

Delete Your Account

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ANTHONY MICHAEL KREIS*

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I. INTRODUCTION

Social media cannibalizes its users. Social media platforms like Twitter, Facebook, and Instagram are fraught with traps at every turn, which can cause even their most religious adherents to burn out or self-destruct. These dangers run the gamut from the irritations of misinterpreted posts to combating those on a sole mission to goad co-users to the career-ending, offensive statements that users regret for years—or will seek penance for years from now. The perils of social media are something of a running joke among users who often comment that the best wisdom is to “never tweet” or who reply disapprovingly to a post with a curt “delete your account.”¹

Notwithstanding the ironic title and the severe pitfalls associated with social media use, this essay stands to praise these platforms’ ability to democratize the law and encourages members of the legal community to harness its power to educate the public responsibly. It is the goal of this short symposium contribution to square the ideals associated with legal practice and social media use. The essay will then offer some basic norms for legal professionals’ consideration while using social media to communicate to the public.

II. SOCIAL MEDIA AS CAUSE LAWERYING

There's a famous scene in Shakespeare's *Henry VI, Part II* where a cabal of plotting men discuss their plans to overthrow the sitting king, Henry VI, whose reign is marred by incompetence and corruption.² Led by the rebellious Jack Cade, the

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1. See, e.g., Greg Lipper (@theglipper), TWITTER (Feb. 12, 2019, 5:37 PM), <https://twitter.com/theglipper/status/1095497045023039494> (“Like everyone else with opposable thumbs, Liz Cheney should never tweet.”); Daniel Victor, *Clinton to Trump on Twitter: ‘Delete Your Account,’* N.Y. TIMES (June 9, 2016), <https://www.nytimes.com/2016/06/10/us/politics/hillary-clinton-to-donald-trump-delete-your-account.html> (reporting on Hillary Clinton tweeting to then-presidential candidate Donald Trump, “Delete Your Account.”).

2. WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY THE SIXTH*, act 4, sc.2.

group was mulling over what they hoped to accomplish after they seized power from the monarch.³ One of the conspirators, Dick the Butcher, makes a pointed suggestion for the group. "The first thing we do, let's kill all the lawyers," he recommended.⁴

Far too often, this line is used as a quip to ridicule the idiosyncrasies of the legal mind and the proliferation of lawyers.⁵ Contrary to the contemporary spin on Dick the Butcher's quote, it was never intended to serve as a lawyer joke. Instead, it is the highest of Shakespearian compliments. Because what Dick the Butcher knew is that lawyers are the first line of defense to protect the rule of law, secure the rights of marginalized people, and push back against forces of tyranny. Shakespeare's scene reminds us that our profession is a noble one. As lawyers, as people concerned about the integrity of our constitutional system, and as citizens, we must speak out for society's most vulnerable to safeguard individual rights and liberties, and to be the watchdogs of the republic.

To be a member of the legal profession is a high calling that requires active participation in public deliberation. But, how can we harmonize that highbrow mission with the lowbrow politics of social media? When opportunities arise to impart knowledge for public consumption and to breakdown complex legal questions for laypersons to easily digest, lawyers *should* avail themselves of those opportunities if they are willing and able. This is because social media can serve as an important tool for the democratization of law, as well as a vehicle for shedding light on miscarriages of justice that might otherwise receive too little attention. Far from being a practice antithetical to professional values, a lawyer can aspire to that Shakespearean ideal by effectively using social media as a way to educate the public, as a tool to promote the rule of law, or as a vehicle for cause lawyering.⁶

This essay's goal is to articulate some standards legal professionals (particularly directed at those with sizeable followings and the professional freedom to use social media) should consider when they enter social media fora and participate in public debates about questions of law and public policy in furtherance of the profession's aspirational calling.

3. *Id.*

4. *Id.*

5. See Jacob Gershman, *To Kill or Not to Kill All the Lawyers? That Is the Question*, WALL ST. J. (Aug. 18, 2014), <https://www.wsj.com/articles/shakespeare-says-lets-kill-all-the-lawyers-but-some-attorneys-object-1408329001> (describing the misappropriation of the Shakespeare reference).

