

**WHO IS THE MOST POPULAR LAWYER NOW?  
SOCIAL MEDIA ETHICS ISSUES FOR LAWYERS**  
by Stuart Adams

**Setting the Stage for a Paradigm Shift**

Social media is rapidly transforming many segments of our society, not the least of which are professional practices. A now dated (i.e. 2009) article stated “86 percent of lawyers ages 25 to 35 are members of social networks like Facebook, LinkedIn and MySpace, as opposed to 66 percent of those over 46. For those just out of law school, ‘this stuff is like air to them...’”<sup>1</sup>

Facebook, at the time this went to press: had over 500 million active users; 50% of whom log on to it in any given day; the average user had 130 friends; while in the aggregate, people spent over 700 billion minutes per month on Facebook.<sup>2</sup> Meanwhile, a JDSupra blog post noted:<sup>3</sup>

“...the legal profession was the second to the last industry utilizing LinkedIn. LinkedIn announced earlier this week that they now have more than 100,000,000 users. Just to put that into a bit of perspective, if you were to stack 100 million business cards in a pile, it would reach 98,425 feet, according to Read Write Enterprise. You’d pass Mt. Everest at 29,029 feet. Let’s just say, it’s a whole lot of business professionals in one place.” (emphasis added)

**Ethics and Competency**

Wondering whether, as a lawyer, you really have to worry about social media, let alone get involved in it yourself? If so, I suggest that you may already be in an ethical danger zone. At least one author agrees, noting in her article, *If You’re Not Using Facebook, You’re a Bad Lawyer*, that both the Wall Street Journal and Reuters had recently published their own articles on the evolution of jury selection, “quipping that ‘voir dire’ is becoming ‘voir Google.’”<sup>4</sup>

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<sup>1</sup> Schwartz, John, *A Legal Battle: Online Attitude vs. Rules of the Bar*, The New York Times, Sept. 12, 2009 <http://www.nytimes.com/2009/09/13/us/13lawyers.html>

<sup>2</sup> Facebook, statistics, accessed June 1, 2011 <http://www.facebook.com/press/info.php?statistics>

<sup>3</sup> Matte, Tom, *Legal Marketing: Big Surprise! Legal profession is the least represented on LinkedIn*, JDSupra, March 29, 2011 <http://bit.ly/gPtb5C>

<sup>4</sup> Hill, Kashmir, *If You’re Not Using Facebook, You’re a Bad Lawyer*, Above the Law blog, February 23,

A concurring opinion comes from Ralph Losey, attorney and author behind the e-Discovery Team blog. His article, *Lawyers Behaving Badly: Understanding Unprofessional Conduct in e-Discovery*,<sup>5</sup> although primarily focused on e-discovery, notes how the lag between technological advances and attorney mastery of them can lead not only to negligence, but also to ethical problems by violating several of the ABA's Model Rules of Professional Conduct. These include Rule 1.1 on competency (ex. failing to make reasonably diligent discovery efforts).

***Model Rules of Prof'l Conduct R. 1.1 (2007) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.***

"The social media phenomenon is a part of "Web 2.0"<sup>6</sup>, the shifting of content from top-down publishing to user and consumer-generated information; in other words, people powered publishing. Social networking is a fast growing segment of this media. In essence, SNSs are "web-based services that allow individuals to (1) construct a public or semipublic profile within a bounded system, (2) articulate a list of other users with whom they share a connection, and (3) view and traverse their list of connections and those made by others within the system." The core ingredients of these sites are their individual user profiles (information storage and publication) and communication tools"

"The tension in social networking investigations is in drawing the line between public and private information. The privacy dilemma lies at the center of a triangle formed by the private enclaves envisioned in the First, Fourth, and Fifth Amendments; service providers. terms of service agreements (TOS) and their definitions of privacy; and the meaning of "reasonableness" as expressed in the practices and habits of millions of online users."

