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Organizational Use of Social Networking in Employment Actions

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ORGANIZATIONAL USE OF SOCIAL NETWORKING IN EMPLOYMENT
ACTIONS

A Thesis
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ACTIONS

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TABLE OF CONTENTS

ORGANIZATIONAL USE OF SOCIAL NETWORKING IN EMPLOYMENT ACTIONS

Cameron Lile   May 2015   Pages 46

Directed by: Amber Schroeder, Elizabeth Shoenfelt, and Reagan Brown

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This study examined federal court cases related to the use of social media websites (e.g., Facebook, Twitter, MySpace, LinkedIn) in various employment practices (e.g., selection, promotion, employee monitoring, layoffs). Court cases were identified using various online databases in an attempt to create an exhaustive list of cases to be used to better understand the role that social media has played in organizational settings and the legal implications of its use. The results of this study show that there were a significant number of cases involving termination and Facebook, and organizations prevailed in court significantly more than the defendant did. The results of this study provide organizations, employees, and applicants with a better understanding of how organizational social media use has been perceived in the court of law, thereby allowing people and employers to make better decisions regarding social media use.

Introduction

Perhaps one of the biggest phenomena to hit the internet within the last ten years is the onset and growth of social networking. A social networking site (SNS) is a dedicated website or application that provides users the ability to communicate within a social media sphere ("Social Network," 2014). Communication within these spheres is driven via photos, videos, and messages. Whereas internet users today see these features as staples to their internet experience, they were once defining features in a shift from what we consider "Web 1.0" to what we now call "Web 2.0" (O'Reilly, 2005). Despite the inferences drawn from using version numbers to categorize this shift, the term does not indicate a change from a technological perspective. Instead, as Lassila and Hendler (2007) described it, this change was a "social revolution" in the way that users view and use the internet. Web 2.0 distinguishes itself from the former as not being a medium for publishing, but as a channel for interaction and participation among users (Lassila & Hendler, 2007).

Whereas SNSs are not the only websites to act as facilitators for this interactive experience, they are among the most popular. According to Alexa, an Amazon-powered global trafficking tool, three SNSs rank among the top ten most visited websites in the world, with Facebook ranking second, Twitter ranking seventh, and LinkedIn ranking tenth (Alexa Internet, Inc.). Facebook, following only behind Google in terms of traffic, consists of one billion users (Piotrowski, 2012), who according to Wilson, Gosling, and Graham (2012), are spending 9.7 billion minutes on the site per day. Twitter, in its own respect, is made up of 500 million users (Saito & Masuda, 2014), whom produce 500 million "tweets" posted a day (Yosef, Hoffart, Ibrahim, Boldyrev, & Weikum, 2014).

This growth in the popularity of social networking has caught the eye of many organizations that, in reaction to the large amounts of data provided by these sites, are seeking a means to harness their use in a multitude of organizational activities such as selection, recruiting, promotion, employee monitoring, and termination. However, the legality of organizations using social networking for these purposes is unclear. Thus far, research pertaining to organizational social media use has focused mostly on examining the number of organizations using SNSs for these purposes and determining the various factors organizations consider when using social networking as a tool and how these factors relate to tools already in use, such as résumés and interviews.

Although many researchers have touched on the potential legal implications of organizations using these tools, no empirical studies have examined federal court cases related to their use. Thus, to understand the legal implications, the current study examined federal court cases related to the use of SNSs in various employment practices. The results of this study will provide organizations with a better understanding of how organizational social media use has been perceived in the court of law, thereby allowing employers to make better decisions regarding social networking use. To do this, this literature review will first begin by discussing the history of the four major SNSs most commonly used today, including MySpace, Facebook, Twitter, and LinkedIn.

A Brief History of Social Networking

Whereas social networking in today's age experiences wide success, in its early onset, this success was met with many skeptics. Such skepticism could even be found among "tech junkies" and leaders in the computing industry. For instance, in 2007, Microsoft CEO Steve Ballmer described social networking as being "faddish in nature"

when speaking with Times Online, going on to describe social networking as appealing mostly to younger people (Gunnison, Cane, Stein, Rich & Barnett, 2007). Although, in hindsight, this skepticism seems misplaced, the history of social networking has a long road and many failures. Friendster is an example of one such failure that gave credibility to skeptics. The first major social networking site, Friendster acquired more than three million registered users within a year of going live, only to be abandoned within two years. (Digital Trends, 2014).

Despite many failures, the four social media sites discussed have seen various levels of success and have helped to shape the online world we see today. The design of these websites, while differing in some aspects, includes distinct features shared among each that set them apart from traditional, non-social networking websites. Ellison (2007) defined SNSs as having three distinct features: (1) the ability to create a "profile," (2) the existence of a list of users with whom to share a connection, and (3) the capability of viewing and communicating with these users.

MySpace

MySpace, founded in 2003, can be described as the first mainstream SNS. It found early success through piggybacking from Friendster, an early but failed attempt at social networking (Ellison, 2007). Due to its rapid growth in popularity, Friendster saw many technical difficulties in maintaining enough servers to serve its user base. These difficulties would escalate by the growing number of "Fakesters," a term used to describe Friendster accounts based off fictional characters, celebrities, group members, or other concepts (Ellison, 2007). The company began to crack down on these accounts, which disgruntled many of the users, particularly indie bands, who were using the site to

promote their music. This discrepancy between the desires of the Friendster user base and the company created tension that materialized in users using the site to suggest alternatives. Among them was the newly created MySpace. Tom Anderson, creator of the site, saw the benefit of welcoming indie bands as a way to attract other users. After rumors of a fee-based system spread throughout Friendster, users began to jump to MySpace at a rapid pace both as a way to find local bands in their area, as well as to stay in touch with their peers. As Ellison pointed out, the SNS was able to find a niche with three types of users: (a) musicians, (b) teenagers, and (c) post-college Friendster users.

In 2005, MySpace was the fifth most viewed internet domain in the United States, and Anderson sold the company for $580 million to News Corp (BBC, 2005). By 2006, MySpace was the most popular SNS in the world (Edosomwan, Prakasan, Kouame, Watson & Seymour, 2011). This social networking stardom would not last, however. In only two years, MySpace would lose its popularity to competitor Facebook, and News Corp would sell the website in 2013 for only $35 million, 6% of its original purchase price (Telegraph, 2014). Rupert Murdoch, CEO of News Corp, would later harness the blame of MySpace's failure by posting on his personal Twitter account, "we screwed up in every way possible," concerning questions he received about the SNS (Barnet, 2012).

Although MySpace's success was short, the design helped lay the blueprint for future SNSs while managing to remain unique from its competitors by allowing a large degree of customization. Users were able to use HTML code to customize the appearance of their profile and were not restricted to the limitations often found by other SNSs (Perkel, 2006). This freedom fostered the development of an entirely new literacy, as users relied on copying and pasting user-generated HTML codes to customize their

MySpace profiles. Another feature unique to MySpace tied in with its music roots; independent bands are able to upload entire .mp3 albums, giving fans the ability to download music straight from the artist's social networking profile. Although other SNSs have yet to replicate these features, MySpace still failed to attract enough users to stay with the website. Today, MySpace maintains its relevance, but only at a fraction of what once was.

