

Online Activity "Is it Evidence?"


- ### Session Overview
- Technology - Online Social Networking
 - In the News & Usage
 - How it affects representation of clients
 - Overview of actual custody case
 - Electronic Evidence
 - Discovery
 - Forensics and Data Recovery
 - Outcome



- ### Usage - Social Networking
- **Facebook**
 - Barely 4 years old
 - Reaching 60 million users
 - \$15 billion entity
 - Users initially Ivy League students, now expanded to non-collegiate users
 - **MySpace**
 - 200 million user accounts
 - 3rd most popular website in USA
 - Projects revenue of \$800 million 6/2008
 - Users - wide spectrum of ages, backgrounds & geography
- Source: The PA Lawyer Magazine, January/February 2008 Issue

- ### Online Activities
- Share pictures, videos, music
 - Chatting, e-mail, IM
 - Blogging - Journal style
 - Personal in nature
 - Often emotional
 - Bragging, bashing, tells all

The Big Question.....



IS IT EVIDENCE??

Girlfriend's Site

Girlfriend bashes mother!

...fake religious people

...people who don't shower

...people who won't let Gregory be happy and loved

my hatred tends to really grow everytime this past little while, even tho I have mainly been happy there are some examples who have to go and die. Is, so through my confidence and through my work, w/ having to put up w/ ppl I have come to these generalizations.

1. those people
2. people who dont like to take showers
3. fake religious people who use their "faith" not using the faith its using the devil
4. people who jus sleep with a guy to jus have a baby... they have no intention of sticking around w/ the guy, a baby should be made out of love for each other not out of desperation thinking that the baby will love you.
5. people with the letter "n" in their names, the ones

HEAD LINES

Outcome

- Our client is granted primary custody
- Father granted visitation
 - Gets more interesting.....

Motion to Reopen

Presented false testimony to the Court

MOTION TO REOPEN THE RECORD AND FOR RECONSIDERATION

AND NOW, I, the 17th day of January, 2006, come by this Petition to ask the Court to set aside the judgment of the Court and to grant the Plaintiff a new trial.

1. This Motion is brought by the Plaintiff in the above captioned matter.
2. Your Petitioner resides at 123 Green Oaks Drive, Apartment 202A, Edinboro, Pennsylvania.
3. The Respondent is residing at 1031 Palms Creek, Edinboro, Pennsylvania.
4. Petitioner seeks Reconsideration of the County Order dated January 6, 2006, which is attached hereto and made a part hereof as if it were a part of this Motion, which is attached hereto and made a part hereof as if it were a part of this Motion.

Next

- Offering "proof" that our client lied
- Siting Text – A Comment posted to his site
- We object to authenticity of evidence

Alleged Posting

The trial is over, I don't have to pretend to be nice...can't believe the Judge believed everything we told her. You should have known that we would have made you look as bad as we could and made ourselves look perfect. I got everything I wanted: I got MY son. I'm going to ...make sure that he grows up to resent and hate you

1/12/2006 3:31:00 PM

Laura

Steps in Process

- Subpoena MySpace Internet Activity Records
- When were users online?
- What Time was posting?

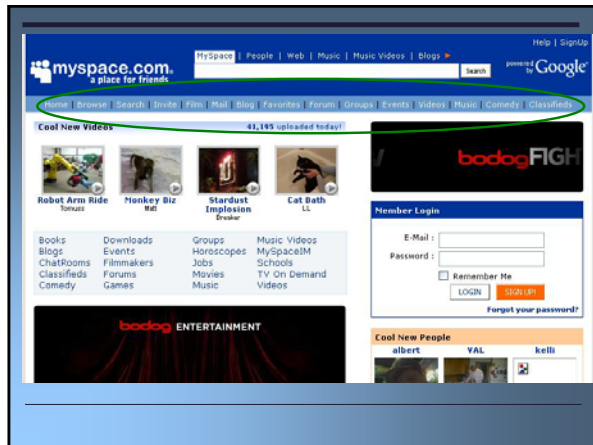
MySpace
 133 Second Street, 1st
 Santa Monica, CA 90401
 Legal Department 310-969-7396
 Fax # 310-969-7394

