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Symposium

\*245 THE ETHICS PANEL ETHICS 2.0--THE ETHICAL CHALLENGES AND  
PITFALLS WEB 2.0 PRESENTS TO BANKRUPTCY ATTORNEYS

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MR. DUEDALL: Let me turn it over to the panelists to speak for a couple minutes generally about how they've used the Internet effectively and how they help others use the Internet effectively. Then we're going to posit a few questions and concerns that are in your materials that you may have "why can't I do this," "this is too hard," "there's too many ethical issues," and "there's too many pitfalls." The panelists are going to explain why a lot of that is wrong and set forth a lot of opportunities that are out there including opportunities that you would have thought everyone is already doing. It turns out they're not. Steve, why don't you start off?

MR. JAKUBOWSKI: Well, first I want to thank Emory for inviting me down here and Mark. It's a great symposium. I have followed the Emory Bankruptcy Developments Journal since its inception and have great respect for the university and the law school and all of its participants. I'm really happy to see students here because in many ways this is a critical avenue of discussion for you. I heard yesterday that 35% of the graduates of Emory are receiving job offers now, and I think nationally even at schools like Harvard Law School and Northwestern, the top was maybe 55%. So, you all need to figure out how you're going to create a presence for yourself and how you're effectively going to be building a brand for yourself as an individual who has something to say in the bankruptcy marketplace. Let me tell you how I started \*246 a little bit and I'll keep the comments brief, but I think it's important because, as Mark said, I've worked at big firms, I ran some companies, and then I went back to being a lawyer. In 2002, I went to a lecture that was given by Judge Diane Wood who is on the Seventh Circuit. Actually, I worked for her when I was a first year law student. She's almost a Supreme Court Justice; she was runner up to Justice Sotomayor. And I listened to her speak, and I was just in awe of her brilliance. She knew the cases and the theories and the constitutional questions in a way

that was just absolutely remarkable. I took that and I thought about myself --and I'm going to direct this to all of you here. We are all lawyers and we're responsible to know the law. Now, how many of you here really feel like you know the law; who can say I really know what's going on out there or that I know what bankruptcy law is about? Now, you're students, and I don't expect you to, but when you get out there and you're marketing yourself as a lawyer, you have to know the law.

So after that lecture I decided I'm going to start knowing bankruptcy law and I subscribed to Westlaw and I starting pulling down every case and having it delivered to me on e-mails. And to this day I get e-mail alerts--if you type in the word bankruptcy and put it up as an alert, you'll get every single bankruptcy case that comes down--about 20 cases a day that come into my e-mail inbox and I read them. I don't read the consumer cases because I'm not really a consumer lawyer, but still there are a lot of issues that come up in consumer law with respect to statutory interpretation and things like that that are so relevant. So the number one thing is you have to know the law. So it turned out that what I was doing was: I'd get all these cases and I would be mailing them out to people and saying "did you see this," "did you see that," and eventually people got sick of my e-mails. I saw a cartoon in the New Yorker showing one dog talking to the other, with the caption "I had my own blog for a while, but I decided to go back to pointless, incessant barking." [FN1] So that, for me, is really kind of what most blogging is about. It's not about pointless, incessant talking. It's about really trying to make a point and to try to put yourself into the stream of conversation that's out there in terms of what's going on currently. So what happened was: in '05 there were a lot of great Supreme Court cases that came down, such as Kelo and Grokster. [FN2] I was following them on blogs such as SCOTUSblog and a couple of patent blogs, \*247 and it was just remarkable how within a short period of time the entire case had been vetted by terrific analysts, professors, great constitutional lawyers. SCOTUS Blog Homepage, <http://www.scotusblog.com/>. Within literally a week, both Kelo and Grokster had been completely vetted.

So I said, well, BAPCPA had just been approved, what are people saying about that? But there was no bankruptcy blog out there. Well, it was quiet in 2005. There wasn't a lot of business. So I decided I was going to become a blogger, and I met my co-panelist Kevin. And I'll turn it over to him. It's been a tremendous success. Kevin of course runs the premiere blogging domain for handling blogs, and for me it's just been a tremendous success. So far I've had 500,000 page hits. I've put myself, at the insistence of Kevin, in both the Lehman and Chrysler discussions. [FN3] In Chrysler, I got about 10,000 page views in one day and as a result of that I ended up--because of my involvement in these cases as a blogger--actually becoming a lawyer in the GM case. [FN4] I represent the tort claimants there. I've talked about it on my blog. I'm the only one out there appealing the decision in the Chrysler cases and the GM case about the unfortunate treatment of tort victims. [FN5] And I talk about it on my blog. However, it was the blogging that ultimately lead me to that pro bono representation.

MR. DUEDALL: Kevin, can you give us your background in this area?

MR. O'KEEFE: My name is Kevin O'Keefe. I'm a lawyer of about 30 years. I practiced for 20 years and when I practiced, I think it was like those practitioners that are here--you get your work by word of mouth. When the Internet hit in 1996, I was a lawyer in Lacrosse, Wisconsin, and had just started my own firm. I was looking to do something different as a plaintiff's trial lawyer, rather than do the traditional sort of advertising in

the Yellow Pages and whatnot to bring in your staple of cases. So, I bumped into the Internet. I quickly realized that the Internet was a communication tool. It was a way to engage people. It was a way to build relationships. It was a way to demonstrate your empathy. It was a way to show that you were a different sort of lawyer. A way to show that you actually cared about people in a real and meaningful way, and that it didn't matter whether you were a consumer lawyer or a business lawyer.

