

# THE LAW *Exchange*

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The Quarterly Newsletter of:



JOHNS, FLAHERTY  
& COLLINS, SC

Good neighbors.  
Great lawyers.

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Brent Smith

Most employee policies today include provisions for employee monitoring. In fact, estimates from the Society for Human Resource Management suggest three out of every four employers use some form of monitoring.

It's understandable when you consider that some estimates place productivity losses near 40 percent when employees send personal emails, use social media or text during the work day, said attorney Brent Smith who practices employment law.

"In most cases, employers are well within their rights to monitor employees," he said, adding there are some areas where employers could find themselves being sued, publicly humiliated or both. "The key is to treat your employees the way you would like to be treated."

### Following are guidelines for the most common monitoring issues.

**Email** — Employers have the right to establish policies prohibiting personal email and to monitor all email in the workplace, as long as they have a valid business reason.

**Internet** — Laws governing Internet monitoring closely follow those for email since workplace computers belong to the business. Employers may block certain websites, limit the amount of time an employee may spend on a particular site and track all websites visited.

**Telephone and voicemail** — The Electronic Communications Privacy Act prohibits employers from monitoring employees' personal calls without their knowledge and consent.



**Hidden cameras** — Employers may install hidden cameras to monitor employees but only in areas where there's no expectation of privacy. There aren't any laws requiring employers to notify employees of hidden cameras, but doing so is the ethical choice.

"Generally, when people accept a job, they voluntarily surrender their workplace privacy in exchange for gainful employment," said Smith, "but that doesn't mean they surrender their privacy rights in general." Deceitful, secret or intrusive monitoring is usually grounds for legal action by employees. It's safest and most respectful to monitor employees only when there's an obvious business purpose.

For more information about employment law, plan now to attend our annual employment law seminar. Details on page 5.





# LEGAL DILEMMA



JOHNS, FLAHERTY  
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The LAW EXCHANGE is published quarterly to inform our clients and colleagues of legal trends and decisions. This information should be viewed as a general summary. Please contact your Johns, Flaherty & Collins attorney for specific legal advice. If you know of someone who would like to receive this newsletter, send his/her name and address to the attention of the EDITOR, THE LAW EXCHANGE at the address below.

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**Question:**

*My child has been going to day care after school, where she stays until I finish work. She's 10 years old, pretty responsible, and I do occasionally leave her home alone to run quick errands. Is there any law that says when she is old enough to stay home alone?*

**Answer:**

As the new school year begins, parents often grapple with the question of when they can leave their children home alone.

"Wisconsin does not set a minimum age at which children may stay at home alone legally," said attorney Brian Weber, who deals with that question about his 8- and 11-year-old sons.

The legal issue is whether a parent could be considered neglectful for allowing their kids to be home without supervision. Wisconsin law says a child is neglected if the person responsible for the child's welfare fails for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter as to seriously endanger the physical health of the child.

A child could be taken out of a home and parents charged with criminal neglect, depending on a number of factors, including actions that "create a substantial and unreasonable risk of death or great bodily harm to another."

"The court looks at the readiness of a child to be left at home and how seriously it endangers the physical or mental health of a child," Weber said.

As a practical matter, he recommended two sources to help parents weigh the issue. The first is a babysitting course offered periodically for children ages 11 and older. The same skills used in babysitting apply to staying at home alone.



Brian Weber

The other is "Kids Home Alone," a flyer created by the Greater Madison Safe Community Coalition available at [bit.ly/kids-home-alone](http://bit.ly/kids-home-alone).

The flyer looks at a number of questions that parents may ask to determine whether their children are ready mentally, physically, socially and emotionally.

It also is helpful to leave children at home alone for short periods at first to see how they do. "Leave them for an hour and go out to dinner and see how they do. If they call nonstop, you know they are not ready to stay at home alone," Weber said.



**Legal Statistic**

Neglect was the most common type of maltreatment of children in 2011. Of the 18,879 cases reported that year, some 2,723 were substantiated as neglect.

Source: 2011 Wisconsin Child Abuse and Neglect Report of the Wisconsin Department of Children and Family Services.

## Wisconsin gun laws similar to other states

Wisconsin courts have long allowed gun owners to openly carry handguns but not concealed weapons. The Wisconsin Legislature changed that law in 2011.