Facebook

Facebook, founded by Mark Zuckerberg in 2004, shied away from the MySpace model by targeting a specific demographic. Instead of garnering popularity by being open to anyone, Facebook appealed to college age individuals, specifically to Harvard students, where Zuckerberg was an alumnus. By requiring a Harvard email address to gain access, Zuckerberg was able to use its private, closed structure to provide an intimate and close-knit experience to the user, which quickly grew Facebook's popularity among Harvard students (Cassidy, 2006). Facebook then capitalized on this popularity by branching out to other colleges, followed by high school students beginning in 2005 (Ellison, 2007). By the end of 2005, Facebook was open to any user and soon grew to the social media status it has today.

Although having less customization than its MySpace cousin, Facebook appealed to users by providing a more intuitive design for connecting users with one another. In particular, Facebook's built-in profile allowed more robust features than MySpace could replicate. Whereas both social networks allowed users to create profiles, post photos, and make public statuses, only Facebook combined all of these features into one easy to find area. This feature, deemed the "wall," combined all of the status updates made by the

user's friends and updated in real time. This centralization of content created a sense of community to the user that MySpace could not achieve. Whereas on MySpace a user would have to go to each friend's page one at a time, Facebook was one click away from providing the user with everything he or she needed. Although Facebook's design has changed multiple times throughout its history, the wall feature remained a staple selling point and has become a necessity for those looking for the social networking experience.

In 2009, Facebook added a major new feature to the Facebook wall that allowed a new way for users to express themselves. This feature was the "like" function (Musil, 2009). This function gave users the ability to "like" statuses (i.e., personal messages made by the user on his/her page) or shared content of other users that they enjoyed. By "liking" content on a person's page, the person receives a notification. Many internet sources would soon implement this feature to their own websites, leading to an easy form of advertisement. For instance, after reading a news article on CNN, one can easily click a button straight from the article that shares the article on the person's Facebook wall, allowing every friend of the user to see the content. These friends can then like or share the content on their own page. With its continual additions of new features, and its already strong hold on the social networking market, Facebook's continued growth does not appear to be stopping anytime soon.

Twitter

Twitter made its mark on the SNS world in 2006, offering a service completely different from that of Facebook. Whereas Facebook and MySpace aimed at providing more features, Twitter was designed to offer fewer. Instead, it focused on simplicity. Jason Kottke, a famous blogger and web designer, coined the term "microblogging" to

describe Twitter (Java, Song, Finin & Tseng, 2007). Microblogging is described as a short status distributed via instant messaging, mobile phones, email, or the web. Twitter, in particular, forces microblogging by only allowing users 140 characters in each post. By keeping this limit on the amount of text available, Twitter is able to provide a different type of experience to users by tracking keywords posted as "hashtags" to follow trends in what people post. A hashtag, as described by Twitter's own website (twitter.com), is denoted by the "#" symbol and was created organically by Twitter users. By providing a key word or point after the "#" symbol, users are able to categorize posts. The data that hashtagging provides allows for a unique experience that SNSs like Facebook are unable to provide, which has contributed largely to the success of the website.

Perhaps Twitter's biggest appeal, however, is a different kind of social connection. Whereas MySpace and Facebook have "friends," Twitter has "followers." Following another user provides a feature similar to that of other SNSs, but differs in that it is often not backed up by a "real world" connection to the person. The best example of this may be the use of celebrity Twitter accounts. Whereas celebrities use Facebook as a private means of communication among real world friends, Twitter is often used as a way to promote and express oneself to the public. The ability to follow celebrities provides a way for users to keep up to date and communicate easily with their favorite movie and television stars, book authors, talk show hosts, politicians, and various other persons with claims to fame.

Whereas Twitter's ability to mix the celebrity world with the "real world" has been vital to its success, another major drawing point of the website is its ability to

provide news and general information quickly and efficiently. Twitter's large user base acts as an "organic" news source tailored to the user's specific needs and interest. One can use Twitter to follow only the people, groups, or things they are interested in, which then update in real time with new pieces of information and events pertaining to those interests. Reactions to events in the real world are immediately expressed and measureable through the hashtagging system. News organizations are aware of this and now use Twitter to gauge public opinions in ways once impossible. The simplistic but effective features of Twitter make it one of the most prevalent SNSs on the market today.

LinkedIn

MySpace, Facebook, and Twitter have met the need for social connection with friends, family, and the public, but their biggest weakness is LinkedIn's biggest strength: networking with the professional world. Created in 2003 by Reid Hoffman and founding members of PayPal and socialnet.com, designed LinkedIn with organizational networking in mind. It boasts having the largest professional network on the internet with more than 313 million members in over 200 countries (linkedin.com)

Even though LinkedIn began in the same year as MySpace, growth was slow and steady. With as few as 20 members a day signing up for the LinkedIn service in its early years, the professional website still managed to maintain its vision for a business-oriented social network (Yeung, 2013). The persistence of the LinkedIn team paid off; by 2005, 1.7 million professionals were using the site and were attracting the attention of major investors. The most notable of these investors was Sequoia Capital, which made an early investment in the company, and by 2011 would amass a holding worth $2.5 billion (Levy, 2011).

As mentioned earlier, LinkedIn was created with the professional worker in mind, and its design choices have reflected this idea. In the beginning of its life, LinkedIn was designed to host the résumé of the user and allow business colleagues to leave recommendations and provide credibility to the user (Yeung, 2013). However, LinkedIn soon grew into more of contact relationship manager, allowing users to network with professionals all across the world. Instead of Facebook and MySpace's usage of "friends" and Twitter's "followers," LinkedIn opted to use "connections," and, as such, has built itself around the old adage of "it's not what you know, it's who you know."

LinkedIn is evidence that users can bridge the gap between the "social world" and the "business world." As discussed previously, organizations also have been attempting to bridge this gap by using social networking as a tool in various employment decisions. The types of decisions organizations are using SNSs for will be further explored below.

Organizational Social Media Use

The most common use of social media by employers is using SNSs as a selection tool in the hiring process, most typically as a means to screen applicants through reviewing the applicant's user profile. For instance, research conducted by Kennedy and Macko (2007) found that 27% of employers had used either Google or SNSs to screen their applicant pool. Four years later, similar research saw this number double to 45% (Davidson & Maraist, 2011). Likewise, MacLeod (2011) conducted research looking at 300 hiring professionals and found that 91% of these professionals reported using SNSs in evaluating applicants. Of these, 69% reported rejecting an applicant because of profile content deemed "unacceptable." From this trend, it is clear that a growing number of organizations are using these tools in their selection practices.