\*248 So, as the Internet's evolved from how it existed in the '80s, many of its features stayed very much the same. We hear all this stuff that's new, this social media, this Web 2.0, Twitter, blogs, what have you. Forget about the names and forget about the technology. It has nothing to do with technology. It has everything to do with building relationships with people. And as law students who are here, you want to leave law school having relationships with leaders--really knowing them. Yesterday, I was getting a ride in from a student--I don't know if he's here today--from the airport. He was talking about the job prospects going forward, what he's doing today, about working at the law review, and having an idea about getting some article out that could be months away. He's been working on it for a year, and he was trying to figure out how to maybe get an op-ed piece in the Wall Street Journal. So, I'm thinking, I know you're going through your advisor to do that type of thing, but have you thought about maybe writing about something a reporter said at the Wall Street Journal--one that writes on bankruptcy. They'll immediately know that you referenced them. They'll know you're a law student at Emory who wants to get out and focus on bankruptcy. They'll thank you. You will know them. You will connect with them on LinkedIn. Maybe he drops you a note for resources. How many other law students are doing that in the country? Some are, but not very many. Some lawyers in this country are doing things like that, but not very many. We rely on other people. So, when we're talking about these things, think about them as relationships. When you think about that sphere of relationships, you're thinking about a target audience, some clients, perspective clients, referral sources. Those are your inner core of the onion. But take it a step outside. Ninety-five percent of people are influenced by 5% and today those influences are a lot more than when I was a kid. Back then it was Walter Cronkite on the one channel we got in our town. Today, it's bloggers and it's news sites. It's coming at you every which way. There's influencers, and so no matter what area of expertise you are in--if you're in bankruptcy, well, then who are the A list people writing on bankruptcy issues in this country? Whether they're lawyers, whether they're academics, whether they're industry people, whether they're financial people, who are they and are you listening to them day in and day out? Have you set up a vehicle to listen to them, not by e-mail or browsing the Internet but by using some of the tools that are easy as could be to use. If you were to reference them in discussions, and they were to see you and began to cite you, then now it's people that did research into that field that saw your name because you claimed that mantle of expertise. Then when somebody Googles your name it will come to a web site and a directory listing, which anybody \*249 could have if they're alive and their money is green. They actually see citations to you. So, what you've done and what you're hearing about, this social media being very powerful, all it's talking about is that people trust peers. We trust each other. And on the Internet peers have extended far beyond the guy down the street or the person in the next office. It's expanded to what we can quickly see about someone. So, if I Google your name and I don't see a robust LinkedIn profile with lots of connections in your industry and you

participating in groups, then I know you're behind the times. I know you probably charge a little bit more than other people because you are not very tech savvy. If I don't see people citing you as a thought leader, then other people around the country don't respect you as a thought leader. If I don't see you speaking at conferences in Google then I know you're not getting invited to speak and if I'm reading periodicals that have to do with bankruptcy, and I don't see your name being cited when I Google your name, then I know you're not a leader. All of those things are very, very, very doable with very few challenges other than a little bit of creativity.

MR. DUEDALL: Scott, what are your initial thoughts on this topic?

MR. RIDDLE: One question I want to ask Kevin is--and I agree with everything Kevin and Steve said--has a picture of this panel already hit Twitter?

MR. O'KEEFE: Yeah. And so if I'm sitting here putting stuff in, it's not that I'm trying to catch up on e-mail and wasting peoples' time. I can put up, for example, that Steve Jakubowski addressing a panel here at Emory. You know how many people have seen that? Well, I have 8,000 people that follow me on Twitter. They're not strip dancers or something. They tend to be lawyers, media people, legal professionals, and industry leaders. When LexisNexis bought my last company and I was a business development person there for about 18 months, 6 weeks spiritually, they wouldn't listen to anything I said. Now if I put stuff out, not only do they re-Tweet it to share with other people, but if I say anything about LexisNexis there will be 187 people plus their PR people in New York, four of them at Ogilvy Public Relations Worldwide, who will see what I write. So, yeah, we put stuff out to see and I think these guys are good lawyers. They are getting out there and expressing their ideas.

MR. RIDDLE: Well, my blogging career started in probably late 2005. For several years before that, I had a lot of real estate and mortgage fraud litigation. Around 2005, those cases fizzled out mostly because the cases ended and people went to prison so that helped my career a little bit. So, I was \*250 looking for a way to get back to more of a bankruptcy practice. I needed a web site, so I started looking at web sites. I vaguely knew what a blog was and didn't have a high opinion of them from what little I knew. I think over the course of just one or two days, I literally went from looking at web sites or companies that offered web sites, to Steve's blog and corporate litigation blog, by Francis Pileggi in Delaware [\[FN6\]](#)--and I found one of those blogs which lead me to LexBlog. I filled out the little online form that you fill out on a lot of web sites and I think Kevin called me back within an hour and told me five years ago --

MR. O'KEEFE: In those days it would probably be within a minute.

MR. RIDDLE: It was very quick. I mean it was while I was still sitting at my desk, I remember that. Kevin went through a lot of the things he just talked about and that was five years ago. That was before Twitter. I don't know if LinkedIn was around but it certainly wasn't as popular and before a lot of the things that Kevin was way ahead on. I needed to spend money on something so I took the plunge and did the blog and, coincidentally, it just happened to be when BAPCRAPA, as Judge Lundin called it, came out. It was then when all the cases started coming out. So, that gave me a good intro. My blog, if anybody reads it, is a little different than Steve's. I'm sort of scattered-shot and I even occasionally try to summarize a chapter 13 case. To the best of my recollection I have been involved in one chapter 13 case in my career and came to regret it. [\[FN7\]](#) But it's good to know what's out there.

MR. DUEDALL: Let's talk about some of the propositions that I think we're going to find are patently false and that are holding a lot of people back from using the Internet to its maximum capability in terms of developing their brand, growing their practice. I think most practicing lawyers will tell you that the key to generating business is: knowing a lot of folks and establishing credibility. So do you go to conferences? Yeah, I go to conferences. What do you do? I get lots of business cards. What else do you do? Well, I put them in my contacts so I know them and of course they have my business cards so they know me. Did you establish credibility with them? No. I met them. Mission failed. Law firm money wasted; your time wasted. If you have a lot of credibility, but you don't know a lot of folks then you have a very small pool. So, let's talk about use of the Internet and the use of social media. Kevin, how \*251 is that used to develop credibility and to get to know people? The question answers itself but, Kevin, why don't you tell us a little bit about that?