"The existence of privacy in social media is a key question under codes of ethics and discovery rules. If the expectation is that online profiles are as private as a person's home, desk drawer, or combination safe, then pretexting by private parties becomes problematic."<sup>7</sup>

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2011 <http://bit.ly/gUtJus>

<sup>5</sup> Losey, Ralph, *Lawyers Behaving Badly: Understanding Unprofessional Conduct in e-Discovery*, 2009 <http://bit.ly/mKTIwt>

<sup>6</sup> We've already breached the borders of Web 3.0 technology and are well on our way to achieving some aspects of what pundits describe as Web 4.0. If you're playing catch-up on the Web count, for a discussion of Web 2.0, et seq., see, *Your Space is My Space: Using Social Networking Tools to Vet, Prep and Adjourn*, by Stuart Adams & Constance Ard, 2009 Kentucky Law Update Materials, p 5-101 to 5-114, available *gratis* from the KBA at [http://www.kybar.org/documents/cle/materials/klu\\_2009\\_day2-4.pdf](http://www.kybar.org/documents/cle/materials/klu_2009_day2-4.pdf)

<sup>7</sup> Keith, Mary Ellen Judicial Discipline: Drawing the Line between Confidentiality and Public Information, 41 S. Tex. L. Rev. 1399 (1999-2000)

## How Dare You Question My Opinion?

“With social media, we’ve moved beyond the era of stand-alone, static webpages. Today’s communities actively post and vet information. Users increasingly treat these venues as their first stop in gathering data and forming an opinion. A recent Pew study found that nearly 40% of Americans say they have doubted a medical professional’s opinion or diagnosis because it conflicted with information they’d found online. If users put that much faith in what they learn on the internet, what will they be willing to believe if members of a social media forum start trashing your organization? And are you prepared to handle it when it happens?”<sup>8</sup>

If you think only the medical profession is coming under increased doubt because of the availability of “professional” information online, you’re mistaken. According to comscore.com, “a global leader in measuring the digital world,” during 2010 “[T]he average American spent 32 hours per month on the Internet. People between the ages of 45-54 averaged more than 39 hours online each month.” Not only is “the Average American” spending time online, so are a bunch of general counsel to companies, large and small.

"Steven Weinberger, general counsel of Wisdom Natural Brands, boasted on an online social network last month that he saves money by drafting his own trademark applications before sending to outside lawyers for review."

"Paul Escobar, corporate counsel at Cumberland Gulf Group of Cos., wrote back saying he, too, sometimes drafts legal documents to establish content and tone before outside counsel get their hands on them."

"Cash-strapped in-house attorneys are swapping such ideas and other information on Web sites like those owned by LinkedIn Corp., which connects professionals around the world."

"‘Increasingly the key piece of information a general counsel uses to assess an outside lawyer’s reputation is not the renown of his or her firm, but the review by a trusted peer,’ Lippe (who started the online site Legal OnRamp in 2007) said, adding that the trend is more accelerated in Silicon Valley than on Wall Street."

"About 26 percent of outside lawyers believe that online networks will change the business and practice of law in the next five years, according to LexisNexis. Some expressed concerns about data security and sharing personal information, while others questioned whether online legal networking will be widely adopted."

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<sup>8</sup> Kane, Gerald, et al., Community Relations 2.0, Harvard Business Review, November 2009  
<http://hbr.org/2009/11/community-relations-20/ar/1>

“This is a universe that has yet to be fully tapped,’ Escobar said. ‘My attitude is you’ve got to embrace it, and if you don’t, you’ll fall behind.’”

“Many lawyers believe that social networks are no more than the playthings of their teenage offspring,’ Richard Susskind, the author of numerous books on legal technology, said in an interview. ‘I disagree. The business-oriented versions will fundamentally change the way law firms are chosen and the way lawyers work with their clients.’”<sup>9</sup>

### **Just the Issues Please, Mam.**

“As the legal field grapples with the growth and prevalence of social networking, there do not yet seem to be bright lines clarifying the legal issues involved and social networking often outpaces and changes the law itself. Online communication on social network sites, which are open to misperception or manipulation, may have consequences in the real world, leading to civil or criminal liability and moral, ethical, and legal issues.”<sup>10</sup>

They say you don’t know what you don’t know. True enough without a moving target. The paradigm shift being caused by social media is far from a static target. There was very little good material available when I started to prepare the seminar handout for the 2009 KBA CLE program on social media and the law. By the time I presented the first live session a few months later, the volume of available commentary seemed to have exploded. Two years later, that archive now seems like a grain of salt in the ocean.

The number of issues created or impacted by the ongoing development of social media is likewise expanding at a rate previously unknown in the field of legal ethics. It is likewise beyond the ability of the 25 page maximum for these CLE materials to explore, or frankly, to even identify all of these issues. Fortunately, we do have a baseline.

