



October 2013

Vol. 30, No. 10

# THE DICTA

## The Docket

- October 5 (Saturday)  
Walk to End Alzheimer's  
8:30 a.m., American Airlines Center
- October 5 (Saturday)  
Generation Generosity with Mazie's Mission  
Noon, Bass Pro Shop Parking Lot
- October 8 (Tuesday)  
DAYL Education Advocate Training Program  
Noon, Belo Mansion
- October 8 (Tuesday)  
DAYL Lawyers Promoting Diversity Committee Meeting  
Noon, Belo Mansion
- October 9 (Wednesday)  
DAYL Lunch and Learn CLE  
Noon, Belo Mansion
- October 15 (Tuesday)  
DAYL Elder Law Committee Meeting  
Noon, Belo Mansion
- October 15 (Tuesday)  
DAYL Pub Trivia  
7:00 p.m., ACME
- October 16 (Wednesday)  
DAYL Coffee with the Court  
8:00 a.m., 1100 Commerce Street
- October 16 (Wednesday)  
DAYL Work / Life Balance Program  
Noon, Belo Mansion
- October 16 (Wednesday)  
DAYL Solo & Small Firm Roundtable Discussion  
5:00 p.m., ACME
- October 17 (Thursday)  
DAYL Animal Welfare Committee Meeting  
Noon, Belo Mansion
- October 17 (Thursday)  
GrowSouth Jams  
7:00 p.m., Kessler Theater
- October 23 (Wednesday)  
Sister Bar Social Benefitting DVAP  
6:00 p.m., Four Corners Brewery
- October 25 (Friday)  
DAYL CLE Committee Meeting  
Noon, Belo Mansion
- October 28 (Monday)  
DAYL Solo & Small Firm Committee Meeting  
Noon, Belo Mansion
- October 29 (Tuesday)  
DAYL Aid to the Homeless Committee Meeting  
Noon, Belo Mansion
- October 29 (Tuesday)  
DAYL Dinner with the Judiciary  
5:45 p.m., Tower Club

## Sister Bar Social Benefitting EAJ

**T**he DAYL is pleased to partner with the **Dallas Asian American Bar Association, Dallas Bar Association, Dallas Hispanic Bar Association, Dallas Women Lawyers Association, J.L. Turner Legal Association, and Texas Women Lawyers** for a night of camaraderie and networking on **Wednesday, October 23rd**, from 6:00 – 8:00 p.m. at Four Corners Brewery Co., 423 Singleton, just across the Margaret

Hunt Hill bridge.

The Social will also raise money and awareness for the DBA's Equal Access to Justice Campaign, which is co-chaired by **Aaron Tobin** and **Shonn Brown**. The sponsor of the event is **The Kenrich Group**, who will provide two drink tickets per person. Personal pizzas are available for purchase from Pizza Napoletexan. An RSVP to <http://www.surveymonkey.com/s/SisterBarsHappyHour> is requested.

### Don't Miss Pub Trivia

**Tuesday, October 15, 2013 | 7:00 p.m.**

**ACME Food & Beverage**

**\$10 per team | Individuals Welcome**

**Email Adam Baumli ([abaumli@gmail.com](mailto:abaumli@gmail.com))**

## Inside Practice Tips from Former Federal Judicial Law Clerks

*by Abigail Moore*

**G**o beyond the local federal rules to get the inside track on local federal court practice. Join DAYL for the October Lunch & Learn Series CLE at noon on **Wednesday, October 9th** at the Belo Mansion. The panel discussion will focus on practical tips, advice, and best practices that you can use when litigating in our local federal courts.

Panelists includes: **Meghan Nylin**, Thompson & Knight associate and former judicial law clerk for The Honorable Catharina Haynes of the United States Court of Appeals for

the Fifth Circuit; **Hallie Graves**, Baker Botts associate and former judicial law clerk for The Honorable Sidney A. Fitzwater, Chief Judge of the United States District Court for the Northern District of Texas; and **Jessica Greenwood**, Akin Gump associate and former judicial law clerk for The Honorable Reed O'Connor of the United States District Court for the Northern District of Texas.

