

# COMMUNITY POLICING & SOCIAL NETWORKING SITES

*Tips for Law Enforcement Administrators, Officers  
and Other Law Enforcement Personnel*



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**Idaho Transportation Department**

## **Background Information**

The explosion of social networking sites has not only changed the way we communicate, it has also added a new dimension to the way we practice law. The concept of social networking is simple. You fill out a personal profile then you look for people you know. When you find them, you invite them to be your friend by a click of a button. Once this invitation is accepted, you can not only see everything about your friend, but also who your friends know, who your friends' friends know, and so on. It is not uncommon for a person on Facebook, MySpace or other social networking sites to have 300 plus friends located all around the globe. Social networking sites have a wealth of information but can also be full of pitfalls and danger.

Prosecutors, law enforcement officers, victim witness advocates and prosecutorial staff should all have a basic understanding of social networking sites, their dangers, and their potential uses as a prosecutorial tool. This presentation will only briefly cover the basics of how to navigate and use social networking prosecution. The presentation is not meant to turn anyone into an experienced cyber-sleuth, but you will hopefully come away with some insights and tools to help you in your current occupation.

This presentation was initially conceived when I was asked to address a group of school resource officers. My current area of expertise is traffic crimes, with the bulk of my time spent in the area of impaired driving. Naturally, the topic that came to mind was that of underage drinking. I have been asked on numerous occasions to address school resource officers, teachers, students, parents and community members about the dangers of underage drinking. Townhall meetings would be planned on the topic, but the audience was generally comprised of the event planners and the janitor assigned to lock up the building when we were done. Without a dead kid in a coffin, the seats just did not fill up!

With these experiences in mind, I decided to take another approach to the topic of underage drinking. This different approach was to address the topic by instructing how to find underage drinkers on social networking sites. The training focused on how School Resource Officers could identify and monitor the at-risk kids in their schools, make arrests when appropriate, and utilize this online information for successful prosecutions. Community members would not show up to learn about the dangers of underage drinking, but they did show up to learn about the dangers of social networking sites. Parents wanted help understanding how to handle this new online community.

Basically, the presentation opened a huge can of worms, because this is an area where training had been lacking. The rapid advancement of technology makes it nearly impossible to keep up. Once the training is conducted, new technology and new uses of the technology occur. The Internet itself is still a rather new tool to society. It was only two decades ago when it was first available for public consumption. At the time, I was a young detective using the Internet to investigate child pornography crimes, missing person reports, domestic violence, stalking and other crimes. Today, social networking has added a new layer to criminal acts and ways to investigate them. I hope you find this guide and accompanying presentation useful in your career.

## **Social Networking Sites - An Investigation & Prosecution Tool**

Prosecutors and law enforcement officers in today's world would be remiss if they are not familiar with and utilize social networking sites in the cases they investigate and prosecute. It is highly likely your witnesses, victims, defense experts and jurors have social networking sites. Many lawyers will check court and driving records, but they do not think of the wealth of information available in the various online communities. Activity on sites such as Facebook and MySpace can be quite revealing. For whatever reason, most people will provide the most intimate and revealing details on their personal profiles.

Revealing information on social networking sites will most often include marital status, education, address, personal identifiers, and the list goes on. In general, people participate on sites such as Facebook with their friends, co-workers, school and professional colleagues, as well as "friends" they have only met online. The information provided by the individual user and the comments from other participants, provide insight into a person's values, morals, activities, biases and self-image. Most people will be very detailed in explaining where they work, how they like their job and employer, their past education all the way back to high school, as well as current interests and hobbies. At a glance, there is an enormous amount of information telling you the type of person they were and are. It doesn't take long to realize the powerful tool available for your use.

For example, take a moment to think how social networking sites can be used in preparing to interview a suspect. Most likely half of your suspects and/or jurors will have a social networking page. Sure, you cannot trust all the information they may post, but at the same time there are many unguarded admissions that can be found. People seem to be driven to talk about themselves and record their views on current events. It is as if these participants are placing a soapbox in many online town squares letting their views be known to all who may pass by. This provides an investigator with a tool to quickly understand the suspect's personality, likes & dislikes and can give the investigator some quick tips of how best to approach the interview.

