

# Social Networks Friends or Foes?

## Case Studies

### Case Study 1: **Cyberbullying**

(Based on the case of *United States v. Drew*)

Relates to Panel:

- *Regulating Crime in the Cloud: policing Unlawful Behavior on Social Networks*

Lori Drew is the Midwestern mother who allegedly participated in a hoax on the social-networking website MySpace that ended in the suicide of junior high student Megan Meier. Meier was formerly friends with Drew's daughter until the two had a falling out. There were also allegations that Meier had acted in negative ways toward Drew's daughter. In retaliation or perhaps as a prank, Drew collaborated with her daughter and Drew's former employee in creating a fake profile of a 16-year-old boy. Using the profile, they friended, befriended, flirted, and started an online relationship with Megan Meier. After some time, the messages became nasty. One message to Meier said, "I don't know if I want to be friends with you anymore because I've heard that you are not very nice to your friends." The harsh messages continued, finally culminating with: "You are a bad person and everybody hates you. Have a shitty rest of your life. The world would be a better place without you." Meier responded: "You're the kind of boy a girl would kill herself over." She committed suicide a few minutes later.

In the wake of this tragedy, prosecutors attempted to find a way to charge Drew with a crime, but her actions did not fall under any of the traditional applications of existing statutes. However, one prosecutor theorized that Drew could be charged under accomplice liability for aiding and abetting unauthorized access to a computer system under the Computer Fraud and Abuse Act (CFAA), a law normally used for computer hackers. In bringing its case, the government argued that Drew aided and abetted the violation of the CFAA because she encouraged the creation of a fake MySpace profile, violating MySpace's Terms of Use (TOU) which required truthful information from users. Since access to the MySpace system is premised on satisfying the TOU, lying about one's identity by creating a fake profile would give access without proper authorization thus violating the CFAA.

Issues:

- Was this a proper CFAA use? What role does prosecutorial discretion play here?
- Are current laws sufficient to handle these situations or do we need new laws? (e. g., anti-cyberbullying statutes).
- Who should regulate social networks? The government? Users? The companies?
- What duties do social networks have to enforce their terms of use?
- What duty does the government have to help enforce the terms?
- Do social networks create the possibility of new crimes, or just new locations for old crimes to take place?

References:

- <http://www.wired.com/threatlevel/2008/11/lori-drew-pla-5/>
- Opinion: <http://volokh.com/files/LoriDrew.pdf>

Case Study 2: **Impeaching a Primary Witness**  
(Hypothetical, loosely based on real facts)

Relates to Panels:

- *Does Overt Access to Social Networking Data Constitute Spying or Searching*
- *MyFace in Court: Admissibility and the Probative Value of Social Networking Evidence*

John is a college student who has been charged with sexual assault. He believes that exculpatory evidence that could help his case is on the Facebook page of Chloe—his accuser and a classmate at school. Chloe alleges that John plied her with liquor and then sexually assaulted her; John says that they had an ongoing flirtation in a class that turned into a consensual one night stand at a raucous party, but that when Chloe’s boyfriend found out, she claimed it was rape. One of the issues relevant to the case is whether or not John used drugs and alcohol to coerce Chloe. Chloe asserted to the police that she never drinks and that John used this knowledge as part of his coercion tactics. John disputes these claims, and believes that Chloe’s Facebook page, which he can no longer access, might have pictures of her drinking at other parties that would impeach her testimony. He also thinks her friends might have pictures from the party showing that Chloe had been drinking before he arrived, as well as corroborate that she was “In a relationship” at the time of the offense.

Issues:

- Do John and his attorney have a right to obtain this evidence? If so, how?
- Can the information be obtained through subpoenas? Are there any limitations?
- Can the information be obtained socially or technologically? Are there any limitations?
- How should the law handle the privacy issues here? What is the proper ethical approach?
- How reliable and valuable is information obtained off of social networks? Does it matter if the government seeks to use the relationship status to bolster Chloe’s claim of rape, versus if John seeks to use it to support the defense theory?
- Does the prosecution have any duty to look for or provide this evidence if they find it? A duty to look for it if asked?
- Should this type of evidence be admitted into court? Under what conditions should it be used?