This CLE has been approved for 1.0 hour of CLE credit. It is free for DAYL members. The non-member fee is \$10. RSVP to **Cherie Harris** at [cherieh@dayl.com](mailto:cherieh@dayl.com).

# THE DICTA

Paul Simon, Editor

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Copy Deadline for November Issue:

**October 15, 2013**

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## From the President

# Expressing our Gratitude for the Judiciary

**F**rom my experience, one of the greatest perks of bar involvement is the opportunity to interact with our judiciary. Nothing makes arguing a first hearing or tackling a first voir dire less intimidating than knowing the person wearing the black robe behind the bench. Luckily for our members, our Dallas judges are second to none in their support of the local bar, and DAYL in particular. These are perennially some of DAYL's most popular programs. I hope you have—or will—take advantage of these opportunities to interact with our Dallas judges:

In April, we held the annual **Social with the Judiciary** at the City Club. At that event, over 20 Judges attended and over 150 DAYL members attended.

Over the summer, members of the Dallas judiciary hired a large number of interns from area law schools through **DAYL's Judicial Intern Program**. As part of the program this year, the law students were invited to attend a luncheon hosted for the interns and Judges, as well as a panel discussion hosted by young lawyers who provided valuable advice on obtaining a job in Dallas and making the most of their time as judicial interns to achieve that goal.

In August, DAYL held its sixth annual **Bowling with the Bench**. This year, we switched the location and had an excellent turnout, featuring teams that included 15 judges and members of their court staff.

DAYL also started a new program this year: **Coffee with the Court**. So far this year, **Judge Tonya Parker** and **Judge Chris Wilmoth** have each hosted a breakfast with DAYL members. Judge Parker



Sarah Rogers

addressed issues about filing motions for summary judgment and Judge Wilmoth discussed the most common questions (and answers) that arise in probate court.

Each year, DAYL also hosts a **Swearing-In Ceremony** in the spring and in the fall. At the spring ceremony, **Justice Lana Myers** provided advice to the new lawyers and swore them in, welcoming them to the profession and community of Dallas Judges and lawyers. Stay tuned for details on the fall ceremony as plans for that are underway.

This fall, DAYL hosted the **Voir Dire CLE**, which was organized by **Judge Martin Hoffman** with assistance from the DAYL Judiciary Committee. This CLE required the assistance of numerous Judges and experienced lawyers who assisted in critiquing participants in a mock voir dire based on a hypothetical lawsuit. In addition to the Voir Dire CLE, members of the Dallas Judiciary hosted numerous other top-notch **CLEs** for DAYL this year including domestic violence basics, the changes to the Texas Rules of Civil Procedure, advice on motions practice, and prenuptial and postnuptial basics, just to name a few.

Finally, this year, the **Dinner with the Judiciary** will be held on October 29th at the Tower Club. **Judge Irma Ramirez** and **Judge Craig Smith** will be two of the speakers on Ethics Issues in Discovery. We anticipate a great turnout of local judges and lawyers at this annual event.

We deeply appreciate the time and effort that our judges invest in DAYL. We are fortunate to have judges who believe in the bar and the role it plays in the development of young lawyers. Thank you all for your support.

## CLE Recap: Ethics of Sitting on a Board of Directors

by Tim Hardesty

**I**n case you missed it, the DAYL CLE and Professionalism Committee recently sponsored a panel discussion about ethic considerations when serving on the Board of Directors of a non-profit organization. The panel included **Chad West** (Founder, Chad West, PLLC), **Robert J. Witte** (Partner at Strasburger & Price, LLP), and **Brittany Byrd** (Associate at Winstead PC).

The main point to take away from the CLE was that before accepting a position on a Board you need to know your role. Do they expect you to serve as general counsel? Do they expect you to serve on an advisory board or a board that is more active in the operations of the or-

ganization? The expectations of the organization will inform your decision about whether or not to serve on the Board. Whether you're at a firm, in-house, or providing legal services for a Board of Directors, the same ethical rules apply, you need to be sure that if the Board expects you to provide legal services, you can do so competently and ethically.