Since many social media channels take the form of, or are similar to Web pages, essentially all of the Web-based ethical issues we’ve known about for over a decade will typically apply to them. In some cases, these old issues are "complicated" by the substantially more interactive nature of social media, and in particular, by the user-generated content not present in the older, static Web site design. Already present and continuing to grow is the issue of content generated by artificial intelligence engines. The following is a partial listing of the basic ethics issues related to lawyers being involved, or in some cases, refusing to utilize social media tools.

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<sup>9</sup> Cotts, Cynthia, *Lawyer Fees Cut as Company Counsel Network for Tips*, Bloomberg.com, September 9, 2009, available at <http://bloom.bg/ZkNgG>

<sup>10</sup> Kathleen Elliott Vinson, *The Blurred Boundaries of Social Networking in the Legal Field: Just 'Face' it*, Suffolk University Law School, March 25, 2011, University of Memphis Law Review, Vol. 41, p. 355, 2010, Suffolk University Law School Research Paper No. 10-37

## Issues

- links from the lawyer's social media platform to third party Web sites (Is this an "endorsement" or contain "otherwise unethical" content?)
- links from third party Web sites to a Web site operated by the lawyer
- links from a social media channel (ex. Twitter, LinkedIn, Facebook profile, or blog, to the lawyer's Web site, or providing a way (ex. listing the phone number, e-mail address, or response widget) to contact the lawyer via law firm contact information. ("Solicitation" or violation of multi-state practice rules?)
- posts by clients in response to one by the lawyer
- posts by the lawyer in response to one by a client or other third party
- "endorsement" language posted by a client or other third party
- posting information which exposes confidential information about the lawyer, client, witness, leaving a trail of your investigation (ex. trial strategy), etc.
- posting information which could reasonably be interpreted as legal advice
- posting information that is false (ex. out of date) or misleading (ex. jurisdictionally inapplicable)
- posts of material by third parties on their own Web sites (or social media pages controlled by them) that would violate the lawyer's rules of ethics, if they had been posted by the lawyer
- inadvertent creation of an attorney-client relationship
- disqualification from representation due to receipt of information from an adverse party (So you thought the Facebook post raised a hypothetical issue?)
- use of (personally or through inducing another) deceptive practices to gather evidence (Are you really my Facebook friend?)
- professional competence, or lack thereof, in using social media properly as a tool, while avoiding pitfalls (I didn't realize I could find that out....)

Many of the Web-related ethics issues revolve around whether or not they were the result of unilateral actions of a client or other third party, for whom the attorney is not responsible, or involved an attorney's effort to circumvent the rules. "While the Internet did not create the ability of third parties, such as clients, to make statements that a lawyer could not ethically make, it certainly has increased the ease with which such statements can be made and, as a result, the difficulty that lawyers face in policing them, if policing they need do."<sup>11</sup>

A lawyer may not "induce" or "assist" (both somewhat subjective terms) in improper advertising, according to ABA Model Rule of Professional Conduct 8.4(a). Thus, encouraging a client or "friend" to post a comment anywhere (ex. on client's blog to the effect that prospective class action plaintiffs should join a lawsuit the lawyer or lawyer's firm has filed) would seem to be inappropriate at best.

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<sup>11</sup> Hricik, *David, Communication and the Internet: Facebook, Email and Beyond*, Working Paper, Mercer University - Walter F. George School of Law, December 2009  
<http://ssrn.com/abstract=1557033>

What about comments or other material that would not otherwise comply with the ethics rules binding lawyers, which are posted on a lawyer's blog or Web site by a third party, but not induced by the lawyer? At least one bar association has stated that a lawyer "should review the website to insure that there is nothing on it that would constitute any other violation of the advertising Rules...."<sup>12</sup> In other words, it appears you have to keep your own house clean after the visitors leave.

Additionally, you may sometimes have to suggest others clean up their house. South Carolina and Ohio<sup>13</sup> have said lawyers should "counsel" their clients to correct anything on the client's pages that would be so incorrect or inappropriate as to constitute a problem if the lawyer posted it. The client's First Amendment rights would seem to be at stake here, but these rulings appear limited thus far, at least, and have not been extended to non-client third party sites.