The same principle applies to jury research. I find myself checking out the online comments section of newspapers, where readers respond to specific stories. This provides me with an idea of what my local jurors' think about the local police department, certain attitudes on different crimes and how they feel about the prosecutors' handling of cases. I realize it is likely a select group who take the time to respond in the online comments section, but I also realize there is a larger group of people reading these comments and becoming "educated" by them. You should not pick a jury without delving into your online community.

Social networking sites are also crucial when it comes to keeping track of your victims. It would be unwise not to ask your victims what social networking sites they use. Undoubtedly, the prepared defense lawyer will be keeping an eye on these sites, therefore so should you! Consider for a moment the dangerous implications of a victim in a

domestic violence case using their social networking site. This is a conversation you must have with your victims and witnesses – this includes your police officers.

Finally, you should be very careful with your own social networking activities. Recent media coverage is full of stories where lawyers, police officers, witnesses, jurors and judges are seeing their online activities come back to haunt them. For example, a Florida lawyer made *The New York Times* (September 2009) when he blogged about a judge saying she was an, “Evil, Unfair Witch.” This lawyer found himself hauled up before the state bar, which issued a reprimand and a \$1,200 fine. This same article referenced other lawyers and judges who have found themselves in hot water due to their own social networking pages.

### **Social Networking Sites - A Crime Prevention Tool**

Crime prevention and community prosecution should be a major focus for prosecutors’ offices and law enforcement agencies when considering using social networking sites. Social media allows us a unique opportunity to be strategic and proactive in our response. In the area of traffic crimes, I have been able to use social networking sites to prevent large organized underage drinking parties, know when the local bars are promoting drink specials that may encourage over-service, and even uncover private adult house parties with the potential of unleashing a number of deadly impaired drivers. Monitoring social networking sites is a useful community policing tool for education, prevention and enforcement.

Social networking sites like MySpace and Facebook are increasingly being used by law enforcement agencies as a source of evidence gathering and proactive monitoring of student users. For example, many colleges and universities use Facebook and MySpace to investigate underage drinking and violations of dry campus policies. Students who violate these policies may be discovered through photographs of illicit drinking behavior, membership in drinking-related groups, or party information posted on these websites. The sites are used for both preventive and enforcement measures.

Social networking sites are also increasingly being used by agencies for community policing. Many agencies specifically use Facebook and Twitter as a communication tool with their communities. They are finding it to be a speedy and convenient way to distribute press releases, Amber Alerts, road closures and suspect descriptions. For example, the Boise Police Department maintains a Facebook, Twitter and YouTube account. They set a good example of how to use social media to have proactive and positive communications with the public. Its use has also fostered good relations with the media as they appreciate being able to follow the Boise Police Department on Twitter for breaking news stories. The responding officers see this as a positive tool as they are able to respond to the “call” while reporters are routed to the Communications Director for more information. Twitter has basically replaced the police scanner and gives the agency better control on the information disseminated.

Agencies using social networking sites are also able to better educate the public about a number of law enforcement issues facing their community. Citizens are able to interact directly with the agency through the social media. For example, the Boise Police Department's Facebook has a number of videos regarding their agency, they send out messages and warnings on current issues, and report on community involvement that is often not reported in traditional news sources.

Social networking sites have also become a new form of "Neighborhood Watch." For example, the Boston Police Department uses Twitter for the community to help recover stolen bicycles. Other departments have "tweeted" descriptions of neighborhood burglaries. Followers then re-tweet the message to all their friends. Newspapers have reported a number of stories where social media interaction has led to the apprehension of criminals and the return of property to the victims.