9

Whereas selection seems to be the focus of most organizations using social media, termination and employee monitoring also appear to be a common use of SNSs. As noted by Davison, Maraist, Hamilton and Bing (2011), however, there has been little research on how employers are using SNSs for these purposes. Judging by anecdotal evidence and the details of recent court cases, it is clear that organizations are using SNSs for both monitoring employees and for evidence in termination cases. Notably, although few researchers thus far have conducted studies on employee monitoring via SNSs, there is a growing amount of research on how employees perceive potential "friend invites" from their employers. Evidence from Horowitz (2008) suggest that whereas people agree it is acceptable for a manager to accept a friend request from a subordinate, it is not acceptable for that manager to initiate the friend request. Likewise, Skeels and Grundin (2009) found that when people are uneasy about being friends with an employer, they usually self-monitor or limit the types of things they post on their wall. In this way, people are participating in impression management when their social network mixes with their professional network. Persons in management positions have likewise reported unease with friending those with whom they work. In a survey conducted with 100 senior executives, 72% reported being uncomfortable with friending people whom they have managed (Karl, Peluchette, & Schlaegel, 2010).

It has yet to be determined if LinkedIn may solve these issues by providing a safer means of connecting with colleagues. As LinkedIn grows in users, we may see those in the professional world stay with LinkedIn as their SNS of choice for employee relationships, while maintaining their Facebook/MySpace/Twitter network for friends. Binder, Howes & Sutcliffe (2009) conducted a study that looked at the tension created by

mixing and separating these social spheres. They found evidence to suggest that most online tension was a result of social spheres overlapping, implying that tension occurs between and not within spheres.

The last use of SNSs within organizations has been the development of using social networking for recruiting purposes. The Society for Human Resource Management (SHRM) has conducted several studies on recruiting practices. In 2008, 34% ($n=128$) of organizations surveyed were using SNSs as a recruiting tool. In 2011, this number jumped to 56% ($n=277$). Of those using SNSs for recruiting purposes, SHRM found that 95% were using LinkedIn, 58% were using Facebook, 42% were using Twitter, and 3% were using MySpace. The number of managers who believed SNSs were an efficient tool for recruitment saw a significant increase between 2008 and 2011, increasing from 13% to 58%, respectively.

Validity of Using Social Networking

With organizations beginning to capitalize on the use of SNSs, one must question whether there is some validity in using these new tools. Unfortunately, with social networking being a relatively new phenomenon, researchers have had little time to catch up on the rapidly changing trends of organizational social media use. To date, there is no research that links job performance to content on a person's SNS. There is, however, a growing amount of research relating SNSs to other psychological concepts. The most prevalent of these research trends is relating social networking behavior to personality traits.

In one such study, Ivcevic and Ambady (2012) broke Facebook into multiple categories, including pictures, music, interests, and books, and seven raters rated a group

of participants' Facebook pages on how each category related to the Big Five personality traits. Rater scores were then correlated with the scores given by the Facebook user's friends. Out of all the categories, pictures followed by quotes showed the highest correlation between the scores of the raters and the scores from the friend-reported data (ranging from $r = .43$ to $r = .66$). Interrater reliability showed substantial reliability among many of the categories. Extraversion exhibited a mean Cronbach's alpha of .78, and agreeableness and conscientiousness each exhibited a mean Cronbach's alpha of .68. Unfortunately, the small number of raters (i.e., seven), limited this study, so the question arises as to whether these results generalize to the real world.

In a later study, Kluemper and Rosen (2009) increased the number of raters but decreased the number of Facebook profiles rated. Sixty-three participants were trained extensively in how to conduct the ratings. These 63 raters looked at six Facebook profiles, three of which were women and three of which were men. These raters rated the six profiles based on the Big Five personality traits, as well as cognitive ability and predicted GPA. Intraclass correlation coefficients (ICC) assessed interrater agreement. The results were pretty astonishing; the ICCs ranged from .93 to .99, showing substantial agreement among the sixty-three raters. The ratings given were less than substantial, however. While raters were able to accurately distinguish between the highest performers and the lowest ones (in terms of GPA), they were only able to do so by a small margin. This means that the raters were not able to distinguish accurately between the four middle scores. This could be a problem for employers if this study is indicative of a trend among using Facebook in hiring practices. If raters can only distinguish between the very best candidates and the very worst, there is a large amount of missing information that

Facebook cannot provide the raters. However, as discussed earlier, if organizations want to use SNSs as a screening tool for applicants, this research does show some validity in distinguishing these outliers.

From both Ivcevic and Ambady (2012) and Kluemper and Rosen (2009), we can see that raters are relatively consistent on the ratings being made based on Facebook pages, especially in regard to pictures. Whether a Facebook user's pictures will affect their job opportunities is not determined. To look further into what pictures are posted on these SNSs, Hum et al. (2011) examined five different aspects of a person's pictures uploaded to their profile. The five aspects were number of photos, physical activity, candidness, appropriateness, and number of subjects. It was found that 86% of the 150 participants had 21 or more pictures in their profile folder, 7.3% had between 11 and 20, 5.3% had between one and 10, and one person (.7%) had an unknown amount. Forty-two percent of the pictures consisted of only one person, 82% of the pictures had individuals who were doing no physical activity (e.g., standing, sitting down, or any behavior not in motion), with 76% being in a posed stance. Perhaps the most important statistic from this study was that 86.7% of the pictures were found to be appropriate, 12% were moderately appropriate, and 1.3% were put in the "other" category whose profile photos consisted of only logos or words. There were no pictures found to be inappropriate. However, no information was provided on the criteria used to determine appropriateness. If employers focus more on a user's pictures when looking at Facebook, this study would suggest that there might not be much variability in picture appropriateness.

Considering the widespread use of interviews for selection, a high correlation between judgments of a person in the "virtual world" and judgments of a person in the

"real world" may provide some validity for using these tools. Weisbuch, Ivcevic and Amabady (2009) found that real world first impressions and impressions made through Facebook have a positive correlation ($r = .33$). Thirty-seven participants were brought in and introduced to one of six confederates who were trained to interact naturally and consistently in each interaction. They were given four minutes to interact with the participant with the goal of rating him/her on several dimensions. The Facebook pages of these participants were then rated by ten undergraduates from a nearby private university on likeability (inter-rater reliability = .79), the extent to which they would want to be friends with the target person (inter-rater reliability = .73), the target's attractiveness (inter-rater reliability = .85), and their trustworthiness (inter-rater reliability = .75), coefficient alpha for the four items was .85. The results showed that webpage expressivity (i.e., the number of photos, wall postings, albums, and friends) correlated with positive impressions based on Facebook pages (i.e., $r = .61$) in much the same way that real world first impressions correlated with non-verbal expressivity (i.e., $r = .34$). If first impressions have high consistency across face-to-face and web contexts, as this study suggests, there may be a use for SNS evaluations in employee selection contexts.

