

Facing MySpace Amidst the Twitter of It All

By Michelle St. Germain

Many of us know that doing a little reconnaissance on a witness or opposing party can prove very helpful to your case. Today, doing this kind of research has become particularly easy. Just hop on the internet, and with one quick Google or Bing, you may be lead to Facebook, MySpace and/or Twitter, where you have information worthy of the best private eye. You are almost bound to find your witness, with unprovoked commentary, spelled out in their own hand. You will get insight into his or her thoughts, whereabouts and friends. If you are really fortunate, the target of your probe will discuss the case at hand, and hopefully in a manner helpful to your case.

Millions of people have accounts on “social networking” websites, like Facebook, MySpace or Twitter. However, networking is a probably a glorified term for what usually transpires on those websites. Normally it is not networking at all, but rather soliloquies followed by personality quizzes followed by announcements of what the writer had for breakfast that day. Perhaps “web-based social media” is a better term.

The amount of information shared, and the pace of the information shared, via these sites is growing and getting faster every day. With the advent of mobile-linked social media applications on devices like the iPhone and Blackberry, people can discover and spread information with the touch of a button. The necessity of sitting down in front of a computer with an internet connection is obsolete. If you compare the ability to use web-based social media to cooking, then using a computer is like cooking a four course gourmet meal, whereas using a mobile phone is like going to McDonald’s. The mobile phone makes communication practically immediate, and is probably as addicting as chicken nuggets (and arguably about as good for you).

Communication is also more spontaneous with a mobile method. You can send out a missive when you are stuck in traffic, share that you have just seen a home run at a baseball game, or let everyone you know that the new teenage vampire romance movie was horrible, as you walk out of the theater. What all this means is more sharing, less thinking. The phenomenon is best summed up by the expression that technology does not make us smarter; it just makes it easier to say and do stupid things.

The great thing about all of this for the astute lawyer is that, now, more than ever, there is an increased possibility of finding and using the stupid things people say and do against them. It means kicking off the juror who is ranting and raving about your client on his Twitter account from his Blackberry. It also means that looking at someone’s MySpace account might expose that the opposing party lied about something. In fact, a lawyer I know was having a hard time serving a witness who was ducking process. After six weeks and three alias summonses, a paralegal in his firm got the idea to search Facebook. Just as she found the scallywag’s page, he posted a “status update”: “On my way to the Galleria cinema to see Harry Potter with my nephew, can’t wait.” One quick

call to the process server, and Mr. Defendant got more than the popcorn he had bargained for.

Of course the pitfalls of modern techno-babbling is well and good when it is the opposing party sounding off, but what about when it is you?

Yes, lawyers, and even judges, have accounts on web-based social media accounts as well. Although the advice about what not to say on your status update may seem obvious, when you have checked your iPhone, Blackberry, Palm Pre (or other nifty mobile device) a cool four thousand times a day – interacting on your social media sites - - you may lose your inhibitions. As lawyers, we are people with warm blood running through our veins, right? Right? So, here are some tips:

First, check the privacy settings on your social media service. Changing your privacy settings means you can control who can or cannot view your account. At the very least, make sure you have it set so your account is not fully public. Without this, anyone can view your information on your account, even through a search engine result. Twitter settings tend to be public by default and your information could be revealed to anyone, even individuals without Twitter accounts.

Second, watch who you “friend,” or allow to view your account, on your social media service. You intentionally share information with your friends on these social media services, but also unintentionally share with friends of your friends sometimes by old-fashioned word-of-mouth. There is a phenomenon on Twitter called “re-tweeting,” which means if someone else re-sends a message that you “tweeted” (or post to your account), the message goes onto their account and is then subjected to their privacy settings, and no longer your settings. Your message has become publicly visible without your permission. You should assume that despite the privacy settings you have placed on your account, they are not airtight. So, if you are “friends” with a client with a million-dollar account, think twice about posting before your back-to-back golf day outings (unless they are hosting both tournaments).