

Model Rule 1.1 Competence

- Rule unchanged:
 - "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."
- Comment amended:
 - Maintaining Competence: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**" (emphasis added).

Technological Competence?

- Florida requiring 3 hours of courses in approved technology program

In the News

- Amazon Echo

Security 101

Cooley

Security Basics

- Are you carrying your social security card?
- Are your banking passwords in your wallet?
- Do you have your address written on your house key?
 - Are you doing the equivalent with client data?



Security Fatigue



Paper Documents

- “An Inside Look at Sullivan & Cromwell’s Recruiting Process” (Above the Law, Sept. 22, 2011)
 - Binder left on outdoor recycling bin and marked “Confidential”
- “Georgia Lawyers’ Old Case Files End Up in Recycling Bin at Newspaper Offices” (ABA Journal Oct. 17, 2011)
 - College intern’s alternative to “shred”

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Discarding Equipment

- **Headline: NYT Learns of Goldman Trader’s Legal Defense from Discarded Laptop**
 - ABA Journal (June 1, 2011) by Debra Cassens Weiss
 - “The New York Times has learned about the legal defenses for a Goldman Sachs trader from a discarded laptop discovered in a garbage area of a New York apartment building. An artist and filmmaker gave legal materials from the laptop to the newspaper, saying a friend had discovered the computer in the garbage and given it to her in 2006, the New York Times reports.”
- Copiers
 - Several states considering laws requiring erasure of copy machine memory.

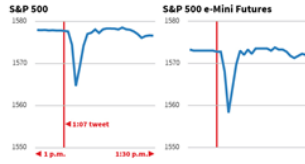
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Security – External Threats

- External
 - Hackers
 - Malware
 - State sponsored attacks
 - Black market (phishing)
 - Competitors

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What Happened?



Hacked AP feed stating that White House had been attacked

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Voicemail – Hacking Risks

- Chiquita cases
- News (Murdoch) cases

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Use Real Passwords!

- 123456 (and variations)
- 1111 (or variation)
- password or password1
- iloveyou or iloveu
- abc123
- qwerty
- superman
- princess
- letmein
- trustno1
- default
- f*****
- welcome
- New in 2015
 - Star Wars
 - solo
 - starwars

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Passwords – Other “Hacks”

- Problem is humans are not good at creating random
 - Example, if require uppercase it is first letter 90% of the time; if a digit, most users put two at the end, four at the end, or one at beginning and three at end. See Why you should steer users towards less predictable passwords (April 29, 2015 at <https://www.helpnetsecurity.com/2015/04/29/why-you-should-steer-users-towards-less-predictable-passwords/>)
 - Phrases – also tend to repeat

Password Managers

ANDY GREENBERG SECURITY 06.15.15 5:01 PM

HACK BRIEF: PASSWORD MANAGER LASTPASS GOT BREACHED HARD

<http://www.wired.com/2015/06/hack-brief-password-manager-lastpass-got-breached-hard/>

Security Question – “Hacks”

It makes sense, then, that the Celebgate hackers seem to have accessed the accounts of people such as Jennifer Lawrence and Kirsten Dunst that way, deploying – in the words of Apple’s statement on the subject – “a very targeted attack on user names, passwords and security questions.” Security questions are a gaping, well-documented vulnerability, “the biggest joke in online identity verification.” And yet we still use them. Worse, we use questions like “in which city did your parents meet?” or “what’s your mother’s maiden name?” – minor bumps that can be Googled and gotten out of the way.

http://www.washingtonpost.com/posttv/business/technology/apples-icloud-no-to-blame-for-celebrity-hackings/2014/09/02/8a140315-64a4-415b-ae9f-fae9b4d71650_video.html

Using Networks Without Security

- Public computers
- Public Wi-Fi

ABA TECHSHOW 2013

This Pineapple can intercept Wi-Fi traffic

POSTED JUN 01, 2013 07:10 AM CDT

BY REGINALD OWENS

What I learned after being hacked in mid-air

Steve Petron, Special for USA TODAY | 11:58 a.m. EDT March 5, 2016



Last week I wrote about being hacked mid-air while using the Gogo Internet service ([story/techcolumnist/2016/02/24/got-hacked-my-mac-while-writing-story/668447201](#)) on an American Airlines flight.