### **...and You Thought Profiling Was Just Politically Incorrect.**

"Profile" information, such as on LinkedIn, Facebook, and many other social media sites, must generally conform to state ethics rules. Typically, a lawyer is prohibited from putting anything in such a profile, update, news item, blog post, or discussion that the lawyer could not put in an "advertisement." Some states regulate the extent to which a lawyer may indicate specialization or expertise, and some prohibit endorsements or references to verdicts in a particular case without a disclaimer that results may vary from case-to-case. Viewing a lawyer's "profile" on LinkedIn, for instance, can put the lawyer's blog posts, comments in discussions groups, and real time Twitter feeds right in the face of the visitor. Profiles are thus constantly morphing in real time.

### **Where are We Going and How Will We Know When We Get There?**

The extent to which the legal profession will ultimately be changed by technology, and in particular by various, still emerging forms of social networking, is yet to be seen. There will always be those members of the bar who are compelled to explore and plant their flag in and on some piece of what they anticipate will be our future. One such example may be indicated by the work of Greg Lastowka, who has published a 241 page book, *Virtual Justice: The New Laws of Online Worlds*<sup>30</sup>

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<sup>12</sup> Pa. B. Ass'n Comm. on Legal Eth. & Prof. Resp. 2007-13 (Dec. 2007).

<sup>13</sup> S.C. B. Op. 99-09 (1999) <http://bit.ly/lhkuqr>; S.Ct. Ohio Bd of Comm'rs on Grievances and Discipline Op. No. 2004-7 (Aug. 6, 2004) <http://bit.ly/jMiBQa>

<sup>30</sup> Lastowka, Greg, *Virtual Justice: The New Laws of Online Worlds*, 2010, Yale University Press, New Haven; also available under a Creative Commons licence, so you can access the book electronically <http://www.chaihana.com/virtualjustice.pdf>

With reports that on-line video games are being used for money laundering, perhaps Lastowka really is ahead of the curve on this. According to a post<sup>31</sup> in the Video Game Law Blog (yes, you read that correctly), criminals have been using on-line video games, or virtual property used in on-line games, to launder money. According to the story, they use stolen credit card information to buy virtual property (items, currency, etc.) on one of the various virtual property exchanges, then shuffle the property between various in-game characters to hide the trail, and, finally, sell the property on the same or a different exchange in return for cash. The extent of the activity has apparently been enough for law enforcement officials (and lawyers) to take notice. Looking for a new branch office? Try a virtual world. Seems to be a lot going on.

"Information inflation reflects the fact that civilization has entered a new phase. Human beings are now integrated into reality quite differently than before. They can instantaneously write to millions. They engage in the real time writing of instant messages, wikis, blogs, and avatars. Accordingly, the flux of writing has grown exponentially, with resulting impact on cultural evolution."

"All this affects the litigation. Vast quantities of new writing forms challenge the legal profession to exercise novel skills. This means litigation must become more collaborative. It means more use of computer technology. It means there will be new legal rules. And the future of litigation as we know it is at risk unless law and its practice coevolve with information."<sup>15</sup>

The transition from relatively static Web sites with "brochureware," to more interactive sites took over a decade. According to some, the transition of lawyers experimenting with moving from "brick and mortar" buildings to "virtual offices"<sup>14</sup> has "turned the traditional business model for a law firm on its head."

The proliferation of experiments with such virtual offices has indeed sparked criticism, including a post by Florida lawyer, Brian Tannebaum, who took issue with lawyers putting a picture of a big, impressive building on their Web site for the presumed purpose of "pretending you have a certain amount of experience, or credentials, or yes, even a certain type of office."<sup>16</sup>

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<sup>31</sup> Spratley, David *Online games used for money laundering?*, Video Game Law Blog, April 5, 2011 <http://bit.ly/emmNJC>

<sup>15</sup> Paul, George & Baron, Jason, *Information Inflation: Can the Legal System Adapt?*, 13 RICH. J.L. & TECH. 10 (2007) <http://jolt.richmond.edu/v13i3/article10.pdf>

<sup>14</sup> Portis, Portia, *Centerville lawyer expands practice into a virtual reality*, Dayton Daily News, March 4, 2011 <http://bit.ly/ml4ea6>

<sup>16</sup> Tannebaum, Brian, *The Future Of The Legal Profession: How To Ethically Lie About Your Fake Office*, My Law License blog, April 18, 2011 <http://bit.ly/ly136P>

Are you still struggling with “multi-tasking?” Imagine then, if you can, what we might expect in the way of criticism of social media experiments by members of the bar, as we move from the era of lawyers experimenting with basic blogs to practicing in an era of transliteracy,<sup>17</sup> holographic video conferencing (with “smell” to be added later),<sup>18</sup> intelligent agents for virtual environments<sup>19</sup> capable of autonomously evolving to self-improve, and a host of things currently beyond our comprehension or imagination.

