Civility is the Best Social Media Policy

With the huge boom in social media, almost everyone has a Facebook page or Twitter account, including teachers, coworkers, employers, future employers, and yes your aunt Edna too. More people than ever can get a glimpse into your life, and it’s important to be careful about what you post and who has access to it. To help South Source sort out the potential personal, legal, and professional ramifications of social media posting, we asked John Shupper, Legal Studies program director at South University — Columbia, South Carolina, to lend his expertise.

South Source: In what ways are people and/or businesses responsible for what they post on social media sites?

John Shupper: Personal Responsibility — I suggest to my students that they not post anything on a social media site that they would not want their mothers, fathers, or employers to see. We are in an electronic age where employers will scan social media sites to gather information about a potential employee that might not be included on their resume. If you want to be in a licensed profession, like a doctor, nurse, lawyer, or CPA [certified public accountant], or you want to work in law enforcement, government, or have a military career, then you better be careful about what you post on your social media sites.

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You might not get the job with the law firm or the brokerage firm on Wall Street you seek or you could be denied a security clearance for government or law enforcement work because of something you thought was funny and harmless when you posted it on Facebook when you were in high school. Have you seen the stories and photos of Michael Phelps and the bong? Most folks would not come out of something like that as well as one who won lots of gold medals in the Olympics did.

When you post phrases or photos on websites you are posting them for the world to see. You cannot have an expectation of privacy for voluntarily postings on social media sites. You can be stuck with the consequences of indiscretions of youth forever by certain postings on such sites.

Employers’ View — Many businesses have developed policies that prohibit employees from using their company’s computer or smart phones for personal reasons like checking personal email or social media sites. Some employers have the capability to check your computer to see what you have been doing when you log on the internet in your office. Employees who violate company policies can be fired in many “Right-to-Work” states. Again, posting “party” photos or lewd remarks on a site when you are young can end up being the reason you get rejected for certain jobs much later in life even if you have a great GPA [grade point average]. Prospective employers will check — especially the government — if you are being considered for a security clearance work overseas or law enforcement work.

Legal Responsibility and Potential Consequences — Defamation laws allow people who say, write, and publish untrue remarks about others that harm their reputations to be sued for money damages. The laws vary from state to state, but saying, writing, and otherwise publishing untrue remarks that cause harm to the reputation of another can result in you being sued in civil courts. If a jury finds you liable for defamation or slander, they can award money damages to the person whose reputation was damaged.

There is a fine line between “free speech” under the First Amendment to the Constitution of the United States and speech for which one can be held liable in civil court. A private citizen has a greater right to privacy than public figures like politicians and professional athletes. Likewise, one must have an expectation of privacy before they can claim their privacy rights have been violated. So release of a private citizen’s protected health history could result in a civil liability for the person who published another’s medical records without permission.
Truth is an absolute defense to defamation claims. So publishing a medical report that shows a person had a sexually transmitted disease might not amount to defamation because the report was true no matter how much the publication harmed the person with the disease. However, the person who rummaged through the backpack of another and published that medical report they found in an envelope marked “Confidential” in a zippered pouch inside the backpack, could conceivably be held liable for disclosing protected health information without authorization, which violates statutes promulgated to protect people’s privacy and protected health data.

**Images of Others** — Reproducing the image of another person without permission can be actionable in tort if the person has an expectation of privacy and their photo is published without their permission. “Public figures” have diminished rights to privacy compared to private persons. So professional athletes and local politicians would have a difficult time prevailing in a claim their privacy was invaded if you published photos of them at a topless bar on your website. However, if you have a business, and use a social media site for advertising your business, you incur more risks if you publish people’s photos without their written permission. Someone who comes to your business to get a tattoo may not want to see a photo of their tattoo in an advertisement on your Facebook page.

**SS: Can people and/or businesses get in legal trouble for posting things on social media sites that could be considered offensive, but are true?**

**JS:** Generally, truth is a defense in defamation actions. Posting a picture on your personal social media page showing someone “mooning” the crowd at a keg party might be offensive to the person with their pants down after they sober up, but if they pulled their pants down and posed for the picture voluntarily then they would not be likely to prevail in a lawsuit.

The commercial use of the image of another without permission could be actionable in certain cases.

Truth is a defense to a libel claim even if the statement is harmful. But, one can also be liable for invasion of privacy in other instances. Public figures like politicians and professional sports figures do not have the same degree of privacy as “private” individuals. Generally, one must prove a statement was heard or published, it was injurious, untrue, and was not privileged, to win a defamation case.

**SS: What does the future hold with regards to litigation being brought against individuals and/or businesses because of things posted on social media sites?**

**JS:** We will have to wait and see how the courts handle some cases that have already been brought in an effort to get social media sites to protect the privacy of people who post on their sites.