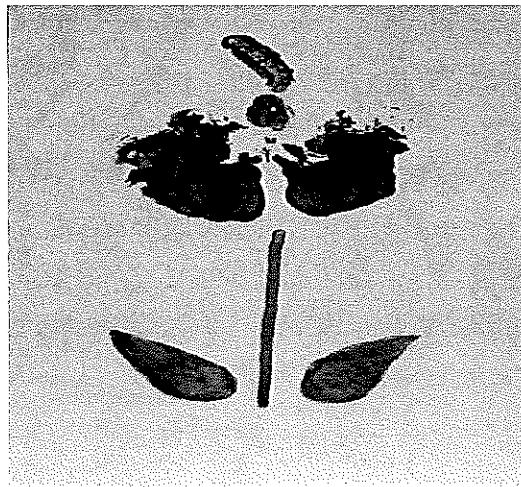


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Signs of the social networking times.

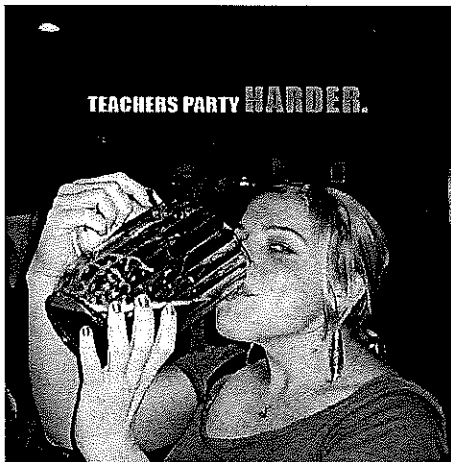
ART TEACHER MARKETS HIS ARTWORK PUBLICALLY ON SOCIAL MEDIA, PROBLEM?



ONCE YOU FIGURE OUT HOW HIS  
"ART" WAS CREATED, PROBLEM?



TEACHER SOCIAL MEDIA PROFILE PICTURES DO  
NOT REFLECT GOOD JUDGMENT, PROBLEM?



**TEACHFORAMERICA**



### **WHAT IF A STAFF MEMBER POSTS:**

- PICTURES OF THEMSELVES IN REVEALING CLOTHING OR INVOLVED IN SUGGESTIVE ACTIVITIES
- PICTURES OF THEMSELVES DISPLAYING A SINGLE MIDDLE FINGER
- PICTURES OF THEMSELVES CONSUMING DRUGS
- PICTURES OF THEMSELVES POSING WITH A STRIPPER AT A BACHELORETTE PARTY

◎ PROBLEM?

### **WHAT IF A STAFF MEMBER POSTS:**

- PROFANITY
- OFF COLOR JOKES
- SEXUALLY EXPLICIT LANGUAGE
- RACIALLY CHARGED LANGUAGE
- REFERENCES TO STUDENTS AS "RETARD" OR WANTING TO "KILL" A DIFFICULT CHILD

PROBLEM?

DO WE AGREE THAT IT IS NEARLY IMPOSSIBLE FOR SCHOOLS  
TO BE ABLE TO TOTALLY SEGREGATE STUDENT AND  
TEACHER SOCIAL NETWORKING USAGE, IF SO...

SOME OF THE AREAS OF CONCERN INCLUDE:

- INAPPROPRIATE RELATIONSHIPS WITH THOSE STUDENTS 'FRIENDED'
- STUDENTS BEING EXPOSED TO AGE INAPPROPRIATE POSTINGS
- LOSS OF PROFESSIONAL DETACHMENT
- DISRUPTION OF THE LEARNING ENVIRONMENT

## **EMPLOYEE FREE SPEECH RIGHTS ARE NOT AS EXTENSIVE AS YOU MIGHT THINK**

THERE ARE TEACHER FREE SPEECH RIGHTS ON LEGITIMATE  
MATTERS OF PUBLIC CONCERN (I.E. SCHOOL SYSTEM  
BUDGET) - PICKERING V. BOARD OF EDUC., (1968)

THERE ARE LITTLE OR NO FREE SPEECH RIGHTS ON  
MATTERS OF SELF-INTEREST (I.E. COMPLAINTS ABOUT  
SUPERVISORS) GARCETTI V. CEBALLOS, (2006)

- THE 4TH CIRCUIT IN A CASE ABOUT A TEACHER'S RELIGIOUS POSTERS HELD THAT TEACHERS ARE PAID TO TEACH THE CURRICULUM; NOT TO EXERCISE THEIR FREE SPEECH RIGHTS  
LEE V. YORK CO. SCHOOL CORP., (2007)
- THE SUPREME COURT IN JUNE OF 2010 IN CITY OF ONTARIO V. QUON, RULED THAT A PUBLIC EMPLOYER COULD REASONABLY SEARCH AN EMPLOYEE'S TEXT MESSAGES SENT ON EMPLOYER PROVIDED COMMUNICATION DEVICES AS PROVIDED UNDER THEIR POLICY.

