

Conducting An Online Alcohol Environmental Scan for Your Community

*Introduction to the Concept of Conducting an
Alcohol Environmental Scan to Address Alcohol-
Related Issues in your Community.*



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Introduction

A few years ago I attended the National EUDL Leadership Conference conducted by OJJDP's Underage Drinking Enforcement Training Center (UDETC). An emphasis of the conference was focusing on how communities can implement changes in environments to reduce retail and social availability of alcohol to youth, including supporting enforcements of underage drinking laws. It was my distinct pleasure to work with a great collection of youth attending the conference. We spent one evening with the youth conducting an Alcohol Environmental Scan. We loaded up on a bus, divided into small groups and then conducted the environmental scan at a local liquor store. The youth collected information on the alcohol advertising, promotions, atmosphere, actual placement of the product and any warning signs regarding violating alcohol laws.

The youth were quickly able to assess and provide some interesting feedback regarding the experience. For example, during our visit a customer attempted to buy alcohol without identification. The retailer, very cognizant of our presence, refused to sell. The customer stared at the retailer quizzically and awkwardly left the store. A young girl in our group commented when we left the store, "That boy is going to come back after we leave and the store clerk is going to sell to him. I could tell!" I agreed with her assessment. It was fascinating conducting the study and seeing the youth perspective.

Understanding the environments where youth exist, helps formulate and implement effective changes in the community. One of the most active environments for youth is online technology. This is a moving target as the Internet continues to evolve and change. A few years ago, the best source of information for young people was MySpace. Then in January of 2009, Facebook became the number one social networking site. A few years later it was reported that 41% of the population of the United States has a Facebook page. Youth are especially engaged in this medium and much can be learned from them and about them by environmentally scanning their online environment.

The same methods used to conduct an Environmental Alcohol Scan can be applied with our online community. I realized at the National Leadership Conference I had been conducting online environmental scans in every community where I have provided training on underage drinking issues. I would quickly like to introduce you to how such a scan can be conducted, demonstrating examples of what can be found and offer some suggested guidelines to consider in conducting such an environmental scan. Let's get started!

DEFINITION OF AN ALCOHOL ENVIRONMENTAL SCAN

An environmental alcohol scan is a form of community assessment that investigates the physical elements within a community contributing to alcohol or other drug use. In order to fully understand what is creating a problem in a community, an environmental scan will go beyond looking at data such as the number of impaired driving arrests, underage drinking citations, enforcement actions taken against retailers and so forth. The goal is to assess what environmental factors are present contributing to alcohol or drug use.

An environmental scan for alcohol tends to look at surrounding cultural or geographic characteristics that may be adding to the problem. The scan would include going into a specific area and analyzing how many bars or liquor outlets are currently operating, and what is the latest time they are open for business? How available is alcohol? How easy is it to purchase? An environmental scan for alcohol would consist of noting the prevalence of signs promoting alcohol use, such as commercial signs, or the prevalence (or lack thereof) of signs against alcohol use. Environmental scans would also note other locations or events where alcohol is consumed, such as parks or festivals.

According to Dr. Eduardo Hernandez-Alarcon, coalitions should consider environmental scans to provide data on *context* or *place* of alcohol use in their community. He emphasizes the purpose of the environmental scan is to focus on “**where**” specifically the problems occur.¹ Coalitions can then focus on the areas of concern and develop strategies to reduce the prevalence of underage drinking.

The environmental scanning process includes three basic steps: (1) developing an approach to the scanning process; (2) scanning the environment; and (3) analyzing the data collected. A thoughtful and comprehensive planning process is key in developing a project that will have a chance in impacting the environment youth live in. Once you have your team you must develop a methodology to document the information. Identify the questions you want answered and determine how you are going to collect and analyze the data. For more information on environmental scanning you can check out the [CADCA Institute’s Environmental Strategies](#) publication. In addition, be sure to contact the Underage Drinking Enforcement Training Center at www.udetc.org.

LET’S PRACTICE AN ONLINE ENVIRONMENTAL SCAN...

The same principles and methods discussed above can be used to conduct an online environmental scan. I have been conducting these types of assessments for years when training law enforcement and prosecutors in how to use social media to investigate and prosecute alcohol-related crimes. It has also been a great tool when working with youth on the topic of underage drinking. I believe one of the most important factors for reduction of alcohol use among youth is to impact the environment they live in.