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Public Wi-Fi

- See Cal. Ethics. Op. 2010-179 (duties when using public wi-fi and other technologies susceptible to unauthorized access by third parties)
- Tips
 - Valid network
 - Device encryption
 - Certificate errors?
 - Don't install updates over unsecured connections

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Dangers of Fake Wi-Fi

Ride The Lightning

July 26, 2016

Over 1000 Republican Convention Attendees Connect to Fake Wi-Fi Networks

Trust me, this is not a political post. I am sure the Democrats will be equally guilty of negligent mobile security this week.

On July 19th, Avast Software revealed the results of a Wi-Fi hack experiment conducted at various locations around the Republican National Convention site in Cleveland to demonstrate how risky it can be to connect to public Wi-Fi. The experiment, performed by Avast's security researchers, revealed that over a thousand convention attendees were negligent in their behavior when connecting to public Wi-Fi. Attendees risked the possibility of being spied on and hacked by cybercriminals while they checked their e-mails, banked online, used chat and dating apps, and even while they accessed Pokemon Go.

See also <https://www.pact-one.com/2016/08/09/be-wary-of-open-public-wifi/> (Democractive National Convention)

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Accessing Wi-Fi – Hiding Computer at Law Firm

Fraudster Who Hid Computer At Pillsbury Gets Lifetime Ban

By Jacob Fischler

Law360, Washington (May 10, 2016, 9:40 PM ET) -- A convicted hedge fund manager who once hid a contraband computer in a ceiling at Pillsbury Winthrop Shaw Pittman LLP was banned from the securities industry for life by a U.S. Securities and Exchange Commission judge on Tuesday.

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You DO NOT Have to Open Every Email!

- SPAM, phishing and other foul odors
 - Slow down. Read the email and then read it again. Are you expecting this email?
 - Look at the sender. Would a valid company or department email come from that person?
 - If it's sent to a seemingly random group of company names, it is spam.
 - If the grammar is poor, it is spam.
 - If the email has embedded links that point to somewhere other than a legitimate site, it is spam.

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Email Phishing

Ride The Lightning

October 24, 2016

A Notice From Google That Your Gmail Account May Have Been Compromised. Now What?

The e-mail saying that your Gmail account may have been compromised conveniently contains a link or button for you to click on to remedy the problem. Slow down and think. According to an *Ar7 Technician* story, this is exactly how the breaches of the Democratic National Committee and the personal e-mail breaches of former Secretary of State Colin Powell and Clinton Campaign Chairman John Podesta took place.

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Phishing – Invoking the “ABA”

Ride The Lightning

May 16, 2016

New Law Firm Phishing E-mail Cites Referral from an ABA Law Firm

Thanks to Claudia Rast for sending along a phishing e-mail received by her firm purportedly from a company seeking help in collecting funds from another company. The author of the e-mail claims to have been referred by another law firm belonging to the ABA. There is a link to a website – very likely a malware-infected website.

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Lawyers Targeted

Don't click! Lawyers get fake emails about a complaint; hyperlink installs malicious software

POSTED DEC 05, 2016 07:00 AM CST

BY DEBRA CASSENS WEISS (@HTTP://WWW.ABAJOURNAL.COM/AUTHORS/W)

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Phishing – PDF attachments

Tom Spring, Experts Warn of Novel PDF-Based Phishing Scam (Jan. 5, 2017) at <https://threatpost.com/experts-warn-of-novel-pdf-based-phishing-scam/122896/>



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Companies Sending Malware Inadvertently – USBs



28 Dental Assn Mails Malware to Members

The American Dental Association (ADA) says it may have inadvertently mailed malware-laced USB thumb drives to thousands of dental offices nationwide.

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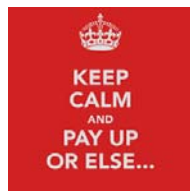
USB Phishing

- In CompTIA 2015 study, 17% of respondents finding a USB drive plugged it in
 - Then opened text files, clicked on web links or sent emails to listed email addresses
- In Sophos 2011 study, they purchased 50 USB keys bought from a transit authority Lost Property auction and found 66% were infected
- See Hey, There's a Flash Drive Just Lying on a Bench – Am I Luck! Maybe Not, Ride The Lightning (Nov. 12, 2015)

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Ransomware

- Malware – user clicks on infected email attachment; malware then encrypts files stored locally and on mapped network drives