If the Board is not bringing you on to be the General Counsel, be very clear that you are there as a member of the Board, not as an attorney. Clear, open communication and full transparency when it comes to dealing with attorneys and firms outside of the Board of Directors are the best tools to avoid inadvertently crossing the line into providing legal services

or facing accusations of self-dealing.

Be passionate about the organizations you choose to serve, be aware that you must treat your role on the Board as the fiduciary duty it is, separate and distinct from your duties as an attorney, and communicate the obligations imposed on you in both capacities clearly and respectfully and you'll go a long way towards avoiding the potential ethical hazards of serving on a Board of Directors.

### DAYL ONE TO WATCH

**Erin Bogdanowicz** has been selected as the October 2013 DAYL One to Watch! To find out why, visit [www.dayl.com](http://www.dayl.com).

## GrowSouth Jams to Rock the Kessler

by Terry James

**T**he DAYL 2012 Leadership Class is excited about leaving its mark in the great history of Leadership Class projects. Since its inception in 1997, the DAYL Leadership Class Program has provided young lawyers the opportunity to plan, coordinate and execute a civic project benefiting a local non-profit, charity or worthy cause. The 2012 Leadership Class voted to support local education and **Dallas Mayor Mike Rawlings'** GrowSouth Initiative.

On **October 17, 2013**, the 2012 Leadership Class will present GrowSouth Jams. GrowSouth Jams is a benefit concert for three Dallas Independent School District schools adopted by Mayor Rawlings' GrowSouth Initiative. GrowSouth is Mayor Rawlings' initiative to strengthen and develop neighborhoods, schools and businesses in the southern sector of Dallas. Proceeds from the concert will be donated to Lincoln High School, Madison High School and Dade Middle School to provide them with resources and help address needs and wants at their individual campuses.

The concert will be held at the Kessler

Theater in North Oak Cliff. The performances will include: **Tim Halperin**, a top male performer from the 2011 season of American Idol; **The BoomBachs**, a jazz/hip-hop fusion group from Denton, Texas; and Dallas's own, **Larry g(EE)**, who will bring his unique high energy soul/funk show to the Kessler stage. Larry g(EE) is a Red Bull Sound Select Artist that has performed on Jimmy Kimmel Live and Good Day Texas.

The 2012 Leadership Class is very appreciative for all the help and support Mayor Rawlings and Leadership Class alum, **Adam McGough**, are providing to make this concert a huge success. If you like good music and want to support local education, come on out to the Kessler Theater on October 17th and support GrowSouth Jams.

**GrowSouth Jams**  
 October 17, 2013  
 Kessler Theater  
 1230 W. Davis Street, Dallas, Texas 75208

Doors open at 7:00pm  
 General admission tickets are \$25.00.  
 For more information, or to purchase tickets online, visit <https://prekindle.com/events/growsouthjams>





# Coffee with the Court - Magistrate Judge Toliver

by Lindsay Griffin

**D**AYL's next Coffee with the Court program will be with **United States Magistrate Judge Renee Toliver** on **Wednesday, October 16th**, beginning at 8:00 a.m. Judge Toliver has graciously offered to open up her chambers to ten young lawyers to give them insight into the role of United States magistrate judges

in the federal judiciary system. Magistrate judges are appointed under 28 U.S.C. § 631 to assist United States district court judges in the performance of their duties.

A former prosecutor, Judge Toliver made history when she became the first African-American to be appointed to the magistrate bench in the Northern District

of Texas in 2010. You will not want to miss this unique opportunity to learn about one of the vital judiciary roles in our federal court system and to get practice pointers for practicing in the Northern District.

RSVP to **Cherie Harris** at [cherie@dayl.com](mailto:cherie@dayl.com). Please respond quickly as space is very limited.

## ...And 3.5 for Family Time. How to Have the Job You Want With the Life You Want

by Sarah Rogers

**T**his month, DAYL's Wellness initiative continues with a panel discussion on challenges we face in the work-life balance. As young lawyers, many of us begin our practice when we are single. Our greatest concern is how to make time for our busy social calendar while making sure we put in our time as the newest associate at the firm. What happens when our obligations change? How do you handle asking for time off to visit a sick parent or grandparent when you have already used your vacation time for the year? Or when

you're in the middle of a deal or have a deposition scheduled and a sudden family obligation takes you out of town?