The best way to explain how to conduct an online environmental scan is to demonstrate it. I will do my best to demonstrate how I have scanned various community environments before conducting trainings alcohol-related trainings. Along with the demonstration, I have included some cliff notes I hope you will find useful. The key to remember is you are not going to break your computer by testing it out. Do not be shy about touching the buttons to see what happens. It will never become a useful tool unless you first practice.

¹ *Why Should You Consider an Environmental Scan?* Dr. Eduardo Hernandez-Alarcon, CADCA National Coalition Institute’s blog, www.cadca.org, April 6, 2009.

Social Networking Sites

There are a vast number of social networking sites, ranging from Facebook to Fubar.com. It would be unrealistic for me to explain and demonstrate every social networking site. Instead, I will focus on the current king of social media, which is Facebook. The best fishing hole is Facebook because it has saturated the market and has the largest number of followers. So we begin by going where the fishing is good. But I repeat --- Facebook is not the only social media network. It is a good idea to keep the pulse on your local community to see what social media sites are being used. You may want to involve youth from the target community in your environmental scan. They are certainly adept with today's technologies and will know which social media platforms their peers are using. Make sure you implement good safety procedures and guidelines in your environmental scan, because the Internet is certainly not without its perils. We will discuss this in more detail later.

An online environmental alcohol scan widens the opportunities to collect data on a specific community. For example, we will walk through how to conduct a scan of youth attending a specific high school. The data collected may then lead to social media sites maintained by bars, liquor stores or other alcohol retailers. Therefore, many of the same questions in a traditional environmental scan will be useful in the online scan.

- How many liquor stores, bars, markets, convenience stores, drug stores, gas stations in the community have a social media page?
- Where is alcohol consumed? Bars? Parks? Festivals? Sporting events? Campgrounds? Abandoned buildings? Homes? Elsewhere?
- Who is providing the alcohol to the youth? Parents? Siblings? Retailers?
- How is alcohol promoted in your online community? What kinds of advertisements are found on the social media pages of alcohol retailers? Do they post lots of "Happy Hour" or other types of promotions (i.e. drinking games)? What type of photos do they post on their pages?
- Is there any posts on the social media sites indicating the person must be 21 to purchase their product? Any other similar warnings?
- Are there conversations about law enforcement involvement in enforcing the underage drinking laws? What is the tone and content of these posts?

These are just a few of the items you can scan. I think you get my point. Sit down with your team/coalition and determine what type of information you want to collect. Remember, the purpose of an environmental scan is to determine WHERE the problems occur. I think you will find the opportunities to impact the environment youth live in to be significant.

Scanning Youth Social Media Sites

To demonstrate the online environmental scan, I decided to begin with scanning the social media pages of youth under the age of 21. The challenge of the online environmental scan is the wide expanse of the online community. It is not uncommon for

youth to communicate with peers across the globe. To help narrow the search to a specific geographical community, I have found it best to begin my scan with a specific school.

There are numerous ways to accomplish this. I will demonstrate how I can go into a community as a stranger and begin an online scan, identify a specific community and begin to collect data that is alcohol-related. First, I will use a search engine like Google or Yahoo to get a list of all the schools in the area. I will then visit these school websites. More often than not, the websites will contain names and photos of the students. For example, when it nears graduation time, I will find a complete list of names of every graduating senior. I usually locate the Facebook page of the first student on the list. Even if the school does not list the names of their students, I can use the name of the school and conduct a search directly on Facebook. A number of students will post this information on their Facebook page, making it easily searchable. Including youth from the relevant neighborhood to conduct the scan can also shortcut the time of your search.

A significant number of youth will have their social media sites available for public consumption. There is no need to send them “friend” requests to access their privately protected information. In fact, I would not recommend attempting this as it may thwart the positive impact you hope to make with your environmental scan. There will be plenty of information to collect from youth who have not set any privacy restrictions. Once you identify the relevant community, the next step is to implement the methodology you have developed to collect helpful information. I have included some sample templates attached as an appendix.

Scanning Alcohol Retailers Social Media Sites

The same method discussed in locating youth in the online community applies to locating retailers selling alcohol. Use a search engine like Google to find the bars, liquor stores and other retailers in the community you are scanning. Then take this list of names and begin to search for their social media pages and/or websites. They often have both. An advantage to the online environmental scan is the advertising becomes a two-way street between the retailer and the customer. Due to this dynamic, it has been my experience that it does not take long to identify retailers who are more likely to engage in over-service, serve to minors or engage in other harmful practices. Often it is the online posts by the customers on the retailer’s social media page that exposes the illegal and/or harmful practices.