“Augmented reality” (AR) applications have already started to creep into our lives. “While Lawnmower Man may have led us to believe the future was a virtual one, it seems that in fact augmented reality (the overlaying of digital data on the real world) is where we’re headed.”<sup>20</sup> Early applications were interesting gadgets and toys, but real progress is starting to become evident.

One example of progress toward practical, every-day use of this technology for lawyers is found in something called the NAI mobile architecture application. Although not built for lawyers, the press release should give some glimpse (for those with imagination) to applications specifically for the legal profession.

“UAR, the NAI mobile architecture application, provides information about the built environment on the basis of text, image, archival material and film on an iPhone or Google Android (and on Nokia phones at a later stage). By means of advanced 3D models, right in the middle of the city UAR shows you on your phone what isn’t there. The city as it once was – for instance by showing buildings that once stood there. The city as it might have been – by showing scale models and design drawings of alternative designs that were never implemented. And the city of the future – by showing artist’s impressions of buildings under construction or in the planning stage.”

“AR can be used on phones with a camera, compass and GPS. Point the phone at a building and you see the building on your screen with a digital layer of information on top. See, for instance, what the original design of that building looked like, or compare a design by a different architect.”<sup>21</sup>

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<sup>17</sup> The working definition of “‘transliteracy’ is the ability to read, write and interact across a range of platforms, tools and media from signing and orality through handwriting, print, TV, radio and film, to digital social networks” according to transliteracy.org <http://nlabnetworks.typepad.com/transliteracy/>

<sup>18</sup> Cisco TelePresence - On-Stage Holographic Video Conferencing, [http://www.musion.co.uk/Cisco\\_TelePresence.html](http://www.musion.co.uk/Cisco_TelePresence.html)

<sup>19</sup> Gongora, Mario & Irvine, David, *ReAd: Reactive-Adaptive Methodology to enable Evolving Intelligent Agents for Virtual Environments*, *Evolving Systems Journal*, Center for Computational Intelligence, 2010 <http://bit.ly/jkyq5C>

<sup>20</sup> Elliott, Amy-Mae, 10 Amazing Augmented Reality iPhone Apps, Mashable, December 5, 2009 <http://mashable.com/2009/12/05/augmented-reality-iphone/>

<sup>21</sup> *SEE WHAT IS NOT (YET) THERE With the NAI and Augmented reality*, Netherlands Architecture

If you still doubt that this sort of technology has anything to do with lawyers, social media, and ethics you might want to guess again. The NAI app. was built using technology developed by companies like Layer. “Layar is a mobile platform for discovering information about the world around you. Using Augmented Realty (AR) technology, Layar displays digital information called 'layers' in a user’s field of vision through their mobile device.”<sup>22</sup>

Play the video you can find from the links in footnote 22 referenced above or this one.<sup>23</sup> They easily demonstrate some of the many uses of AR, allowing you to see the real world with a digital overlay of any sort of information. Imagine having something akin to a wearable teleprompter pushing information to you just as you need it. Add virtual retinal display (VDR)<sup>24</sup> technology to this, plus a few enhancements, and you have Mobile Device Eyewear of the sort already marketed by companies like Microvision. Take a look at their gallery<sup>25</sup> for practical examples, including the “Social Network Master,” and one designed for presenters at seminars, allowing the user to see prepared material, receive real time updates from remote sources, and much more.

The inevitable aggregation of other technologies could include facial recognition, document imaging, and other biometric tools that make our current “lie detector” technology seem like a hand cranked phone. I would venture a prediction that within a few years, a lawyer could (and some will) sit in a meeting (or maybe even a trial or important negotiating session), and be able to look at a person or object (or holographic image of a remote, proposed, or no longer existing object) while background information about it and its relevance to the proceeding is concurrently displayed on his or her eyeglasses.