Maybe you started out as a young lawyer who is married and has several children – how do you balance your work obligations and time for your family? What do you do about the senior partner who thinks that you are not committed to your job because you want to leave at 5:00 p.m. to attend your son's t-ball game or your daughter's ballet recital?

If you have faced these types of dilemmas before and want to hear how other young lawyers have overcome these

hurdles, you won't want to miss the panel discussion on **Wednesday, October 16th**, from noon – 1:00 p.m. at the Belo Mansion. Hear from **Judge Monica Purdy** (Civil District Court Associate Judge), **Mark Melton** (Hunton & Williams, LLP), and **Christina Jump** (Jump Start Legal Solutions) who will provide advice and guidance on how to handle these tricky situations and to make the most of your law practice while still making time for the life that you want.

There is no charge for DAYL members to attend. RSVP to **Cherie Harris** ([cherieh@dayl.com](mailto:cherieh@dayl.com)).

## Volunteers Needed...

- Generation Generosity with Mazie's Mission (animal adoption), October 5th, Noon - 3:00 p.m.
- DAYL Ask-A-Lawyer Program, November 2nd, 10:00 a.m. - Noon
- Stand Down (for veterans) with the Attorneys Serving the Troops Committee, November 8th, 9:00 a.m. - 2:00 p.m.
- Be an E-Mentor to a high school student for the upcoming school year - [www.dallasbar.org/ementoring](http://www.dallasbar.org/ementoring)
- Aid to the Homeless Community Court Project, November 9th, 7:15 a.m. - Noon

Contact Cherie Harris ([cherieh@dayl.com](mailto:cherieh@dayl.com)) if you have any questions or are interested in any of these opportunities. Volunteers do not need to commit to the full time noted, other than for E-mentoring.

The Elder Law Committee is teaming up with the Alzheimer's Association to form a team at this year's Walk, which will be held the morning of October 5th. All are welcome to participate.

Contact Steven Hallbauer ([steven@lemonshallbauer.com](mailto:steven@lemonshallbauer.com)) if you're interested in volunteering; if you would like to walk on the team or make a donation, please visit: [http://act.alz.org/site/TR/Walk/TX-GreaterDallas?team\\_id=107124&pg=team&fr\\_id=3708](http://act.alz.org/site/TR/Walk/TX-GreaterDallas?team_id=107124&pg=team&fr_id=3708).

# LinkedIn and the Lawyer Advertising Rules: What are “Advertisements” and “Solicitations” in the Context of Your Online Profile?

by Steve Thomas

**A**fter long ignoring my LinkedIn page, I finally updated my information, rewrote my background, answered all of the questions in the profile builder, and sent out connection requests to friends and colleagues. All caught up. But then one of my partners catches me in the hall and says, “Do you think the lawyer advertising rules apply to LinkedIn pages?”

As it turns out, the answer is yes.

In Texas, Part VII of the Texas Disciplinary Rules of Professional Conduct (the “Rules”) governs lawyer advertising. The Rules are supplemented by Rule Comments, Ethics Opinions and Interpretive Comments. So let’s see what they have to say, directly or indirectly, about LinkedIn.

## Is my LinkedIn profile an “advertisement” subject to the Rules?

Rule 7.07(b) requires that any “advertisement in the public media” by a lawyer or law firm be filed with the Advertising Review Committee of the State Bar of Texas in accordance with the requirements of that Rule.

There might be ways to prevent your LinkedIn profile from becoming part of the “public media.” The settings on your LinkedIn page allow you to limit what is viewed by people who are not in your network, including what people will see in search results on Google, Yahoo!, Bing and other search engines. Go to settings and click on “Edit your public profile.”

But the whole point is networking—you want people you don’t know to be able to see your profile, at least to some extent. So if your LinkedIn profile is in the “public media,” is it an “advertisement”? With regard to LinkedIn, the State Bar has removed all uncertainty in Interpretive Comment 17 (1996, revised 2003):

C. Social Media Sites. Landing pages such as those on Facebook, Twitter, LinkedIn, etc. where the landing page is generally available to the public are advertisements. Where access is limited to existing clients and personal friends, filing with the Advertising Review Department is not required.

