

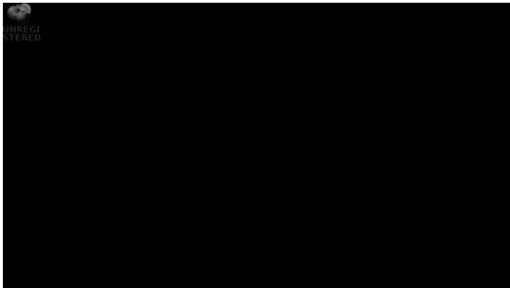
WEB 2.0

*Social Media and how it
affects cities and courts
Presented by Kelly Crow
Deputy City Attorney
City of Sugar Land, TX*

WHAT IS WEB 2.0?

- **Term used to describe the new world wide web. It refers to the combined advances in marketing, social media and technology.**

Social Media Revolution



Questions we will address:

- What is social media?
- Who is using it?
- How does social media affect courts?
 - Judges? Attorneys? Court Personnel? Juries?
- How does it affect elected officials?
- What are some pitfalls of social media in the workplace?
- How is social media affected by the Public Information Act?
- How can you draft a good policy for your city?

SOCIAL MEDIA IS?

- *Interactive, not authoritative;*
- *Personal, rather than institutional;*
- *Potentially focused narrowly on specific groups, rather than casting a broad net over an audience.**

*Chris Kingsley, Fels Institute on Government Penn Arts and Sciences, "Making the Most of Social Media: 7 Lessons from Successful Cities, 2010).

Back in the days when you could actually write on a wall.



WHO IS USING SOCIAL MEDIA?

- **149.4 million users in the U.S. had active Facebook accounts at the end of June 2011.**
- **51% of Americans over age 12 are on Facebook.**
- **Only 8% use Twitter.**
- **A survey of British employees found that 57% of staff use Twitter, Facebook or other social networking site for personal use during office hours, spending almost one working week a year on such sites.**
- **-The Economist, October 31, 2009, "Business this week."**

SOCIAL MEDIA USE AMONG ATTORNEYS

- **Ages 25-35-86%**
- **Over 46-66%**

Social Media and Courts



• Trial of Sheila Dixon-Mayor of Baltimore:

During initial trial, 5 jurors used Facebook to friend each other and discuss the trial via their walls, and through inbox and chat sessions.

Jurors could be held in contempt and mistrial declared.

- *Texas criminal case-juror tried to friend the defendant during trial. Juror was kicked off jury and held in contempt. Juror wanted to "investigate" defendant outside of the trial setting.*
- *Not freedom of speech, but juror misconduct.*

Role of Judges:

How can judges place constraints on jurors, defendants and court staff?

How can judges protect the integrity of the court?

Code of Judicial Conduct

- Canon 2B
- Canon 2C
- Canon 3B(1)
- Canon 3B(8)
- Canon 3B(10)
- Canon 3B(11)
- Canon 4A(1)
- Canon 4A(2)
- Canon 4B(1)
- Canon 5(1)
- Canon 5(2)

Pitfalls for judges

- a few months ago a judge was caught participating in the comments on a news website covering a case she was presiding over, expressing her personal opinions regarding the defendant's guilt or innocence. This got her into quite a bit of trouble, for obvious reasons.

- **North Carolina child custody case:**
Judge "friended lawyer on Facebook. They proceeded to comment on the case on their walls. Lawyer stated, "I have a wise judge." Opposing lawyer discovered the "friendship." He asked for a new trial and judge's disqualification.
Judge was publicly reprimanded by the State for improper *ex parte* communications.

• Brooklyn criminal court judge provided details of his schedule and location on Facebook.

• He updated his profile and “status” while on the bench and posted photos of courtroom.

• Invited lawyers to be his “friend” on Facebook.

• Same judge also had a MySpace account and once listed his mood as “amorous.”

• He had several lawyers as “friends.”

• One lawyer was a candidate for the State assembly and the judge’s MySpace page provided a link to the lawyer’s campaign website.

• Promoted lawyer’s candidacy.

• Georgia Judge “Bucky” Wood resigned in December 2009 after allegations that he had inappropriate contact with a defendant through Facebook.

• Judge offered “behind the scenes” help in a criminal case.