Last but not least, law enforcement agencies themselves are able to use social networking sites to investigate crimes in their community and bring offenders to justice. The use of the tool is as diverse as the crimes that are committed. Examples include:

- In November 2005, 4 students at Northern Kentucky University were fined for posting pictures of a drinking party on Facebook. The pictures, taken in one of NKU's dormitories, proved the students were in violation of the university's dry campus policy.<sup>1</sup>
- Realizing officers are monitoring their sites, some students have begun to submit "red herring" party listings.<sup>2</sup> In one case, George Washington University students advertised their party and were raided by police. The police found only cake, no alcohol, and later claimed the dorm raid had been triggered by a noise complaint.<sup>3</sup>
- In October 2005, sophomore Cameron Walker was expelled from Fisher College in Boston for comments about a police officer made on Facebook. The comments, including the statement the officer "loves to antagonize students...and needs to be eliminated," were judged to be in violation of the college's code of conduct.<sup>4</sup>
- In February 2006, Oxford police were directed to the Facebook profile of a Miami University student because it showed the police sketch of a suspect in the rape of another Miami University student as the account owner's personal picture. The police arrested the student and charged him with inducing panic.<sup>5</sup>

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<sup>1</sup> Comtex Community Via Thomson Dialog NewsEdge "Officials at institutions nationwide using Facebook site." *TMC News* 29 March 2006.

<sup>2</sup> Pescovitz, David. "Facebook prank on police." *Boing Boing* 9 January 2006.

<sup>3</sup> Hass, Nancy. "In Your Facebook.com." *The New York Times* 8 January 2006.

<sup>4</sup> Schweitzer, Sarah. "Fisher College expels student over website entries." *The Boston Globe* 6 October 2005.

<sup>5</sup> Wolfe, Graham. "Student arrested for inducing panic with Facebook picture." *The Miami Student* 9 February 2006.

- In April 2006, University of Dayton student Christopher Herbert was fined approximately \$10,000 for damages caused by an annual event known as “LoweFest.” Herbert had posted a public invitation to the event on Facebook, though he did not attend the event himself. The University informed him 24 hours before “LoweFest” that he would have to pay for any and all extra costs (police, cleaning, damages, and so forth) stemming from the event. However, Herbert chose not to pay the fine and transferred from the university.<sup>6</sup>
- In August 2006, police officers at the University of Illinois at Urbana-Champaign arrested two students. One student eluded arrest and the other lied about knowing the escapee. The officers were able to use Facebook to identify the escapee and show the two were “Friends” according to their Facebook pages. The dishonest student was charged with obstruction of justice.<sup>7</sup>
- Rhode Island prosecutor Jay Sullivan (a personal friend and colleague of mine) used the Facebook postings at sentencing for a defendant who had seriously injured a woman while driving drunk. The defendant had posted pictures attending a party two weeks after the crash dressed in a striped shirt and orange jumpsuit labeled “jail bird.” The judge sentenced the defendant to 2 years.<sup>8</sup>
- In October 2008, in Edmonton, Alberta, filmmaker Mark Twitchell, who was facing first degree murder charges, posted as his Facebook status that “he had a lot in common with Dexter Morgan” (a television series where Dexter is a serial killer). This proved to be key evidence in the missing person case of John Altinger, who Twitchell is believed to have murdered. Shortly after Altinger’s disappearance, Twitchell gained access to Altinger’s e-mail and Facebook accounts, adding posts and e-mailing Altinger’s contacts stating he met a girl online and was planning to move to Costa Rica.<sup>9</sup>
- In July 2009, an EMT, and retired NYPD detective, was terminated and arrested for taking a picture of a crime scene and then posting it on his Facebook.<sup>10</sup>
- In October 2010, a collector’s edition Wayne Gretzky jersey was stolen from an apparel store in Ottawa Canada. Within 15 minutes, the store staff identified the perpetrators using the store’s Facebook page to review the list of 324 people on their “friend’s list” who “like” the store, which included the 4 thieves. Police found the suspects and recovered the jersey valued at \$1,000.00.<sup>11</sup>

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<sup>6</sup> “Junior unfairly blamed for LoweFest problems.” *Flyer News* 11 April 2006.