MR. O'KEEFE: That is a few hour discussion but just very simply, for example, how many people here have ever used a Google Reader? [\[FN8\]](#) Well, there are some. When you engage people, you don't talk at them. You listen. Okay. So imagine if you are at an industry conference of clients and you are on a panel. There is going to be cocktail reception at the end of the day and you told the marketing people: "Hey, make sure the associates get that really impressive box of content ready because we're going to dazzle them." So, you're going to write a bunch of articles, you're going to grab the law firm bullhorn, and you're going to get up on a box, tell everybody to be quiet, and you're going to read content at them--just shout stuff at them. That's what most law firms do. We put up web sites as shrines to ourselves and then we shout stuff at people. The more we shout at them, the less we can figure out why our traffic isn't going up on our web site. If that isn't enough, then we hire services to send out e-mail alerts and newsletters and then we measure success based on how often we can get people to click on it and open it. Then we buy more and more of those services. It's, "How much shit can we shove at people?" Who's looking for more e-mail? I'm really not. Do you want more e-mail? Do you want more alerts? You're sending stuff out to in-house counsel who would get fired if they didn't already know about those things. What if you actually engaged people? If you went to that cocktail party and instead of shouting content at people, you actually listened to what they were saying, and there were actually some all-stars there that you would welcome meeting and getting to know a little bit. Maybe listen to what they were saying and then offer value. That's an interesting point you made. Are you aware of this article or this point or here's what I see that's going on. That's value. That's engaging people. That's what people build relationships upon. And if you asked any CEO of any large corporation, if you asked any managing partner of any large firm that's headed someplace what this is all about, they will tell you, "It's built on relationships." So, let's go back to that Google Reader. What if you're listening to that room, that cocktail party, and you framed it? Let's use bankruptcy as an example. We are going to listen to the leading bankruptcy bloggers, the ones who have the greatest influence, i.e. the ones who have the most subscribers through the RSS, which you can see right there in Google Reader. Then we're going to monitor particular terms. People know how to monitor terms at Google. It's like doing a search on a particular \*252 bankruptcy case and seeing who is mentioning it on a blog, to have it fed to them in a Google Reader. Who monitors their own name and their own firm's name and their clients' names on blog searches or in the

news and has it fed to them in a Google Reader? It's a little bit crazy when you think about it. Fifteen percent of people in the country are using RSS and a reader to get information and they tend to be the people who have an insatiable desire to learn. They tend to be the people who are going someplace and even the busiest people in the world because they don't have time to browse around and get content like you're getting it. But if you go to that reader, you listen to what the thought leaders were saying on a subject and you engage in the conversation by referencing them on a blog, then they immediately see you. You have now entered into a conversation. You have left the cornfield where you're shouting out content and you've gone where the thought leaders are and they are going to begin to reference you as they see you. That can come even if you're a first year lawyer that just started practicing, being transparent in where you're coming from or it comes where most law bloggers are. This stuff isn't for kids. The average age of the lawyers who blog on our network of 3,000 lawyers is 45 to 65 years old. Kids are ill-equipped to know how to use social media to build a relationship. So the way it's done is to think: "How do I engage?" If you're looking at other forms of Internet marketing, whether it's web sites, e-mail, newsletters, or ads, those don't engage people. So, I'm always talking about putting up a cord--how am I engaging people and building relationships?

MR. DUEDALL: Let's talk about brands a little bit. The proposition up here is that the Internet is too crowded. There's no place for me. There's already so much junk out there. There's just no space for me. Well, think about a supermarket. There's already a lot of soap out there. How am I going to get a new soap on the shelf? You build that brand. Steve, what does a brand mean for a lawyer?

MR. JAKUBOWSKI: Well, brand is really another word for reputation, and I don't think that there's a person who is a lawyer or a judge who thinks that there is anything more important than a person's reputation. So, the question is how do you build a reputation? You build it through years of honesty, integrity, loyalty, all the positive things that ethics represents. But, the question is how do people know you? How do people learn about you? What we're saying up here is that the use of the Internet is a way to get people to know about you in a way that you otherwise wouldn't be able to accomplish. Now, if you're going to work for a big firm, you're going to be limited in \*253 many ways in terms of what you can do, but as Kevin will tell you, all the AmLaw 100 firms or, at least most of them, have blogs now. So, if you go into a large firm, you can certainly push the marketing people at that firm or in your department to say: "Hey, this is something that is good for the firm." In fact, it is good for a department and, so ultimately it's good for you. If people know your name and they associate it with something they have read, something that made an impression on them, then that's good for you because what you have that only you can take away from there for yourself is your reputation. That is as important as anything that you come away with. In other words, this is how you can build your reputation, how you can maintain it, and how you can foster it.

MR. O'KEEFE: In professional services your brand is your expertise. So it's not the logo that I see at the airport when I come into town and go, "Oh, my God, I'm glad I'm using that firm because they've got a great logo or they've got a great letterhead." It's the expertise of the lawyers and it's not just the brand of the firm. It's your personal brand. The more powerful your personal brand is, the more available you are to the firm. If

you're 50 years old or you're 45 or 50 and you don't have a personal branding and you can't attract clients for your expertise, then you're not an asset to the firm anymore. Instead, you are a liability to the firm. So you're more valuable if you have that personal brand because you're recognized as an authority, as a reliable and trusted authority in the law. And you're more valuable to yourself because it puts you in a position where if you have opportunities to go someplace else, the door is always open.