Simply extending the concept of the data streams for the NAI application mentioned above, could arguably allow a personal injury lawyer to visit an accident location, and while viewing it in the present, see an overlay of information about what the location looked like in the past, what it could look like in the future, based upon specific projections (ex. RFP bids for road improvements to a dangerous intersection), as well as visualizations used in trials by other lawyers who had also had a client injured at the location. The link to the social media aspect of this seminar is that in the Semantic<sup>26</sup>

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Institute [http://en.nai.nl/exhibitions/3d\\_architecture\\_app](http://en.nai.nl/exhibitions/3d_architecture_app)

<sup>22</sup> Layar - *Impactful Augmented Reality in Your Everyday Life*, Video on YouTube, uploaded by Layer Feb 16, 2011 [http://www.youtube.com/watch?v=HW9gU\\_4AUCA](http://www.youtube.com/watch?v=HW9gU_4AUCA)

<sup>23</sup> *TED: Sixth Sense Tech of the Future*, YouTube video uploaded March 21, 2009 <http://bit.ly/kYSYCK>

<sup>24</sup> Hugley, Terence, *The Virtual Retinal Display*, February 12, 1999 <http://bit.ly/1bzR6K>

<sup>25</sup> *Wearable Displays: Application Gallery*, MacroVision, <http://bit.ly/bYWiwx>

<sup>26</sup> “Semantic Web” is a term coined by Tim Berners-Lee, the inventor of the World Wide Web. “I have a

world, much of the data is provided by social interaction, such as posting a call for help on a LinkedIn forum, something I see more than once every day within the 50 or so LinkedIn groups I prowl for information about business deals, litigation, etc.

Likewise, this eyewear should allow the user to immediately recognize a document (pulled out of your file or by your adversary from his or hers), display information such as drafter, date of creation, known copies and recipients, etc, as well as perhaps concurrently projecting a line of questions being streamed from an associate in a remote location, objections to admission as evidence generated by an artificial intelligence program from the lawyer's form file archive, etc. Much of this is possible now, and contracts such as those from DARPA's Urban Leader Tactical Response, Awareness & Visualization (ULTRA-Vis) program (an advanced technology development initiative, whose objective it is to build a soldier-worn system that provides non-line-of-sight command and control in distributed urban operations for dismounted soldiers), will likely bring initial costs down to affordable levels. Keep in mind that the mechanical parts cobbled together by folks from MIT for the augmented reality system shown in the TED video referenced at footnote 23, cost only a few hundred dollars.

### **A Few Word About Disclaimers**

Kentucky is not without controversy with regard to proposed regulation of lawyers' involvement in various forms of social media. Reports of proposed changes to Kentucky's attorney advertising rules reached many of us via social media channels, such as The Kentucky Law Review,<sup>27</sup> Courier Journal, or even the ABA Journal,<sup>28</sup> using common social media tools such as Google alerts,<sup>29</sup> well prior to seeing them in the form of paper magazines, such as Bench and Bar.

Lawyers, who answer fact-specific legal questions online via Web response form, blog comment, or social media networking group post, may be characterized as offering personal legal advice, especially if the lawyer is responding to a question that can one might reasonably understand to refer to the questioner's individual circumstances. A lawyer posing and answering a hypothetical question, however, will not usually be

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dream for the Web [in which computers] become capable of analyzing all the data on the Web - the content, links, and transactions between people and computers. A 'Semantic Web', which should make this possible, has yet to emerge, but when it does, the day-to-day mechanisms of trade, bureaucracy and our daily lives will be handled by machines talking to machines. The 'intelligent agents' people have touted for ages will finally materialize." - Tim Berners-Lee, 1999

<sup>27</sup> Stevens, Michael, *Proposed KBA Ethics Rules Changes re social media (Facebook and MySpace)*, Kentucky Law Review, November 8, 2010 <http://bit.ly/a2Vd6T>

<sup>28</sup> Weiss, Debra, *Seeking Clients Via Facebook? In Ky., Bar May Regulate Social Media Comments*, ABA Journal, November 18, 2010 <http://bit.ly/bzabdG>

<sup>29</sup> Google alerts <http://www.google.com/alerts>

characterized as offering legal advice. The KBA and ABA recommend potential lawyers who provide general legal information include statements on these Web (and presumably other social media) platforms, characterizing the information as general in nature to caution the public it should not be misunderstood as a substitute for personal legal advice.

