Davis appealed, arguing that the court erred in relying solely on the job description, and that, in practice, the SHO did not exercise sufficient discretionary authority to be considered a "policymaker."

City officials conceded that Davis was terminated for political reasons, and the only issue on appeal was whether the SHO was a position subject to political termination. The U.S. Court of Appeals for the Seventh Circuit, using the test of whether "the position authorize[d], either directly or indirectly, meaningful input into government decisionmaking on issues where there [was] room for principled disagreement on goals or their implementation," held that the starting point of the inquiry should be the ordinances establishing the SHO position, and not the job description, because, unlike job descriptions, which could have little resemblance to a position's actual duties, an ordinance's terms were not open to contest. "The ordinances give the SHO substantial discretion to flesh out policy by promulgating regulations. While Davis argues that the discretion exercised by the SHO is professional rather than political, this contention is belied by the fact that Davis was a political hire with no technical expertise at the time of his appointment." Here, the City ordinances conferred "sufficient policymaking responsibilities to the SHO such that political loyalty was a valid qualification." The district court's decision was affirmed. *Davis v. Ockomon*, No. 10-2589, 2012 U.S. App. LEXIS 2088 (7th Cir. Feb. 03, 2012).

Practice and Procedure

Access to Litigant's Facebook Account

Lela Tompkins, the plaintiff, claimed she incurred back and other injuries as a result of a slip and fall accident at Detroit Metropolitan Airport. She claimed to be impaired in her ability to work and to enjoy life as a result of these injuries. The defendants included the Airport Authority and Northwest Airlines. Northwest sought to have Tompkins sign authorizations for her medical records and for the release of records from her Facebook account. It alleged that the plaintiff's public postings, as well as some surveillance photographs, showed the relevance of the private postings (the public postings, attached as an exhibit, were photographs showing Tompkins holding a very small dog and smiling, and standing with two other people at a birthday party; the surveillance photos showed her pushing a grocery cart). The plaintiff, however, maintained her objection to the production of her entire Facebook account, including those sections she had designated as private and which she claimed were not available for viewing by the general public.

The request to have the plaintiff sign authorizations to access her Facebook account was denied. Other courts had come to varying conclusions as to the discovery of information posted on social networking sites such as Facebook. Here, the court held that material posted on a 'private' Facebook page, accessible to a selected group of recipients but not available for viewing by the general public, was generally not privileged, nor was it protected by common law or civil law notions of privacy. Nevertheless, the defendant did not have "a generalized right to rummage at will through information that Plaintiff has limited from public view." Rather, consistent with Rule 26(b) and with the caselaw, "there must be a threshold showing that the requested information is reasonably calculated to lead to the discovery of admissible evidence. Otherwise, the Defendant would be allowed to engage in the proverbial fishing expedition, in the hope that there might be something of relevance in Plaintiff's Facebook account."

In this case, the pictures and surveillance relied on were not inconsistent with the plaintiff's claim of injury or with the medical information she provided. She did not claim that she was bed-ridden, or incapable of leaving her house or participating in modest social activities. "If the Plaintiff's public Facebook page contained pictures of her playing golf or riding horseback, Defendant might have a stronger argument for delving into the non-public section of her account. But based on what has been provided to this Court, Defendant has not made a sufficient predicate showing that the material it seeks is reasonably calculated to lead to the discovery of admissible evidence." *Tompkins v. Detroit Metro. Airport*, No. 10-10413, 2012 U.S. Dist. LEXIS 5749 (E.D. Mich. Jan. 18, 2012).

Search and Seizure

Allegedly Defective Warrant

The Santa Maria Police Department (SMPD) was investigating a drive-by shooting in which a young boy was injured. Witnesses recognized the car and the man's voice calling out from the car, and gave investigators a list of gang members believed to be associated with the shooters. The list included Javier Bravo, Jr. Based on this and other information, the officers obtained a warrant that authorized the search of seven individuals suspected of harboring weapons and evidence relating to the drive-by shooting, as well as a search of those persons' residences and vehicles, and a search of any persons or vehicles present at the time of the warrant's execution. Officer Tanore's affidavit listed Javier Jr.'s address as his parents' residence and contained a brief summary of his criminal history, but failed to mention that Javier Jr. had been sentenced, and was over six months into serving, a two-year sentence in state prison for his crimes. (A detective said he *had* checked but was told by the sheriff's office that Javier Jr. was not in custody, but no check of state prison custody had been done).

The Santa Barbara Police Department (SBPD) SWAT team served the warrant on the Bravo residence at 5:30 am by shooting off the front door locks and deploying two "flashbang" grenades outside the back door. Inside were Mr. and Mrs. Bravo and their eight-year-old granddaughter. Mrs. Bravo told officers her son was in jail and that they would find a recent letter from him on the dining room table. The Bravos remained detained in their living room, but at no