



## Loss of Face-Book: The Anti-Social Use of Social Media

O. Brandt Caudill, Jr. Esq.

**T**he evolution of social media has rapidly outstripped recognition of the risks posed by these phenomena. Many psychologists have plunged into social media without realizing the risks.

Since it began in 2004, Facebook has tapped into a widespread desire of individuals to be seen, heard and understood. One court recently asserted that Facebook had 901 million active users (*Doe v. Prosecutor*, 2012). There are a growing number of legal cases, anecdotal reports and articles describing some problems created by using Facebook. For example, a Beverly Hills psychiatrist who was functioning as a child custody evaluator posted photographs and material on Facebook that appeared to show his buttocks and appeared to condone drug use and prostitution. These photographs were accessed by a custody litigant who brought a motion to disqualify the evaluator. After the motion was brought, another child custody evaluatee in a different case became aware of it and also brought a motion to disqualify the psychiatrist. The motions were heard by different judges in different branches in Los Angeles County Superior Court. According to the *Los Angeles Times*, one judge granted the motion to disqualify the psychiatrist (Christensen & Kim, 2011) while a second court commissioner denied the motion to disqualify. The Medical Board of California reviewed the situation. The psychiatrist's defense was in part that the photos were not for public viewing and were intended as a prank and jokes. The Medical Board determined not to take any action. Psychologists may wonder whether if the same scenario was presented to the Board of Psychology if a more negative result might have occurred.

The refusal of jurors to stop using Facebook during trials has also been documented. During a December 2011 criminal trial in Orange County, the judge warned jurors not to do any investigation and specifically said, according to a news article "and the biggest evil facing the world today: The Internet. Please stay off the Internet.... we don't want any tweeting or texting either" (Wellborn, 2011). Despite this explicit warning, one female juror posted entries on Facebook including her thought the defendant was "presumed guilty," which is the exact opposite of the legal standard. Similarly, a juror posted comments on Facebook and Twitter during a trial (*US v. Fumo*, 2011). Published articles suggest that more than 90 legal cases have been adversely affected by jurors' Internet research (Maclean, 2011).

Lawyers have found Facebook and Twitter to be wonderful discovery tools. One lawyer described how he uses Facebook and other social networking sites to generate information (Meyer, 2010). Lawyers accessing Facebook pages by pretending to be friends of an adverse party

### FREE CE CREDIT

CPA Members: Read this article, the Ethics Corner, and the feature articles to earn 2 CE credits.

Go to the Members Only section of CPA's website ([www.cpapsych.org](http://www.cpapsych.org)) and follow the directions.

is sufficiently common that it has led to several ethics opinions. The Philadelphia Bar Association's Professional Guidance Committee issued an opinion concluding that an attorney who engages a third party to "friend" an individual on Facebook to gather information for litigation is engaged in an impropriety as opposed to simply accessing social networks without friending the party (Opinion, 2009). The New York State Bar Association Committee on Professional Ethics indicated that a lawyer can access the Facebook or My Space Pages of another party in litigation so long as they don't friend the party or have a third party do it (Opinion, 2010).

In our practice, we have seen a number of instances where individuals have pretended to be friends or relatives of psychotherapists to gain information through Facebook. In one instance a female patient pretended to be a male high school friend of our client's husband to obtain information about our client. In another example, a plaintiff sued a defendant in part for hacking into his voicemail and Facebook accounts (*Heacker v Safeco Ins Co*, 2012).

An issue that a psychologist should consider is the risk posed by putting information on Facebook that the psychologist would not share with a patient in a session. Psychologists should ask themselves: "How much of what's on my Facebook would I share in a session with a patient who has a personality disorder?" If a psychologist has a Facebook page, any patient with a personality disorder can go to Facebook and learn who the psychologist's friends are, what the psychologist likes and dislikes, and view photographs of the psychologist and/or significant others involved in various activities. Whatever boundaries may exist in the therapy room may thus be effectively destroyed by the Facebook information the psychologist posts. Particularly with individuals with personality disorders, the availability of such information

can fuel transference in undesirable and unpredictable ways. If a psychologist has a Facebook account, then he or she should provide the maximum protection for entries on the account so that there is control over who can access it. To do otherwise leaves the psychologist vulnerable.

Recent cases corroborate cyberstalking as a problem, including disparaging comments posted on Facebook and other sites including false claims of sexual misconduct against medical or mental health professionals (R.D v. P.M., 2011; Lynch v. Christie, 2011). There are also cases discussing the creation of false profiles of individuals on the Internet to put them in a bad light (Ebersole v. Kline – Perry, 2012). Essentially social media can help facilitate cyber stalking.