This type of warning could be particularly useful for website visitors who may not be experienced in using legal services, and may otherwise believe that they can rely on general legal information to solve their specific problem. Avoiding misunderstandings by warning visitors the legal information provided is general and should not be relied on as legal advice, and by explaining legal advice cannot be given without full consideration of all relevant information relating to the visitor's individual situation, would be prudent.

Warnings or cautionary statements on a lawyer's website or other social media posting can be designed to attempt to limit, condition, or disclaim the lawyer's obligation to a website visitor or social media channel participant. Such warnings or statements may be written to avoid a misunderstanding by the website visitor that: (1) a client-lawyer relationship has been created; (2) the visitor's information will be kept confidential; (3) legal advice has been given; or (4) that the lawyer will be prevented from representing an adverse party.

In a fashion perhaps better known to lawyers drafting commercial warranty disclaimers, any verbiage regarding limitations, conditions, or disclaimers of a lawyer or law firm's obligations will only be effective if reasonably understandable, placed prominently, and not misleading. This requires a clear warning posted in a readable format, whose meaning can be understood by a reasonable person. If the website social media source page uses a particular language, then any waiver, disclaimer, limitation, or condition must be in the same language. The appropriate information should be conspicuously placed, such as on a home page or "landing page," to assure that the visitor or reader will be likely to see it before proceeding to divulge personal information.

It should be noted that any attempted limitation, condition, waiver, or disclaimer may be undercut if the lawyer acts or communicates contrary to its warning. If it ain't broke, don't fix it. If it is ethically challenged, you had better bone up on what is required to avoid an ethics problem.

## **Conclusion**

The impact of social media on judicial ethics is covered in a separate section of these materials. As an aside, however, as I wrote this conclusion, I was watching streaming video of the Casey Anthony murder trial, partially because of so many references to evidence discovered and admitted at trial, which had been obtained from social media sources such as MySpace. I also ran across a news article describing the consequences of a judge who caught an attorney in a lie because the attorney gave one excuse for something in court but in the lawyer's Facebook posts, bragged about doing something else.

Attorneys are under an ethical obligation to remain students of the law, as well as the applicable technological advances impacting it. The social media era is bringing us a paradigm shift, whether we want it or not. It should be a good thing, as we learn to access new sources of information that can help us help our clients. As with the emergence of e-discovery, to be effective, competent, and uphold ethical duties, attorneys must continue to learn, and pursue a balance between zealous representation of clients, duties to the profession, and ongoing co-evolution of law and information management techniques.

### **Resources & Partial Bibliography<sup>32</sup>**

This area of the law is expanding at an extraordinary rate. The traditional method of citation to authorities includes indicating the last time a Web article was accessed, because the articles posted online often change over time, and may be available in multiple forms through several different online sources. These posts sometimes include comments added by readers, and many of the most valuable reader comments form the basis of continuing online discussions between the original author and visitors to the Web site. These post-article discussions can provide the most valuable part of the content, eventually exceeding the original post in value.

To that end, a fuller version of this article is posted on one of my blogs, SocialLies, <http://socialies.wordpress.com/> and in other places, such as the boxnet app on my LinkedIn profile page. The expanded version is well beyond the 25 page max. allowed for here, and includes a growing social media glossary, as well as links to dozens of additional articles and other resources relevant to this topic. I have also started something of a catalogue of notable, if not infamous misadventures of lawyers, judiciary, jurors, and others involving social media. I am currently in the process of trying to catalogue this by issue, jurisdiction, and "misadventurer." This too is available online, and my hope is that you will help this grow as a resource, in true social media style, by offering your examples and comments.

You can, of course, follow me, link to me, or maybe even "friend" me on:

Twitter: <http://twitter.com/StuartAdamsLaw> <http://twitter.com/#!/StuartAdamsLaw>

LinkedIn: <http://www.linkedin.com/in/stuartadams>

Facebook: <http://www.facebook.com/stuartadams.law>

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<sup>32</sup> To help those interested in reading "source material," which may be ever-changing and available from multiple sources, I've tried to include a link to the online version I read. To avoid those long URL's however, I have used the bitly™ (<http://bit.ly/>) URL shortener, and have not included the "last accessed" verbiage at the end of each cite.