6. "Cause lawyering" is best described as legal efforts "directed at altering some aspect of the social, economic, and political status quo." AUSTIN SARAT & STUART SCHEINGOLD, *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 3–4 (Austin Sarat & Stuart Scheingold eds., 1998).

III. STANDARDS FOR THE LEGAL PROFESSION

A. Ensuring Expertise and Accuracy

While law students are trained as generalists,⁷ few lawyers can be experts in every area of law.⁸ While our interests may be broad, our depth of knowledge is not equal in all matters. It is important when using social media as a springboard for public education and commentary to avoid speaking authoritatively on issues that we lack the requisite experience or research. This is not to suggest that subject matters that lie at the periphery of a person's wheelhouse should be deemed off limits,⁹ but rather the user should use some phrasing to gesture to their followers that they are speaking on the outer limits of their expertise.¹⁰ In this way, the legal professional can initiate dialogue and offer reasonable, educated preliminary thoughts without misleading readers.

B. Good Faith Engagement

Social media users can help to boost the saliency of an issue and raise public knowledge of relevant legal matters through good-faith debate. Initiating and sustaining quality conversations is more easily said than done, of course. However, legal professionals should avail themselves of the marketplace of ideas in the social media space to engage with others and expand the reach of other users in pursuit

7. See David Luban, *Legal Scholarship as a Vocation*, 51 J. LEGAL EDUC. 167, 169 (2001) ("Law schools continue to think of themselves as homes to generalists . . . they do not divide into departments, and everyone still indulges in the fiction that they are fit to understand and judge the work of all their colleagues."); Gary A. Munneke, *Legal Skills for a Transforming Profession*, 22 PACE L. REV. 105, 153 (2001) (describing the prevailing law school curriculum as being in the "Harvard model of training generalists who enter large corporate law firms and thereafter, acquire practice skills and substantive expertise").

8. See Philip C. Kissam, *The Decline of Law School Professionalism*, 134 U. PA. L. REV. 251, 258 (1986) (noting that while "the function of law schools is to train beginners or generalists in the law; the professional specialist develops the specific knowledge and skills of her specialty only after years of practice and on-the-job training."); Gary Munneke, *Requiem for a GP: The End of an Era*, 83 N.Y. ST. B. ASS'N J. 10, 14 (Feb. 2011) ("Much has been written about the transformation of large firms from big, to bigger, to colossal, but much less about the future of solo and small firm practice. Yet it should be clear from this article that the changes that have transformed BigLaw have not left LittleLaw unscathed. In order to survive in these times, lawyers have to develop a cognizable expertise. Whether we call this expertise a concentration, a niche, or a specialty, the shift away from general practice is changing the way that solo practitioners and small firm lawyers work, including the way they connect with clients, deliver their services and charge fees.").

9. For example, in the context of a law professor, Carissa Byrne Hessick astutely points out that while "a law professor will often be able to clarify or dispute a legal issue that is being mischaracterized by others, even if that issue is outside of her core area of expertise," nevertheless, "when tweeting on legal issues outside of their area of expertise, law professors should take care to dispel the implicit claim to expertise created by their self-identification as a law professor." Carissa Byrne Hessick, *Towards a Series of Academic Norms for #lawprof Twitter*, 101 MARQ. L. REV. 903, 918 (2018). Worth considering however, is Darren Bush's caution that overzealous flagging of expertise could be potentially detrimental to some underrepresented groups. See Darren Bush, *Law Reviews, Citation Counts, and Twitter (Oh my!): Behind the Curtains of the Law Professor's Search for Meaning*, 50 LOY. U. CHI. L.J. 337, 348 (2018) (suggesting that there might be a disparate chilling effect on users from underrepresented groups by instituting a qualification norm).