So are you required to file your LinkedIn profile with the State Bar? Not necessarily. Even some communications that are clearly “advertisements in the public media” are exempt from Part VII’s filing requirements. Rule 7.07(e) provides a laundry list of exempt information. Said another way, if your LinkedIn page contains anything that is NOT listed in Rule 7.07(e), you probably have an obligation to file. You can find a copy of all of the Rules and Comments in Part VII, including Rule 7.07 and the Interpretive Comments, on the State Bar website located at <http://www.texasbar.com/Content/NavigationMenu/ForLawyers/AdvertisingReview/RulesCommentsandOpinions/default.htm>.

## Are InMail or OpenLink messages “solicitations” governed by Rule 7.05?

Suppose you read an article about someone who has a legal problem directly within your area of expertise. You don’t have the person’s contact information, but you find a matching profile on LinkedIn. All you have to do now is write an InMail or OpenLink message to contact the person. But wait—is the message a “solicitation”? Are you required to put “ADVERTISEMENT” in the subject line as required by Rule 7.05(b)(2) for email solicitations?

Subsections (b) and (c) of Rule 7.05 impose certain requirements for any “written, electronic or digital” commu-

nication sent to “prospective clients for the purpose of obtaining professional employment.” But before you start dropping “ADVERTISEMENT” into your subject lines (Rule 7.05(b)(2)) and writing long disclosures about what prompted you to contact the person (Rule 7.05(b)(5)), there are some broad exclusions contained in subparagraph (f).

For example, if you are writing to a family member, or if the recipient is a present or former client, subsections (b) and (c) don’t apply. Rule 7.05(f)(1). Even if the person is someone you don’t know, if he or she asks you for information, you aren’t bound by the solicitation requirements. Rule 7.05(f)(4). Also, communications that are not specifically addressing a particular past occurrence or event, or a series of past occurrences or events, and that are not “motivated by or concerned with the prospective client’s specific existing legal problem” don’t come under the solicitation requirements. Rule 7.05(f)(2).

Comment 4 to Rule 7.05 clarifies that newsletters or other works published by a lawyer that are not circulated for the purpose of obtaining professional employment are not within the ambit of 7.05(b) and (c).

## Conclusion – Keep Networking!

So keep posting updates, sending messages and otherwise using LinkedIn to the fullest extent—it’s a great tool for keeping in touch with clients, colleagues and friends. Just remember that it’s an “Advertisement” and keep the Rules in mind.

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*Steven H. Thomas is a commercial litigator with McGuire, Craddock & Strother, P.C. in Dallas, Texas. He can be reached at [stthomas@mcsllaw.com](mailto:stthomas@mcsllaw.com).*

## Be a Foster Child's Education Advocate

**T**he DAYL Lawyers Serving Children Committee is embarking on a new pilot program where young lawyers will have the opportunity to be an education advocate for a foster child. Working with Texas Lawyers for Children and the **Honorable Cheryl Shannon** in the 305th District Court, this program is meant to enhance the educational out-

comes for children and youth in foster care.

A training session has been scheduled for **October 8th, 2013**, at the Belo Mansion. This training will be held from 12:00 - 1:00 p.m., and will provide you a better understanding of what is expected of you as you serve as the Education Advocate. Training is required to participate in the program.

All TYLA members (36 years of age or younger as of June 1, 2013 or licensed 5 years or less, and in good standing with the State Bar of Texas) are welcome to participate and will be covered by malpractice insurance.

If you would like additional information about this great opportunity to make a real difference in a child's life, contact **Cherie Harris** ([cherieh@dayl.com](mailto:cherieh@dayl.com)).

DAYL Dinner With the Judiciary  
Tuesday, October 29th, 2013  
The Tower Club, 1601 Elm Street  
5:45 p.m. Cocktails | 6:45 p.m. Dinner  
\$30.00 per person

### *Ethics Issues In Discovery*

The Honorable **Irma Ramirez**, United States Magistrate Judge for the Northern District of Texas;  
**Judge Craig Smith**, 192nd Civil District Court;  
**Judge Joe Cox**, Partner at Bracewell & Giuliani and formerly Presiding Judge of the 160th Civil District Court;  
Moderated by **Monica Latin**, partner at Carrington Coleman

Contact Cherie Harris ([cherieh@dayl.com](mailto:cherieh@dayl.com)) for ticket information.