MR. JAKUBOWSKI: So how do you do that? The question is how do you do that, as a young student who is just learning the law. Well, there are commentators and there are aggregators on the web and at a young age there's nothing wrong with being an aggregator. An aggregator meaning--and I tried to be an aggregator and I can't do it, but in the early days of my blog I was an aggregator--I would go and I would pull down the Westlaw cases for the month and I would go to SSRN and pull down those articles for the month and I would take the abstracts and post them. Also, I would take all the law review articles that were bankruptcy related and alphabetize them by author and do a link to them on Westlaw. That's very, very valuable for people and people appreciate that. So, that's one way to start. And another way is when you see something in the news, you say, "Well, I'm going to aggregate stuff about a Lehman reorganization or I'm going to aggregate something about something \*254 that happened in the Chrysler case or anything that's local." [\[FN9\]](#) So that's how you kind of get yourself into the conversation. And as an added benefit, it forces you to think and learn, and you meet other people too, all of which provides great benefits.

MR. O'KEEFE: How valuable would that be to you as somebody practicing --

MR. JAKUBOWSKI: It's huge. Before I had twins in '07, I used to blog a lot more. I used to put up every month a monthly reading and I would have probably 20 to 40 articles just with links to Westlaw. Bob Millner from Sonnenschein came up to me--he's the head bankruptcy partner up there, I've known him for years--and he said, "Steve, why did you stop putting up your monthly posts of your readings? I love those things. What happened to them?" Just to give you an example.

MR. RIDDLE: People notice when you don't post for a while.

MR. DUEDALL: Scott, talk about that. We talked in advance of this panel a few times. It's very hard to determine this case came from my blogging. This case came from my being perceived as a thought leader. This engagement came from my relationship with Bob Millner that was enhanced by being a content aggregator. If it's hard to do that, then why do you do it?

MR. RIDDLE: Well, I think there are two questions there. One, what cases come directly from the blog or a web site? The people Googled your name and so there's some of that. A lot of the calls I get are consumer calls. Those usually go somewhere else, and I'm happy to send those somewhere else. I also get a lot of calls from Google searches. So, considering the money I'm paying to Kevin's company, the blog more than pays for itself. But is it worth the time? Well, the question is can you go to other cities and shake somebody's hand and they say, yes, I've heard of you? That may or may not lead to a case, but I think some of that does. Getting back to the brand, you first get the name recognition. People know your name. If I were to Google: "Chicago bankruptcy lawyer," for example, I know I'm going to get Steve, but I need to click a little further. There can be a big sign in the grocery store about a new brand of soap that you mentioned here --

\*255 MR. JAKUBOWSKI: I don't get cold calls. Well, very rarely, and the cold calls I may get are calls you generally don't want. But what I did get though from this is the fact that people knew me and so if they have a matter that comes up in Chicago, they may call me say, "Hey, I've got something for you." So it's very intangible. Marketing is intangible. You can't precisely put your finger on it, but did I get business from it? Yes. But it's always through a referral by someone who's known me from the blog or who has talked to me from the blog and feels comfortable with sending their client over to me knowing that they are going to get a decent representation. You know, you can have your web site up there but that's a lot different than being in the conversation and having people follow you and read your conversation.

MR. RIDDLE: Credibility really is what it comes down to because everybody can know everybody's name and you can come up on Google 10,000 times but you have to click on further. You have to read and see, to be confident that he knows what he's talking about. You can't sit back and do a blog and have clients line up at the door. I found that out pretty quickly. It's not a substitute for other kinds of marketing.

MR. O'KEEFE: Going back to time commitment. It varies from lawyer to lawyer. Somebody that's an influential person, if they put up a blog post once a month everybody is going to listen because they're not coming back to the blog saying, "Oh my God, they didn't post everything." The information is streaming out to them in a reader that they may have organized by subject so they may get multiple bankruptcy blogs. It's like, for example, if there's not a column in Sports Illustrated from a particular columnist on a particular issue. You don't call him up and get all mad. You know that it just didn't come. You know that it could come at another time. Lawyers can do some pretty impressive things ranging from 4 to 5 hours to 10 to 12 hours a month. Some will spend more but I think they would be hard pressed to get a higher return on their investment in their time anyplace else. And if you measure the return on investment like you're asking, "How do you know?" Well, you know if you ask some simple questions. You know, whether you are extending your reach. Do these guys get seen more places? Absolutely. What they are saying is seen by more of their target audience. Are they engaging their target audience of clients, prospective clients, referral sources, and influencers? No question. If they're referencing them, they are engaging them. Are they building their influence with the target audience? You know, that is going on by observing whether they are being cited. The law is pretty simple. You tend to cite law reviews that are being written by professors that the judges know.

\*256 MR. JAKUBOWSKI: The bottom line is?it's not too crowded. There are a lot of opportunities for you out there and you need to be there. That's the bottom line. And there's different ways of doing it cost effectively also.

MR. DUEDALL: Let's talk about some of the pitfalls and I think what you are going to hear from the audience. Some of the ethical pitfalls are the same ethical pitfalls that exist in any kind of marketing. The fact you are on the Internet doesn't really make much of a difference at all. But let's go ahead and move on now.

Here's my personal brand. I typed my name into Google this morning and it came up with my picture. That's my brand and it doesn't really do a whole lot. Think about Mr. Bubble instead. That brand evokes something. Let's talk about the next proposition. My personal spaces on the Internet are no one's business. Why can't I post to my friends

about general thoughts of my job and my coworkers? Scott, give us a very real anecdote perhaps about someone in this room that is a word to the wise.

MR. RIDDLE: Well, a few months ago, I think a recent graduate of '08 or '09 of an Atlanta law school, which I won't name, sent a resume to a few firms and I happened to speak with one of the bankruptcy lawyers at this firm. He sent the resume over to me. I took a look at it and what I didn't see or what wasn't legible on the copy was an e-mail address so I did what everybody does, I Googled the person's name and what came up first, Facebook. So I thought there might be an e-mail address on there so I clicked on Facebook and everything was visible. There were no privacy restrictions on there and like any curious person, I scrolled down a little bit and that person's job history included one or two good bankruptcy jobs and some summer jobs at law firms and below that in the description of the job--I hope I'm not offending anybody here--were basically comments that mocked every job, just funny comments and mocking about the clients or the type of job. I wanted to e-mail the person and say, "What are you thinking?" Because I am sure that the recruiters in the large firms check that, and probably the person cost themselves some job opportunities just by having a Facebook, No. 1, that was visible to everybody and, No. 2, the comments that were made under the employment history--it wasn't anything profane. There was nothing that was shocking about it. It was just probably--I'm like a lot of other firms. I didn't want to be the next employer who was mocked in that list of jobs. So especially people younger than me, at 44, whatever you put on the Internet, assume everybody is going to read it, especially potential employers.

