

**American Bar Association
Section of Labor & Employment Law**

**National Symposium on Technology and
Labor and Employment Law**

*Co-sponsored by the UC Berkeley Center for Labor Research and Education and
the Berkeley Center for Law and Technology*

April 21-23, 2013

**Bancroft Hotel
2680 Bancroft Way
Berkeley, CA 94704**

Sunday, April 21

6:30 – 8:00 pm **Welcome Reception**

Monday, April 22

8:00 – 9:00 am **Registration and Continental Breakfast**

9:00 – 9:15 am **Welcome and Introductions**

Co-Chairs:

Adam S. Forman, Miller Canfield, Detroit, MI

Hanan B. Kolko, Meyer Suozzi English & Klein, New York, NY

Brian E. Koncius, Bogas, Koncius & Croson PC, Bingham Farms, MI

William A. Herbert, New York State Public Employment Relations
Board, Albany, NY

9:15 – 10:45 pm **Tangled Up in the Web: How Did We Get Here and Where Do We
Go From Here?**

This opening presentation will feature a fascinating and thought-provoking discussion of the impact of the Web, social media and the increasingly mobile tech world on employers, employees, and attorneys alike. We will hear about the privacy we have lost in overt and covert ways, and issues that may arise as a result of future technological innovation. The panel will also discuss the impact of the Internet (including social media) and mobile devices on employees, clients and the practice of law. We will get

a preview of what the future holds – from data self-destruction, to appliances communicating online, to sophisticated surveillance and tracking techniques that were previously unimaginable. Hold on for the ride!

Speakers:

Chris Jay Hoofnagle, Director, Information Privacy Programs, Berkeley Center for Law & Technology; Senior Staff Attorney, Samuelson Law, Technology & Public Policy Clinic; Lecturer in Residence, Berkeley, CA

Chris Conley, Technology and Civil Liberties Fellow at the ACLU of Northern California, San Francisco, CA

Lee Tien, Staff Attorney for the Electronic Frontier Foundation, San Francisco, CA

Christopher J.Sundermeier, General Counsel and Chief Privacy Officer for Reputation.com, San Francisco, CA

10:45 – 12:15 pm E-Discovery: The Next Frontier

In this brave new world of e-discovery, where computers may be more reliable than attorneys at performing legal work and documents often come with “load files,” this panel will discuss emerging and anticipated future trends and technologies for e-discovery. See what the future has in store for automated litigation holds, technology assisted review, social media collection tools, judicial pilot projects, class actions, and much more. Explore with us the impact of these developments on your practice.

Moderator:

Lauren E. Schwartzreich, E-Discovery Counsel, Littler Mendelson, New York, NY

Speakers:

Hon. Elizabeth D. Laporte, Northern District Courts of California, San Francisco, CA

Melissa Frank, Texas Instruments, Dallas, TX

Kathryn Burkett Dickson, Dickson Geesman, Oakland, CA

12:15 – 12:30 pm Break to get Lunch

12:30 – 1:10 pm Mobile and Trackable: A Forensic Tour of Portable Devices and The Secrets They Reveal

Have you ever wondered what a smart phone or tablet device might reveal about a witness’ ‘lost’ communications or whereabouts during a critical period? A certified forensic examiner will reveal a few hidden gems of information that may be recoverable. This demonstration will show how

seemingly non-existent but potentially critical information can be obtained from such devices.

Moderator

Doug Dexter, Farella Braun + Martel LLP, San Francisco, CA

Speaker:

Gavin W. Manes, Ph.D, Avansic, Tulsa, OK

1:10pm – 2:15 pm Mini-Mock Trial: How to Get Electronic Evidence Authenticated and Admitted

You have spent the last eight months of discovery gathering your arsenal of electronic data and now it is time for trial. How do you plan to authenticate your smoking-gun e-evidence when opposing counsel disputes its authenticity? Will the court admit the evidence simply because ESI seems complicated? In a data-controlled world, litigators cannot expect to admit e-evidence on a wink and a nod to an increasingly tech-savvy judiciary. Through this panel you will learn the “pitfalls and perils” – and learn how to collect authenticating information during discovery, how to use this information to support admission of e-evidence at trial and how to frame your admissibility arguments to the court.