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Ransomware Payments

February 17, 2016

Hollywood Hospital Suffers Cyberattack: \$3.4 Million Ransom Demanded

Hollywood hospital pays \$17,000 in bitcoin to hackers; FBI investigating

Los Angeles Valley College pays \$28,000 in bitcoin ransom to hackers

Nov 26, 2015 @ 06:37 AM 135,777 views

The Little Black Book of

Ransomware Crooks Demand \$70,000 After Hacking San Francisco Transport System -- UPDATED



Thomas Fox-Brewster, FORBES.COM

Provide support
feels more hi

Ransomware Payments

BUSINESS INSIDER

The FBI says you may need to pay up if hackers infect your computer with ransomware

TESS DANIELSON
OCT. 26, 2015, 2:56 PM

Prosecutor's office paid ransom to regain access to its computers; international network busted

POSTED DEC 06, 2016 09:14 AM CST

BY DEBRA CASSENS WEISS @HTTP://WWW.ABAJOURNAL.COM/AUTHORS/4/

Ride The Lightning

February 18, 2016

Law Firm Pays \$2500 to Get Data Back After Ransomware Attack

Ransomware – Profitable!!!

- \$209 million in the first three months of 2016
- The majority of companies, 68.7 percent (1,375), in the Forbes Global 2000 are less profitable than the ransomware industry
 - <http://blog.datagravity.com/ransomware-vs-global-2000/>

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Ransomware – New Formats

The many faces and tactics of Jigsaw crypto-ransomware

The Jigsaw crypto-ransomware got its name from the main bad guy from the popular horror movie franchise Saw, as its initial ransom note (either in English or Portuguese) shows the image of a very distinctive puppet used in the films.

Data Breaches

Cooley

IRS – Failure To Encrypt/Protect

IRS Emails Didn't Encrypt Taxpayers' Data, Report Says

By Brandon Lowrey

Law360, Los Angeles (November 17, 2016, 6:38 PM EST) -- The Internal Revenue Service may have compromised millions of taxpayers' sensitive information because employees occasionally sent tax returns in unencrypted emails to accounts both inside and outside of the agency, according to a Treasury Inspector General for Tax Administration report made public Thursday.

Panama Papers – 2016

April 07, 2016

The World Largest Data Breach Comes From a Law Firm

It appears that we will have jaw-dropping revelations from what has become known as the Panama Papers for a long time to come. The Panamanian law firm that was breached was Mossack Fonseca, which provides services including incorporating companies in offshore jurisdictions such as the British Virgin Islands. It is the fourth largest provider of offshore services, 2.4 terabytes of data - some 11 million files - were exposed, along with the sort of offshore hiding of assets that has become the stuff of legend in the last few decades. The documents span an almost 40-year period from 1977 when the law firm was formed.

<http://ridethelightning.senseient.com/2016/04/the-world-largest-data-breach-comes-from-a-law-firm.html>

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US Law Firms Breached

THE WALL STREET JOURNAL

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MARKETS

Hackers Breach Law Firms, Including Cravath and Weil Gotshal

Investigators explore whether cybercriminals wanted information for insider trading

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Chinese Hacking US Law Firms

Chinese Nationals Charged With Hacking Firms to Steal M&A Info

Mark Hamblett, The Am Law Daily

December 27, 2016

Three Chinese nationals face federal charges for allegedly hacking into two major U.S. law firms in a scheme to trade on information about imminent mergers and acquisitions.

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Content – What You Say and Write

Cooley

VW Plea Agreement – Attorney Comments Re Imminent Legal Hold Notice

77. On or about August 31, 2015, a meeting was held to prepare for the September 3 presentation to CARB and EPA where VW's use of the defeat device in the United States was to be formally revealed. During the meeting, within hearing of several participants, Attorney A discussed the forthcoming hold and again told the engineers that the hold was imminent and recommended that they check what documents they had. This comment led multiple individuals, including supervisors in the VW Brand Engine Development department at VW AG, to delete documents related to U.S. emissions issues.

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Social Media Posts

Curt Schilling, ESPN Analyst, Is Fired Over Offensive Social Media Post

By **BENJAMIN SVETKEY** APRIL 20, 2016

http://www.nytimes.com/2016/04/21/sports/baseball/curt-schilling-is-fired-by-espn.html?_r=0

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And More Social Media Posts – An Open Letter

 Talia Jane
Feb 11 · 22 min read

An Open Letter To My CEO

Dear Jeremy,

When I was a kid, back in the 90s when Spice Girls and owning a pager were #goals, I dreamed of having a car and a credit card and my own apartment. I told my 8-year old self, *This is what it means to be an adult.*

Now, seventeen years later, I have those things. But boy did I not anticipate a decade and a half ago that a car and a credit card and an apartment would all be symbols of stress, not success.