\*257 MR. DUEDALL: And I think that's the takeaway from this slide. We have got more things we are going to cover so we will move on.

MR. O'KEEFE: I would never hire anybody that would leave Facebook wide open. We just don't. I ask the younger people in my office, you know, when we're screening employees, they go we're not going hire this person. Why? Because they left their Facebook page open to non-friends and it's pretty clear why would you--it's probably a flaw in their judgment. Maybe you don't want them working at your firm. So you can be stupid doing things like that person obviously was.

MR. RIDDLE: I didn't want to say that.

MR. DUEDALL: This was no one by the way. This is a picture so it's none of our panelists and it's no one in this room as well but think about if you Google someone's name or go on their Facebook page and you see something like that or if you Google Scott Riddle and Steve Jakubowski and you see that they are thought leaders and that people are referring to them and whatnot and which one do you want to have.

Let's take a look at proposition 3. The Internet is very new. It's very murky. I can run afoul of things. Steve, what's the "law of the horse"?

MR. JAKUBOWSKI: Well, preparing for this I was thinking about, well, what is unique about the rules of ethics that apply to the web and to what we're doing and is there a law that needs to be generated with respect to--or ethical rules that need to be generated with respect to the use of the Internet. The ABA has set up a panel that is looking at this issue. I think it's called Ethics 20/20. [\[FN10\]](#) Then I came across Judge Easterbrook's article from 1996 in which he wrote. He was asked to give a lecture at the law school about property and cyberspace and the question of what property rights people have in cyberspace. So he wrote an article called, not "Property in cyberspace," but "Cyberspace and the Law of the Horse." [\[FN11\]](#) What he said was there is a great risk of saying law

and anything. Gerhard Casper who was the dean of the law school when I was there said that he was very proud that he did not create a course that was called "The Law of the Horse." And what does that mean? That means that there are many laws that apply to horses. You have sales and purchases of horses. You have issues related to the care of horses, veterinarian issues. You \*258 have legal issues relating to licensing, racing, property rights, all other kinds of things that relate to horses. But to say that one is going to create a law of the horse is to create, what he called, a shallow multidisciplinary dilettantism. And he said basically what you are creating is the potential for the "cross-sterilization of ideas," and instead of creating something, you're actually diluting it of any real value. And I think that that applies here to the web.

In the stuff that I've looked at and have thought about for a bit, I think that we have tremendous rules that apply to prevent lawyers from engaging in ethical misconduct. We have confidentiality issues in Rule 1.6. [FN12] You have truthfulness issues in Article 4, [FN13] and other rules regarding respect for the rights of third parties, [FN14] dealing with unrepresented people, [FN15] dealing with represented people, [FN16] the unauthorized practice of law, [FN17] communication regarding your services, [FN18] advertising, [FN19] solicitation, [FN20] and your general catchall in 8.4 on misconduct. [FN21] Those rules apply cross the board to the web. Not much has come up yet with respect to any particular opinions or disciplinary proceedings with respect to people who are involved in the web. But the fact is that we have rules that you need to know and that you need to think about before you do anything related to the web. Florida has come up with rules where you can't even put testimonials about yourself on your blogs. And if somebody from Kentucky puts a comment on your blog, or whatever, and you answer that, then you have just engaged in the unauthorized practice of law in Kentucky.

This whole social networking phenomena is a major issue in criminal trials. That's where you see most of the law coming up now because what you have is spoliation issues. You have people who have web sites that have pictures like Mark just showed and they're in the middle of a criminal trial and people want to use them for impeachment purposes. So when they get in trial, all of a sudden they pull things down off the site, and so you've got litigation hold issues. Judge Scheindlin just came up with an opinion about how lawyers have \*259 engaged in gross negligence by not engaging in a litigation hold and doing the kinds of things you need to do for your e-discovery. So the bottom line is your ethics rules are all applicable and need to be remembered when you are on the web. [FN22]

MR. DUEDALL: But think about this. Kevin, I'm sure you come across this often. You're answering a blog post that generates from Kentucky may be engaging in the practice of law in Kentucky. Have we seen that before? What about answering a telephone call that comes from a potential client in Kentucky? Are the rules any different?

MR. O'KEEFE: Yeah. And let's make sure everybody understands we're talking about blog posts. It's your microphone. It's your blog. Nobody is writing on your blog without your permission. Blogs allow comments but all comments should be moderated and you get to put them up so if somebody is disclosing confidential information in a comment, it's never going to go up unless you're foolish. Okay. So you're not--are you going to go back and forth in a wide-open forum such as this or somebody asks Steve a question about a particular case and said, "Steve, I'd like to run this particular situation by you. I'm

representing this client and here are the facts.” And now Steve goes, “Yeah, I would say in this situation I would do this and do that.” Would they ever do that? Of course not. So it doesn't happen. So understand in the case of a blog you're publishing a blog post.

Very active law blogs, they generate two, three, four comments in a month. Why? Because the only people that are more scared of comments, you know, and talk on the Internet than you would be anybody who would potentially ever leave anything at a lawyer's blog, so they tend to be very academic. You see this over here, that's an interesting comment, those types of things. I think it would be very similar to a conversation that you would have here as bankruptcy lawyers where somebody is talking about a particular case or particular rules or a code section and somebody said that is interesting.