Moderator

Jurate Schwartz, Proskauer Rose LLP, Boca Raton, FL

Speakers:

Hon. Paul Singh Grewal, US Magistrate Judge, San Jose, CA

Todd M. Schneider, Schneider Wallace Cottrell Brayton Konecky LLP, San Francisco, CA

Cecil A. Lynn, III, Littler Mendelson P.C., Phoenix, AZ

2:15 – 2:30 pm Break Bring Your Own Disaster Or Bring Your Own Device? The Latest on “Dual Device” Laws, Policies and Practices

Whichever way we describe it, “BYOD” has become a permanent part of our lives and lexicon. (Even the White House has a BYOD policy). The use of employee-owned devices, such as smartphones, tablets and laptops for both personal and professional use, presents a host of unresolved legal questions and employee-relations challenges. While the opportunities for security breaches and lost data make many employers cringe, companies that dictate which devices employees must use may find themselves at a competitive disadvantage in attracting and retaining talent. This panel will discuss important case law and legislative developments; the tensions between employment and privacy; unique liabilities in the wage-hour and discrimination contexts; preservation and discovery issues in litigation; what to do when an employee leaves and takes his or her personal device with her; as well as critical “do’s & don’ts” when crafting BYOD policies.

Moderator:

Heather A. Morgan, Paul, Hastings, Janofsky & Walker LLP, Los Angeles, CA

Speakers:

Brian Matthew Flock, Microsoft Corporation, Redmond, WA

Michael Marino, Warner Bros, Los Angeles, CA

Scott Bonagofsky, Bonagofsky & Weiss, San Francisco, CA

3:45 – 5:00 pm

Do Employees Have Any Free Speech Rights Left In The Workplace? An Exploration of Section 7 And Public Sector Laws, Today Tomorrow And Beyond

In the aftermath of *Citizens United*, corporations have taken to spending more on politics than ever before; however, their political stances may not be in line with their employees’ political stances, especially as espoused on social media. This panel will begin with a review of the NLRB’s current stance on the scope of Section 7 protections for social media use, and reflect on whether, after elections have occurred, Section 7 rights extend to political speech, and how both private and public sector employers have reacted to employee on-line speech. This panel will also deal with the legality of surveillance under the NLRA and other laws.

Moderator:

William A. Herbert, New York State Public Employment Relations Board, Albany, NY

Speakers:

Jeffrey Scott Sloan, Renne Sloan Holtzman Sakai LLP, San Francisco, CA

Kerianne R. Steele, Weinberg, Roger & Rosenfeld, Alameda, CA

6:00 – 9:30 pm Reception and Dinner

Tuesday, April 23

7:30 – 8:15 am Continental Breakfast and Business Meeting

8:15 – 8:30 am Message from the ABA Labor & Employment Section Liaison

8:30 – 9:45 am Time to Hit Refresh? NLRB Cases And Evolving Technology

Traditional labor-law practitioners have yet to fully embrace technology's expanding role in labor law. While many labor practitioners have become familiar with the Board's evolving social media cases, few have ventured into other technology-related issues. This panel will explain why traditional NLRB practitioners should gain familiarity (and competence) with technology's growing role in labor law. The panel will also answer important technology-related questions that traditional labor lawyers may have to face in the future, such as: In an unfair labor practices case, what is the scope of the duty to preserve and how might concepts of proportionality be applied? How would a revisiting of Register Guard change the playing field? Will the Board address dual personal-work use mobile devices and electronic monitoring of employees in the near future? In addition, NLRB panelists will explain the Agency's internal shift to embrace and leverage technology, such as by implementing electronic case files and internal adoption of cloud-based services.

