

Problem 2A

Pursuant to a whistle blower law, Adam has sued Beckman Corp. for wrongful termination, claiming he was fired in retaliation for contacting the EPA about the company's failure to properly dispose of hazardous waste. The company defends the firing as based on merit because Adam was performing his job poorly.

At trial, Beckman Corp. offers into evidence print-outs of several Facebook postings from July by Adam in which he said he was going to get even with Beckman and his boss for giving him an unwarranted poor job performance review.

(1) Adam objects that someone hacked his account and the postings are fake. What response can Beckman's attorney make?

(2) The judge thinks a minute, and then says he will exclude the email if Adam can show that it's fake. Adam hands the judge an email he received from Facebook Security informing him that his Facebook account had been hacked in July. Assume the letter violates Rule 802 because it is hearsay. Should the judge accept and consider the evidence?

(3) Next, Beckman Corp. calls Adam's wife Carol to the stand and the following takes place:

Beckman attorney: We call Carol as a witness. She is Adam's wife.

Q: What is your name?

A: Carol.

Q: Are you married to Adam?

A: Yes.

Q: Do you know if he has a Facebook Account?

A: Yes he does.

Q: Did you see some postings by him in July about his job?

A: Yes.

Q: Did you ask him about them?

A: Yes. On July 8th after dinner, I asked him if it was a good idea to post threats about getting even.

Q: What did he say about the postings?

A: He said it was okay because his boss was so stupid he couldn't even use Facebook.

The Marital Privilege Rule says that any private communication between a husband and wife is confidential, and the spouse who made the private communication may assert the privilege in court to prevent its disclosure. You are Adam's lawyer. How would you object on the basis of the privilege rule, and when would you make the objection?