I would add this. So it's very academic so you're not practicing law in another jurisdiction. You are not breaching client confidences. You are not doing anything to enter into an attorney/client relationship. You know, Steve is so right on this law of the horse. I mean there are a bunch of lawyers in this \*260 country still waiting for bar associations to pass rules on how we can use the telephone. We laughed about this but there were lawyers that said certainly it would be unprofessional to use a telephone. Business-wise it would just be totally unprofessional to practice law and talk to clients over the phone.

And there's the problem with ethics rules so we're going to wait for the American Bar Association or the states to adopt rules to allow us to govern that. We are still waiting. And so these things like Steve is talking about, this ABA 20/20, you want to get scared, look at the conversation among those people on a list server about what is going on in social media. They don't have a clue what it is and now they get out there and pass rules. It would be like you saying, “Okay, the bankruptcy rules are going to be passed by people who don't know what bankruptcy is or know anything about it.” And they're just going to willy-nilly do it. I mean maybe that does happen. I don't know.

MR. DUEDALL: Scott, talk to us from the trenches about how you deal with comments on your blog. Any anecdotes and whatnot where you had done things differently, things where you wished you had done things differently?

MR. RIDDLE: Steve and I talked about this the other day and I think he moderates them a little more heavily than I do because I think years ago when I first started blogging, I read an article that said if you start moderating comments and deciding which comments to post and not post you might be liable as an author or publisher of those comments similar to a newspaper. But if you just leave them all, other than spam or just absolute profanity something like that, if you post all comments, other than the clearly inappropriate ones, then maybe you're not liable. And I think I started off that way but I have definitely not--there were some that were a little over the edge and name-calling. For example, if there was an article about a chapter 11 case and you are going to get people who write in and say I went there. They are a bunch of crooks and I do moderate those but I agree with Kevin. There aren't that many comments.

MR. O'KEEFE: How many do you get, Steve?

MR. JAKUBOWSKI: I don't get many comments. But remember, again, this falls within the rules of ethics. If your blog that you have with your name has a statement that may be untruthful, deceptive, slanderous, libelous or defamatory, then you have an obligation to look into that, in my view. I think it would be unethical and a violation of

the rules for somebody to allow posts to go up that may contain untruth to it. Now, that's different from opinion, but \*261 if somebody is calling somebody something or somebody is making a statement about what somebody else does and you put it up, you can't say "there's nothing I can do about it; it's just somebody else's opinion." I think you, as a lawyer, have to filter that through the rules of not making statements that are false and not making statements that are deceptive.

MR. DUEDALL: But there's nothing different about the Internet and I think that is more of the takeaways here. Let's talk about the next proposition. As the Internet is new can I get away with anything? There is a very interesting--I'll summarize this one just so we can get to the final proposition and some closings points as well. There is a very interesting Philadelphia Bar Association opinion from 2009. [\[FN23\]](#) A lawyer asked the bar association ethics panel can I or can one of my surrogates friend someone on Facebook and hopefully--and that someone being the client of my adversary, the other side, and learn about them? Of course, if you use Facebook and you friend someone, that person can get into your Facebook page and can learn all sorts of interesting things about you. And the Philadelphia Bar Association opinion, which I recommend that you take a look at it, that opinion is so informative and some helpful because it says the ethics rules already apply to everything you're talking and it's tried and tested. What are the ethics rules? A lawyer cannot ask a surrogate to do something that would be unethical for the lawyer to do him or herself. We all know that one. It doesn't apply any differently on the Internet. A lawyer is not allowed to hire someone to investigate someone's private places. Personal injury lawyers, personal injury defense lawyers can certainly hire a videographer to follow someone around and video what they're doing and find out if they're still exercising, if they're still engaging in active behavior that seems to indicate there is no injury whatsoever. Can that videographer drill a little hole through that person's wall and put in a little camera and see what they are doing in their house? No. And a Facebook page where you've not allowed folks except folks that purport to be your friends is a private place, the exact same rules apply. The opinion is very good because it really talks about the fact that no new ground has to be created to answer this question.

There are really very little gaps here in the Internet that have the ethics rules and the laws that don't already apply. And the same thing with the \*262 Florida Supreme Court. They recently issued an opinion. [\[FN24\]](#) Florida of course as we all know is a little more strict on lawyer advertising, a little more strict on testimonials and they issued an opinion saying, with respect to the Internet, we are a little more strict on advertising, we're a little more strict on testimonials, nothing new coming out of the State of Florida whatsoever. I think you will find that any ethical issues you come across would be the same exact ethical issues you will come across if you were practicing law in 1985 or in 1992, or any of those periods where the Internet was just a bulletin board or did not exist at all. I think we have already covered proposition 5, are you responsible for other peoples' posts and you have heard from Scott that indicates if it's not defamatory, if it's not harmful, if it's not salacious, he'll go ahead and allow it to post without much editing. You've heard from Steve saying he'll do a little bit of inquiry in terms of people that assert something as fact and both Scott and Steve said they will sometimes edit things on occasion to take out profanity and whatnot because they don't want to have that kind of post. But I think you'll find the rules are pretty simple on that, and the same rules apply to a blog that would

apply in a community news clipper or a local magazine that you might publish or you and your friends may take part in.

MR. O'KEEFE: Communications and decency act would totally exempt you from what somebody else may say though in comments but that may not protect you from an ethical issue. Like Steve is saying, if somebody said are you using this blog purposely for brand building and client development and you've got something misleading on there, whether it is said by you or someone else, you probably still have that issue.

MR. JAKUBOWSKI: Especially to the law students in this room, there is nothing worse than getting entangled in a disciplinary proceeding. It literally can kill you. You want to talk about tears, we'll talk about tears. Many people don't recover from that. And there is nothing more important than maintaining your integrity and keeping yourself out of trouble as a lawyer. Sure you have free speech rights, but you don't have a right to be a lawyer. And you're bound by certain rules. So if you get in trouble, you can kiss your career--it's going to go downhill immediately. You are going to fall off--you're going to be like Tiger Woods, literally. You are going to be at the bottom and you are going to be spending years working yourself up. If there's anything you come \*263 out of the whole conference with, keep yourself out of trouble and know the rules. Don't just assume that because you saw somebody else do it that it's okay because you know what? Assume that you're going to be the test case. No matter what somebody says, you've got to look into it.