<sup>7</sup> Martinez, Kiyoshi. “Student arrested after police Facebook him.” *Daily Illini.com* 1 August 2006.

<sup>8</sup> Tucker, Eric (Associated Press). “Facebook used as character evidence, lands some in jail” *USA Today*, 16 July 2008.

<sup>9</sup> Bennett, Dean. “Dexter murder case put over.” *The Canadian Press* 5 November 2008.

<sup>10</sup> Miller, Joshua Rhett. “Graphic Photo Posted on Facebook at Center of Pending Lawsuit.” *Fox News*, 29 July 2009.

<sup>11</sup> Butler, Don. “Facebook helps store owner track thief.” *Yahoo News*, 31 October 2010.

There may be numerous other community policing applications utilizing social networking sites. The key is to be familiar with the search mechanisms and types of personal information found at each social networking site. Each form of social media appeals to a different audience with different communication styles. For example, most users on MySpace will include their first name but not their last. Yet, most of them will post their picture and list their high school and current town name. Knowing this helps save time and be more successful in searching during your investigation.

In some cases, the user has set privacy restrictions on their site, limiting access to the type of information you can collect. The only way to legitimately gain full site access to profiles set to “private” is to either ask the person for permission to access their site, or to obtain a subpoena. Most of these social networking sites have established protocols to work with law enforcement. This is one more thing for you to become familiar with in using social networking sites in community policing. Attached to this document are the most current “Law Enforcement Guides” for some of the current popular social media.

Remember, after you find the site that makes your case, do not just save the link. You must capture the web page to preserve it. These sites can and usually are changed on a continual basis. The user may also decide to change their public page to “private” or the relevant pictures and comments could be deleted. It is also a good idea to print the web pages from your browser, with the date and URL in the header/footer. There are also a number of digital recording software programs to capture the websites. A good software application has certain advantages when introducing this evidence in court.

### **Social Networking - Pitfalls Specific to Law Enforcement Agencies**

The most visible pitfall to social networking sites for law enforcement agencies has been the misuse by the officers within. This is explored in detail in the next section when addressing “Pitfalls Specific to Law Enforcement Officers.” Unfortunately, some agencies have had to learn the hard way regarding the need to police their own employees and set good social networking policies.

The likely culprit for this lack of forethought in developing social networking policies is the generation gap between administration and new officers. I was an officer during the beginning of the internet, yet I would never have considered posting personal information on a website for the world to see. I went to great lengths and expense not to even have my home phone number listed in the phonebook. Most police administrators are from my parents’ generation. They are still trying to get the clock to stop blinking on the VCR. The computer age is often an unwelcome development in their lives. Whereas, new officers have grown up with social media and have no problem posting personal information online. The result can be a poor reflection on the police department without administrators ever realizing it is happening until the media brings it to their attention.

The key to educating officers on the proper use of social media is to set it forth in print in the department’s policy manual. The policy should focus on protecting the reputation of the department and the individual officer. Police officers should be advised

to keep content unobjectionable at the very least, but frankly would be better off staying clear of online postings and video rants. A police department can regulate officers as it determines is necessary to accomplish agency mission and service goals. Court challenges to this authority are seldom successful.<sup>12</sup>

Universities and colleges were among the first institutions recognizing the need to protect their public image on social networking sites. Many of these institutions adopted policies wherein students under scholarship – whether it be academic, sports or otherwise – signed agreements to not post pictures wearing university apparel, use university logos, or espouse content determined to reflect poorly on the University. This same approach is now being used by corporations, businesses and government agencies. In fact, many law enforcement agencies would be wise to know the policies of other agencies they work closely with. An example of a good social media policy for law enforcement is provided by the Boise Police Department on the next page.