  With the current research on judging personality factors based on SNSs, some have concerns regarding the ability of the applicant to fake certain personality traits on their SNS. Whereas these concerns may prove to have validity, the harsh reality of the situation is that no research has been conducted to determine if applicants can fake personality factors via their SNS, although the related research that exists does appear to be promising. Two studies, Krämer and Winter (2008) and Schlenker (1982), have been consistent in asserting that people tend to present themselves more truthfully to larger

audiences. Grieve and Elliot (2013) found that participants perceived faking to be easier in an online context compared to the real world, but the researchers found no significant difference in intentions to fake online compared to offline. However, given the large amount of research that shows that applicants fake résumés, bio data, and self-report measures (Birkeland, Manson, Kisamore, Brannick, & Smith, 2006), organizations should be wary that the same desire to fake personality factors offline may also exist online for individuals who want to appear desirable in the eyes of employers.

Given the current research, it is clear that there is no consensus on the effectiveness of organizational SNS use. Given the lack of validity for these tools, especially concerning actual measures of job performance, it may be very risky for organizations to use these tools in their current state. In addition, as organizational SNS use may have important legal implications and privacy concerns, these issues will be discussed below.

<div align="center">**Legal Implications and Privacy Concerns**</div>

Currently, there are no federal laws concerning the use of social networking by organizations. On a state level, however, we are beginning to see this legislation take form. In 2012, 14 states introduced legislation prohibiting employers from requesting or requiring employees or applicants to disclose a username or password for a personal social media account. Four of these states (i.e., California, Illinois, Maryland, and Michigan) enacted this legislation by the end of the year. To date, twenty states now have legislation regarding the disclosure of personal social media account information, with nine states with legislation still pending.

Although this legislation is a step towards stricter privacy laws with regard to social media, it is important to note that these laws only affect the disclosure of personal account information. This is an important distinction, as organizations are still within their rights to obtain and use information from a person's SNS as long as this personal account information remains private. This means that any public SNSs are still within the right of the organization to be used. Due to the narrow scope of the law, even private accounts can still be accessed via measures that are more creative. As early as 2006, when Facebook required a college email address, some companies were hiring students to gain access to their peers' profiles (Brandenburg, 2008). Now, without the need of a college email, such practices have become easier. Organizations can have a human resource manager create a Facebook account and then require the applicant or employee to befriend this person (McFarland, 2012). However, this method does have some limitations and is not a guaranteed way of acquiring all of a person's profile information. By using the built-in privacy features of Facebook, the user can control what information is available to specific friends by adding them to a restricted list to limit what the person can see. Nonetheless, these privacy features are often overlooked and may or may not prove to be effective in preventing all of a person's sensitive information from being seen. Due to these limitations, even states that have enacted social networking privacy laws are not providing full protection for the employee or applicant, as it is made clear from the examples that organizations are still capable of obtaining profile information without the need of a person's username and password.

Whereas these protections may grow to encompass some of these shortcomings in the future, there is yet another gray area about which some employees and applicants

should be wary. State laws may protect persons working within the private sector, but whether these laws will be able to protect state employees is yet to be determined. Kennedy and Macko (2007) discussed a case of a Louisiana State University student applying for an internship with a state agency. This student made his Facebook profile private before searching for employment, but during his interview was unexpectedly asked about information found on his profile. According to the interviewer, as a state agency, the recruiters were able to access his Facebook account by going through the PATRIOT Act (Kennedy & Macko, 2007). With federal laws like the PATRIOT Act in place, whether state agencies are required to abide by their own state laws cannot be assumed. Therefore, although some states provide limited protection for SNS users, the legal ramifications for organizational social media use in employment decisions is unclear. As time passes and SNS use by employers increases, we can expect to see a legal precedence begin to take place; but, until such legal recourse is established, both potential and current employees, as well as employers should remain wary of SNSs as a selection and decision making tool.

Further studies on privacy concerns regarding organizational SNS use prove to be just as discouraging. In a study done by George (2006), the researchers found that one-third of students felt the practice of Facebook evaluation by organizations was unethical, with the main concern being that information found on a person's profile could be taken out of context or just simply misunderstood by the employer. In this study, 42% of students said that companies using Facebook to make hiring decisions was a violation of privacy, whereas only 21% of employers felt the same (George, 2006). This study is congruent with findings from Deloitte (2009), who found that 53% of employees

considered it "none of the company's business what was on their SNS," whereas 60% of business executives felt they had "the right to know" how employees portray themselves and their organization online. The evidence suggests a disconnect in what employers and employees perceive as fair.

The Current Study

As mentioned previously, the purpose of the current study is to provide some insight into the legal trends regarding organizational SNS use to aid organizations in better understanding the current legal environment. This was done by reviewing federal court cases (Appendix A) involving the use of social media by organizations to examine if a legal precedent exists.

To understand the potential legal risks of using social media in employer decisions, it is first important to discuss the general factors associated with litigation. Manheim, Moore, Grunberg, and Greenberg (2003) found that organizational commitment predicted post-termination commitment and the perception of procedural justice in the layoff process. This suggests that the actions of the employer during both the employee's time with the organization and during the time of termination are important in enhancing or diminishing long-term commitment post-termination and this commitment is predictive of litigation against the organization. Likewise, Wanberg, Gavin, and Bunce (1999) found evidence that suggests negative affect towards an organization and perceptions that one's termination was unfair are associated with a greater likelihood of litigation. Bies and Tyler (1993) further suggested that the most important factor in determining the likelihood of a lawsuit is the fair or unfair treatment of the employee during the termination process.

From this research, it is clear that organizations should be concerned with the sensitivity of termination. If the means or reasons for terminating an employee are sensitive in nature, then it may be very difficult for the organization to avoid high levels of negative affectivity and possible backlash. According to Carter (2011), the most common feelings associated with termination from a job mirror those associated with the loss of a loved one, the most typical of which include denial, shock, sadness, anxiety, and anger. This further suggests the importance in diminishing the effect of these negative feelings. For organizations that use SNSs to monitor employees, and use information found on these sites as a reason for termination, reducing these feelings may prove to be very difficult. Further research on the relationship between termination and social networking needs to be conducted, but the inferences drawn from this study should cause organizations to reconsider the use of SNSs in monitoring employees.

Due to the increase in likelihood of litigation by terminated employees when procedural justice is violated, the sensitivity of termination and the perception that organizational use of SNSs in employment practice contexts is a violation of privacy, the following is hypothesized:

Hypothesis 1: There will be a higher frequency of organizational SNS cases involving termination compared to any other single type of employment practice.

Next, because multiple SNSs are being examined, relationships between individual SNSs and federal court cases can be examined in further detail. First, it will be beneficial to know which SNSs are more frequently discussed in court cases. Based on the difference in popularity, it is expected that the most popular SNSs, in terms of number of users and amount of user activity, also will be the SNSs used most often in

organizational activities concerning both employees and employers. Therefore, it is

expected that the most popular SNSs also will be the most prevalent in court due the

higher likelihood of organizational activity occurring. Based on research previously cited

by Alexa.com, among social networking websites, Facebook is the most visited, with

Twitter being the second most visited. Comparing research previously cited by

Piotrowski (2012), and Saito and Masuda (2014), Facebook was reported to have twice as

many users compared to that of Twitter (one billion compared to five hundred million).

Due to this difference in popularity, the following is hypothesized:

> *Hypothesis 2:* There will be a higher frequency of organizational SNS cases
>
> involving Facebook than any other single SNS.