MR. DUEDALL: Let's wrap up. Kevin, tell us what the takeaways are from the panel.

MR. O'KEEFE: Yeah. I'm a little bit different--you know, I agree with Steve. When you tell the ethics boards to take a hike, they don't like it. But I think what you are going to find, for law students getting out, lawyers tend to be a little bit like sheep and keep their head down and lots of times it's woe is me. We don't have the clients I want. This thing isn't as satisfactory as I thought it was going to be. It's not that much fun and you're trapped. The great thing is that these things we are talking about, social media, it's very real. It's not a fad. It's huge. Seventy-eight percent of people trust peers, 14% trust advertising. Generation Y, which is your age, are more apt to trust things from peers on the Internet than any other place and they read social media. That's how they get their information and news. If you go out to a large firm today and ask how many of the associates in this firm in the last five years get the Wall Street Journal and the local major newspaper, you may not find anyone. They are getting their information from peers passing information around. So it's here to stay. It's a tremendous opportunity for you.

If you are going to pick up a book, pick up Linchpin by Seth Godin.. [\[FN25\]](#) It just came out within the last couple of months, but it really is a manifesto for how I would be approaching my career, whether I'm starting it today or whether I'm 54 years old, like I am. And I think Seth says something that I highlighted and I think it's so true. We're surrounded by bureaucrats, note takers, literalists, manual readers, thank God it's Friday laborers, map followers and fearful employees. You can put that on the wall at most law firms and if you are going to do that, you are going to be stuck in that station in life that you have put yourself in. Do you go out and use these things? Just explore. Learn what they are about. Learn how successful people are using them. Ask people like these guys. Ask other people on the Internet. People are very, very giving of themselves via social media and try these things. Your horizons will expand tremendously because 99% of the people are going to be these thank God it's Friday laborers and map followers, so your competition --\*264 when I hear people complain about the job market isn't good but

thank God that other people that are looking for jobs suck. I mean they are just not doing anything to get seen and get known and establish relationships with people. Your competition is so bad that you just have to do a little bit to shine above them. It's not like you're competing in the NFL and you're trying to be an all-pro where everybody is pretty good.

This is the competition. It's not great and the social media being so real, it's not going away. Don't assume that this stuff is going away. My partners assumed that the Internet was going away in 1996 and '97. That's why I left that firm. It didn't go away. This is much bigger than the Internet as far as web sites and e-mail. This phenomenon that you're hearing about, social media, is much, much bigger so if you do harness your star to that, it will pay for personal growth and professional growth. It will do some wonderful things for your family. Never before have you had the opportunity to do it. That's the message I would leave you with.

MR. DUEDALL: Scott, how big is your marketing department in your firm?

MR. RIDDLE: How big is every department in my firm?

MR. DUEDALL: When you started doing it on your own, how did you achieve success in it?

MR. RIDDLE: Well, it started with just the easy way of blogging about summarizing new cases, just doing more reading about that and then it grew from there. Now I'm at the point where after four or five years I actually sent an e-mail to Kevin's company and asked them how do I redesign or refresh or do something to take me into the next phase which is click on to share with Facebook and Twitter, so I'm learning new things. I still don't know about Twitter other than--does everybody know about this young guy who lives with his dad and talks about the funny stuff his dad says? I'm not going to say the name of the Twitter. So I don't know Twitter but I understand this guy is talking with a network about creating a show just because he Twittered about the funny things that his 80-year-old dad says. So I'm not quite into that yet but I think it's growing. And the question I have for Kevin is after Twitter, what's next? We've got LinkedIn, Twitter, blogs and before that web sites. So what's the thing next year that we haven't heard about yet?

MR. O'KEEFE: Operating system for the Internet, both, you know, social interaction and if you really said, well, gee, some people will just say Facebook is just about social stuff, go out to a men's club on Thursday night in \*265 the summer here in Atlanta after they've played golf in the afternoon and they are in the grill. You don't think that's social mindless babble that they're talking about after drinking? It is. Now, why do they do that? Why does a lawyer do that? So they can meet leaders in associations in town and accountants and doctors and other businesspeople, because they want to build relationships with those people. They want to get to know them as people. Small talk leads to big things. I'll leave you with one last thing.

Twitter, I thought it was the stupidest thing I had ever heard of. I was speaking at a conference in Las Vegas to Fortune 200 companies and all of a sudden American Airlines--this is two years ago--American Airlines, Wells Fargo were talking about Twitter. And I'm going, "But these people who are otherwise reasonably intelligent businesspeople, why are they talking about Twitter." Then Tony Hsieh who is the CEO of Zappos--you know, he looked like a kid and he was. He's like thirty some years old and sold Zappos for a billion dollars at the end of last year. He's talking about Twitter, so

what I did was like anything I don't know anything about this stuff and there is no book. You just go see what smart people are doing because I'm not that smart, but I can learn things from smart people. So you go look at what smart people, CEOs, were doing and thought leaders on Twitter and what they were doing was--if I have a reader--an RSS reader is set up to monitor good sources of news and information and good subjects, I can open it in the morning and see some pretty good headlines and I skim the article and I take the news of that article as it relates to social media for client development. It could be Facebook. It could be blogs. It could be LinkedIn. It could be news media and journalism, the opportunity that lawyers have now to get their content seen, whatever it may be. And I put out seven or eight of those in the morning on Twitter on a thing called a TweetDeck, and what happened was my followers started going from 50 to 100, 200 to 500 to 1,000. There are now 8,000 people and you know what they do, they pass it around to other people so on any particular morning some news headline that I shared relating to my area of expertise may have got seen by 20 or 30,000 people and it's all basically saying go follow Kevin O'Keefe because if you want to stay up to speed on this issue, he's kind of a funnel or an intelligence agent on this. So what it did was my brand went through the roof as far as what I was known for. Our business is a multimillion-dollar business for which we have never ran an ad, we never did a sponsorship. We have never done anything other than the blog, but it's up probably 20 or 30% because of Twitter. So what I see lawyers doing with Twitter is imagine being the Associated Press of bankruptcy as it relates to mass tort issues. So anything that comes down on \*266 that, you're monitoring the rules, you're monitoring the case names, you're monitoring the leaders and every day people know that if something comes down, you put it out. That saves all those people a lot of time and then the people that are interested in it, they pass it around. That's a pretty interesting use of Twitter.

