

In the Eye of the Beholder: The Relevance of Facebook Evidence

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Social networking litigation will be written by the end users of those websites. In *Bass v Miss Porter's School*, the Defendant school sought from the Plaintiff discovery of her alleged teasing and taunting on Facebook. *Bass v. Miss Porter's Sch.*, 2009 U.S. Dist. LEXIS 99916 (D. Conn. Oct. 27, 2009).

The Plaintiff objected to the Facebook discovery request on the following grounds:

- 1) The Facebook information was "irrelevant and immaterial" and was "not reasonably calculated to lead to the discovery of admissible evidence;" and
- 2) "[Plaintiff's] ability to produce responsive documents was severely curtailed by Defendants' actions in disconnecting the Plaintiff's access to her school email and intranet access prior to the filing of this lawsuit." *Bass*, at *2.

After subpoenaing Facebook, Facebook agreed to produce "reasonably available data" from the Plaintiff's profile from January 1, 2008 to May 1, 2009. *Bass*, at *2.

The Court ordered the Plaintiff to produce 1) all responsive Facebook discovery to the Defendant and 2) everything produced from Facebook to the Court for *in camera* review. *Bass*, at *3.

The resulting production was 100 pages (apparently printed out) to the Defendant and 750 pages produced to the Court. *Bass*, at *3.

The Court was noticeably frustrated with the Plaintiff's attorney. The Court stated the production offered "no guidance as to the grounds or basis on which her counsel made the determination of which documents to produce to Defendants." *Bass*, at *3.

The Court took direct aim Plaintiff's claim the Facebook discovery was irrelevant after reviewing the Facebook production by date, sender/recipient and subject matter. *Bass*, at *3. The Court found:

*The selections of documents Plaintiff disclosed to Defendants and those she referred for in camera review reveal no meaningful distinction. Facebook usage depicts a snapshot of the user's relationships and state of mind at the time of the content's posting. Therefore, relevance of the content of Plaintiff's Facebook usage as to both liability and damages in this case is more in the eye of the beholder than subject to strict legal demarcations, and production should not be limited to Plaintiff's own determination of what maybe "reasonably calculated to lead to the discovery of admissible evidence." Bass, at *3-4.*

The Court overruled the Plaintiff's objection to producing Facebook discovery, especially in light of the fact the *in camera* production contained communications clearly relevant to the lawsuit. *Bass*, at *4.

Bow Tie Thoughts

This is a wonderful short and sweet opinion on using Facebook information in discovery. The Court's recognition that Facebook usage can reflect the state of mind of a user was excellent to see. The only area somewhat concerning about the opinion was the fact the Facebook discovery was printed and not maintained in a digital form of production.