Scanning Law Enforcement “Fan Pages” and Alcohol-Related Groups

Another interesting phenomenon with social media is you will uncover intertwined connections leading to more valuable information regarding the targeted environment. For example, a youth may bemoan an underage drinking citation they received. This may lead to discovering a “fan page” created so a collective group of like-minded similar situated individuals can vent. It is not uncommon to find what I refer to as “Law Enforcement Fan Pages.” They will rant about how much they hate the local

police. These rants give you valuable information on how active your local law enforcement, prosecutors and judges are in enforcing underage drinking laws.

In addition, this often leads to other alcohol-related group discussion on social media sites. For example, it may be a group of youth in your community that have developed a brand preference for a certain type of alcohol. It may be a particular brand of beer or liquor. A fan page is created and then multiple conversations and posts will revolve around this brand loyalty. Again, I often find information regarding where underage youth are purchasing the alcohol and/or who is the provider. All of this information paints an overall picture of what is occurring in the targeted environment.

A Word of Caution

Searching the Internet is like navigating a big city you have never visited before. Most of the streets are clearly marked with signs that indicate where danger may be lurking. Keep to the main roads and heed the warning signs and most of the time you are safe. But when navigating unfamiliar online streets it is also easy to get lost or make a quick turn into a dark alley. It is imperative you plan for this to make sure you protect yourself, your team and the good name of your coalition. Have a very frank discussion in the planning phase and come up with a solid safety plan.

This is a very short presentation and there is no way for me to even consider all of the possibilities and needed guidelines. But it is imperative you put together a written plan including safety procedures. So let me help you begin your safety plan by offering three important guidelines.

1. Document and record all of your scanning activities.

- a. Technology is available to easily record and store everything you do online. There are free or inexpensive applications that will record your online activities. It is likely the computer you are using already has the software. For example, the laptop I use came “QuickTime” already installed. This application has a feature where you can record and save your computer screen as a video file. Another product popular among my colleagues is called SnagIt. Again, it allows you to record and save your online activities. This will help protect you from any claims you engaged in inappropriate behaviors or methods. It may also be a method where one person can physically search the social media sites and record it, and others can then use the video files to document the sought information.

2. Implement a Method of Oversight – What I refer to as “Two Sets of Eyes.”

- a. As a police detective, I was assigned the tough task of investigating child pornography cases. This required me to review and search the most despicable online sites. At the end of every online session I had a supervisor who would be my second set of eyes. He would review my

online activities and then sign a document as a testament I was within the scope of my investigative duties.

- b. In preparing trainings like this one, I have unfortunately stumbled upon youth who have posted nude photos of themselves or others. Not only do I not have the same protections as I did as a sworn officer assigned to these cases, but I don't want anyone thinking I am engaged in inappropriate or illegal behavior. Therefore, I have a plan in place that if I inadvertently find myself in a dark alley I can report this to my "second set of eyes." They review my actions and then can vouch I have not engaged in inappropriate behaviors. This is a strong protection both personally and professionally.

3. Report Illegal Behaviors to the Appropriate Authorities

- a. Please put a plan in place where everyone involved in the scanning process knows when to report illegal behavior to the appropriate authorities. I strongly suggest you include a local law enforcement officer and a local prosecutor at least during the planning process. They will be able to help you implement a good reporting plan.
- b. Let me share some quick examples. First, you are going to run across too many pictures of underage drinkers consuming alcohol. It is certainly illegal but may not be something your coalition will report each and every time you come across an image. This is where you need to involve a police officer and prosecutor on your team. They can direct you to what situations to report to law enforcement. As a prosecutor, I may not be able to prove the necessary elements of the criminal statute on a photo alone. However, in my presentation, I have shown you an example of youth posting that their parents purchased alcohol for the party. In my jurisdiction, officers could investigate these claims and it may be possible to charge the parents with a crime. Finally, even if you determine to not report it to law enforcement, there may be someone else who is an "appropriate authority." For example, it might be appropriate to report certain findings with school administrators. There might be school policies the student is violating. Again, these are all decisions you should consider when formulating your plan. The goal is to have the most effective and appropriate impact on your community.
- c. Second Example --- I conducted a quick online scan before speaking at a community event on underage drinking. I ran across some photos where college age kids were engaged in sexual behavior. It was not immediately apparent whether the female was of legal age. This would certainly need to be reported to the appropriate authorities. However, I was able to quickly confirm she was of legal age. Therefore, there was not illegal behavior to report to the police, but I certainly wanted to implement my

“second set of eyes.” By doing this, my supervisor was able to confirm I did not need to report a criminal act and then documented I acted appropriately with the material I encountered.