“Gun rights supporters have won that right on every stage in legislatures across the country including Wisconsin,” said attorney Terry Collins, who enjoys hunting along with other outdoor sports.

To carry a concealed weapon, a gun owner must have a permit. He/she must be at least 21, pass a criminal background check and complete a gun safety course. Convicted felons and those with certain mental illnesses are ineligible.

The law permits loaded handguns or loading guns in a vehicle, boat, all-terrain vehicle and even a noncommercial aircraft.



However, rifles or shotguns may not be concealed. If long guns are transported in a vehicle, they must be unloaded and enclosed in a zipped, snapped, buckled, tied or otherwise fastened case with no part of the firearm exposed.

Concealed weapons are not allowed in a courthouse, police/sheriff station, public building, state parks or where otherwise posted.

Collins said Wisconsin has the Castle Doctrine, which means you could use your firearm to defend your home from an intruder. The Castle Doctrine allows you to shoot that uninvited person on your property. “The law puts all the burden on the person who was shot,” he said.

Wisconsin does not have what is known as a Stand Your Ground law, which would allow you to use your firearm to defend yourself outside your home if you believe your life is in danger. Under that law, you don’t have to back away from the situation but can confront the person.

Collins noted a topic little discussed in gun issues is suicide – more than half of the gun deaths in the United States are from suicide.

“We are now an armed society,” Collins said. “Whether we are a polite society has yet to be seen.”

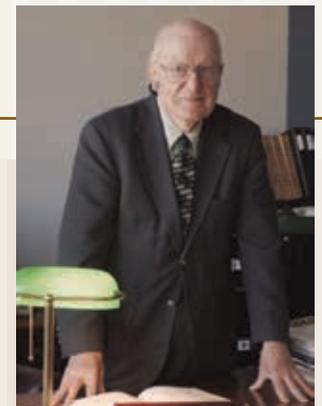


Terry Collins

*“We are now an armed society.*

*Whether we are a polite society has yet to be seen.”*

*~ Terry Collins*



## Remembering Dan Flaherty

As a young attorney in 1978, Brent Smith felt fortunate to have Daniel Flaherty as his mentor.

“He made a strong impression that stays with me,” Smith said of Flaherty, who died June 14, 2013, at age 89. “He was inquisitive and tenacious and stuck with a case. He taught me it takes hours and hours to prepare for a case. You don’t go into a courtroom and ad-lib. You don’t make the kind of bold statements in court that Perry Mason made.”

Something else that impressed Smith was Flaherty saying, “We are fortunate to be lawyers and lawyers in this community,” Smith said. “We have an obligation to give something back.”

Flaherty first came to La Crosse in 1949 as an Assistant La Crosse County District Attorney, and as an attorney with Johns, Roraff & Coleman, which is now known as Johns, Flaherty & Collins. He loved his family, was active on community and state boards, practiced law more than 60 years and loved outdoor recreation, including golfing, fishing and hunting.

“Dan’s philosophy,” Smith added, “was to live life to the fullest and make a difference.” He succeeded at both.



# Survey

*To thank you, we'll enter your name (submitted separately) in a drawing for one of two Amazon \$50 gift cards. Entries must be received by October 15, 2013.*

The Law Exchange is published quarterly with an aim to give you practical, relevant information about laws that affect you, your family and your business. Would you please take a moment to let us know how we're doing? We thank you.

**Please answer the questions below and mail them to**

**Mikat Public Relations, Inc. • 411 21st Street S • La Crosse, WI 54601  
or visit [bit.ly/JFCsurvey](http://bit.ly/JFCsurvey) to complete your answers online.**

Either way, your responses will remain completely anonymous and will help us do a better job of providing information that's helpful to you.