Our position

- Present examples of dummy sites
- Letter from client's English professor
- Request Court to disallow evidence - inadequate proof
- Judge agrees and dismisses Motion to Reopen

Court Takes Action

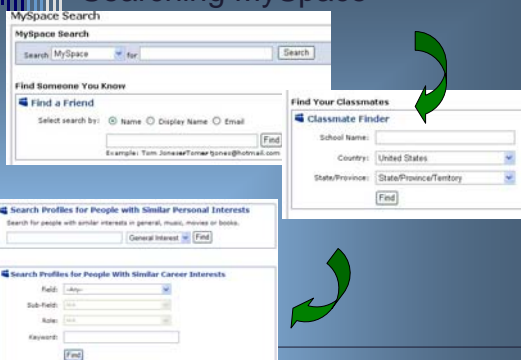
- Judge orders DA to confiscate computers
- Deleted material is recovered
- Defendant now faces Criminal Charges
- Judge Orders Defendant to Pay Costs



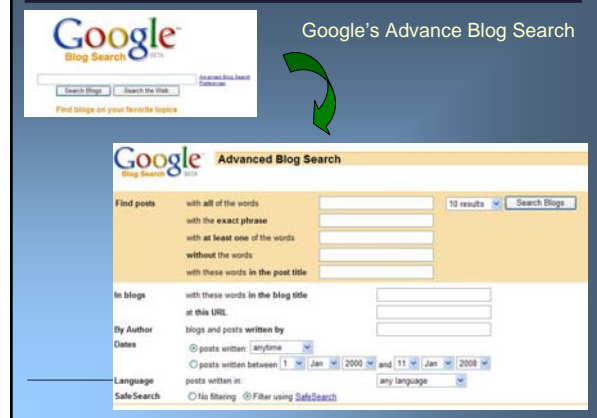
Find Blogs by Category



Searching MySpace



Google's Advance Blog Search



New Clips

- [National Law Journal](#) -- "MySpace is a Treasure Chest for Cases" Law Firm searches MySpace & Facebook daily as a defense tool to find info relevant to firm cases.
- For Other examples – See Handout

In the News

Principal sues students over parody profiles on Internet site

Saturday, April 07, 2007

A school principal has filed suit against four former students over parody profiles that were posted on an Internet social networking site.

Eric Trosch, who had been co-principal of Hickory High School, alleges that the three MySpace.com profiles created in December 2005 damaged his reputation, humiliated him and impaired his earning capacity. The suit filed in Mercer County court seeks unspecified damages.

AGs seek sex offender data from MySpace

Posted 10m ago | Comments: 0 | Recommend: 0

By Samuel Spies, Associated Press Writer

RALEIGH, N.C. — Top law enforcement officers from eight states on Monday asked MySpace.com to turn over the names of registered sex offenders who use the social networking Web site.

In a letter, the attorneys general asked MySpace to provide information on how many registered sex offenders are using the site, and where they live. North Carolina Attorney General Roy Cooper signed the letter, along with attorneys general from Connecticut, Georgia, Idaho, Mississippi, New Hampshire, Ohio and Pennsylvania.

In a statement, Cooper's office said media outlets in 2005 "reported almost 100 criminal incidents across the country involving adults who used MySpace to prey or attempt to prey on children."

In December, MySpace announced it was partnering with Sentinel Tech Holding Corp. to build a database with information on sex offenders in the United States. Software to identify and remove sex offenders from the site was launched in early May, MySpace officials said Monday in a statement.

"It is our understanding that the data from Sentinel reveals that thousands of known sex offenders have been confirmed as MySpace members," the letter from the attorneys general said.