Another social networking problem for police agencies is the creation of “dummy” or “imposter” sites. It is fairly easy to impersonate an officer or an agency using social networking sites. Twitter and other social networking sites have no verification process to determine the legitimacy of someone claiming to be the “official” account. The Austin Police Department found this out when a fake Twitter account was created depicting their department. The imposter site had 450 followers, and was posting fictitious updates about police activities and statistics. Sheriff Joe Arpaio of Maricopa County Arizona also has a Twitter impersonator who regularly posts bizarre, racially insensitive “Tweets.” Most social networking sites have a process to report and remove false sites. The key to avoiding this problem is being vigilant in searching for false accounts and educating the public the need to corroborate information they receive with traditional news sources and official agency communications.

Finally, law enforcement agencies should spend time carefully familiarizing themselves with the account settings when constructing a social networking site. For example, Facebook has a setting to control what others can post on your page. Before a post is allowed to be attached on your site to be viewed by others, a private email is sent to you asking you to “accept” the post. This is strongly recommended! There are a number of other settings to control who can view your page and the amount of information that can be viewed. However, be warned that even when all the settings seem to be in place, surprises will happen. The programs are simply not fail safe.

Note: A quick tip I strongly suggest implementing is to always have a second set of eyes. Whether it be for the agency’s social media site, the officer’s personal site, or for sites developed for investigation (both formal and undercover), a second pair of eyes will be a good editor and possibly a crucial witness to protect against claims of wrongdoing.

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<sup>12</sup> See *Kelley v. Suffolk County Police Department*, 425 U.S. 238 (1975) (U.S. Supreme Court recognized a municipalities right to “organizational structure for its police force,” structure which, “gives weight to the overall need for discipline esprit de corps, and uniformity); *see also*, *Garcetti v. Ceballos*, 547 U.S. 410 (2006) (U.S. Supreme Court put further limits on a public employees free speech and narrowly defined the contours of that speech)

# Boise Police Department Special Order

Number: 10-05

**Effective Date: March 1,  
2010**

**Modifies: 2009 BPD  
Policy Manual, 11.00.00  
Conduct, 11.06.00 Social  
Networking Policy**

**Subject: Social Networking Policy**

**INSTRUCTIONS:** *This Special Order modifies language in 2009 BPD Policy Manual, 11.00.00 Conduct and new subsection 11.06.00 Social Networking Policy. Post this special order in your policy manual and on page 156, handwrite "NOTE: This policy is modified by Special Order 10-05, effective at 0001 hours on March 1, 2010" 11.00.00 Conduct, 11.06.00 Social Networking Policy updated.*

## **11.06.00 Social Networking: Personal Online/Internet Content**

**Members of the Boise Police Department (BPD) are reminded that their conduct both on and off duty must meet a high standard. This includes, but is not limited to, conduct related to materials posted on the internet or disseminated electronically. No member shall allow or permit any digital media to be posted to the internet that:**

- **Could reasonably be interpreted to express the opinions of the Boise Police Department. A member may comment on a subject of general interest and of value and concern to the public provided that, in doing so, the member does not suggest or imply that the views expressed are those of BPD.**
- **Has both a reference to the member being affiliated with BPD and which contains content that is unprofessional, unbecoming or illegal, such as lewd sexual conduct, excessive alcohol consumption or similar behaviors. Members are reminded that courts may scrutinize the credibility of a witness from unintentional sources like the internet.**
- **Could be reasonably interpreted as having an adverse effect upon agency morale, discipline, operation of the agency, safety of staff or perception of the public.**
- **Contains any recording, including images, obtained while engaged in the performance of enforcement activities, tactical situations, or anything that will have an adverse effect upon the agency. Digital images such as shop with a cop, promotion ceremonies, etc., are permissible.**

**Clarification on appropriate postings, if needed, shall be directed to Command Staff.**

**Note: This does not apply to internet postings that are posted for legitimate law enforcement purposes.**

## **Social Networking - Pitfalls Specific to Law Enforcement Officers**

There are a number of pitfalls associated with social networking sites, such as identity theft, pornography and other displays of questionable material in terms of taste and propriety. However, the biggest issue for officers is often their postings on social networking websites such as Facebook, MySpace and Twitter. Postings of pictures, comments and videos have been used to successfully attack law enforcement officers' credibility in courts. In many cases it has cost them their job and their career.