10. For example, a user could preface a post with "This isn't my area, but . . ." or "I haven't read up on [subject matter] in some time . . ." to communicate they are offering an educated point of view, but not an expert one.

of diversifying and improving the quality of public discourse. At the same time, maintaining credibility is vital. For this reason, social media users must resist sliding into corrosive insults and be willing to admit errors.

Social media can help inform the public about tensions within the law and improve others' understanding of legal controversies if members of the legal community use it to promote reasoned dialogue. Good faith debates between individuals across the ideological spectrum are healthy and necessary for a democratic society but requires individuals who want to engage without relying on personal attacks and dismissive quips. The challenge of social media lies in the fact that it is much easier to insult someone with a biting tweet than it is to insult a person to their face. Restraint and civility cannot become lost to the ages that came before the digital debate space. Instead, robust exchanges must be had without resorting to ad hominem attacks. Part and parcel to this point is the lesson that there is no shame in confessions of error. It is relatively easy to misinterpret a tweet or to make a mistake of fact. While it requires some degree of humility, users should be transparent when they have caught themselves in the wrong.

An additional element of the engagement that social media users can undertake to inform the public about pressing legal matters is tapping into the power of promotion. Avid social media users can help democratize the law through social media by amplifying the voices of others who are experts and the views of marginalized persons who offer thoughtful, fresh, and overlooked perspectives. Reposting or soliciting the viewpoints of diverse and often ignored persons who have a reputation for incisive commentary is itself a public service.

C. The Perils of Thinking Out Loud

Notwithstanding its benefits to democratize the law, foster intellectual debates, and serve as a vehicle to thrust vitally important, but far too often unnoticed perspectives in the spotlight, social media does not reward users who think too long. In other words, digital spaces like Twitter and Facebook place a premium on the immediacy and incentivize real-time opinion generators. This approach works rather nicely when commentators are not surprised by a turn of events. For example, a rapid response to a long-anticipated Supreme Court decision where the underlying issues are understood is an ideal way to take advantage of social media to facilitate popular knowledge. Those who can hold a social media presence of that nature offer a public good of tremendous value. They stand apart from the knee-jerk reaction punditry that serves to inflame more than it helps to enlighten.

Social media's more distasteful characteristics often manifest in the wake of breaking news where impassioned, off-the-cuff punditry comes at the expense of deliberative nuance. Though terribly challenging to resist, especially in moments of turmoil, it is sometimes worth pumping the breaks and urging caution. This is particularly true as legal professionals when it comes to criminal law matters—we should be exceedingly cautious before deeming certain forms of conduct criminal or rushing to judgment in regard to a person's guilt or innocence. In my view, the rush to judgment against individuals is something that legal spheres of social media should caution against and combat with sober analysis.

D. The Power of Personal Narratives

My final musing on the place of the legal professional on social media is that sterile accounts are undesirable. Individuals who are willing to share their stories, particularly recounting their struggles and perseverance, can have a significant public education function. There is much to learn from individuals who come from dramatically different backgrounds than ourselves. The opportunity social media provides to garner insight from a diverse group of individuals about the way law and public policy has impacted their lives should not be squandered. It is particularly important to listen to the perspectives of persons from historically disadvantaged groups or whose voices have been marginalized. Not only do these users have the chance to help enrich public discourse, but they can also tell their stories to help others facing similar challenges. Not every form of public exposure must be scholarly to do good.

IV. CONCLUSION

Social media fora are not for the faint of heart. They attract characters with unsavory intentions, can prove destructive for its users, and are too often are vats of vitriol. Yet, if lawyers shy away from entering new technology-based spaces, legal professionals and academics will inevitably leave a vacuum that others will occupy. While imperfect, social media can be an influential tool for members of the legal community to improve public knowledge and stimulate robust debates about matters of public concern. Far from being degrading to the profession, lawyers can do substantial good with an online presence—they can raise awareness, educate with expertise, and offer varied perspectives necessary for popular debate. Lawyers have a higher duty to speak out for the rule of law and individual rights and liberties. Social media can be a vehicle to advance toward noble aspiration.