MySpace reaches accord with U.S. attorneys general

Updated 19h 1m ago | Comments: 43 | Recommend: 21

By Uren Dorell, USA TODAY

MySpace on Monday responded to pressure from a group of attorneys general and promised to provide names and e-mail addresses of about 7,000 registered sex offenders who had profiles on its site.

The move came one week after top law enforcement officials for eight states signed a letter asking MySpace for access to a list of its users who appear on a database that combines registered sex offender information from 50 states. MySpace says it deleted the unwanted profiles among its 180 million users.

Other Case Examples

- Eviction – Landlord introduces posting by tenants bragging about their wild parties
- Custody – father introduces postings by mother implying she might be suicidal to suspend visits
- Abuse – restraining order issued based on threatening posting.
- See Handout -- List of case summaries dealing with admissibility issues

Thank you

Judith E. Wilson, Esquire
jwilson@nwls.org

Northwestern Legal Services
1001 State Street, Suite 1200
Erie, PA 16501

Letter from Tech Consultant - Expert
Witness

February 1, 2006

Via Facsimile

Judith E. Wilson, Esquire
Northwestern Legal Services
1001 State Street Suite 1200
Erie, Pennsylvania 16501

Re: Myspace.com Login Information

Dear Attorney Wilson:

I reviewed the Myspace.com login information that you provided for the period from January 11 through January 24, 2006.

As background, an Internet IP (Internet Protocol) address is a unique identifier that is assigned to every computer connecting to the Internet. IP addresses are assigned in blocks to Internet Service Providers (ISP), who in turn lease those numbers to customers wishing to connect to the Internet.

The period of the lease varies with the arrangement between the customer and the ISP. For customers connecting through a non-permanent telephone connection ('dialup'), the period of the lease is the duration of the telephone call - An IP address is assigned by the ISP to the customer's computer when the Internet connection begins, and the IP address is released back to the ISP when the connection terminates.

Because of this arrangement, the same IP address can be assigned to different computers at different times, but a specific IP address can only be assigned to one specific computer at a particular time.

Website hosts (e.g. myspace.com) maintain logs detailing each connection (login) to their websites. The login information contains the IP address of the computer from which the login occurred. As described above, IP addresses are permanently assigned to ISPs, but generally not to specific customers of that ISP.

By reviewing the myspace.com log, I determined that, during the period between 1/11/06 and 1/24/06, all but one of the logins to user account 2644124 at myspace.com, and including the connection made on 1/12/06 AT 6:31 PM EST (3:31 PST), were made through an IP address assigned to local ISP Velocity.Net.

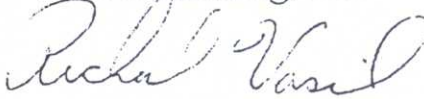
From the fact that the IP addresses are different, but are all assigned to Velocity.Net, I

conclude that the computer or computers that connected to myspace.com did so through a dialup telephone connection. It is not possible to determine from this log the identity of the specific computer or computers making the connections. However, the connection to myspace.com, made through a Velocity.Net supplied IP address, could have only been made by an individual who was validated (by entry of a user name and password) as a Velocity Net customer.

I suggested you contact Velocity.Net, which maintains log reports of usage of its assigned IP addresses, in order to determine the specific identity of the Velocity.Net account used to connect to myspace.com on 1/12/06. The information you received from Velocity.Net verifies that the computer that connected to myspace.com on 1/12/2006 at 6:31 pm EST did so through a Velocity.Net IP address assigned at that moment to user name elafuga, which Velocity.Net further identified as being registered to [REDACTED]. Again, the Velocity.Net logs do not identify the specific computer making the connection. Note the discrepancy in times between the Velocity.Net log and the myspace.com log indicates that the computer connected to Velocity.Net at 6:28 pm EST, then connected to myspace.com three minutes later.

Very truly yours,

Vasil Consulting, Inc.