In addition, in terms of the SNSs being examined, it will be beneficial to know

which SNS most often results in the defendant (i.e., the organization) prevailing in court.

Considering the social and organizational aspects of each of the SNSs, it is clear that the

primary focus of Facebook, MySpace, and Twitter is toward a social context. LinkedIn,

on the other hand, is built with the organization in mind. Users of LinkedIn not only

expect, but also desire organizations to look at their profile as a means to increase their

professional network. Likewise, comparing the design of each, LinkedIn is built similar

to a résumé, whereas the three aforementioned sites promote social interaction among

friends and family instead of organizations. Given that the purpose of LinkedIn is for

organizational use, and it is more job relevant than Facebook, MySpace, and Twitter, the

following is hypothesized:

Hypothesis 3: The defendant (i.e., organizations) will prevail more often than the

plaintiff (i.e., individuals) in court cases involving LinkedIn than any other

individual SNS.

Next, it is important as both an employer and individual to know the likelihood of

prevailing in court when litigation involving any SNS use occurs. To the author's

knowledge, this is the only study to examine federal court cases involving organizational

social media use in employment decisions. Thus, previous research in this regard cannot

be examined. However, multiple studies have examined the general likelihood between

individuals and organizations prevailing in court. This research provides a context for this

study that can be applied with social media in mind. Songer and Sheehan (1999) stated

that in general, the likelihood of success in court systems tends to stem from the top

down, with governments finding more success in litigation than organizations, and

organizations finding more success than individuals do. Galanter (1974) provided more

insight on this matter by breaking groups into "haves" and "have-nots." Haves are

described as those with superior material resources who are advantaged in a multitude of

ways. Namely, they have the resources to hire better legal representation, a greater ability

to incur the expenses of court costs, and are more likely to be "repeat players," which

refers to their substantial litigation experience and, thereby, greater experience in

developing and implementing strategies used in court to increase their probability of

success.

When applying this knowledge to the current study, it can be assumed that

individuals who sue an organization for using information based on their SNS content are

less likely to be "repeat players" compared to that of the organization. It also is assumed

21

that an organization will have superior material resources compared to that of an individual. Based on these assumptions, the following is hypothesized:

Hypothesis 4: The defendant (i.e., organizations) will prevail in court more often than the plaintiffs (i.e., individuals) in organizational SNS cases.

Finally, it is important to determine if other factors may be affecting the likelihood of which party prevails in court. One such factor at play is the presence or absence of a formal social networking policy within the company. Persons within Human Resource positions have discussed the benefits and importance of having formal policies, with a number of Human Resource-oriented websites (e.g., SHRM.org, hrcouncil.ca, bizfilings.com) providing advice on formal policies. SHRM.org, the Society for Human Resource Management website, states that to avoid litigation, organizations must be proactive and ensure that employment practices follow formal policies. The website hrcouncil.ca states that a formal policy can provide protection against employment claims and support fairness. Likewise, the website bizfilings.com also advises on the importance of having formal policies, stating that having a formal policy, even when not required to, can protect a business from litigation. Because multiple Human Resource websites discuss the importance of having formal policies and because formal policies provide better protection for the organization, it is hypothesized that having such policies will benefit organizations in SNS court cases.

Hypothesis 5: Organizations that have formal social networking policies in place will prevail in court more often than organizations that do not.

Method

Court cases were pulled from both Google Scholar and LexisNexis databases using the following keywords: "Facebook," "MySpace," "Twitter," "LinkedIn," and "Federal Court" to search through the federal court level for cases pertaining to these types of social media. Each case was categorized by the researcher as either relevant or irrelevant based on its relevance to organizational employment practices. Cases categorized as relevant were coded by a team of three graduate student researchers in the Western Kentucky University Industrial/Organizational Psychology program using the coding scheme presented in Appendix B.

This coding scheme was created for this study based on factors considered to be the most relevant and important according to the researcher literature. Descriptive information for the case (i.e., if tried in court, settlement information, which party prevailed) was included to provide a better understanding of the process and outcome of said case. The social media website used by the organization was coded to determine if there was a significant difference between individual SNSs within the court of law, as this information could be important for organizations using these SNSs currently or who are considering their use in future employment practices. As such, employment practice was also included to provide further valuable information for employers, as well as to differentiate between which practices are more at risk than other practices. Although federal court cases were used, geographic information was included to control for potential differences in state interpretations of federal law. Including a coding variable for formal social networking policies provided information on a potential moderator variable that organizations may want to consider when using SNSs for employment

23

practices. Finally, to control for various other factors that may be playing a part in the outcome of an individual case, a coding variable for the role of SNSs was added to differentiate between cases in which SNS use played a primary role versus a secondary role. This was done to get a more accurate view of the relationship between SNS use and the outcome of the court case. To ensure consistency among coders, inter-rater agreement was examined. For cases with less than 100% agreement, the case was read again by the researcher and a decision was made.

Results

Using the keywords "Facebook," "MySpace," "LinkedIn," and "Twitter" and sorting by federal cases only, a combined 1,978 cases between LexisNexis and Google Scholar were found. After reviewing these cases, 26 were deemed relevant to the study. Twenty-two of 26 cases were from district courts while four cases (Rodriquez v Walmart Stores, Debord v Mercy Health Systems of Kansas, Graziosi v City of Greenville Mississippi, OSEI-WUSU v Holder) came from circuit courts. These 26 cases were then coded by three graduate researchers and checked for reliability. Fifteen of 26 cases (57.6%) had 100% agreement across all features. Eight of 26 cases (30.7%) contained one feature in which there was not full agreement and three of 26 cases (11.5%) contained two features in which there was not full agreement. If a case did not have 100% agreement across all coding features, it was read again, and the researcher made a decision. For each dispute that occurred, two researchers agreed and one disagreed. There were no instances where all three researchers had a different rating. A summary table of the completed ratings for each individual case can be found in Appendix C. After all cases were coded, the data were then analyzed using a Z-test for proportions for

independent samples. The equation for this analysis can be found below:

$$z = \frac{\frac{r_1}{n_1} - \frac{r_2}{n_2}}{\sqrt{\left(\frac{r_1 + r_2}{n_1 + n_2}\right)\left[1 - \left(\frac{r_1 + r_2}{n_1 + n_2}\right)\right]\left(\frac{1}{n_1} + \frac{1}{n_2}\right)}}$$

Where:

r_1 is the number of people in Group 1 who meet the criteria for success.

n_1 is the total number of people in Group 1.

r_2 is the number of people in Group 2 who meet the criteria for success.

n_2 is the total number of people in Group 2.

For Hypothesis 1, it was stated that there would be a higher frequency of cases involving termination compared to any other single employment practice. Twenty-two of 26 cases (84.6%) involved organizations in termination lawsuit cases. One case (3.8%) involved an employee being passed up for promotion (i.e., Barella v. Village of Freeport), one case (3.8%) involved employee monitoring (i.e., Ley v. Novelis Corporation), and two cases (7.6%) involved the "other" category, with one case involving a termination of an advertising contract (i.e., Rashard Mendenhall v. Hanesbrands, Inc.) and one case involving an employee suspension (i.e., Jenyé Viki Knox v. Union Township Board of Education). Using the Z-test for proportions, termination was compared to the next highest category (other) and Hypothesis 1 was supported ($z = 5.52$, $p < .05$).