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section of Yelp/Eat24 before I'd be qualified to transfer to media. Then, after I had moved and got firmly stuck in this apartment with this debt, I was told I'd have to work in support for *an entire year* before I would be able to move to a different department. A whole year answering calls and talking to customers just for the hope that someday I'd be able to make memes and twitter jokes about food. If you follow me on [twitter](#), which you don't, you'd know that

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rejected that Yelp could save about \$24,000 in two months if the company stopped restocking flavored coconut waters since no one drinks them (because they taste like the bitter remorse of accepting a job that can't pay a
Anyway, those are my thoughts. I know they're not worth your time—did you know that the average American earns enough money that the time they

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Screen Shot Reveals Too Much

However, he explains away the open porn tabs in terms that essentially amount to him being the Sherlock of porn-related malware.

The explanation is 2,000 words long. It does not make a huge amount of sense, but apparently blames the pornographic images on an experiment Webb was performing to see whether or not someone was using malware embedded on porn sites to infect electoral candidates with malware that would prevent them from filing their candidacy before the deadline.

Maybe. It's honestly hard to parse. Webb writes, in part: "Curious by nature, I wanted to test the suggestion that somehow, lurking out in the pornographic world there is some evil operator waiting for the one in a gazillion chance that a candidate for federal office would go to that particular website and thereby be infected with a virus that would cause his or her FEC [federal election commission] data file to crash the FEC file application each time that it was loaded on the day of the filing deadline, as well as impact other critical campaign systems."

Anytime
Paid day
Curzon Staffing near Arlington, VA

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Disciplined for Sending Threatening Social Media Message

- Indiana attorney 30 day suspension for sending threatening and obscene private social media message to a client's ex husband.
 - Violated Rule 4.4(a) and 8.4(d)
 - *In re Hanson* (Indiana 2016)

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Anonymous Posts About Lawyer

'Working Here is Psychological Torture': Law Firm Sues Over Anonymous Comments

By KAT FRANKLIN WELLS

PHOTO: GETTY IMAGES

1. "Bad place to work (this company just changed its name) Research Layfield & Wallace"
2. "Deceptive, Unethical, Poorly Managed, No Sense of Direction"
3. "You will HATE working here - Please read all the reviews"
4. "Working Here is Psychological Torture"
5. "New Admittees Beware!"
6. "For the love of God, do NOT work here"
7. "Anyone who gives this place a full rating has literally just started working there."
8. "Working for Philip J. Layfield (a.k.a. Philip S. Pesin) Was Pure Misery"
9. "Horrible place to work. Unreasonably cruel."
10. "Phil Layfield Changed His Name from Phil Pesin for a Reason"
11. "Don't let the name change fool you, read the reviews for Layfield & Wallace. This is Phil Pesin's way of 'starting fresh'"
12. "Layfield & Barrett, wallace or pesin STAY AWAY!!!! BAD BOSS"

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Mutterings

Rebuked after muttered remarks at federal sentencing, defense lawyer says cursing is commonplace

POSTED MAY 10, 2016 10:05 AM CDT
BY MARTHA NEIL, [HTTP://WWW.ABAJOURNAL.COM/AUTHORS/55](http://www.abajournal.com/authors/55)

Judge referred matter to Ohio disciplinary authorities

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Complaining

Stressed-Out Cravath Atty Divulged IBM Deal, Jury Hears

By **Max Stendahl**
Law360, New York (February 18, 2016, 3:15 PM ET) -- Jurors in a U.S. Securities and Exchange Commission insider trading suit stemming from a \$1.2 billion IBM Corp. acquisition heard prerecorded testimony on Thursday by a former Cravath Swaine & Moore LLP associate who said he disclosed the deal to a friend while griping about his heavy workload.

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Email

Cooley

Misperceptions About Email

- Casual conversation from which author can retreat
- Feels private – only the recipient will ever read it
- Will be taken in context
- Goes away



The Risks of Email for Everybody

- Misaddressed
- Auto addressing
- Reply to all
- Reply or forward?
- Attachments



Misaddressed by Partner

- “Skadden Partner Accidentally Emails Confidential Evaluation to Entire Department” (Above the Law, Nov. 2010)



Careful with CC and BCC

- “In a Dilbert-esque faux pax, a Taliban spokesperson sent out a routine email last week with one notable difference. He publicly CC’d the names of everyone on his mailing list.”