In a New York state court, a NYPD officer was successfully impeached by a defense lawyer regarding statements the officer had made on both his MySpace and his Facebook accounts.<sup>13</sup> The case involved an ex-con in possession of a gun who led officers on a chase, weaving through traffic, on a stolen motorcycle. The defense claimed the officer used excessive force on the defendant when arresting him and broke three ribs. The defendant went on to allege the officer planted the stolen handgun on him to cover up this use of excessive force.

The defense strategy was obviously successful and it was based on the officer's social networking postings. The day before the trial started the officer posted his mood was "Devious" on his MySpace page. Fairly innocuous, but when coupled with other postings you can see why the jury found reasonable doubt. A few weeks prior to the trial, the officer posted this status on his Facebook page: "Vaughan is watching 'Training Day' to brush up on proper police procedure." (*Training Day* is a motion picture depicting corrupt police behavior and brutality). The defense lawyer was also able to use the social networking accounts to track comments the officer made on another site displaying video clips of officers making an arrest. One of his postings said, "If he wanted to tune him up some, he should have delayed cuffing him." In another he added, "If you were going to hit a cuffed suspect, at least get your money's worth 'cause now he's going to get disciplined for (it)." (Note: The quote is incomplete as the officer used what is often considered "hate speech.")

The officer tried to explain the posts as "bravado talk" as what would be found in a "locker room." The painful lesson was this locker room talk – which I personally feel is irresponsible even in a locker room – made its way into a courtroom. The talk is now forever documented as a public court record. It is unlikely this officer will ever be able to shed himself from these damaging remarks. In law enforcement, there are no second chances when it comes to one's integrity!

Unfortunately, this officer is not alone. Papers across the country are seemingly filled with reports of poor personal and professional conduct on social networking sites. For example, an Indiana State Trooper and an Indianapolis Metropolitan Police Officer found themselves in a criminal and internal investigation because of the postings on the Trooper's Facebook account.<sup>14</sup> These comments and pictures included bragging of heavy drinking, lewd horseplay and a crash involving his state issued police cruiser.

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<sup>13</sup> Dwyer, Jim. "The Officer Who Posted Too Much on MySpace." *New York Times* 10 March 2009.

<sup>14</sup> Segal, Bob. "Trooper in Trouble Over Facebook Photos." Indianapolis WTHR13 24 March 2009.

In one comment he shares his views of police work, referring himself not as a trooper but as a “garbage man, because I pick up trash for a living.” Another comment was in response to an incident in California where the police had punched a homeless man during an arrest. The trooper weighed in stating he would not hesitate using deadly force concluding, “These people should have died when they were young anyway, I’m just doing them a favor.”

The bad judgment did not end there as the trooper had posted an off-duty picture showing a fellow city officer holding a gun to the trooper’s head. Both officers had been consuming alcohol, which the trooper had validated by posting they were “drinking lots of beer” that day. This act led to a criminal investigation for the city officer for violation of a state law. These postings should be of concern to all law enforcement as they leave a stain on a profession we should protect as carefully as we do in protecting the public we serve. The Indiana State Police were left scrambling to develop a social media policy after this incident was discovered by the media.

Careless postings may not only lead to personal accountability and embarrassment but they can also potentially put fellow officers in danger. Take for example a Nebraska Correctional Officer who lost his job along with two fellow officers based on comments they made on Facebook.<sup>15</sup> This officer said, “When you work in prison a good day is getting to smash an inmate’s face into the ground...for me today was a VERY good day.”

Not only do these statements tarnish the reputation of every other officer and law enforcement agency, but in this case it could have led to dangerous consequences for other employees of that specific correctional facility. Consider for a moment the dynamics of interaction between inmates and correctional officers. If the media can find these comments so quickly, it is not a stretch to recognize the inmates themselves can find this same information. Could this not lead to additional violence?