For Hypothesis 2, it was stated that there would be a higher frequency of court cases involving Facebook than any other single type of social media. It was found that 24 of 26 (92.3%) relevant cases involved Facebook as the SNS used. One case (3.8%) involved Twitter (i.e., Rashard Mendenhall v. Hanesbrands, Inc.) and one case (3.8%)

involved MySpace (i.e., Jenyé Viki Knox v. Union Township Board of Education).

Comparing Facebook to one SNS, Hypothesis 2 was supported ($z = 6.39$, $p < .05$).

For Hypothesis 3, there were no LinkedIn cases; therefore, no comparisons could be made. For Hypothesis 4, it was predicted that the defendant would prevail more often than the plaintiff would. The defendant prevailed in 22 of 26 cases (84.6%). Thus, Hypothesis 4 was supported ($z = 5.036$, $p < .05$). Finally, Hypothesis 5 stated that organizations with a social media policy would prevail more often than organizations that did not have a policy in place. Out of eight court cases in which a social media policy was present, six of them prevailed in court (75.0 %). Eighteen cases involved organizations without a social media policy and 16 prevailed in court (88.9%). Thus, using the z test for proportions, Hypothesis 5 was not supported ($z = -.628$, $p > .05$).

Discussion

It should first be addressed that although there was an initial high pool of cases that involved the key terms "Facebook", "MySpace", "LinkedIn", "Twitter", and "Federal Court" out of 1,978 cases, only 26 were deemed relevant to the current study. The most frequent reason that cases were determined to be irrelevant was the lack of organizational use. Many cases appeared due to the social media key term, but many of these cases involved criminal disputes, custody battles, cases involving fraudulent trademark infringement, cases against the social media site, or lawsuits brought between two individuals in which the SNS of the defendant was used as evidence. For example, a court case may involve a shooting in which pictures of the defendant's guns posted to his/her Facebook page were brought in as evidence. Custody battles frequently involved messages sent from the mother or father that were used as evidence as to who should get

custody of the child. Trademark infringements generally involved the use of pictures or advertisements on a social media site that infringed upon a trademark claim held by the plaintiff. These types of cases made up the bulk of the search but were not relevant to the present study and therefore were not used for coding purposes.

As for cases that were determined to be relevant, it is clear from the data collected that Facebook was the most active SNS in terms of court appearances. Twenty-four of 26 cases deemed relevant involved the use of Facebook as the SNS in question. This supports Hypothesis 2, which theorized that the popularity of Facebook would be more appealing to organizations and, consequently, would create more opportunities for legal ramifications. However, the degree to which Facebook appeared in court over other social media sites came as a surprise. Was Facebook the SNS brought to court due solely to its popularity, or could Facebook also be more susceptible to lawsuits compared to other social media?

It can be speculated that a large degree of the variance was indeed due to the popularity of Facebook as a social media leader. As discussed earlier, Amazon's Alexa service rates the website as number two in terms of traffic across internet users in the United States (Alexa Internet, Inc.). However, Twitter and LinkedIn also ranked in the top ten. It is possible that the difference between these rankings is larger than it first appears. Looking at the user base alone as a measure of popularity, the numbers from Piotrowski (2012) and Saito and Masuda (2014) show that Facebook has twice as many users as Twitter (one Billion versus 500 million, respectively), which could explain the discrepancy in popularity among organizations. However, there are conflicting reports

from SHRM that 95% of organizations within their study were using LinkedIn for recruiting, as compared to 58% for Facebook and 42% for Twitter.

These numbers bring about interesting alternative explanations for the high number of Facebook court cases. It could be speculated that each SNS has its own purpose to the organization. It is reasonable from an organizational perspective that LinkedIn would be used for recruitment or selection purposes, as the main objective of the website is to be a networking tool with organizations in mind. It could be then, that whereas LinkedIn serves more of a purpose for recruitment and selection, it may not provide much information on employees already working within the company. Organizations may instead look to Facebook to monitor employees, as it provides more information to the observer with status updates, pictures, and social activity. Twitter, while having a large user base, has more anonymity for the user, as well as a limited space for status updates and limited use of photos. Because of this, organizations may not want to use Twitter to find information that could lead to termination. Therefore, a combination of the overall purpose and design of Facebook along with its popularity may make it both more appealing to organizations but also more susceptible to lawsuits. The limited sample of cases means that more research should be done to determine if these plausible explanations hold true, but it does provide some insight into the legal concerns regarding organizational SNS use.

For the employment practice most commonly brought to court, Hypothesis 1 was supported. Termination made up 22 of the 26 cases (84.6%). As hypothesized, this could be due to the combination of the sensitivity of termination in terms of negative feelings associated with losing a job (Carter, 2011), feelings of procedural injustice (Bies & Tyler,

1993; Manheim, Moore, Grunberg & Greenberg, 2003; Wanberg, Gavin & Bunce 1999), and feelings of privacy invasion (Deloitte, 2009; George, 2006). Evidence from George (2006) and Deloitte (2009) suggest there is disagreement between employers and employees on the fairness of using SNSs in organizational decisions. In the former study, 42% of students found Facebook as a violation of privacy compared to only 21% of employers. The latter study had 53% of employees stating that it was "none of the company's business" what was on their SNS while 60% of employers stated they had the right to know. Examining termination cases in further detail supports this disconnect between employers and employees. Of the 22 cases involving termination, 18 involved organizations terminating the employee over information found on a social media site, while four involved an employer terminated due to being on a SNS site at work. These numbers suggests that employers thought they had the right to know about information on the employee's SNS and this information ultimately led to termination of the employee. Taking into account that feelings of procedural injustice lead to more lawsuits, it is reasonable to speculate that former employees who have been terminated due their social media account feel as if they have had their rights violated in combination with feeling as if the process of their termination was not fair. These variables could lead to increased negative affect and lead to an increased chance that these former employees will take action against the organization.

However, it should be noted that if negative affect, feelings of procedural injustice, and feelings of privacy invasion exist for terminated employees, is it not also possible that these same variables could be present for persons involved in other employment practices such as selection, employee monitoring, and promotion? If so, why

do these same variables not cause a higher chance of litigation in these practices as well? It can be assumed that an applicant not selected, an employee being monitored, or an employee not being promoted would still have high negative affect, a feeling that the procedures in place for these practices were not just, and that their privacy was invaded. These assumptions lead to a need for alternative explanations for why termination has an increased risk of litigation when other employment practices do not. One possible explanation is that employment practice acts as a moderator variable affecting the relationship between negative affectivity, procedural injustice, and privacy invasion and the probability of lawsuits. For example, for a court case to evolve from a selection dispute, it would require the distressed applicant to have inside knowledge that their SNS was used in the selection process. If the use of social media is not disclosed by the organization, there may be no way for an applicant to know that their SNS led to them being passed over as a candidate for the position. Even if an applicant has knowledge that SNSs are being used as part of the selection process, the organization does not have a reason to make it known to the applicant that it caused a dismissal of the applicant. Therefore, even if it is possible that a failed job applicant may feel the same negative affect, feelings of procedural injustice, and feeling of privacy invasion as the disgruntled former employee, these feelings may never get the opportunity to manifest due to the applicant never possessing the knowledge that it even occurred.