• He used a photo taken from the woman’s Facebook page to issue a revocation against another defendant.

- **Judge in social security case to determine if plaintiff had been wrongfully denied Social Security benefits, used Facebook to research her.**
- **Plaintiff was attempting to get benefits based on her “severe asthma,” but the judge found pictures of her smoking on her Facebook page.**

Candor toward tribunal

- **Galveston County District Judge Susan Criss denied a lawyer’s request for a continuance due to death in the family.**
- **Lawyer had posted Facebook updates bragging about her week of drinking and partying at the same time she told the judge that she couldn’t attend her court setting because of her father’s death.**

Role of Attorneys:

- **Florida Ethics opinion- bans judges from friending lawyers on social media sites.**
- **Attorneys are governed by Disciplinary Rules of Professional Conduct**
- **Ethics Advisory Opinions**

QUESTIONS?

- **Should lawyers and judges be friends on a social media website?**
- **Is it any different than a lawyer and judge going to lunch after court and not discussing specific cases?**
- **Does it give the appearance of impropriety?**

Kristine Ann Peshek Case

- **Assistant Public Defender in Illinois was brought up on discipline charges and fired.**
- **She allegedly revealed client communications in her blog and referred to her clients by their first name or jail ID numbers.**
- **She also made derogatory comments about judges she appeared before.**

SEAN CONWAY CASE

- **Florida lawyer referred to a judge in his case as an “evil, unfair witch!”**
- **Even though the lawyer was exercising his 1st Amendment rights, he was still publicly reprimanded by the Florida Bar for criticizing the court.**

Facebook Addicts



- **California lawyer served on a jury when he posted his experiences as a juror in a felony trial despite the judge's warnings to jurors not to discuss the case.**
- **His law license was suspended, he got fired from his job and had to pay \$14,000 in legal fees.**
- **Juror received a new trial.**

Jury Misconduct

- Arkansas, a juror tweeted, "I just gave away \$12 million dollars of somebody else's money."
- Said the "company would probably cease to exist, now that their wallet was \$12M lighter."
- Defendant requested a new trial, but was not granted.

Internet research

- Florida juror in a federal drug trial used the internet to research the case.
- Other jurors had been doing the same thing despite the judge’s instructions.
- Judge had to declare a mistrial.

What about elected officials?



Elected officials

- Bill in Texas’ 82d Legislative session that would have penalized officials for transmitting an electronic message, including email, text message, instant message or internet posting during a public meeting.
- Bill didn’t pass.

SOCIAL MEDIA GONE WRONG?



Workplace pitfalls

-----Original Message-----
From: Kevin Colvin [mailto:]
Sent: Wednesday, October 31, 2007 3:55 PM
To: Jill Thompson (North America)
Cc: Paul Davis (North America)
Subject:

Paul/Jill -

I just wanted to let you know that I will not be able to come into work tomorrow. Something came up at home and I had to go to New York this morning for the next couple of days. I apologize for the delayed notice.

Kind regards,

Kevin

OOPS!!!



From: Paul Davis (North America)
Sent: Thursday, November 01, 2007 4:54 PM
To: Kevin Colvin; Jill Thompson (North America); Kevin Colvin (North America)
Subject: RE:

Kevin,

Thanks for letting us know--hope everything is ok in New York. (cool wand)

Cheers,
PCD

Cautionary use by the government employee

- Government employees 1st Amendment rights depend on the 'balance between the interests of the employee, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employee in promoting the efficiency of the public services it performs through its employees.*
- (*Pickering v. Board of Education)

2 PRONG TEST

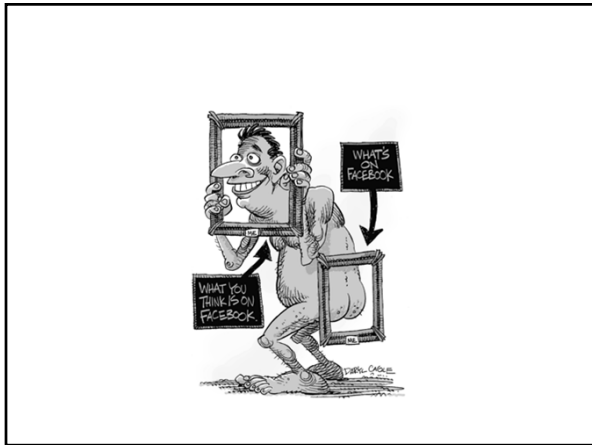
- **1) Determination of whether the employee spoke as a citizen on a matter of public concern-if no then no protection under 1st Amendment.**
- **2) If it is a matter of public concern then ask: Whether the employer had appropriate justification for treating the employee differently from any other member of the general public.***
- (*Pickering v. Board of Education)