- d. Third Example -- In another situation, I ran across information where it appeared to me that a 14-year-old girl might be engaging in sexual behaviors in exchange for alcohol and other drugs. The group of professionals I was training also had these suspicions long before I arrived. They were aware of the social media posts, yet had failed to report it to the appropriate authorities. They questioned whether their suspicions were valid and they did not want to make any false accusations. This is a situation where they should have reported this to their local law enforcement. The police are equipped to appropriately investigate the situation and take the appropriate course of action.
- e. Last example – I ran across a “teacher fan page.” This is not uncommon. I often come across these types of pages where students will rant about teachers they dislike. But this time the “teacher fan page” -- consisting of 89 students – stated they had received their “sex education” from this teacher. Their posts were vulgar, and if true, the posts certainly detailed illegal behavior. Yet, there was no doubt in my mind that this was an online bullying page and none of the claims were true. But it did not matter – I still reported the information to the police and let them make the final determination. I suggest this was the right course of action.

I don't want these examples and guidelines to scare you away from conducting an environmental scan. I have been presenting on this topic for over 10 years and have spent more time than I would like on social media sites all across the country. The above-cited examples are rare. Regardless, the safety procedures were thought of well beforehand and implemented. It has protected me personally and professionally and has protected my employer. I recommend you revisit your written safety plan as part of the final evaluation process after each environmental scan. You may find the need to add additional procedures or guidelines.

Conclusion

This presentation is a very short introduction to the possibilities of conducting an online environmental scan. It is just skimming the surface and is meant for you to continue the conversation and consider the possibilities. One of the most important factors for reduction of substance use among youth is to impact the environment they live in. They certainly are a group that lives online! An online alcohol environmental scan has fantastic abilities to collect important data as long as there is a thoughtful and comprehensive planning process. I encourage you to start the conversation, consider the possibilities and then effectively make a positive impact in your community.

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.

Alcohol Environmental Scan

Assessment Team Member Names:

Date of Scan: _____

Please check what type of site visited:

- Youth Social Networking Site
- Alcohol Retailer Social Networking Site
- Alcohol Retailer Website
- Alcohol Wholesaler Website
- Other _____
- Other _____

Instructions

Counting advertising, photos and other categories for alcohol use:

- Mark a line (I) in the correct place for each item.
- After there are 4 lines in each area (IIII), draw a diagonal line through the four lines to represent the 5th item.
- Start the next set of 4 lines and a diagonal line to continue counting items in that area.

Totaling the Results:

- Count the number of groups of 5 marks in each area and multiply by 5.
- Add any marks not included in groups of 5.
- Write the total number at the end of each column.

Alcohol Environmental Scan

Team Name: _____

Indicate where alcohol-related material(s) were found

Facebook	Twitter	Pinterest	MySpace	Other

NOTES:

Team Name: _____

Placement - Indicate location of alcohol-related photos on Social Networking Site(s)					
	Cover Photo	Photo Album	Wallpaper	Videos	Other
Facebook					
Pinterest					
Twitter					
MySpace					
Other					

NOTES:

Team Name: _____

Tally of alcohol-related photos on individual sites

Facebook	Twitter	Pinterest	MySpace	Other

NOTES:

Team Name: _____

Description of Alcohol-related behaviors

	Games	Alone/Group	Amount (Shots/Kegs)	Videos	Other
Facebook					
Pinterest					
Twitter					
MySpace					
Other					

NOTES:

Team Name: _____

Alcohol-related conversations

Promoting risky behaviors	Party Location	Provider(s)	Law Enforcement	Other

NOTES:

Team Name: _____

Can you determine the provider(s)?					
	Parent	Older Sibling/Friend	Stranger	Retailer	Other
Facebook					
Pinterest					
Twitter					
MySpace					
Other					

NOTES:

Alcohol Environmental Scan

DEBRIEFING REPORT

Team Name: _____

TO THE TEAM:

It's important to always take the time to stop right after you finish collecting data to discuss and record your immediate thoughts and impressions. Although you have been communicating throughout the scan process, now is the time for you to consider the exercise as a whole. Take a few minutes to talk about each of the following questions and have a recorder write down the main points of the discussion for each question. Talking your answers over with the team helps everyone to understand the perspective of each member.