Prosecutors have not been immune from bad behavior on social networking sites. A Florida prosecutor found himself in the media after he posted to his Facebook page a poem he composed to the tune of Gilligan’s Island about a recently completed jury trial.<sup>16</sup> A Minnesota prosecutor was accused in a post-conviction motion of posting anti-Somali comments during the trial of a Somalian man accused of murder.<sup>17</sup> The prosecutor was accused of posting statements such as, “keeping the streets safe from Somalians.”<sup>18</sup> Ultimately, the judge did not grant a new trial but publicly stated on the record that the prosecution and defense had been “careless, foolish and unprofessional.”<sup>19</sup> These accounts and many others illustrate the importance of watching what you post.

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<sup>15</sup> Matteson, Cory. “3 Officers Fired Due To Comments Made On Facebook.” *Lincoln Journal Star* 19 March 2010.

<sup>16</sup> Holsman, Melissa E. “Facebook poem gets prosecutor in hot water.” *Sun Sentinel*, 22 April 2010.

<sup>17</sup> Olson, Rochelle. “Hennepin County prosecutor accused of anti-Somali posting on Facebook.” *Star Tribune*, 17 February 2010.

<sup>18</sup> Simons, Abby. “Second motion over prosecutor’s Facebook postings is denied.” *Star Tribune*, 12 March 2010.

<sup>19</sup> *Id.*

## **10 SAFE SOCIAL NETWORKING TIPS FOR PROSECUTORS**

The simple practical advice for safe social networking really boils down to three words: “**DON’T BE STUPID!**” This is sage advice for any aspect of your life, but unfortunately we all have our stupid moments. Therefore, I have taken the time to expand “Don’t be Stupid” into ten helpful tips. The list is directed towards prosecutors, but many of the tips apply (or can be followed by) law enforcement officers, victim witness advocates and other prosecutorial staff members.

1. **Always Be Professional.** Remember that you are a prosecutor 24/7. Always be professional in whatever you do online. Do not say or post anything that might damage your reputation.
2. **You Are Not Anonymous.** Do not delude yourself into believing that socializing ‘anonymously’ online is truly anonymous. For example, you may believe you have sufficiently restricted your personal Facebook page to friends and family. However, you can not count on Facebook’s restricted groups to restrict everything. It is impossible to know what types of items will slip through and be viewed by everyone.
3. **Consider Your Friends Carefully.** Be careful who you connect with and do not be afraid to decline “friend invitations.” This can be uncomfortable, but it is better for it to be uncomfortable than to cost you your job or even your license to practice law.
4. **Consider The Possible Ethical Implications Regarding Accepted Friends.** Be familiar with your ethics as a lawyer, and even the higher ethical standard of being a prosecutor. For example, there are a number of judges I consider to be a friend, but if I had a social networking site it is unlikely I would ever accept them as a “friend” on my Facebook page. Even the appearance of unethical conduct is too great a risk. An example I found online was such a situation, where a judge had “friended” a lawyer on Facebook. The lawyer was representing a party in a trial before that judge. Ultimately, the judge was reprimanded and the losing party got a new trial.
5. **Be a Judicious Editor Over Yourself.** Do not say anything online that you would not want attributed to yourself on the front page of *The New York Times*. Do not assume that no one will ever read your blog or see your tweet. The scary reality is that once it is online, you really have to assume that it is online forever and it can and will be found.
6. **Be a Judicious Editor Over Others.** It is not only important to censor yourself, but it is also important to censor others. This is especially true if their comments are viewable on your social networking site. A simple suggestion is to become very familiar with the editing tools available on your social networking site. For

example, most sites include an option to approve all comments before they are posted. Use this option! In addition, remember that the *Six Degrees of Separation* does not just apply to Kevin Bacon. The small world phenomenon applies to your online activities as well. Your online friends are just one click away, and you may find yourself associated to ideas, concepts, images that you do not agree with, but yet others will associate you with them.