• See Uri Friedman, “Taliban accidentally CCs everybody on its mailing list,” (Nov. 16, 2012) available at http://blog.foreignpolicy.com/posts/2012/11/16/taliban_accidentally_ccs_everybody_on_its_mailing_list

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ABA Opinions re Email

- Lawyer “must warn the client about the risk of sending or receiving electronic communications . . . to which a third party may gain access . . . [T]he lawyer must take reasonable care to protect the confidentiality of the communications. . . .” ABA Op. 11-459 (August 4, 2011)
 - Focus is on workplace scenario but includes other settings

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The Risks of Email – Auto Addressing

- An article appears in New York Times on Jan. 31, 2008
 - “Lilly Considers \$1 Billion Fine To Settle Case”
 - Outside lawyer for Eli Lilly had two people named “Berenson” in email address book. Instead of sending email to co-counsel Berenson, she sent email to NYT reporter “Berenson”
 - But . . . NYT’s Berenson said he got status of settlement talks from another source



Reply to All

- Department of State
- Associate’s “reservations” regarding firm clients



Reply to All– Law Clerks

- Law clerk group in SDNY 2016:



Law Students

EMAIL SCANDALS, BAY, LAW SCHOOLS

3L At Top Law School Writes 'Derogatory' Anti-Gay Email, Hits 'Reply All'

By DAVID LAT

APR 23, 2010 AT 12:05 PM

APR 23, 2010 AT 10:12 AM

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Professors and Senior Lawyers

EMAIL SCANDALS

Lawyers: Don't Make Domestic Violence Jokes In Your Emails

By GUY PATRICE

APR 23, 2010 AT 1:02 PM

Law Professor Who Sent Anal-Bead Porn To Her Students Blames Everyone But Herself

By DAVID LAT

APR 27, 2010

Senior Lawyer Unleashes 'Old School' Homophobic Rant, Hits 'Reply All'

By GUY PATRICE

APR 28, 2010 AT 10:02 PM

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Hazardous Attachments

- Baylor
 - Sent email to recent admittees with spreadsheet listing grades, LSAT, race, and other info.
 - Second email: "Due to the sensitive nature of the information that was contained in the attachment, we ask you to treat the document as confidential, just as you would as a lawyer, and delete the information."
- See Karen Sloan, "Baylor Overshares About Incoming Law Class," www.law.com (April 4, 2012)

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29 Jan 2013 at 3:45 PM [GRADE REFORM](#) [LAW PROFESSORS](#) [LAW SCHOOLS](#) [PRIVACY](#) [SCREW-UPS](#)
[UNIVERSITY OF MICHIGAN LAW SCHOOL](#)




**Would You Like To See The Grades Of All Your Classmates?
 Then You Should Have Gone To This Top Law School!**

By ELIE MYSTAL

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Institutions of “Higher Learning”

- Educational institutions
 - Wesley College in Delaware sent an email to 2400 students discussing the 18 students at risk of flunking out.
 - UC San Diego sent 28,000 applicants an email that they had been rejected. Weeks later, they were sent a second email that (incorrectly) stated applicants were admitted (See LA Times, March 31, 2009). And, it happened at Vanderbilt, Middlesex, George Washington U.

65

Law Firm Reveals Settlement

- “Quinn Spills Value of Facebook Deal,” Z. Elinson, law.com (Feb. 10, 2009)
 - *ConnectU v. Facebook* case including efforts to clear courtroom of reports and steps to keep settlement confidential
 - ConnectU fired Quinn Emanuel and the two entered arbitration re fee and malpractice claims
 - Quinn website
 - “WON \$65 million settlement against Facebook”



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Email Tracking Ethics

- Alaska Ethics Op. 2016-1
 - "May a Lawyer Surreptitiously Track Emails and Other Documents Sent to Opposing Counsel?"
 - **Issue Presented:** Is it ethically permissible for a lawyer to use a "web bug" or other tracking device to track the location and use of emails and documents sent to opposing counsel?
 - **Conclusion:** No. The use of a tracking device that provides information about the use of documents – aside from their receipt and having been "read" by opposing counsel – is a violation of Rule 8.4 and also potentially impermissibly infringes on the lawyer's ability to preserve a client's confidences as required by Rule 1.6."
- See also NYSBA Ethics, Op. 749 (Dec. 14, 2001).
- Question: What about other decisions that require lawyer (recipient) technological competence?