MR. JAKUBOWSKI: But there's an additional benefit of that and I want to keep coming back to that. You're lawyers. Especially the young ones, you're lawyers, which means--you know, they don't pay you \$350 an hour because you can go out and research on Westlaw. They can research on Westlaw. They hire you for \$350 an hour because of the fact that you know what you're talking about, and what putting yourself out there and creating a voice for yourself does is? it's a "pull" strategy. So you're not only pushing stuff out, but it forces you to actually stay on top of things and thus it's "pulling" you up. There's a great benefit to that especially because what you're selling is your knowledge, and it forces you to know things and stay on top of things and that's why you get premium rates.

MR. DUEDALL: I want to thank the panelists for being here.

[\[FNaa1\]](#). Mark I. Duedall, Hunton & Williams. B.S., Florida State University, 1991; J.D., Emory University School of Law, 1994.

[\[FNaa1\]](#). Steve Jakubowski, Coleman Law Firm. B.S., University of Chicago, 1980; J.D., University of Chicago Law School, 1985. Bankruptcy Litigation Blog at [www.bankruptcylitigationblog.com](http://www.bankruptcylitigationblog.com).

[\[FNaaa1\]](#). Kevin O'Keefe, CEO, LexBlog, Inc. B.B.A., University of Notre Dame; J.D., McGeorge School of Law. LexBlog at [www.lexblog.com](http://www.lexblog.com).

[FNaaaa1]. Scott Riddle, The Law Office of Scott B. Riddle. B.S., University of North Carolina, 1987; J.D., University of North Carolina Law School, 1991. Georgia Bankruptcy Law Blog at [www.georgiabankruptcyblog.com](http://www.georgiabankruptcyblog.com).

[FN1]. Alex Gregory, The New Yorker, Sept. 12, 2005, available at <http://www.cartoonbank.com/I-had-my-own-blog-for-a-while-but-I-decided-to-go-back-to-just-pointless-incessant-barking/inv/129006>.

[FN2]. [Kelo v. City of New London, 545 U.S. 469 \(2005\)](#); [Metro-Goldwyn-Mayer Studios Inc. v. Gorkster, Ltd., 545 U.S. 913 \(2005\)](#).

[FN3]. See [In re Lehman Bros. Holdings, Inc., 2009 Bankr. LEXIS 4349 \(Bankr. S.D.N.Y. Sept. 17, 2009\)](#); [In re Chrysler LLC, 405 B.R. 84 \(Bankr. S.D.N.Y. 2009\)](#).

[FN4]. [In re General Motors Corp., 407 B.R. 463 \(Bankr. S.D.N.Y. 2009\)](#).

[FN5]. [In re Chrysler, 405 B.R. 84](#); [In re General Motors, 407 B.R. 463](#).

[FN6]. Delaware Corporate and Commercial Litigation Blog, <http://www.delawarelitigation.com> (last visited May 1, 2010).

[FN7]. Georgia Bankruptcy Law Blog, <http://www.georgiabankruptcyblog.com> (last visited May 1, 2010).

[FN8]. [www.google.com/reader](http://www.google.com/reader) (last visited on May 1, 2010).

[FN9]. See [In re Lehman Bros. Holdings, Inc., 2009 Bankr. LEXIS 4349 \(Bankr. S.D.N.Y. Sept. 17, 2009\)](#); [In re Chrysler, 405 B.R. 84](#).

[FN10]. ABA Commission on Ethics 20/20, <http://www.abanet.org/ethics2020> (last visited May 11, 2010)

[FN11]. Frank H. Easterbrook, [Cyberspace and the Law of the Horse, 1996 U. Chi. Legal F. 207 \(1996\)](#) (arguing general legal principals are sufficient and that there should not be a specialized law of cyberspace).

[FN12]. Model Code of Prof'l Conduct R. 1.6.

[FN13]. *Id.* R. 4.1.

[FN14]. *Id.* R. 4.4.

[FN15]. *Id.* R. 4.3.

[FN16]. *Id.* R. 4.2.

[\[FN17\]](#). Id. R. 5.5.

[\[FN18\]](#). Id. R. 7.1.

[\[FN19\]](#). Id. R. 7.2.

[\[FN20\]](#). Id. R. 7.3.

[\[FN21\]](#). Id. R. 8.4.

[\[FN22\]](#). The [Pension Comm. of the Univ. of Montreal Pension Plan v. Banc of America Securities, 2010 WL 184312 \(S.D.N.Y. Jan. 15, 2010\)](#)(Amended Order) available at <http://ralphlosey.files.wordpress.com/2010/01/05cv9016-january-15-2010-amended-opinion.pdf>.

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One bankruptcy attorney in Los Angeles warns consumers to be on the lookout for competent, board-certified attorneys to handle their case. A bankruptcy is delicate, and you want someone with plenty of experience to represent you. A difference on the front end of a few hundred dollars could actually cost thousands in the long run, including refiling fees.Â If the attorney charges the presumptively reasonable fee, the Court wonâ€™t look into the charges unless you specifically request it. Presumptively reasonable fees vary based on the complexity of your case. Nationally, the average is around \$3,000, but each bankruptcy district has its own standards and rules.