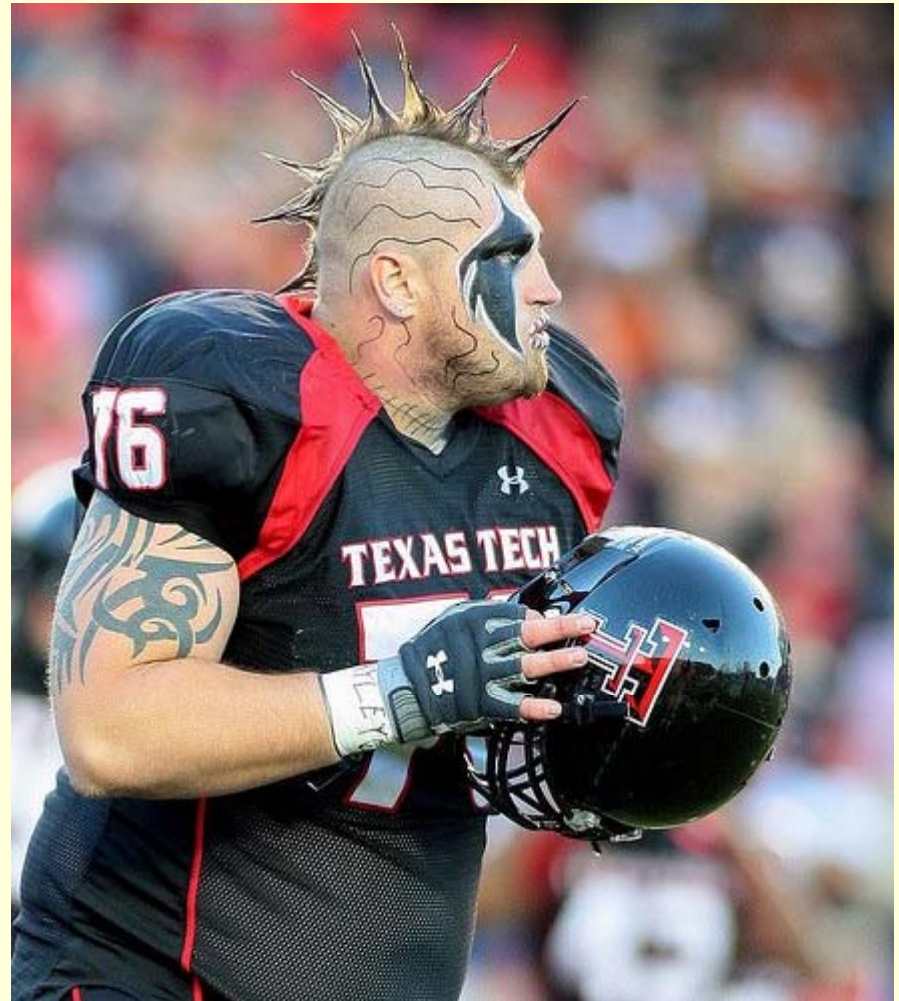


Tears of a Clown: An Overview of the Law and Ethics of Blogging

Jon Heining
General Counsel
Texas Legislative Council

Brandon Carter: Large Intimidating Man

- **School:** Texas Tech
- **Class:** Senior
- **Hometown:** Longview, Texas
- **High School:** Spring Hill
- **Height:** 6' 7"
- **Weight:** 344 lbs.
- **Position:** Left Guard
- **Major:** Exercise Sport Science
- **Projected NFL Draft Round:** 5
- **Projected Post-NFL Careers:**
 - Professional Wrestling
 - Birthday Party Entertainer



Brandon Carter: Sensitive Human Being

- Texas Tech 28 – Houston 29
- Twitter Feed:

This is not how I saw our season. I just cried like am idiot. I want us to be so good.my last year and I feel like I'm letting everyone down