This also could help explain the lack of cases involving LinkedIn and recruitment, neither of which had a case relevant to this study and made it impossible to examine Hypothesis 3. As discussed, LinkedIn may be involved primarily in the recruitment process as a way to increase an organization's applicant pool. LinkedIn is an interesting

case, however, as viewing a LinkedIn profile notifies the person with the account that their profile was viewed. However, contrary to goals of many Facebook users, users of LinkedIn desire their profile to be viewed by members of organizations. This desire to be seen by organizations inhibits responses of privacy invasion and procedural injustice.

For recruitment to be a source of litigation for other SNSs, in which feelings of injustice may be present, it would have to be known to the profile owner that his/her profile was searched. In addition, it would have to cause enough negative affect for the person to seek legal recourse. These criteria are difficult to achieve. In the same way that an applicant would be unlikely to possess knowledge of selection procedures, a person not yet in an organization's applicant pool would possess even less knowledge that this was occurring, as Facebook, Twitter, and MySpace do not have any features in place for a person to see who has viewed their profile. Thus, LinkedIn and recruitment do not possess qualities that could increase the possibility of litigation.

For litigation that has occurred, Hypotheses 4 and 5 looked at the probability of the plaintiff or defendant winning the case. Hypothesis 4 stated that defendants (i.e., organizations) would prevail in court more often than plaintiffs (i.e., individuals). This Hypothesis was supported. The reason for this occurrence was suggested to be caused by an increased amount of resources that "haves" (those with a greater ability to incur court costs) possess compared to "have-nots" (those with less of an ability to incur court costs) (Galanter, 1974) and the higher probability of organizations prevailing against individuals in cases not associated with SNSs (Songer & Sheehan, 1999). The data support these conclusions. However, perhaps a more interesting finding relates to Hypothesis 5, which was not supported. It was expected that organizations that have a

formal social media policy should be at an advantage compared to organizations that do

not. The data failed to provide support for this reasoning. Both Organizations with and

without formal policies lost two cases. Because there were more data for organizations

without formal policies, the percentage of cases won was higher than for cases that did

not have formal policies. Thus, data reflected a negative relationship, such that having a

formal policy lowered the chance of succeeding in court. However, this relationship was

not significant, and inferences from these numbers cannot be made. It is likely there is

not enough statistical power to determine whether formal policies provide organizations

with more power in court. Given a reasonable theory that formal policies should provide

more protection (not less) and the minimal cost for having such a policy, it would not

hurt organizations to implement these policies as a precaution, especially if the

organization wishes to use SNSs in organizational decisions. When more data become

available, it can be known if these policies do play a role in the probability of winning in

court.

Limitations and Future Implications

One limitation of this study was the generality of the search terms used. The vast

majority of cases found on both LexisNexis and Google Scholar were not relevant to the

study. This made it more difficult to find the specific cases related to organizations within

the large list and may have caused some cases to be missed. It can be argued that the

generality of the terms, however, could have helped create a more exhaustive list of court

cases, as the basic search terms should be broad enough in nature to capture every court

case that could involve an organization. Future research should use a combination of both

specific search terms relevant to organizations such as "termination" or "promotion" in

concurrence with a basic search to ensure a comprehensive collection of cases are examined.

A further limitation to the study was the lack of power of the "SNS role" coding feature. This feature was included to have a better understanding on the importance that the SNS played in the lawsuit. While it does give some idea as to what role social media played in the case, it was too broad to paint a full picture of whether the plaintiff was suing directly due to his/her SNS or if the SNS was used as evidence in conjunction with other variables that may be a more direct cause of the lawsuit. This may seem like a minor differentiation, but it could be important in understanding the role that SNSs are playing. Do they more often spur people into seeking litigation, or are they often just another piece of evidence alongside a multitude of other reasons? The former may be worrisome to organizations, as actions pertaining to SNSs may lead to more lawsuits, but the latter may imply that these cases were likely to happen regardless of a SNS being a part of the process even if the SNS played a major role in the case. For example, in the case *Graham vs. City of Hopkinsville*, the plaintiff made an argument that she was terminated partly due to posting allegedly explicit photos on her Facebook account. When looking at the details of the case, it can be seen that she is making a Title VII sex-based claim for alleged discriminatory actions. The plaintiff argued that she was treated differently than similarly situated coworkers for not only posting pictures on Facebook but also for arriving late to work, not filling out proper paperwork, and speaking with a coworker. Whereas Facebook played a major role in the case, it could be argued that this case of discrimination was likely to occur regardless of Facebook. Likewise, it may be that Facebook sparked the controversy, and the other pieces of evidence came after the

fact. This level of detail could not be covered with such a broad coding feature. A more detailed examination is required if it is possible to be known at all.

For these reasons, future research should examine the reasoning that cases are brought to court in detail. This paper has made speculations as to why Facebook led to more instances of lawsuits, but more studies are needed to understand what makes Facebook a more likely source of legal ramification, and more importantly, whether cases that occur could be prevented with a different action from the employer or employee.

Conclusion

The use of SNSs as an organizational tool has grown in popularity. The validity and the legal implications of their use, however, is yet to be determined. Research in the field of Industrial/Organizational psychology thus far has focused on the number of organizations who are using SNSs, how these organizations are using SNSs, and the validity of their use. Whereas many researchers have speculated on the legal aspects of social networking, to date there have been no studies that have examined real world data to better understand this legal gray area. Therefore, the focus of this study was to provide a better understanding of the legal side of SNS use by organizations.

With the small number of cases that have circulated in court, it does not appear that, from a legal standpoint, organizations invoke a large amount of risk by using SNSs in organizational decisions. With the relatively new nature of their use, however, this may change. With what risk that does exist, it appears to be centered on decisions involving termination and Facebook. Only counting cases in which the SNS played a major role, 16 of 19 (84.2%) involved the employment practice of termination. Of these 16 cases, 15 (93.7%) involved the use of Facebook, and 15 (93.7%) were won by the employer.

Therefore, it appears that even when organizations are brought to court, they most often prevail. However, this should still be a point of caution for organizations who are wanting to use or act upon social media due to the cost associated with the legal system.

For organizations that do wish to implement social media in their employment practices, it should be done carefully and properly. To do so, organizations should focus on using SNSs that provide information to the organization but that do not impose risks. The current research on organizational social media use shows that there are feelings of privacy invasion and injustice associated with organizations using SNSs. Current research on termination shows litigation is most likely to occur when procedural justice is compromised. The combination of this research suggests that termination involving SNSs of the employee creates the highest risk for legal repercussion. The data presented in this study support that assumption and should cause organizations to hesitate in using SNSs for these purposes.