Topics for the team debriefing: (Feel free to add your own topics at the end of this form.)

The most important thing from all the data we collected...

Youth #1 _____

Youth #2 _____

Youth #3 _____

Youth #4 _____

Adult advisor _____

The most surprising or unexpected thing from all the data we collected...

Youth #1 _____

Youth #2 _____

Youth #3 _____

Youth #4 _____

Adult advisor _____

Alcohol Environmental Scan

DEBRIEFING REPORT

Team Name: _____

Adult Advisor _____

In conducting the scan, the part of the research process that worked best or was most important...

Youth #1 _____

Youth #2 _____

Youth #3 _____

Youth #4 _____

Adult advisor _____

My top suggestion for improving the research process...

Youth #1 _____

Youth #2 _____

Youth #3 _____

Youth #4 _____

Adult advisor _____

What I liked the best about the way the team worked together...

Youth #1 _____

Youth #2 _____

Youth #3 _____

Youth #4 _____

Adult advisor _____

COMMUNITY PROSECUTION & SOCIAL NETWORKING SITES

*Tips for Prosecutors, Law Enforcement Officers,
Victim Witness Coordinators & Prosecutorial
Staff*



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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 cannot only see everything about your friend, but also people your friends know, who your friends' friends know, and so on. It is not uncommon for a person on Facebook 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. Town hall meetings would be planned on the topic, but the audience was generally comprised of the event planners and the janitor assigned to lock up 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 their child's 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 three 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 Instagram 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 witnesses 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 general 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 agency, 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. ****Be sure to review the "Prosecutor's Pitfall section on Page 13 before using social media to investigate potential or sitting jurors.**

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. 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 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 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.¹
- Realizing officers are monitoring their sites; some students have begun to submit "red herring" party listings.² 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.³
- 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.⁴
- 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.⁵

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

² Pescovitz, David. "Facebook prank on police." *Boing Boing*, 9 January 2006.

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

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

⁵ 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.⁶
- 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.⁷
- 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.⁸
- 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.⁹
- 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.¹⁰
- 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 \$1,000.00.¹¹

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

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

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

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

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

¹¹ 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. Knowing this helps you 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 themselves. 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.

In the past, I believed the likely culprit for this lack of forethought in developing social networking policies is the generation gap between administration and new officers. I believed police administrators were from the generation that was still trying to get the VCR clock to stop blinking. Whereas, younger officers have grown up with social media and have never had a problem posting personal information online. After about 5 years of younger officers getting in trouble, I started seeing older officers getting themselves in trouble. Research had shown the older generations have more than doubled their presence in online communities during this time. Regardless, the result can be a poor reflection on the police department when the media first 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.¹²

Universities and colleges were among the first institutions recognizing the need to protect their public image on social networking sites. Many 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. Corporations, businesses and government agencies have copied this approach. 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 posted 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 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.

¹² 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, Twitter, SnapChat, Instagram and the list goes on. Postings of pictures, comments and videos have been used to successfully attack law enforcement officers' credibility in court. 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.¹³ 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

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

Trooper's Facebook account.¹⁴ These comments and pictures included bragging of heavy drinking, lewd horseplay and a crash involving his state issued police cruiser.

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 the media discovered this incident.

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.¹⁵ 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 could lead to dangerous consequences for fellow employees. 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 within the correctional facility?

It is recommended that law enforcement officers review the "10 Safe Social Networking Tips for Prosecutors" included in the next section. Although prosecutors have some extra ethical duties and responsibilities, many of the tips also apply to law enforcement officers. One major difference is that officers may be allowed to set up dummy investigative sites for the purposes of criminal investigations. Whereas, prosecutors have certain ethical rules in which they are not allowed to misrepresent themselves or engage in deceptive investigative practices. As with anything, it is important for everyone to understand their professional roles and their accompanying ethical duties.

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

¹⁵ Matteson, Cory. "3 Officers Fired Due To Comments Made On Facebook." *Lincoln Journal Star* 19 March 2010.