Richard D. Vasil

**List of Case Summaries Dealing with
Admissibility Issues**

Cases

Case name: Comm. V. Crabill

Court: Pa. Superior Court

Citation: Comm. V. Crabill, 926 A.2d 488 (Pa. Super. Ct. 2007) Date: June 4, 2007

Procedural History: Pennsylvania Court of Common Pleas of Dauphin County sentenced Defendant to 11 to 23 months imprisonment for criminal attempt at unlawful contact with a minor and criminal use of a communication facility after a trial by jury.

Facts: Based on sexually explicit communications in an internet chat room and subsequent emails Appellant was convicted of criminal use of a communication facility and attempt at unlawful contact with a minor. The minor was in fact a law enforcement officer whom Appellant emailed over a 10 day period and believed to be a 12 year old girl. Appellant ultimately attempted to meet with the minor and upon arrival at the scheduled location admitted that he believed her to be 12 years old. Appellant herein challenged the sufficiency of evidence [emails] and inferences drawn from that evidence.

Issue: Whether the evidence and inferences drawn were sufficient to establish all of the elements of the charges?

Holding: The Superior court held the [emails] evidence sufficient to sustain the convictions.

Reasoning: Citing recent Pennsylvania case law the court established that the burden of the Commonwealth may be established by circumstantial evidence. The court identified Appellants actions in admitting that he believed he was communicating a 12 year old girl, the content and duration of the emails and the substantial step of attempted contact with the 12 year old as sufficient to sustain the charges.

Disposition: The Superior Court affirmed the ruling of the Court of Common Pleas.

Case name: Comm. v. Wynn

Court: Pa. Superior Court

Citation: Comm. v. Wynn, 850 A.2d 730 (Pa. Super. Ct. 2004) Date: May 14, 2004

Procedural History: A jury of Pennsylvania Court of Common Pleas of Greene County convicted Defendant of third degree murder and aggravated assault.

Facts: Appellant was convicted of murder and aggravated assault for the death of his infant daughter. The trial court prohibited Appellant's introduction of evidence in the form of a website maintained by a witness –mother of the deceased infant. The website contain reference to the mother's drug and alcohol use, body piercings, and crude sexual references. Appellant asserted that the evidence would contradict the testimony of the witness and also shed light on her credibility and

character. The trial court refused the evidence as inadmissible as to relevance. Herein Appellant asserted that pursuant to Pennsylvania rules of Evidence 608(a) the evidence was admissible and the trial courts refusal was an err.

Issue: Whether the trial court erred by prohibiting Appellant from cross-examining a witness concerning the contents of her internet website?

Holding: The Superior court held that the trial court did not err in finding website evidence was inadmissible as irrelevant.

Reasoning: Citing relevant case law the Court first established the standard for abuse of discretion and the standard for relevant and admissible evidence . The Superior court stated that Appellant failed to show how the witness website was relevant to the witness-mother's trial testimony and therefore the trial court did not abuse its discretion in finding the evidence irrelevant. The court also stated although Pa. R.E. 608(a) would allow admission of evidence to attack the credibility of a witness nothing in the website would contradict or refute the witness testimony.

Disposition: The Superior Court affirmed the ruling of the Court of Common Pleas.

Case name: Hood-O'Hara. v. Wills

Court: Pa. Superior Court

Citation: Hood-O'Hara. v. Wills, 873 A.2d 757 (Pa. Super. Ct. 2005) Date: April 22, 2005

Procedural History: Pennsylvania Court of Common Pleas of Bucks County entered a Protection from Abuse order against Appellant.

Facts: During a PFA hearing Appellant attempted to enter into evidence email from the email account of Appellee's mother. The email contained reference to Appellee's drinking problems. The trial court excluded the emails as hearsay under Pennsylvania Rules of Evidence 801. Appellant herein claims the exclusion was an abuse of discretion.

Issue: Whether the exclusion of the emails was an abuse of discretion ?

Holding: The Superior court held that under Pa. R.E. 801 the exclusion was proper and the trial court did not commit an abuse of discretion.

