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# THE PERILS OF ENGAGING ON SOCIAL MEDIA FOR WOMEN LAWYERS: ARE THE BENEFITS WORTH THE RISKS?

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# THE PERILS OF ENGAGING ON SOCIAL MEDIA FOR WOMEN LAWYERS: ARE THE BENEFITS WORTH THE RISKS?

JAIME A. SANTOS\*

When we think about the “perils and pitfalls” of lawyers engaging in discourse on social media, we usually think about mistakes made by attorneys and how those mistakes can be avoided.<sup>1</sup> But for women (and other groups who are underrepresented in the legal profession, including attorneys of color and attorneys with disabilities), the perils of engaging on social media are often externally imposed. Women professionals, including women in the legal profession, are more commonly exposed to personal and often sexualized attacks and threats when they become part of the public conversation. Despite these perils, however, it is vital that women lawyers engage on social media platforms—both because of the benefits that social media affords to women lawyers, and also because the legal profession, as a whole, benefits when female voices are reflected in the public discourse.

## I. ENGAGING IN THE PUBLIC DISCOURSE ON SOCIAL MEDIA IS RISKY BUSINESS FOR WOMEN LAWYERS

Twitter and other social media platforms are no strangers to controversy. Attorneys who engage on issues of law, policy, or public debate often find themselves at the center of public disagreements—and, sometimes, justifiably in hot water in the court of public opinion. Ed Whelan, the President of the Ethics and Public Policy Center, provides perhaps the best example. During Supreme Court confirmation hearings in the fall of 2018, several women came forward with accusations that the nominee for Associate Justice, D.C. Circuit Judge Brett Kavanaugh, had engaged in sexual misconduct in high school and in college.<sup>2</sup> One woman, Dr. Christine Blasey Ford, accused then-Judge Kavanaugh of attempting to rape her at a party in high school.<sup>3</sup> Shortly before Dr. Blasey Ford was scheduled to testify before the Senate Judiciary Committee, Mr. Whelan took to Twitter with a theory that Dr. Blasey Ford

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1. Although this Essay generally refers to “women lawyers” or “women attorneys” who engage in social media, the issues discussed herein apply equally to practicing attorneys who are women, women law professors, women who previously practiced law and continue to engage in the public discourse regarding issues affecting the legal profession, and women journalists who focus on legal matters, many of whom have law degrees.

2. Morgan Sung, *Man Tries to Use Zillow to Prove Kavanaugh’s Innocence and Ends Up Owning Himself*, MASHABLE (Sept. 20, 2018), <https://mashable.com/article/ed-whelan-uses-zillow-kavanaugh-innocence-conspiracy-theory/#.Qcy8DCqhaq4>.

3. *Id.*

may have been assaulted, but that she had simply been confused about who had attacked her.<sup>4</sup> He cited Google Maps and floor plans that he downloaded from Zillow to support his theory, even naming the classmate that he strongly suggested may have assaulted Dr. Blasey Ford, instead of then-Judge Kavanaugh.<sup>5</sup> Mr. Whelan's actions were roundly criticized and mocked,<sup>6</sup> and Mr. Whelan took a leave of absence from work.<sup>7</sup>

Attorneys who engage in public discourse in such an irresponsible manner quite rightly expose themselves to this type of public criticism. All attorneys who engage in public discourse expose their ideas and viewpoints to public and professional criticism—that is the “debate” part of “public debate.” But when women attorneys—who remain significantly underrepresented in the profession, particularly in high-level positions and appointments<sup>8</sup>—engage on social media platforms, they often find themselves more quickly and heavily criticized for doing so, with much of that criticism taking a demonstrably more personal (and sometimes sexual) character.<sup>9</sup>

For example, I have spent significant time urging the federal judiciary to take action to study and address sexual harassment, and working *with* the federal judiciary to develop effective reforms.<sup>10</sup> I have done this work along with a diverse

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4. See generally W. James Antle III & Daniel Chaitin, *Kavanaugh Booster Faces Backlash After Pushing Mistaken-Identity Theory on Twitter*, WASH. EXAMINER (Sept. 20, 2018), <https://www.washingtonexaminer.com/news/kavanaugh-booster-faces-backlash-after-pushing-mistaken-identity-theory-on-twitter>; Sung, *supra* note 2.