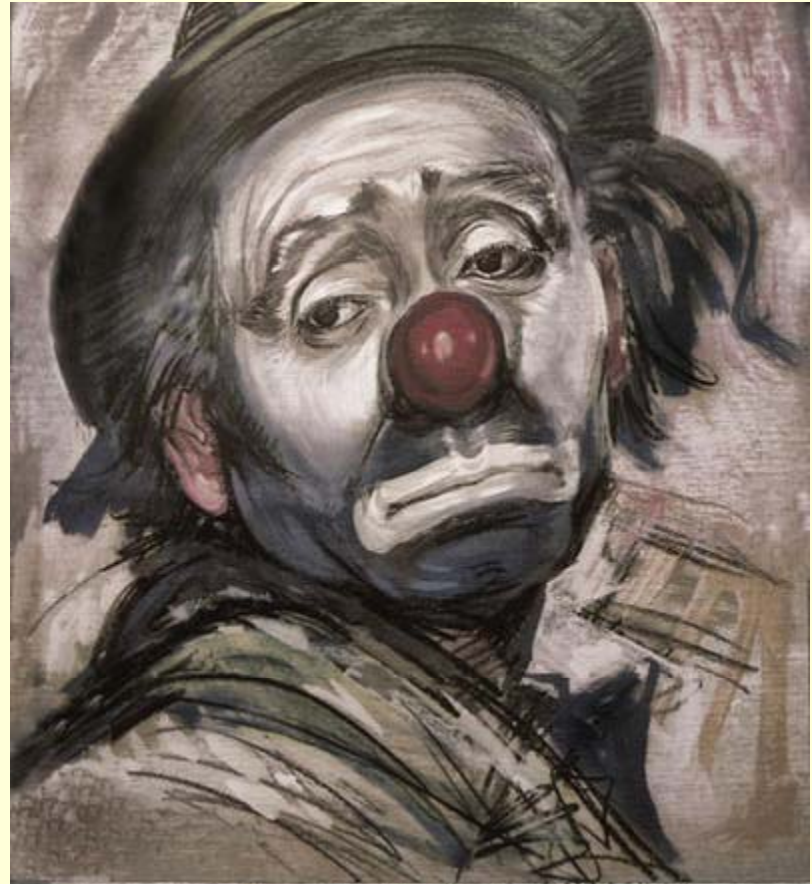
about 2 hours ago from Echofon



BCSLAM
Brandon carter

Brandon Carter: Benchwarmer

- Result:
 - Stripped of captain status
 - Suspended for one game
 - Twitter banned from Texas Tech football team
 - Taylor Potts sacked five times by U of New Mexico, forced to leave game



Functional Issues to Consider

- Instantaneous
 - Highly visible
- Increasingly accepted
 - Immediate
 - Dispersed
 - Permanent
 - archive.org
 - Facebook
- Anonymous (?)

Defamation

1. published a statement;
2. that was defamatory concerning the plaintiff;
and
3. while acting with either:
 - **actual malice, if the plaintiff was a public official or public figure, or**
 - negligence, if the plaintiff was a private individual, regarding the truth of the statement.

--WFAA-TV, Inc., Petitioner v. John McLemore, 978 S.W.2d 568 (Tex. 1998)

Defamation

- Causing something to appear on Internet = publishing
- Deleting offending message doesn't save you
- Winning the case is not always the goal
- Truth is not always a defense
- "Libel tourism"

Defamation

- Rachel Ehrenfeld: *Funding Evil: How Terrorism Is Financed and How to Stop It*
- Published in America by Bonus Books
- 20 orders in Britain
- Khalid bin Mahfouz
- Sues in Britain
 - Distant jurisdiction
 - Different law
- \$230,000 judgment



Anonymity

- Ellen Simonetti
- *Queen of the Sky* Blog
- Fired by Delta in 2004



Legislative Advertising

- **Section 305.027, Government Code**

"legislative advertising" means a communication that supports, opposes, or proposes legislation and that:

- (1) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or
- (2) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, button, or similar form of written communication.

- Very few opinions that interpret this statute
- Requires disclosure
- Class A misdemeanor

Political Advertising

- **Chapter 251, Election Code**

"Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(B) appears:

(i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or

(ii) **on an Internet website.**

- Paying a fee to a web host *probably* not enough to trigger the statute.

– *Doe v. State*, 112 S.W.3d 532, 540 (Tex. Crim. App. 2003) (Dissent).

- Requires disclosure
- Class A misdemeanor

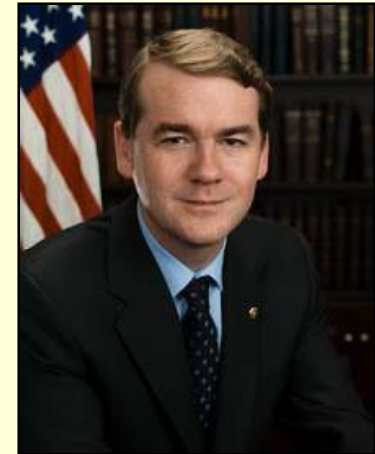
Other Communications

- Open Records
- Open Meetings

Confidentiality

Missouri Sen. Claire McCaskill tweets regarding Colorado Sen. Michael Bennet:

Lunch w/ Lily in the Senate dining room. Sen. Bennet at large table surrounded by journalists. Don't know whether to say congrats or try and save him. [sic]



Job Security Issues

Iowa Senator Charles Grassley tweets regarding President Obama's trip to Paris:

- Pres Obama you got nerve while u sightseeing in Paris to tell us "time to deliver" on health care. We still on skedul/even workinWKEND, [sic]
- When you are a "hammer" u think evrything is NAIL I'm no NAIL. [sic]

Texas Representative Joe Barton tweets regarding President Obama's speech to a joint session of congress:

- Aggie basketball game is about to start on espn2 for those of you that aren't going to bother watching pelosi smirk for the next hour. [sic]
- Disregard that last Tweet from a staffer.

Jon's 3 Approaches to Blogging

1. Consider not blogging.
2. If you must blog, consider only blogging about stuff NO ONE can get upset about:



3. If you must blog about stuff someone can get upset about, consider developing a blogging strategy and sticking to it.

Blogging Strategy

BEFORE YOU BLOG

- Know that anonymity is a myth.
- Know that everything you put on a blog will likely be available to everyone for all time.
 - While your friends may glance at your statements, superiors, subordinates, competitors, and opponents will likely read, dissect, and repeat every word.
 - Consider the long game: will you ALWAYS work for the same people? Will you ALWAYS be on the same side of an issue? Will you ALWAYS have the same constituents?

Blogging Strategy

- Consider your ethical obligations.
 - Statutory/rules-based/relationship-based confidentiality obligations.
 - If you are a lawyer and your blog has legal content, use a disclaimer
- Consider the legal ramifications of your speech.
- Consider your goal for blogging.
- Based on all these considerations, determine what opinions you are going to share and what about your life you are going to make public.
- Consider having someone else blog for you.

Blogging Strategy

WHEN BLOGGING

- Consider taking your time when blogging.
- Consider monitoring your blog's content.
- Consider monitoring your host's privacy settings.
 - Facebook

FIN