Reasoning: Citing Pennsylvania rules of Evidence 801 the court asserted that the email was inadmissible as hearsay and further recognized that none of several exceptions to the hearsay were applicable. In addition to the hearsay exception the authenticity of the emails were in question because at trial Appellee's mother denied authorship and testified to having had security issues related to the email account.

Disposition: The Superior Court affirmed the ruling of the Court of Common Pleas.

Case name: In re F.P.

Court: Pa. Superior Court

Citation: In re F.P., 878 A.2d 91 (Pa. Super. Ct. 2005)

Date: June 15, 2005

Procedural History: Pennsylvania Court of Common Pleas, Allegheny County, adjudicated minor as delinquent of aggravated assault. Juvenile herein appealed.

Facts: The trial court admitted transcripts of an instant messages between Appellant and victim into evidence. The instant messages occurred prior to the assault and included threats from the appellant of the impending assault based on accusations of theft by the victim. Appellant argued that the evidence was improperly admitted because appellant was not proven to be the author.

Issue: Whether the trial court erred in admitting the transcripts of instant messages as not being properly authenticated?

Holding: The Superior court held the emails admissible and properly authenticated through the use of circumstantial evidence.

Reasoning: The Superior court initially cited the Pennsylvania standard of evidence authentication as codified at Pennsylvania Rule of Evidence 901(a). This general provision states: The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Pa.R.E. 901(a).⁹³ The court further stated that evidence may be authenticated or identified by testimony of a witness with personal knowledge of the matter. ⁹⁴ The court then reviews the testimony from Appellant an victim wherein appellant does discussed the alleged theft and subsequent assault. The contents of which affirm his involvement and provide circumstantial support for the authenticity of the instant messaging session. The court acknowledges Appellants argument, regarding the uncertainty and inherent unreliability of email and other electronic communication, but asserts that authentication is still possible within the framework of Pa.R.E. 901 and Pennsylvania case law. Although the court identifies the dearth of Pennsylvania case law the court is persuaded by decisions from surrounding jurisdictions which address similar issues within the similar framework of respective rules of evidence.

Disposition: The Superior Court affirmed the ruling of the Court of Common Pleas.

Case name: Ney v. Ney et al.

Court: Pa. Superior Court

Citation: Ney v. Ney et al., 917 A.2d 863 (Pa. Super. Ct. 2007)

Date: Feb. 7, 2007

Procedural History: Pennsylvania Court of Common Pleas of Dauphin County entered an Order for child support against Appellant.

Facts: During a de novo support hearing the trial court used information from an internet job search to determine Appellant-fathers earning potential and credibility. The internet job search information was not part of the original record and the trial court conducted the search sua sponte. Based on the information in the search the trial court determined that Appellant's inability to mitigate his loss of income was due to his own inaction and thus upheld the support order based on his 2004 salary which had since been reduced by over \$25,000.

Issue: Whether the court committed an error of law in considering information from internet job search conducted sua sponte, which was outside the record, in determining Appellant's earning capacity and assessing his job search efforts?

Holding: The trial court's use of evidence outside the record was an abuse of discretion.

Reasoning: The Superior court citing prior Pennsylvania case law stated that "a trial court may not consider evidence outside of the record in making its determination. *866 (citing Eck v. Eck, 475 A.2d 825, 827 (Pa. Super. 1984)). The court additionally stated that a Pennsylvania appellate court can uphold a trial court's order that is based on off-the record facts. *Id.

Disposition: Support order reversed and remanded for determination of earning capacity based only upon evidence of record.

Case name: Wooldridge v. Wooldridge (not reported in NE.2d)

Court: Ohio Court of Appeals

Citation: Wooldridge v. Wooldridge, 2001 WL 838986 (Ohio Ct. App. 2001) Date: July 26, 2001

Procedural History: Ohio court of Common Pleas of Franklin County overruled Appellant's objections to an amended change of custody decision by a magistrate.