- SCHOOL SYSTEMS CONDUCT CRIMINAL BACKGROUND CHECKS, CONTACT REFERENCES, AND VERIFY RESUMES
- SHOULD THEY ALSO "GOOGLE" PROSPECTIVE HIRES AND CHECK OUT THEIR SOCIAL NETWORKING POSTS?
- IS E-DUE DILIGENCE A WISE IDEA?

## POTENTIAL LEGAL PITFALLS FOR E-DUE DILIGENCE:

- FAIR CREDIT REPORTING ACT ISSUES IF THE SEARCH IS OUTSOURCED
- DISCRIMINATION CONCERNS AS YOU LEARN THINGS ABOUT RACE, GENDER, NATIONAL ORIGIN, DISABILITY, PREGNANCY, ETC.
- VIOLATION OF WEBSITE USER CONTROLS

## POTENTIAL LEGAL PITFALLS FOR E-DUE DILIGENCE:

- FIRST AMENDMENT SPEECH CHALLENGES
- FOURTH AMENDMENT SEARCH CHALLENGES
- PERSONAL PRIVACY VIOLATIONS OF STATE LAWS
- DEFAMATION CLAIMS IF INFORMATION WRONGLY RELEASED

While there is no prohibition against searching publically accessible portions of an applicant's social networking life and there are even commercial companies selling such services, there are still dangers.

A survey by Jobvite, Inc. shows that more than 80% of employers do check social networking sites for information about job applicants

Another potential impact is a disparate impact discrimination charge. Heavy reliance on social networking sites can result in a job applicant pool that under represents minority candidates as Quantcast reports that minorities are under represented on social networking sites, particularly LinkedIn.



## Maryland's Social Media Privacy Law

This law arose from a case where a prison guard was forced by his supervisor to open his Facebook page so that his postings and those of his friends could be inspected. The ACLU complained to the State and likened the alleged privacy violation to your boss looking through your diary, personal emails or home videos.

## Maryland's Social Media Privacy Law

The Maryland Legislature by a combined vote of 172-10 passed the law barring employers (public or private) from requesting or requiring that an employee or job applicant disclose any user name, password, or other means for accessing a personal account or service through an electronic communications device.

## Maryland's Social Media Privacy Law

This law does permit requiring an employee to disclose user name, password, or other means for accessing non-personal accounts or services that provide access to the employer's internal computer or information systems and it attempts to protect employer proprietary information or financial data.

## Maryland's Social Media Privacy Law

This law also directs that an employer may not discharge, discipline or otherwise penalize an employee for the refusal to disclose any information from a personal social media account or service. The only exception is if the employer possesses information that the employee has wrongly downloaded proprietary or financial data to a personal account.

- EVERYONE HAS AN ACCEPTABLE USE POLICY (AUP AND RELATED POLICIES) FOR THEIR STUDENTS AND STAFF BUT:
- IS YOUR AUP ETC. UP TO DATE?
  - YES, IF IT'S 24 HOURS OLD
  - MAYBE IF IT'S 24 DAYS OLD
  - AND PROBABLY NOT IF IT'S 24 MONTHS OLD

FIVE FACEBOOK COMMANDMENTS  
FOR KEEPING YOUR JOB:

1. THOU SHALL NOT REVEAL EMBARRASSING DETAILS OF YOUR LIFE
2. THOU SHALL NOT POST PHOTOS THAT COULD DAMAGE YOUR CREDIBILITY
3. THOU SHALL NOT BE NEGATIVE, NO MATTER HOW STRONGLY YOU FEEL
4. THOU SHALL NOT THINK YOU AND YOUR JOB ARE PROTECTED
5. THOU SHALL NOT THINK "THEY" ARE NOT LISTENING; STUDENTS OR SUPERIORS

BY RICHARD KRUEGER, *FACEBOOK FOR DUMMIES*

