

# Northern Illinois University Law Review

Volume 36

Summer 2016

Number 3

## BIBLIOGRAPHY

- Law Firm Marketing in the Age of Social Media: A Toolbox for Attorneys  
Annie Mentkowski..... 1  
*This Article provides many sources for a broad spectrum of attorneys interested in learning more about social media. Part I explores the social media platforms popular in the legal profession. Part II presents select secondary sources that are intended to enhance attorney engagement with social media. Part III looks at popular resources for managing law firms' social media efforts. Part IV provides popular technology and social media current awareness resources. Part V lists case examples where attorneys have been disciplined for ethical violations stemming from the use of social media.*

## ARTICLES

- Free Speech and Defamation in an Era of Social Media: An Analysis of Federal and Illinois Norms in the Context of Anonymous Online Defamers  
Heidi Frostestad Kuehl ..... 28  
*This Article provides an overview of the evolution of defamation causes of action in an increasingly online era and focuses on successful discovery of anonymous online defamers. After the recent Illinois Supreme Court case of Hadley v. Doe (2015), there are unique Illinois discovery tools that attorneys may use to identify anonymous or unidentified defendants according to Supreme Court Rule 224 and 735 ILCS § 5/2-402. The Article begins with the landscape of federal law preemption of state law according to the Communications Decency Act's "Good Samaritan" provisions in Section 230 and explains why Internet Service Providers ("ISPs") and social media websites are not historically liable for online defamation according to federal law. As a result, state law causes of action for defamation are the key for discovery of their online identities and for successful recovery against the alleged online anonymous defamers. This Article focuses on the Illinois defamation law norms and fruitful pre-suit discovery tools in light of Hadley v. Doe. These valuable facets of Illinois procedure might also be more generally useful and applicable in a variety of contexts when there might be anonymous or unidentifiable defendants for civil causes of action; thus, attorneys who practice in Illinois should carefully evaluate their utility as discovery mechanisms in other types of civil actions.*
- Prosecuting Threats in the Age of Social Media  
Enrique A. Monagas & Carlos E. Monagas ..... 57  
*Social media has opened new avenues for perpetrators to threaten and intimidate. No longer does someone need to physically stalk their prey to deliver a message; they can now threaten anyone, anywhere with just one*

*click of their cell phone. And because the threatening communications are often prepared in private and can be delivered anonymously, they are not regulated by social norms that would harshly condemn such behavior. Thus, it should come as little surprise that threats are increasing every year and online threats are fueling that growth. This Article considers the challenges facing prosecutors in charging and prosecuting online threats after the Supreme Court’s decision in *Elonis v. United States*, 135 S. Ct. 2001 (2015). Social media has radically changed the way we communicate, removing both in-person human interaction and the meaning and intent such interaction conveys. In this Article, we argue that applying the recklessness standard to today’s online communications has the unjustified danger of punishing legitimate speech without increasing public safety.*

Cyberbullying and the Law  
 Jamie Mosser .....79

*Laws are created to regulate behavior and criminalize actions. Sometimes those laws have unintended consequences when it is applied to behavior not anticipated to be covered by those laws. Most states do not have laws specifically directed towards the punishment of cyberbullying behavior. However, the laws that have been created to punish Internet behavior are being used to punish cyberbullying. This essay, which has been written for the Northern Illinois University Law Review’s Symposium on the Legal Implications of Social Media, explores the different civil and criminal laws that have an intended or unintended regulation of a student’s use of social media to bully another person. The essay also discusses cyberbullying behavior in comparison to bullying behavior not done on the Internet and the difference in consequences along with the First Amendment implications.*

**NOTE AND COMMENT**

What’s Really at Steak: How Conflicts of Interest Within the FDA and USDA Fail to Protect Consumers  
 Christine Baderstadt .....97

*In 2015, Chipotle shut down all of its restaurants nationwide in response to the ongoing food poisoning outbreaks. The deadly pathogen e. coli sickened people from the East coast to the West, and cost taxpayers hundreds of thousands of dollars. This Comment explores how these pathogenic outbreaks continue to happen, despite having federal agencies that are tasked with outbreak prevention.*

*The increase of pathogenic outbreaks like e. coli and salmonella correlates to looser enforcement of federal regulations by executive agencies like the FDA and USDA. These agencies are often staffed by former lobbyists of the meat and poultry industries, and some who are even particularly high-level appointees who had contributed heavily to political campaigns of members of Congress. With former lobbyists within the ranks of government officials, the FDA and USDA have failed to uphold what they are mandated to do: protect the American people from harmful investigation of bacteria in our food.*

*This Comment calls for a shut down of the “revolving door” by proposing stricter enforcement of restrictions on former executive branch employees from lobbying, as well as establishing limitations on meat industry lobbyists from serving in executive food protection agencies.*

Student-Athletes as Employees: Unmasking Athletic Scholarships  
 Zachary Bock.....131

*The National Collegiate Athletic Association (NCAA) and its member institutions have increasingly become some of the most powerful*

organizations in the country. With increased power it was only a matter of time before the NCAA and member institutions would feel pressure from its own constituents. As was expected, the pressure initiated in the summer of 2009 when Edward O'Bannon, former UCLA men's basketball standout, brought a class action lawsuit against the NCAA alleging antitrust violations. After a long battle in the United States District Court for the Northern District of California, O'Bannon's class action prevailed, but only to have the decision partially vacated by the Ninth Circuit Court of Appeals. However, the initial success of the O'Bannon case provided a sense of hope for other collegiate athletes and groups to put forth an effort to limit the NCAA and its member institutions' power. Before the O'Bannon case had been decided another group of athletes at Northwestern University came together with hopes of unionizing. Northwestern University's football team petitioned to the National Labor Relations Board (NLRB), wherein, the case was assigned to the Regional Director in Evanston, IL. The Regional Director applied a standard three prong test, established by prior NLRB decisions, in order to decide if Northwestern University football players were employees of the institution. By the end of the Regional Director's analysis, he had concluded that Northwestern University's football players were employees of the university and could unionize. Yet again, the success of student-athletes was short lived, when Northwestern University appealed to the Board for review. The NLRB denied jurisdiction on the matter, effectively killing the Regional Director's order. Now we all sit and wait for an appeal

This Comment focuses on the Regional Director's analysis of the three prong test for employee status, especially the third prong, which focuses on compensation for a service. The term compensation is never truly defined by the Regional Director nor by the NLRB. Traditionally, when we talk about compensation we are thinking of a paycheck, some sort of direct access payment. But in this scenario we are dealing with athletic scholarships; a form of compensation that is not a paycheck but, rather, an institutionally controlled financial aid. This Comment further attacks the rationale of the Regional Director by diluting his arguments that institutions can cancel or reduce athletic scholarships for any reason at any time by offering NCAA Bylaws and regulations, and case samples that specifically prevent institutions from cancelling or reducing athletic scholarships for any reason. Even more importantly, this Comment introduces the potential side effects and implications of allowing student-athletes to unionize, including: tax ramifications, violation of Title IX, nonscholarship discrimination, and a complete dissolution of amateurism.