Moderator:

Rachel See, NLRB, Washington, DC

Speaker:

Katy Dunn, SEIU, Washington, DC

9:45 – 10:00 am Break

10:00 – 11:30 am Social Media: The Separation of Work & Play

This panel will provide an overview of recent developments in privacy rights as it relates to social media. The topics will include a look at newly enacted and proposed legislation seeking to protect employees' social media information. The panel will discuss what this legislation means to employees and employers, such as enforcement, causes of action, and remedies. The panel will also look at what this type of legislation will mean and/or how it will change in the next 5-10 years. To this end, the panel will also address the interplay between the personal and professional

in social media and discuss the ramifications of social media existing as both personal and professional as we move forward in a world that increasingly relies on social media for communication.

Moderator:

Cynthia N. Sass, Law Offices of Cynthia N. Sass, P.A. Tampa, FL

Speakers:

Robert Sprague, University of Wyoming, Laramie, WY

Adam S. Forman, Miller Canfield, Detroit, MI

11:30 – 12:45 pm Technology For YOU (or, How To Be A Legal Tech Geek)

Sure, you use a tablet and smart phone for fun. You may even use them regularly in your practice. But do you know how to REALLY make the most effective use of all the technologies available to you – many of which are free? This dynamic and demonstrative presentation will provide you with a host of “tools” and “tips” that can enhance your practice by making it more practical, and efficient. This panel will discuss the latest apps, software, and hardware available to assist in all phases of your practice, from business development and timekeeping to jury selection and trial. You will learn about products that can help you scan, annotate, revise and sign documents from your tablet, perform dictation or translation functions from your phone, and provide the answers to legal research questions on the run. You’ll never again have to cart five boxes of documents to a court or meeting (we hope).

Moderator

Felicia A. Davis, Paul, Hastings, Janofsky & Walker LLP, Los Angeles, CA

Speakers:

Heather R. Pruger, Saul Ewing LLP, Baltimore, MD

Joshua Carroll, COO for Endsight Inc., Berkeley, CA

12:45-1:00 pm Break (to pick up lunch)

1:00-2:15 pm Do Lawyers Have An Ethical Duty To Understand Technology?

In a world that is critically dependent on technology, lawyers may have an obligation to move beyond email and legal search databases to learn about existing and emerging technologies. In August of 2012, the ABA House of Delegates approved changes to the Model Rules of Professional Conduct clarifying that Rule 1.1’s requirement of “competence” includes keeping abreast of changes to the law and its practice “including the

benefits and risks associated with relevant technology.” This panel will examine core technology competency areas for attorneys, such as protecting confidential and privileged information and communicating with prospective or existing clients, witnesses and jurors. The panel will also consider the ethical implications of lawyers’ (include in-house counsel’s) use, misuse and non-use of emerging technologies, such as mobile apps, social media, cloud repositories, automated litigation holds, document review platforms, and computer forensic tools.

Speakers:

Cara E. Greene, Outten & Golden, LLP., New York, NY

Richard A. Zitrin, Carlson, Calladine & Peterson LLP, San Francisco, CA

Sean R. Gallagher, Polsinelli Shughart PC, Denver CO

2:15-3:30 pm

The Right To Privacy Is Dead - Or Is It? Social Media Use From A Global Perspective

This panel will explore the right to privacy and the right to be forgotten in the European Union and beyond. The EU is considering whether there should be a right to be forgotten, or a more absolute right to privacy vis-a-vis an employee’s relationship with his or her employer. By looking at how employers use social media in Europe and Latin America, employers in the United States may learn a few valuable lessons. This panel of speakers, based outside of the United States, will explain how their legal systems address privacy and anonymity in technology and the workplace, and provide ideas that both attorneys can take back to their clients and policymakers can share with their constituents.

Moderator:

Paul Callaghan, Taylor Wessing LLP, United Kingdom

Speakers:

Deborah David, Jeantet et Associes, Paris, France

Carsten Domke, LL.M., CMS Hasche Sigle, Cologne, Germany