### Case Study 3: **Impeaching a Corroborating Witness**

(Adapted from the above hypothetical and Philadelphia Bar Ethics Opinion 2009-02)

Relates to Panels:

- *Are You Really My Friend? The Law and Ethics of Covert or Deceptive Data-Gathering*
- *MyFace in Court: Admissibility and the Probative Value of Social Networking Evidence*

In the case of Chloe and John, John learns that Kelly, a good friend of Chloe's, was at the party and will be testifying for the prosecution. During her deposition she said that neither she nor Chloe drinks or uses drugs. She also mentioned that she maintains MySpace and Facebook accounts. After the deposition, John's lawyer tried to visit her pages. He couldn't see the content, but he was able to find out that she has over 500 hundred friends on each website. From this he surmised that she readily accepts friend requests. John's lawyer thinks she probably has information on those profiles that would help him impeach her testimony. An intern at John's office goes to the same school as Chloe and Kelly, as does John's daughter.

Issues:

- Can John's lawyer:
  - Ask the intern to download the information if it's available to everyone who attends their school?
  - Ask the intern to friend Kelly?
  - Have his daughter try to friend Kelly, or even friend Kelly himself?
  - Tell the intern to get the information any way necessary and not ask about what the intern did in terms of details?
  - Create a fake profile and ask to be Kelly's friend?
  - Ask John to ask his friends to try to befriend Kelly to get the information?
  - Tell John the information is really important, and suggest he obtain it somehow?

References:

- Philadelphia Bar Ethics Opinion 2009-02 - [http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/Opinion\\_2009-2.pdf](http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/Opinion_2009-2.pdf)

#### Case Study 4: **Ethics and Going Undercover**

(Adapted from the MSN Online article: *MySpace Prank Results in Sex Crime Arrest*)

Relates to Panels:

- *Regulating MySpace: Policing Crime on Social Networks; and Are You Really My Friend?*
- *The Law and Ethics of Covert or Deceptive Data-Gathering; and*
- *MyFace in Court: Admissibility and the Probative Value of Social Networking Evidence*

A group of boys created a fake profile of a 15 year-old girl on MySpace to pull a prank on another friend, who had recently broken up with his girlfriend. While the boys' initial intent was to communicate with their friend, they ended up helping the police arrest a 48 year-old man who tried to meet the "girl" for sex. Shortly after creating the profile, the "girl" began receiving messages from the man. The conversation soon took on a sexual tone. The man arranged to meet the "girl" at the park, and the boys called the police, who then arrested the man for attempted lewd and lascivious conduct with a child.

Issues:

- Should these boys be portrayed as heroes? Should such conduct be encouraged or discouraged? Did the boys themselves commit any illegal acts? Should such pranks be legal?
- Where do social-networking websites stand on the issue of their websites or their users becoming "partners" in law enforcement efforts? Does this implicate the notion of "entrapment" at all?
- How should social networks be policed? Self regulation? Company regulations? Government regulation? Who should be responsible for finding bad behavior?

References:

- MySpace Prank Results in Sex Crime Arrest, Associated Press, <http://www.msnbc.msn.com/id/11708746>

## Case Study 5: **Friending and Professionalism**

(Adapted from the online article: *Judge Reprimanded for Discussing Case on Facebook*).

Relates to Panel:

- *Can Lawyers “Tweet” About Their Work? Confidentiality & Legal Professionalism in the Age of Social Media*

A North Carolina Judge received a public reprimand from the state’s Judicial Standards Commission for “friending” an attorney during a child custody trial. The judge and attorney exchanged “comments” and other activities that questioned the integrity of the trial, such as when the lawyer posted that he had a “wise judge” or when the judge gave the lawyer hints on how to win custody on behalf of his client. In another case, the same judge denied a motion to continue filed by the defense, citing the attorney’s frequent status updates with comments like “should be working but watching Real Housewives of Atlanta instead... again.”