As for the safest use of SNSs, LinkedIn being used for recruitment and selection appears to provide valuable information for the organization while having little risk associated with it. There were no cases involving either LinkedIn or employment practices of recruitment or selection. As discussed, the design of LinkedIn toward organizational purposes could help lessen the effects of procedural injustice and privacy invasion and prevent litigation. Due to the logistics of selection and recruitment, it may be possible that these feelings do not get a chance to manifest, as the use of SNSs for these processes are rarely known to the individuals affected. In combination, the use of LinkedIn to serve these purposes provides information as readily accessible as a résumé with little to no risk to the organization.

In conclusion, the limited number of cases available for this study can draw inferences about the risks associated with organizational SNS use. As the use of SNSs becomes more prominent among organizations as well as more known to employees and applicants, we can expect there to be an increase in the number of cases. The data provided by this study provide a real world look at the current state of the legal system concerning social media use and where it may lead in the future. Both organizations and people whom will in the future or whom are currently within the workforce can use this information to better understand how SNSs are being evaluated and the legal risks associated with their use.

Appendix A: Federal Court Cases

Augustus v. Nassau, 11-CV-0015 (E.D.N.Y. 2013).

Austin v. Preston County Commission, 1:13CV135 (N.D.W. Va. 2014).

Barella v. Village of Freeport, 12-CV-0348 (E.D.N.Y. 2014).

Berrett v. Clark County School District, 12-CV-00626 (D Idaho, 2014)

Claflin v. Shaw, 13-5023-CV (W.D. Mo. 2014).

Debord v. Mercy Health System of Kansas, Inc. and Leonard Weaver, 10-4055 (D. Kan.
    2011).

Debord v. Mercy Health System of Kansas, Inc., 737 F.3d 642 (10th Cir. 2013).

DePriest v. Milligan, 12-CV-00235 (E.D. Ark. 2015).

Graham v. City of Hopkinsville, 12-CV-23 (W.D. Ky. 2013).

Graziosi v. City of Greenville Mississippi, 13-60900 (5th Cir. 2015).

Guevarra v. Seton Medical Center, 13-2267 (N.D. Cal. 2013).

Hanners v. City of Auburn, 13-CV-735 (M.D. Ala. 2014).

Hartman v. Dow Chemical Company, 13-cv-14774 (E.D. Mich. 2014).

Howard v. Clyde Findlay Area Credit Union, Inc., 12 CV 752 (N.D. Ohio 2013).

Jenyé Viki Knox v. Union Township Board Of Education, 13-CV-5875 (D. NJ 2015).

Judeh v. Louisiana State University System, 12-1758 (E.D. La. 2013).

Kirst v. Grays Harbor Community Hospital, C14-5014 BHS (W.D. Wash. 2015).

Ley v. Novelis Corporation, No. 14-CV-775 (N.D.N.Y. 2014).

Meyer v. McBurney, 13-CV-27 (E.D. Ky. 2014).

Robert Gilbert, V. Department of Correction, 10-CV-1877 (D CN 2014).

Rodriguez v. Widener University, 13-1336 (E.D. Pa. 2013).

Rodriquez v. Walmart Stores Inc., 13-10154 (5th Cir. 2013).

Snipes v. Volusia County, 14-CV-413 (D. Fl. 2014).

Swann v. Office of Architect of the Capitol, 12-CV-01320 (D.C. 2014).

Verga v. Emergency Ambulance Service, Inc., 12-CV-1199 (E.D.N.Y. 2014).

Appendix B: Court Case Coding Scheme

Table 1

Court Case Coding Scheme

Coding Feature	Categories
SNS Used	Facebook, LinkedIn, MySpace, Twitter
Employment Practice	Selection, Termination, Employee Monitoring, Recruiting, Promotion, Other
Geographic Location	State
Which Party Prevailed	Plaintiff, Defendant
If Tried in Court	Settled, Tried in Court
Settlement Information	Demanded, Received
Formal SNS Policy	Present, Absent
SNS Role in Case	Primary, Secondary

Note: A category for "Information Not Provided" will also be an option for each coding feature.

Table 2

Social Media Court Cases

Court Case	SNS Used	Employment Practice	Geographic Location	Which Party Prevailed	If Tried in Court	Settlement Information	Formal SNS Policy	SNS Role in Case
Austin v. Preston County Commission	0	1	West Virginia	1	1	NA	1	0
Augustus v. Nassau	0	1	West Virginia	1	1	NA	1	0
Barella v. Village of Freeport	0	4	New York	0	1	NA	1	1
Berrett v. Clark County School District	0	1	Idaho	1	1	NA	0	0
Claflin v. Shaw	0	1	Missouri	1	1	NA	0	1
Debord v. Mercy Health System of Kansas, Inc.	0	1	Kansas	1	1	NA	1	0
DePriest v. Milligan	0	1	Arkansas	1	1	NA	1	1
Graham v. City of Hopkinsville	0	1	Kentucky	1	1	NA	1	0
Graziosi v. City of Greenville Mississippi	0	1	Mississippi	1	1	NA	1	0
Guevarra v. Seton Medical Center	0	1	California	1	1	NA	1	0
Hanners v. City of Auburn	0	1	Alabama	1	1	NA	1	1
Hartman v. Dow Chemical Company	0	1	Michigan	1	1	NA	1	1
Howard v. Clyde Findlay Area Credit Union	0	1	Ohio	1	1	NA	1	1
Judeh v. Louisiana State University	0	1	Louisiana	1	1	NA	1	0
Kirst v. Grays Harbor Hospital	0	1	Washington	1	1	NA	1	0

Court Case	SNS Used	Employment Practice	Geographic Location	Which Party Prevailed	If Tried in Court	Settlement Information	Formal SNS Policy	SNS Role in Case
Ley v. Novelis Corporation	0	2	New York	0	1	NA	0	0
Meyer v. McBurney	0	1	Kentucky	1	1	NA	1	0
Rodriguez v. Widener University	0	1	Pennsylvania	1	1	NA	1	0
Rodriquez v. Walmart Stores, Inc.	0	1	Texas	1	1	NA	0	0
Swann v. Office of Architect of the Capitol	0	1	DC	1	1	NA	1	1
Verga v. Emergency Ambulance Service, Inc.	0	1	New York	0	1	NA	1	0
Rashard Mendenhall v. Hanesbrands, Inc.	3	5	North Carolina	0	1	NA	0	0
Sarah C. Debord v. Mercy Health System of Kansas, Inc. and Leornard Weaver	0	1	Kansas	1	1	NA	0	0
Michael Todd Snipes v. Volusia County	0	1	Florida	1	1	NA	0	0
Robert Gilbert v. Department of Correction, Charles Lee, Patricia Silva	2	1	Connecticut	1	1	NA	0	0
Jenyé Viki Knox v. Union Township Board of Education	0	5	New Jersey	1	1	NA	0	0

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