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Texting

Cooley

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Recent Headlines

49. In a subsequent instant message exchange, Conradt and Weishaus discussed the potential consequences of their trading on material, nonpublic information:

Weishaus: we should get [RR3] to buy a f***load
Conradt: jesus don't tell anyone else
Weishaus: like, [RR3] buy 100000 shares
Conradt: we gotta keep this in the family
Weishaus: dude, no way
i don't want to go to jail
f*** that
Conradt: jesus christ
Weishaus: martha stewart spent 5 months in the slammer
Conradt: does [a friend] know?
Weishaus: and they tried to f*** the mavericks owner

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Mixing Business and Personal

Fired Employees Claim Work iPad Stored Personal Texts

David Blumenthal, *New Jersey Law Journal*
March 20, 2015 | 1 Comment

- Employer issued a Company iPad and alleges he was required to open an iTunes account using a personal credit card
- Five employees exchanged text messages on smartphones disparaging a fellow employee Davis
- One employee had personal phone linked to Company iPad
- Company issued new iPad to employee then issued iPad to Davis who found the text messages

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Self-Destructing Text Messages

San Francisco Legislators Dodging Public Records Requests With Self-Destructing Text Messages

from the [this-transparency-will-self-destruct-in-3...-2...](#) dept

You can call it irony. Or bullshit. But what you can't call it is good government. Cory Weinberg of The Information reports [San Francisco legislators \[warning: paywalled link\]](#) are using one of those infamous tools of terrorism – messaging service Telegram – to dodge open records requests. [\[Link to a non-paywalled story covering the same thing\]](#)

<https://www.techdirt.com/articles/20160317/07505233930/san-francisco-legislators-dodging-public-records-requests-with-self-destructing-text-messages.shtml>

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Phones and “Smartphones” and Their Not So Smart Users

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Autocorrect – Parenting Blunders



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Smartphone Photos – Documents Too!

- Censure for taking a photograph of a letter on prosecution table discussing trial strategy. See R. Gavin, Judges panel slaps Kindlon, Times Union (Sept. 27, 2012).

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Big Partner Tweets and Court Order

He's the partner over at Barnes & Thornburg that got in trouble for flouting the court's rules about use of his cell phone and camera during the trial of spoofer Michael Coscia. You see, the trial judge had a pretty clear rule against text-based technology and the use of cameras, yet Schmeitz was tweeting out pictures of the government's evidence mid-trial.

Biglaw Partner Very, Very Sorry For Inappropriate Tweets

By MATTHEW RUBINO

9 Comments | Nov 25, 2015 at 10:03 AM

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Selfies with Clients



LEGAL ETHICS

Is It Ethical To Take Selfies With Your Acquitted Client?

By JOE PATRICE

25 Comments / 324 Shares / Sep 29, 2015 at 6:02 PM

<http://abovethelaw.com/2015/09/is-it-ethical-to-take-selfies-with-your-acquitted-client/>

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Photos

- Martha Neil, "Lawyer Puts Photo of Client's Leopard-Print Undies on Facebook; Murder Mistrial, Loss of Job Result," ABA Journal (Sept. 13, 2012) (photo of clients undies taken while corrections officer inspected bag of clothing from defendant's family; defense counsel posted on Facebook).

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Employee Posts

- Blogs
- Facebook
- Videos
 - Vine (Twitter App)
 - Instagram
 - Recent fast food restaurant videos

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Mobile Device Security

- When a business-connected mobile device is lost, there is more than an 80% chance an attempt will be made to breach corporate data and/or networks.
 - A total of **83%** of the devices showed attempts to access **corporate-related** apps or data.
 - Attempts to access a **corporate email** client occurred on **45%** of the devices, which could potentially represent an attempt to contact the owner of the device, but still expose sensitive information.
 - A file titled "**HR Salaries**" was accessed on **53%** of the phones and another titled "**HR Cases**" was accessed on **40%** of the devices.
 - Attempted access to a "**Remote Admin**" app was recorded on **49%** of the devices.