7. **Don't Give Legal Advice.** The prosecutor's client is very different from ordinary lawyers, but the warning in this case is the same. Some of the social networking sites such as LinkedIn allow users to post questions and others to post answers. Be cognizant that answering a question may be giving legal advice and creating an unintended attorney-client relationship. Avoid saying anything that might be construed as providing specific legal advice.
8. **Don't Talk About Your Cases.** Sometimes the best perk and the worst perk of this job are the unusual stories we can tell, about the worst conditions of humanity. Avoid telling these stories online, especially when the case is still ongoing. Once again, this is an area ripe for disciplinary charges by your state bar. Even a simple status update on Twitter or Facebook could reveal your next move in a case to your opponent. Your tweet, "Drafting motion in limine for jury trial next week," could be all the warning the other side needs.
9. **You Have No Privacy.** This concept bears repeating, especially with anything you post online, or anything that can potentially be posted by others. Your posted pictures or comments are not one-on-one, but more like one-on-one billion. Furthermore, the concept of "the juror's first impression is in the courtroom hallway" really extends to what potential jurors may see online. More offline activity is finding its way online with less than stellar results. Be professional 24/7!
10. **Don't Be Stupid.** This advice really does cover all the bases. In other words use common sense with all of your online and offline activities. Recently in Idaho, a few decertification cases have arisen, where officers have lost their careers largely based on their social networking sites. One officer (now former officer) was providing alcohol to minors – these underage youth had pictures of this illegal behavior and were not shy about posting them on their social networking sites. Stupid!! Don't be it and you probably will not have to worry about the rest of these tips.

## **ADVICE TO GIVE YOUR VICTIMS AND WITNESSES**

1. Do **NOT** communicate about the case or the defendant at **ALL** --- this includes Facebook, MySpace, Twitter and every other form of social media. Remind them that the people who they think are their friends may turn on them and become defense witnesses.
2. Don't try to "send messages" to the defendant on your social networking site. By this, I am not talking about direct communication, but rather any messages, subtle or otherwise, that are intended for the defendant to read. For example, "When is this pain going to end," or "I am so lonely." This public emoting is stupid and will make you look silly in court.
3. Do not communicate with the defendant at all about the case, especially in printed form. The rule of thumb is that once it is online, it is online forever and it can and will be found.
4. If there is a No Contact Order in place, do not try to reach out to the defendant on your social networking site.
5. Remove any suggestive photos, pictures, videos, comments and so forth that you do not want a judge or a jury to see. Again, a rule of thumb is to avoid posting messages or images that would be unflattering to a group of strangers.
  - a. Word of Caution: There is a fine line between asking victims and witnesses to refrain from posting (and/or remove) information about themselves and destroying evidence. Consider reviewing their account and even keep tabs on their friends' social networking sites to make sure they are not posting messages or images that are exculpatory, damaging to their credibility, and so forth.
6. Do not allow your friends to post images or information discussed in #5. Remember, defense lawyers can learn what your family and friends are saying and posting about you as well, especially if they are asked to testify.
7. Do not think that a Defense Lawyer can not get a hold of your private messages or instant messages on Facebook, MySpace, etc... He or she probably can.
8. Do not think that by setting your Facebook or MySpace page to "private" means the prosecutor can not access it or the defense lawyer can not access it. We can!
9. Do notify me any time the defendant attempts to contact you and this includes your social networking sites.

The best course of action may be to suspend your use of social networking sites until the case is concluded.

## **Conclusion**

Once again, I remind you that this guide covers some basic uses and dangers of social networking sites. There is not enough time to cover all aspects of such a huge topic. The goal of my accompanying live presentation is to introduce how participants can navigate through actual MySpace and Facebook pages and discuss how the information gathered can be used in community prosecution, in court as evidence, and in sentencing recommendations. It is difficult to put this navigation into a manual because these social networking sites undergo frequent changes and updates. The hope is that this guide, along with my live presentation, can be used together as a tool for prosecutors, victim witness advocates, prosecutorial staff, law enforcement officers and community members to solve problems, improve public safety, and enhance the quality of life for their community members.