here.

Social Networking Privacy (Electronic Privacy Information Center)

"EPIC is a public interest research center in Washington, D.C. It was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values. EPIC publishes an award-winning e-mail and online newsletter on civil

liberties in the information age - the EPIC Alert. We also publish reports and even books about privacy, open government, free speech, and other important topics related to civil liberties."

Validity of Adverse Personnel Action or Adverse Action Affecting Student's Academic Standing Based on Internet Posting or Expression, Including Social Networking, 49 A.L.R.6th 115

"Freedom of speech and of the press rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. The issue arises as to the validity of an adverse personnel action or an adverse action affecting a student's academic standing based upon the individual's Internet posting or expression. In *Spanierman v. Hughes*, 576 F. Supp. 2d 292, 238 Ed. Law Rep. 170, 156 Lab. Cas. (CCH) P60690, 49 A.L.R.6th 699 (D. Conn. 2008), for example, the court held that even if an Internet networking site could be considered an 'organization' for First Amendment purposes, there was no evidence that such organization purported to speak out on matters of public concern, as required to support a freedom-of-expressive-association claim of a nontenured high school teacher, whose contract was not renewed after his personal profile on the Web site and his activity on the Internet networking site were discovered. This annotation collects and discusses all of the cases which have considered the validity of adverse personnel actions or adverse actions affecting a student's academic standing based upon the employee's or student's Internet posting or expression, including information posted on social network sites such as Facebook or MySpace."

CURRENT AWARENESS BLOGS

Internet Cases: A Blog About Law and Technology

"Evan Brown is a Chicago attorney with a focus on intellectual property and technology law. He is a graduate of the University of Denver College of Law and received his bachelor's degree in philosophy at Wabash College (Crawfordsville, Indiana). He is a frequent public speaker on issues relating to law and technology, and has published numerous articles on those topics. Evan is licensed to practice law in both Illinois and Colorado."

JOLT Digest: An Online Companion to the Harvard Journal of Law & Technology

"We are the JOLT Digest, an online-only resource featuring short synopses of recent developments in all areas of law & technology, including significant cases and legislation in the United States and abroad. The Digest is designed to provide academics, practitioners and law students not only with timely access to important legal developments, but also with links to in-depth commentary on those issues."

Social Media Law Student

"One goal of this site is to connect lawyers to new technologies in hopes of making the practice of law easier – both inside and outside the courtroom. This site serves as a resource regarding the latest legal technology within the legal profession."

Social Networking Law Blog

"Megan J. Erickson, Esq. Here you'll find discussions, news, and insights related to online interactive media and the law."

1 It also includes noteworthy news articles that were posted after the publication of Part One.

2 This article does not address the advent of social media search engines or related issues. See, e.g., Clint Boulton, *Google Social Search Spreads to Fight Facebook*, eWeek, Feb. 17, 2011; Michael Calore, *First Look at RockMelt, a Browser Built For Facebook Freaks*, Wired, Nov. 7, 2010.

David J. Ferrell, PLLC

Attorney & Counselor at Law
10514 Montwood Drive
El Paso, Texas 79935-2703
(915) 594-8000
Fax (915) 594-8570
Website <http://www.elpasolaw.com>
E-Mail DJF@elpasolaw.com

Biographical Information

David J. Ferrell

Education:

United States Navy - 1966 - 1970
BS in Criminal Justice 1974, University of Texas at El Paso
J.D. Texas Tech School of Law, 1977

Professional Activities:

Assistant Attorney General of Texas

Consumer Protection/Anti-Trust Division 1978-1981

Private Practice in El Paso Texas 1981-2010

Adjunct Professor - Webster University 1980-1993

Associate Municipal Judge-City of El Paso 1983-1990

Justice of the Peace - Precinct #4 - El Paso County - 2010

Member of the Consumer Law Council-State Bar of Texas 1985-1994

Treasurer of the Consumer Law Section-State Bar of Texas 1988-1990

Chairman of the Consumer Law Section-State Bar of Texas 1991-1992

President of El Paso County Probate Bar Association 1999-2000

Chairman of the Board El Paso County Probate Bar Association 2000-2001

Chairman of the El Paso Bar Association Computer/Website Committee 1998-2001

Reappointed Chairman of the El Paso Bar Association Computer/Website Committee 2010

Board of Directors El Paso Bar Association 2002-2005

Member of the Website Services Committee, State Bar of Texas 2008-2013

Member of the Law Practice Management Committee, State Bar of Texas 2008-2011

Publishes and maintains research website **elpasolaw.com** on the Internet

Created El Paso County's Probate Court website **theprobatecourt.com** 1998

Created the El Paso Bar Association's website **elpasobar.com** 1998

Technology and the Law Consultant