Facts: Appellant –husband attempted to submit newly discovered evidence from a school district's website after a hearing concerning the reallocation of parental rights and responsibilities which included findings of fact and conclusions of law. Subsequently Appellant filed preliminary objections and at that hearing orally moved for the submission of the website evidence which was denied. Appellant thereafter submitted a written motion to submit the additional [website] evidence which the trial court overruled thereby denying the motion. Herein Appellant appeals.

Appellant –husband and Appellee –former wife previously established a shared parenting plan. The parenting plan was entered into while both parties lived in Columbus, Ohio. Appellee filed a

relocation notice with the trial court and moved to North Carolina, with the children. Shortly thereafter and as a result of Appellee change of residence, Appellant filed a motion for temporary custody and a motion to reallocate parental rights and responsibilities. During the trial Appellant discovered that the children would attend school in a different school district than previously thought. Based on this newly acquired knowledge Appellant found evidence from the internet that the new school district had a low academic standing with poor chance of improvement. Appellant's attempts to introduce this evidence was denied.

Issue: Whether the trial court's refusal to allow the father to submit critical newly discovered evidence after the trial but before final judgment was err ?

Holding: The Court of Appeals of Ohio, held that the trial court erred in failing to consider the website evidence.

Reasoning: The Court of Appeals of Ohio determined that under Civ.R.53(E)(4)(b) appellant successfully demonstrated that the evidence could not have been presented at the magistrate's hearing. Civ.R. 53(E)(4)(b) provides that new evidence is admitted at the courts discretion unless it can be demonstrated that with reasonable diligence the party could not have produced the evidence. Because Appellant only learned of the new school district at the magistrates hearing Appellant thus could not have produced the evidence before. The court also determined that under Evid.R. 901 the website information was admissible in that it was sufficient to support a finding that the matter in question is what its proponents claim and that Appellant could have authenticated the evidence by affidavit, had the trial court permitted Appellant to submit it. The court ultimately determined that the introduction of website evidence is not precluded as hearsay in that Evid.R. 803(8) provides for the introduction of information from public offices or agencies. The court drew an analogy between the North Carolina Department of Public Instruction, the source of the website information, and Ohio Department of Education as public agencies from which information may be drawn pursuant to Evid.R. 803(8).

Disposition: The Court of Appeals reversed and remanded the case to the trial court for consideration of the evidence.

Lorraine v. Markel Am. Ins. Co., 2007 WL 1300739 (D. Md. May 4, 2007)

This is a good case for the basics on admissibility of electronic evidence.

News Clips & Resources on Electronic Discovery

MySpace is a Treasure Chest for Cases – National Law Journal reports Law Firm searches MySpace & Facebook daily as a defense tool to find info relevant to firm cases.

<http://www.law.com/jsp/article.jsp?id=1192611803361>

Attorney General seeks sex offender data from MySpace:

http://www.usatoday.com/money/economy/2007-05-14-187681679_x.htm

MySpaces reaches accord with US AG:

http://www.usatoday.com/tech/news/2007-05-21-myspace-sexual-predators_N.htm

A PA school principal has filed a lawsuit against four former students, claiming they falsely portrayed him and ruined his reputation

http://www.news.com/2100-1030_3-6174506.html

Electronic discovery "best practices" – Atlanta Injury Law & Civil Litigation Blog

<http://www.atlantainjurylawblog.com/civil-litigation-electronic-discovery-best-practices.html>

5 Articles on Electronic Data Discovery

<http://www.craigball.com/Five%20on%20EDD-August%202006.pdf>

Additional attorney contact source regarding presentation in an abuse case and obtaining a restraining order based on threatening web posting - Attorney Laura Fry, lfry@lafla.org, Legal Aid Foundation of Los Angeles

Reverse DNS Lookup: Every Internet IP address is 'owned' by a internet service provider. By submitting the IP address in a DNS reverse lookup, you can find out which service provider owns that number (or block of numbers). Web sources:

<http://www.networksolutions.com/whois/index.jsp> and www.dnsstuff.com