### *Other Opportunities...*

- DFW Association of Young Bankruptcy Lawyers Casino Night - October 24th, 6:30 p.m.  
Email Evan Baker ([ebaker@gardere.com](mailto:ebaker@gardere.com)) for information
- Family Law Cares Fun Run and Walk - November 10th, 8:30 a.m., [www.familylawcares.com](http://www.familylawcares.com)
- DBA Philbin Awards - October 7th, Noon, [www.dallasbar.org/philbin](http://www.dallasbar.org/philbin)

The Lawyers Promoting Education Committee is collecting the following supplies for Reading Partners Dallas, the local affiliate of a national nonprofit organization dedicated to improving the reading skills of elementary school students reading below grade level through one-on-one, in-school tutoring:

- new or gently used elementary level books
- loose notebook paper and white printer paper
- Post-Its
- Hand sanitizer
- dry erase markers
- boxes of Kleenex
- dry erasers
- crayons
- pencils and erasers
- small stickers and other prizes

When you stop by the store, pick up any of the supplies listed above. Supplies can be dropped off at Cherie Harris' office located at the Belo Mansion the week of October 21st-25th. We are also looking for people willing to be responsible for collecting supplies at their individual firms. If you are interested, please email Matthew Rittmayer at [matthew.rittmayer@gmail.com](mailto:matthew.rittmayer@gmail.com).



# #PostIt #TagIt #LikeIt: Social Media Evidence Generally, How to Access it, and How to Determine if it's Been Destroyed

by Rafael Rodriguez III

**I**f you're reading this article, there's a good chance you have a Facebook account, maybe even a Twitter or Instagram account. That's because we live in a world that's inundated with social media sites that are easily created, edited, and for that matter—easily destroyed. Social media sites, like Facebook, make it easy for us to keep in touch with friends, stay up to date with what's going on in the world, and provide a place for you to express “what's on your mind.” Chances are, last time you logged in to your Facebook account and scrolled through your News Feed, you read about or saw a photo depicting the details of the lives of your “Friends.” The truth of the matter is, detailed information is being shared on social media sites every second of every day by people all around the world. That means there's a good chance that your client, the opposing parties, and/or the witnesses in your cases have shared or will share information on their own social media sites at some point during the litigation of one of your cases. That information could be used as evidence to either support or defeat your clients' claims or defenses. This article provides general information about social media evidence, how to access it, and how to determine if it's been destroyed.

## **Social Media Evidence is Discoverable.**

Under Texas Rule of Civil Procedure 192.3, a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action. Additionally, a party may obtain discovery regarding any matter that is not relevant, so long as the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Thus, things like Facebook posts, Instagram photos, comments, likes, etc. are discoverable if they are relevant, or if they are irrelevant but appear reasonably calculated to lead to the discovery of admissible evidence. *Practice Tip: Use interrogatories to determine the existence and nature of a party's social media account(s) followed up by a request for production asking for the users' account data (see below for explanation).*

**Social Media Evidence is Relatively Easy To Access.** For example, anyone with a Facebook account can search to determine whether a party or a potential witness has a Facebook profile without the use of formal discovery. If the party or witness has made his/her profile publically available, you will have unrestricted access to the details of that person's profile (e.g., photos, wall posts, Likes, etc.) without ever engaging in formal discovery. But, if

you've spent any time searching Facebook, you know most Facebook users don't have publically available profiles (i.e., you have to be a “Friend” in order to have access to the details of the profile). In those situations, you will be required to engage in formal discovery in order to obtain the details for which you're searching. The good news is Facebook stores every users data into a neatly packaged folder, which every Facebook user has access to and can download for production in response to a discovery request. See the following link for a list of the data that is stored by Facebook and can be downloaded by each user: <https://www.facebook.com/help/405183566203254>. See the following link for instructions on how to download a copy of the user's Facebook data: <https://www.facebook.com/help/131112897028467>. *Practice Tip: Include both links above in your discovery requests for a party's Facebook Account Data.*