These are evolving problems which to a certain extent professional standards have not developed to address. However, the idea of putting information about a psychologist where patients can access it without limitation would clearly seem to be questionable under current ethical standards. It goes without saying of course that a psychologist should never friend an existing patient on Facebook or allow him or herself to be a friend on the patient's website. To do so could be claimed to be a social dual relationship. For psychologists involved in forensic work, having lawyers as Facebook friends may give rise to claims of bias. For example, in Shafizadeh v. Bowles (2012) a father claimed a judge hearing a divorce case was biased because he was Facebook friends with the lawyer for the other side.

While Facebook users may assume postings are private, professional associations have also started to view some entries on Facebook and

other social media as triggering ethical principles governing advertising (King, 2012).

Finally, problems with a psychologist's Facebook page needed to be cured before a board complaint or civil suit occurs. In a recent Virginia case (Danzig, 2011), a judge awarded over \$700,000 in sanctions against a party and counsel who removed entries from Facebook after a discovery request was received (Laster v. Allied Concrete Co., 2011).

It is clear that for many people Facebook has touched a deep desire to put information about themselves in the public eye which is inconsistent with the historic reticence psychologists have had to share private information about themselves with patients. Doing so creates risks and potential liabilities for psychologists.

## References

### Cases

*Doe v. Prosecutor, Marion County Indiana* (S.D. Ind 2012) 2012 U.S. Dist Lexis 86862

*Ebersole v. Kline – Perry* (E.D. Va 2012) U.S. Dist. Lexis 93793

*Hecker v. Safeco Ins Co.* (2012) 8th Cir.676 F.3d 724 (8th Cir 2012)

*Laster v. Allied Concrete Co.* Charlottesville Cir Court # CL08-150; CL09-223 10/21/11

*Lynch v. Christie*, 815 F.Supp 2d 341 (D.Me 2011); 2012 U.S. App Lexis 13056 (1<sup>st</sup> Cir. 2012).

*R.D v. P.M.* (2011) 202 Cal.App.4th 181

*Shafizadeh v. Bowles*, 2012 Fed App 0378N (6th Cir. 2012).

*US vs Fumo*, 655 F3d.288 (3d Cir 2011)

### Bar Opinions

New York State Bar Association Committee on Professional Ethics, Opinion 943, 9/10/2010

Philadelphia Bar Association Professional Guidance Committee, Opinion 2009-2, March, 2009.

### Articles

Christensen, K. & Kim, V. (2011, February 27). Child custody expert linked to lewd web photos. *Los Angeles Times*. Retrieved from <http://articles.latimes.com/2011/feb/27/local/la-me-kenan-20110227>

Danzig, C. (2011, November 8). Facebook spoliation costs widower and his attorney \$700k in sanctions. *Above the Law*. Retrieved from <http://abovethelaw.com/2011/11/facebook-spoliation-costs-widower-and-his-attorney-700k-in-sanctions/>

King, J. (2012, June). Social media and attorney advertising. *California Lawyer*. Retrieved from <http://www.callawyer.com/clstory.cfm?eid=922755>

Maclean, P. A. (2011, April). Jurors gone wild. *California Lawyer*, pp. 22, 24.

Meyer, E. B. (2010, July 12). How Facebook can make or break your case. *The Legal Intelligencer*. Retrieved from <http://thelegalintelligencer.typepad.com/tli/2010/07/how-facebook-can-make-or-break-your-case-.html>

Wellborn, L. (2011, December 2). Facebooking juror kicked off trial. *Orange County Register*. Retrieved from <http://www.ocregister.com/articles/juror-329708-trial-judge.html>

*O. Brandt Caudill, Jr. Esq.* (BCaudill@ctsclaw.com) is an attorney and recognized expert in the defense of mental health professionals in civil and administrative litigation. He co-authored the book *Law and Mental Health Professionals: California with Kenneth S. Pope* (1999). He has handled a number of precedent setting appellate cases involving mental health professionals. CPA awarded him the Silver Psi in 1999.

## CALIFORNIA PSYCHOLOGICAL ASSOCIATION

*Our Mission is to strengthen, promote  
and sustain the discipline and practice of psychology.*

## Let Your Voice Be Heard

In the Board of Psychology  
In the Department of Insurance  
In Your Community  
In the Legislature

*Help Us to Support You*

Renew Your CPA Membership Today  
On-line at [www.cpapsych.org](http://www.cpapsych.org)

- ~ Guaranteed Issue Health Insurance ~
- ~ Free Ethics & Practice Consultations ~
- ~ Career Center & Networking Opportunities ~
- ~ Free and Discounted Professional CE ~
- ~ 8 Special Interest Divisions ~
- ~ On-line Interest Focused Publications ~