Source: *The Symantec Smartphone Honey Stick Project*, by Scott Wright

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Twitter Assault

Twitter Must Work With Newsweek Writer To ID Attacker

By Jess Krockenberg

Law360, Dallas (December 19, 2016, 5:07 PM EST) -- Twitter Inc. must cooperate with a senior writer for Newsweek who is trying to uncover the identity of the individual whose tweet at him triggered an epileptic seizure, a Texas judge said Monday, as the writer pursues civil and criminal charges against the person.

"You deserve a seizure for your posts"

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Metadata; Redactions

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Metadata

- Documents you transmit
 - Cloning documents
 - Confidentiality
 - Revealing sensitive client information
- Documents you receive?
 - Can you look
 - Must you notify?

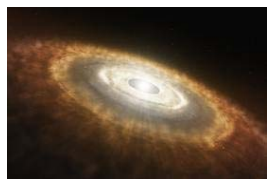
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Social Media Risks & Rewards

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What Does That Mean?

- It's Public
- It's Permanent



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It's Public

Apr 26, 2013

► Don't Write This Letter to the Patent Office

by Dennis Crouch

We all get frustrated. After an examiner rejected his client's application for a telescoping tripod spider, patent attorney Andrew Schroeder could no longer resist and fired the following remarks to Examiner Alexander Yabik:

REMARKS: Are you drunk? No, seriously... are you drinking scotch and whiskey with a side of crack cocaine while you "examine" patent applications? (Heavy emphasis on the quotes.) Do you just mail merge rejection letters from your home? Is that what taxpayers are getting in exchange for your services? Have you even read the patent application? I'm curious. Because you either haven't read the patent application or are... (I don't want to say the "B" word) "Special."

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Really – Once You Send, It's Public

PATENTLYO, RESPONSE TO DENNIS CROUCH, ANDREW SCHROEDER

May 2, 2013 | Posted by admin in Uncategorized | 0 comments

Home / Uncategorized / PATENTLYO, RESPONSE TO DENNIS CROUCH, ANDREW SCHROEDER

One of the things I find fascinating about this whole ordeal is the fact that many of the articles written since Patentlyo's blog post all assume that this was some sort of "PUBLIC" and/or trade. Everyone assumes that this was some sort of "Open Letter" to the USPTO that I wrote to shame this particular Examiner (in fact, this was just between the Examiner, his Senior Examiner and me...

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Blog Postings Lead to Resignation

- The U.S. Attorney in New Orleans, Jim Letten, resigned in December 2012 following admissions by two deputies that they had posted anonymous online comments about pending litigation.
 - See Sari Horwitz, "New Orleans U.S. attorney resigns amid scandal over anonymous online postings," Washington Post (Dec. 6, 2012)

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False Facebook Friend

Friday, February 26, 2016
Stayed Suspension For Prosecutor Who Falsely Facebook Friended Alibi Witness
By Legal Profession Prof [Share](#)

Disciplinary Counsel v. Brockler, 2016-Ohio-657

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On Line Reviews

17. On or about February 5, 2013, Raelaunt posted a client review of Respondent's services on the legal referral website AVVO, in which he discussed his dissatisfaction with Respondent's services. Raelaunt stated in the posting that "She only wants your money, claims "always on your side" is a huge lie. Paid her to help me secure unemployment, she took my money knowing full well a certain law in Illinois would not let me collect unemployment. [N]ow is billing me for an additional \$1500 for her time."

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Attorney Response Tsamis

"This is simply false. The person did not reveal all the facts of his situation up front in our first and second meeting. [sic] When I received his personnel file, I discussed the contents of it with him and informed him that he would likely lose unless the employer chose not to contest the unemployment (employers sometimes do is [sic]). Despite knowing that he would likely lose, he chose to go forward with a hearing to try to obtain benefits. I dislike it very much when my clients lose but I cannot invent positive facts for clients when they are not there. I feel badly for him but his own actions in beating up a female coworker are what caused the consequences he is now so upset about."

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Tsamis Outcome

- *In re Tsamis* (Illinois reprimanded)
 - Rule 1.6 confidentiality
 - Rule 4.4
 - Question: was the issue revealing too much in order to respond to review
- See SF Bar Op. 2014-1 (2014); PA Formal Op. 2014-200 (2014); Los Angeles County Bar Assn Op. 525 (2012)

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Newest Case re Negative On Line Review

- Suit against Google to remove on line review "It was horrible."