- **Sometimes a comment could be a matter of public concern, but still be an ethical violation.**
- **What about the police officer that makes a post on Facebook while on duty regarding an ongoing incident?**
 - Incident may be of public concern, but is that a reasonable extension of his job duties to capture it on Facebook.

GOOD RULE TO FOLLOW:

- If a post on a social media website would disrupt the workplace, even if composed on the employees' free time or outside of the office.....

•DON'T POST IT!!!



QUESTIONS?

- Is there a right of privacy on a Facebook account where privacy settings are limited?
- Should your employer be able to view your profile?
- Should a potential employer view an applicant's social media profile?

Is it coming to this?



ETHICAL USE OF TECHNOLOGY

- **Watch your emails-make sure they don't get misdirected.**

- I accidentally forwarded an email to a 'disputant's' son in a pending mediation case, in order to give him directions to the Dispute Resolution Center. I had forgotten that the email was a string of emails between myself and the director of the DRC in which I refer to his mother (the disputant) as 'certifiably crazy!'

EMAILS

- Remember that whatever you send could then be forwarded on to others.
- Use a disclaimer, such as:
- "CONFIDENTIALITY NOTICE: This email communication may contain private, confidential, or legally privileged information intended for the sole use of the designated and/or duly authorized recipient(s). If you are not the intended recipient or you are not the intended recipient or have received this email in error, please notify the sender immediately by email and permanently delete all copies of this email including all attachments without reading them. If you are the intended recipient, secure the contents in a manner that conforms to all applicable state and/or federal requirements related to privacy and confidentiality of such information.

PUBLIC INFORMATION AND SOCIAL MEDIA

- Definition of “public information”-includes all information either that the governmental body can access or that is owned by the governmental body, ie. all information that is “collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business.”

CITY OF DALLAS V. DALLAS MORNING NEWS L.P.

- **Newspaper requested Mayor’s personal emails. Trial court held that the personal emails became public information when the mayor engaged in communication via personal email related to her authority as mayor.**

CITY OF DALLAS V. DALLAS MORNING NEWS L.P. (CONTINUED)

- Appellate court looked at several factors:
- 1) who prepared the document;
- 2) the nature of the contents;
- 3) the purpose of the document;
- 4) who possessed the document;
- 5) who had access;
- 6) whether the governmental body required the preparation of the document; and
- 7) whether the document was official business.

QUESTIONS?

- Is it likely that social media will be subject to the PIA in the same way other documents are treated?
- What about if it is maintained by a 3d party website?

HOW DOES ALL OF THIS AFFECT YOU AND YOUR CITY?

- **CONSULT** your city attorney to address issues such as open records, open meetings and records retention laws.
- **MANAGE**-establish a clear vision for using social media policy that includes a list of internal workflow and responsibilities and specifically state expectations of employees who participate in social media sites.
- **POINT PEOPLE** to manage these issues.

KEYS TO A GOOD POLICY:

1) Policy contents

2) Consistent enforcement

*Outline organization's position on how employees are expected to use the governmental entities' resources; restrictions on use for personal interests and consequences for violating the policy.

Links that could help you develop a policy for your court:

- <http://socialmediagovernance.com/policies.php?f=5>
- <http://www.inqbation.com/government-policy-on-the-use-of-social-media/>
- [http://www.ctg.albany.edu/publications/guides/social media policy](http://www.ctg.albany.edu/publications/guides/social_media_policy)
- <http://govsocmed.pbworks.com/w/page/15060450/Web%20%20%20Governance%20Policies%20and%20Best%20Practices>

QUESTIONS/COMMENTS?

• THANKS SO MUCH!!

- Contact info:
Kelly Crow
Deputy City Attorney
City of Sugar Land, TX
office: 281.275.2915
email: kcrow@sugarlandtx.gov