Social Networking - Pitfalls Specific to Prosecutor Offices

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.¹⁶ 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.¹⁷ The prosecutor was accused of posting statements such as, "keeping the streets safe from Somalians."¹⁸ 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."¹⁹

An Indiana deputy attorney general was fired over Twitter posts. He was commenting on political riots in Wisconsin and posted the police should "use live ammunition."²⁰ An Ohio prosecutor was fired after he posed as an ex-girlfriend of a murder defendant and chatted with an alibi witness in an effort to get them to change their story. The former prosecutor said he did nothing wrong, but his former boss called the conduct unethical and a disgrace to his office.²¹

Each state and/or jurisdiction has rules of professional responsibility that lawyers are required to follow. Prosecutors follow an even higher ethical standard with additional rules of professional conduct. The rules of professional responsibility require a prosecutor to be honest with the court, with defense counsel and those not represented by counsel. For example, Idaho Rules of Professional Conduct Rule 8.4(c) states, "it is unprofessional conduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

For example, it is my interpretation that the above former Ohio prosecutor misunderstood the difference between the professional rules of a prosecutor in comparison to the professional rules of a law enforcement officer. In a newspaper report he is quoted as saying, "To me, this is all a massive overreaction. I wasn't some rogue prosecutor sitting behind a computer trying to wrongfully convict someone. I did what the Cleveland police detectives should have done before I got the file."²² Under Rule 8.4(c), it is my opinion a prosecutor is not allowed to be an undercover detective, even if the motive is noble. These accounts and many others illustrate the importance of watching what you post.

¹⁶ Holsman, Melissa E. "Facebook poem gets prosecutor in hot water." *Sun Sentinel*, 22 April 2010.

¹⁷ Olson, Rochelle. "Hennepin County prosecutor accused of anti-Somali posting on Facebook." *Star Tribune*, 17 February 2010.

¹⁸ Simons, Abby. "Second motion over prosecutor's Facebook postings is denied." *Star Tribune*, 12 March 2010.

¹⁹ Id.

²⁰ Sikich, Chris & Schneider, Mary Beth. "Indiana official fired for remarks on Twitter." *The Indianapolis Star*, 24 February 2011.

²¹ Neil, Martha. "Prosecutor fired after posing as ex-girlfriend in Facebook chat with defendant's alibi witnesses." *ABA Journal*, 14 June 2013.

²² McCarty, James F. "Cuyahoga County prosecutor fired after posing as an accused killer's girlfriend on Facebook to try to get alibi witnesses to change their testimony." *Plain Dealer*, 7 June 2013.

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 cannot 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. In Idaho, a few law enforcement 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.

Prosecutor Pitfalls Continued – Jury & Witness Research

Social media sites can be a treasure trove for finding information on jurors, but it does not come without perils. Prosecutor offices should carefully consider the risks in using social media tools for jury research. The **general rule** is that lawyers may research potential and sitting jurors on Facebook and other social media sites, but communications with jurors should be avoided.²³ For example, a prosecutor should never make a “friend request” to a juror. Any research should be limited to what is publicly available for all to see, without engaging in any type of communication with the individual.

But what about inadvertent or unintentional communication with a juror through social media? This is where the issue becomes very dicey. The New York City Bar Association’s Committee on Professional Ethics provided an opinion where inadvertent communication may be a violation. According to the opinion, the ban on communication is violated not only through friend requests, but also when the lawyer is aware that his or her review of the juror’s comments, pages or posts will be disclosed to the juror. It might also be a violation if the communication with the juror is inadvertent or unintended.²⁴

“In the social media context, due to the nature of the services, unintentional communications with a member of the jury venire or the jury pose a particular risk,” the opinion says. “For example, if an attorney views a juror’s social media page and the juror receives an automated message from the social media service that a potential contact has viewed her profile—even if the attorney has not requested the sending of that message or is entirely unaware of it—the attorney has arguably ‘communicated’ with the juror.”²⁵

The trick is knowing and understanding the capabilities and functions of each social media service. For example, you can view a Facebook user’s profile and they are not notified of your visit. Facebook has been very protective of this feature. Whereas, a LinkedIn user is notified when their profile has been viewed and who viewed it. The LinkedIn viewer can make their visits anonymous, but this requires them to select this option in their settings. However, it has been my experience that social media sites will often update their functions and this may reset the options you previously selected. Therefore, you have to diligently check and re-check that your settings are maintained.