**1.** How do you receive Johns, Flaherty & Collins, newsletter, The Law Exchange?

- I receive a print copy in the mail
- I receive an electronic copy via email
- Both

**2.** How much of The Law Exchange do you usually read?

- 0-25%     26-50%
- 51-75%    76-100%

**3.** How would you rate the appearance of The Law Exchange?

- Excellent    Very Good    Good
- Fair          Poor

**4.** How would you rate the length of the articles in The Law Exchange?

- Too long
- Just right
- Too short

**5.** The Law Exchange is currently distributed four times per year. How would you rate the frequency of distribution?

- Four times per year is too often
- Four times per year is just right
- Four times per year is not often enough

**6.** How would you rate the quality of the content of The Law Exchange?

- Excellent    Very Good    Good
- Fair          Poor

**7.** How would you rate the quality of the writing?

- Excellent
- Very Good
- Good
- Fair
- Poor

**8.** Which sections are you most likely to read?

	Very likely	Somewhat likely	Unlikely	Not at all likely
Cover story	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Q&A	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Inside feature story	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
News briefs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Attorney profile	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**9.** What topics are most interesting to you?

	Very Interested	Interested	Not Interested	No Interest at all
Business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Criminal law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Divorce and family	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Employment law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Estate planning/wills	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Firm and attorney news	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insurance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal injury	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Real estate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (specify: _____)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**10.** What suggestions do you have for improving The Law Exchange? \_\_\_\_\_

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# News

## BRIEFS

Attorney **Joe Veenstra** was appointed chair of the La Crosse County Administrative Center & Downtown Campus Study Committee, which is charged with examining the potential sale or remodel of the county administrative center and options for relocating staff.



Joe Veenstra

Attorney **Cheryl Gill** and Johns, Flaherty & Collins were 2013 Sponsor of the Year for the Y Cycle Weekend/Brice Prairie's Time Trials. The Family Y bicycling weekend includes the Brice Prairie Time Trial, Y30 Road Race (aggressive cycling) and Y Not So 30 Road Race (non-aggressive race).



Cheryl Gill



### Stay Informed

Whether you're into Facebook, LinkedIn, Twitter or blogging, we're there. Stay informed about the latest legal news that affects you and receive top tips for everything from business and estate planning to divorce and traffic law. So choose the vehicle that's best for you and stay up-to-date between newsletters.



## Annual employment seminar returns October 8

Keeping up with always-changing employment laws can be a big job, but Johns, Flaherty & Collins, SC, aims to make it a little easier with its annual employment seminar, scheduled for Tuesday, October 8, this year.

As always, we're packaging the latest information into a complimentary, 90-minute session that will give you important legal updates along with more in-depth information on workplace discrimination.

***"Employing Integrity: An employer's guide to handling discrimination claims" will cover:***

- New case law affecting Wisconsin employment practices
- Conducting internal investigations, including how to investigate without creating additional issues and while maintaining confidentiality
- Associational discrimination, an emerging area of employment law in Wisconsin that can be especially tricky for employers

The seminar has been pre-approved by the HR Certification Institute for 1.5 hours of recertification credit.

**Time: 7:30 to 9 a.m.**

**Check-in beginning at 7 a.m.  
Lunda Center  
319 7th Street North  
Western Technical College  
La Crosse, Wis.**

**While the seminar is free to area employers, registration is requested by Tuesday, October 1.**

**To register, visit [www.johnsflaherty.com/employmentseminar](http://www.johnsflaherty.com/employmentseminar) or call 608-784-5678.**



*The use of this seal is not an endorsement by the HR Certification Institute of the quality of the program. It means that this program has met the HR Certification Institute's criteria to be pre-approved for recertification credit.*





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**PARALEGALS:**

- Lisa L. Felt
- Teresa Nielsen



**Gifford Collins**

Since joining Johns, Flaherty & Collins in 2011, attorney **Gifford Collins** has found himself working frequently with business owners near the end of their careers.

“A lot of times, a small business is the owner’s main asset, but the value of the business is wrapped up in the owner’s expertise,” Collins said. “Many small business

owners worry about how to pass on that value to their families in case of death or sustain the value of the company after a disability, but they don’t know their options.”

If a family member is unable or uninterested in taking over the business, then a key employee may want to take

it over but often needs help with financing the purchase. The owner may also want to provide key-employee incentive programs to encourage a long-term relationship to sustain the value of the company.

“I love working with the clients,” said Collins, whose undergraduate degree was in business management. “It is sometimes challenging but always fulfilling to help people get through tough issues or have some peace of mind about their business should something happen to them.”

Gifford also gives back to the community as a board member of World Services of La Crosse, a member of the La Crosse County Highway Safety Commission, and as an advisory board member for Operation Home Front.