Issues:

- Should any judge-lawyer communication be allowed outside of the courtroom? Does it make a difference whether the communications are offline or online? Public or private?
- What are the implications of judges belonging to social networking sites or even using search engines to look for lawyers, parties, or witnesses?
- What should the consequences be for ethical or judicial standards’ violations online?
- Can a judge and attorney ever be “friends” on a social networking site?
- If a judge and a lawyer are already “friends” on a social network, do they have an ethical duty to un-friend each other before trial? If so, when and under what circumstances?
- Should parties have discovery access to social networking materials to support civil suits and ineffectiveness claims?

References:

- Ryan Jones, Judge reprimanded for discussing case on Facebook, The Dispatch - [http://legalblogwatch.typepad.com/legal\\_blog\\_watch/2009/06/facebook-friend-earns-judge-a-reprimand.html](http://legalblogwatch.typepad.com/legal_blog_watch/2009/06/facebook-friend-earns-judge-a-reprimand.html)

## Case Study 6: **Confidentiality Violations**

(Adapted from the online article: *Blogging Lawyer Charged with Confidentiality Violations*)

### Related to Panel

- *Can Lawyers “Tweet” About Their Work? Confidentiality & Legal Professionalism in the Age of Social Media*

The Illinois Administrator of the Attorney Registration and Disciplinary Commission filed charges against a public defender in part for disclosing client information on her blog that was confidential or had been gained in the professional relationship and the revelation of it would be embarrassing or detrimental to her client. The attorney referred to her clients by their first real name, a nickname, or by their jail identification number. The blog was open to the public and not password protected. The attorney also posted degrading remarks about judges and was charged with assisting a client with fraud for failing to inform the court of a misrepresentation by her client—which was revealed in a blog post.

### Issues:

- Can or should lawyers ever blog about their cases?
- Is this any different that an attorney disclosing the same information and opinions to friends, family, or colleagues offline? If so, how?
- What safeguard measures, if any, should be taken when an attorney puts up information about his or her work online?
- Can clients consent to having his or her case information posted online?
- What does professionalism require?
  - Can attorneys discuss in public mistakes they made or how poorly written a motion or decision was?
  - Can an attorney discuss “funny” things in briefs or opinions?
  - Can an attorney criticize a judge or other decision maker?

### References:

- Mike Frisch, *Blogging Lawyer Charged with Confidentiality Violations*, Legal Profession Blog, [http://lawprofessors.typepad.com/legal\\_profession/2009/09/wave-of-the-future.html](http://lawprofessors.typepad.com/legal_profession/2009/09/wave-of-the-future.html)

## Case Study 7: **Sentencing Evidence**

(Adapted from the online article: *Don't Drink and Drive, Then Post on Facebook*)

Related to Panel

- *MyFace in Court: Admissibility and the Probative Value of Social Networking Evidence*

A student who injured another in a drunken driving accident was recently sentenced to years in jail instead of a more typical probation sentence because of photographs of him posted to Facebook. The college student was shown at a party in a “jailbird costume” shortly after he injured a woman in the drunken driving crash. The judge considered the pictures wanton and sentenced him to two years in prison in response.

Issues:

- Should there be any guidelines for judges when evaluating the weight of evidence acquired from social networking websites such as these photos?
- Can or should clients or attorneys remove such information from their sites or their friends' sites?
- What are best practices for attorneys who have clients involved in litigation or criminal charges regarding their use of social networking sites? How could the information be used in trial?

References:

- Eric Tucker, *Don't drink and drive, then post on Facebook*, Associated Press, <http://www.msnbc.msn.com/id/25738225>