The New York City Bar opinion has the same recommendations saying, “[T]he committee believes it is incumbent upon the attorney to understand the functionality of any social media service she intends to use for juror research. If an attorney cannot ascertain the functionality of a website, the attorney must proceed with great caution in conducting research on that particular site, and should keep in mind the possibility that even an accidental, automated notice to the juror could be considered a violation.”²⁶

²³ Weiss, Debra C. “Ethics Opinion Warns Lawyers About Perils of Unintentional Juror Contact During Online Research.” *ABA Journal*, 5 June 2012.

²⁴ Formal Opinion 2012-2: Jury Research and Social Media. *The Association of the Bar of the City of New York Committee on Professional Ethics*.

²⁵ *Id.*

²⁶ *Id.*

The professional rule of conduct, prohibiting the use of deceptive behavior on Facebook and other social media sites, also extends to witnesses and victims. Lawyers are simply not allowed to use trickery to obtain evidence on social networking sites. Prosecuting attorneys and their staff should never use false pretenses to “friend” a witness. Similarly, a prosecutor should not create a false Facebook profile in hopes it will be of interest to a targeted witness. In addition, a lawyer cannot e-mail a YouTube account holder falsely promoting a recent digital post in hopes of gaining access to the target’s channel.²⁷

Lawyers secretly sending a third party to “friend” a Facebook user, has also been held to be deceptive, and thereby unethical.²⁸ The opinion explains that not telling the potential witness of the third party’s affiliation with the lawyer, “omits a highly material fact, namely, that the third party who asks to be allowed access to the witness’s pages is doing so only because he or she is intent on obtaining information and sharing it with a lawyer for use in a lawsuit to impeach the testimony of the witness.”²⁹ However, after an Oregon Supreme Court ruling, Oregon’s Rule 8.4 was changed to provide lawyers with the ability to act as an advisor or supervisor in “covert activity” when there is good faith that unlawful activity has taken place, is taking place or will take place in the foreseeable future. It behooves every prosecutor to research the rules of professional conduct in their jurisdiction to determine what advice or supervision they can provide in these cases.

The clear rule is that any lawyer who wants to see a witness or victim’s social media page can always ask for access, using the lawyer’s real name and profile. This can be done without disclosing the reasons for making the request, so long as an attorney does not represent the person. Of course, the lawyer must not make any false statements or misrepresentations in the process. Other routes of accessing the information are also available. The various state ethical opinions I have researched all refer back to historical ways to gain access to the desired information on social media sites, to include: subpoenas, discovery requests and search warrants.

In summary, there are many additional ethical rules and evidentiary rules to consider when lawyers or their staff uses social media. At first blush it seems like common sense, but social media is such a pervasive part of daily life, many may unwarily stumble into problems. It is not only important you monitor your personal communications on social media sites, but also it is also important to understand the rules of professional responsibility when it comes to using social media for work purposes. Finally, it is also important for prosecutors, victim witness advocates and prosecution staff to work with their witnesses and victims so they too understand the potential hazards in social media communications. It is this last group I next address and provide some basic advice every victim or witness should be given regarding his or her social media use.

²⁷ See Formal Opinion 2010-2: Obtaining Evidence From Social Networking Websites. *The Association of the Bar of the City of New York Committee on Professional Ethics*. September 2010.

²⁸ See Opinion 2009-02. *The Philadelphia Bar Association Professional Guidance Committee*. March 2009.

²⁹ Id.

ADVICE TO GIVE YOUR VICTIMS AND WITNESSES

1. Do **NOT** communicate about the case or the defendant at **ALL** --- this includes Facebook, YouTube, 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 will make the witness 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. Avoid posting messages or images that would be unflattering to a group of strangers – i.e. anything you do not want a judge or jury to see.
 - 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. *See Allied Concrete Co. v. Lester*, 736 S.E.2d 699 (Va. 2013) (Lawyer sanctioned over \$700k and law license suspended 5 years for telling client to "clean up" Facebook account to avoid "blow-ups" of the photos at trial).
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 you are asked to testify.
7. Do not think that a Defense Lawyer cannot get ahold of your private messages or instant messages on Facebook, Twitter, etc... He or she probably can.
8. Do not think that by setting your Facebook (social media) page to "private" means the prosecutor cannot access it or the defense lawyer cannot access it. We can!
9. Do notify me any time the defendant attempts to contact you and this includes your social networking sites.

10. 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 social media 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.