In this connection, I have just now discovered that a person that conducts a "Google" search for "Donald Tobias" or "Donald J. Tobias" will see a "review" from an individual, who is a complete and utter stranger to me, named "Mia Arce." The "review," which will appear when "Donald Tobias" or "Donald J. Tobias" is "Googled," consists of three words: "It was horrible." Please be advised that I do not know anyone named Mia Arce and can state, with absolute certainty, and would happily do so under oath, that I have never met or spoken to or known, let alone performed any professional services for, such a person and/or for anyone with a first, last or middle name "Mia" or "Arce." I do however see, from the internet research that I have

Letter from Donald J. Tobias to Google legal department available at http://online.wsj.com/public/resources/documents/2016_1209_tobias_google2.pdf

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Other Challenges

Cooley

\$6B Settlement Blown Up Re Credit Cards

That was surprising enough. Then an internal investigation by Willkie revealed a further shocker: Ravelo had received thousands of e-mails containing confidential legal information from plaintiffs' attorney Gary Friedman.

The Friedman-Ravelo correspondence across enemy lines exploded. Citing the previously secret communication, a federal judge on Aug. 4 rejected a \$79 million settlement between merchants and American Express. Now the back-channel chatter threatens to blow up a \$5.7 billion settlement between an overlapping group of retailers and MasterCard and Visa.

<https://www.bloomberg.com/news/articles/2015-10-06/lawyer-accused-in-scandal-over-mastercard-deal-speaks-out>

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, Case No. 12-4671 (2nd Cir. June 30, 2016 (vacating settlement))

Attorney Whistleblowers

- GM in house attorney took documents with her from and included confidential information in complaints about an alleged GE tax scheme to U.S. and Brazilian law enforcement officials (justified); one month suspension for disclosure to press. *In the Matter of M. Adriana Koeck and Lynne Bernabei*, Board Docket No. 14-BD-06 (D.C. Court of Appeals Board of Professional Responsibility Ad Hoc Hearing Committee)

Ethics § 6.1.1, at 242 (1986). In this case, the record is clear that Koeck and Bernabei sought to use the press not to report crime or to protect financial interests, but rather, to gain leverage in the advancement of Koeck's SOX claim, nothing more. That purpose clearly was not within the limitations provided by SOX or Rule 1.6(d) of the D.C. Rules of Professional Conduct. Hence, Bernabei violated Rule 8.4(a) by knowingly assisting Koeck's violation of Rule 1.6(a). Bernabei's testimony and email exchanges with Koeck reveal that their principle purpose was to advantage the employment litigation. See FF 33, 34, 36, 37.

Collaboration

- Evernote
 - 50 million users compromised. See Doug Gross, 50 Million Compromised in Evernote Hack, CNN (Mar. 4, 2013)
- Dropbox
 - Accounts unlocked for 4 hours (www.wired.com June 20, 2011)
 - See Debra Weiss, Suit Claims Ex Partner Installed Software Allowing Continued Access to Law Firm Files, ABA Journal (Feb. 13, 2012)
- Google Docs
 - Documents autoshared due to bug

Terms and Conditions – Just for Fun

- GameStation Terms and Conditions 4/1/2010
 - * "By placing an order via this Web site on the first day of the fourth month of the year 2010 Anno Domini, you agree to grant Us a non transferable option to claim, for now and for ever more, your immortal soul. Should We wish to exercise this option, you agree to surrender your immortal soul, and any claim you may have on it, within 5 (five) working days of receiving written notification from gamesation.co.uk or one of its duly authorised minions."
 - * "If you a) do not believe you have an immortal soul, b) have already given it to another party, or c) do not wish to grant Us such a license, please click the link below to nullify this sub-clause and proceed with your transaction."
 - * <http://www.foxnews.com/tech/2010/04/15/online-shoppers-unknowingly-sold-souls.html>

I have read and agree to these terms and conditions.
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Conclusion

These materials are intended as an introduction to the subject matter covered in the presentation. The presentation and the materials contained herein do not attempt to provide legal advice for any particular situation. Each particular situation must be analyzed individually in light of all of the surrounding facts and circumstances. Because of the complexity of the legal issues that will always arise in connection with the subject matter hereof, it is critical that counsel be involved. These materials are provided for educational and discussion purposes *only* and are not to be copied, used or distributed outside of this seminar without the express written consent of Cooley LLP. Copyright Cooley LLP and Michelle Greer Galloway 2017.

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