**When Its Gone, Its Gone For Good.** Though social media data may be easy to access, as is the case with Facebook Account Data, generally when it is removed from a social media site by the user, it's gone for good and there's no way to determine if it ever existed. That's because Facebook and other social media sites do not keep track of data that has been removed by the user. Thus, if a client, opposing party, or witness chooses to delete data (e.g., a comment, photo, or wall post, etc.) from their social media site, chances are you'll never know and that information is likely gone for good. However, by obtaining a snapshot of all the user's data before the deletion and comparing it to the post-deletion data, you can easily determine what information has been deleted or altered.

**How To Determine If Social Media Evidence Has Been Destroyed.** As noted above, generally when social media data is removed by the user, it's gone for good. That is, unless you have obtained a snapshot of the user's data before the removal of that data by the user. In those situations, you can then compare your snapshot with the post-deletion data to determine exactly what information was removed and when it was removed. There are several ways to obtain a snapshot of any given user's social media data, some of which require a little more technological savvy, and some of which are as easy as sending a discovery request.

Illustration: Let's take a Facebook profile for example. If you have access to the user's Facebook profile, you can simply take screen shots of the Facebook profile which you can then use to compare at a later time to determine if information has been removed. Though, taking screen shots will

likely not be the most cost-effective method for capturing a user's social media data, depending on how much information is contained on the user's Facebook profile. Not to worry, however. There is software which you can download and program to automatically take a snapshot of the all the data on a user's Facebook profile, which you have access to, every day at a certain time. This software does all the dirty work for you, and the best part about it—it's free. Here is a link which will allow you to download Belkasoft's Facebook Profile Saver: <http://www.top4download.com/belkasoft-facebook-profile-saver/kdwgnavg.html>.<sup>1</sup> After capturing a user's Facebook data, you are then able to track removal of any data, including photos, comments, wall posts, etc. *Practice Tip: If you determine that a party or witness has removed data from their social media site, you may have grounds for sanctions and/or an adverse-inference jury instruction based on spoliation of the social media evidence. See, e.g., Gatto v. United Airlines, Inc., et al, 2013 U.S. Dist. LEXIS 41909 (N.J. Mar. 25, 2013); Allied Concrete Co. v. Lester, 736 S.E.2d 699 (Va. 2013).*

Regardless of which method you choose to access social media evidence or how you choose to use that evidence in litigating your cases, the most important thing is that you know it exists, how to access it, and how to determine if it's been destroyed. **DISCLAIMER: THERE ARE INHERENT DANGERS IN THE USE OF ANY SOFTWARE AVAILABLE FOR DOWNLOADING ON THE INTERNET. MAKE SURE THAT YOU UNDERSTAND THE POTENTIAL RISKS BEFORE DOWNLOADING ANY SOFTWARE. NONE OF THE LINKS PROVIDED HAVE BEEN VIRUS SCANNED. THUS, FOR YOUR OWN PROTECTION, YOU SHOULD SCAN THESE FILES (AS YOU SHOULD FOR ANY FILE DOWNLOADED FROM THE INTERNET). YOU ARE SOLELY RESPONSIBLE FOR ADEQUATE PROTECTION AND BACKUP OF DATA AND EQUIPMENT USED IN CONNECTION WITH ANY OF THE SOFTWARE REFERENCED ABOVE. THE AUTHOR, THOMPSON, COE, COUSINS & IRONS, LLP, AND THE DALLAS ASSOCIATION OF YOUNG LAWYERS WILL NOT BE LIABLE FOR ANY DAMAGES THAT YOU MAY SUFFER IN CONNECTION WITH USING, MODIFYING, OR DISTRIBUTING ANY OF THE SOFTWARE REFERENCED ABOVE.**

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*Janet Ayyad (left) discusses options with a veteran during DVAP's veteran's clinic*

*DAYL Ask-A-Lawyer Program on September 21st. (l to r) Paul Simon, Rachel Kingrey, Jason Freeman, and Andy Jenkins*

# Scenes From the August DAYL Social