5. See Sung, *supra* note 2 (Mr. Whelan's tweets have since been deleted, but screenshots were taken of them before they were deleted).

6. See *id.*; Rod Dreher, *Ed Whelan's Crackpot Theory*, THE AM. CONSERVATIVE (Sept. 20, 2018, 10:27 PM), <https://www.theamericanconservative.com/dreher/ed-whelans-crackpot-theory/comment-page-2/>; Antle & Chaitin, *supra* note 4.

7. Kate Sullivan, *Conservative Strategist Takes Leave of Absence After 'Inexcusable Mistake' in Claim Kavanaugh Accuser Misidentified Alleged Attacker*, CNN (Sept. 23, 2018, 5:33 PM), <https://www.cnn.com/2018/09/23/politics/ed-whelan-kavanaugh-leave-of-absence/index.html>. Ultimately, however, numerous senators voted to confirm because they adopted some version of Whelan's “Mistaken Identity” theory, and Whelan's leave of absence lasted just one month, until Justice Kavanaugh was confirmed. Ryan J. Reilly & Elise Foley, *Standing by Kavanaugh, Republicans Subscribe to Doppelgänger Theory*, HUFFPOST (Sept. 28, 2018 5:40 PM), [https://www.huffingtonpost.com/entry/kavanaugh-blasey-ford-republicans\\_us\\_5bae437fe4b09d41eba10927](https://www.huffingtonpost.com/entry/kavanaugh-blasey-ford-republicans_us_5bae437fe4b09d41eba10927); Jane Coaston, *Brett Kavanaugh is Confirmed and Ed Whelan is Back*, VOX (Oct. 23, 2018, 3:20 PM), <https://www.vox.com/2018/10/23/18014580/ed-whelan-kavanaugh-zillow-eppc-absence>. At the end of 2018, Whelan sought donations, citing “the impact I've had over the years on the broader debate on constitutional issues and judicial confirmations.” Ed Whelan, *Year-End Invitation*, NAT'L REV.: BENCH MEMOS (Dec. 19, 2018, 11:27 AM), <https://www.nationalreview.com/bench-memos/year-end-invitation/>. His odious (and potentially defamatory) conduct therefore does not appear to have had an adverse impact on his career or standing within the conservative legal community.

8. Jennifer Smith, *Women Lawyers Gaining, But Still Underrepresented at the Top*, WALL ST. J.L. BLOG, (Dec. 5, 2012, 11:53 AM), <https://blogs.wsj.com/law/2012/12/05/women-lawyers-gaining-but-still-underrepresented-at-the-top/>; DEBORAH L. RHODE, *THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION* 5 (2001), [https://www.americanbar.org/content/dam/aba/marketing/women/unfinished\\_agenda\\_4920029.pdf](https://www.americanbar.org/content/dam/aba/marketing/women/unfinished_agenda_4920029.pdf).

9. Amy K. Lehr & Mariefaye Bechrakis, *Against the Odds: Overcoming Online Harassment of Women in Politics*, CTR. FOR STRATEGIC & INT'L STUD. (Nov. 8, 2018), <https://www.csis.org/analysis/against-odds-overcoming-online-harassment-women-politics>.

10. See, e.g., Katie Barlow, *An Interview With Jaime Santos*, CIRCUIT BREAKER (Dec. 11, 2018), <https://dccircuitbreaker.org/an-interview-with-jaime-santos/>; Letter from Law Clerks for Workplace

group of current and former women law clerks, and with the federal judiciary's encouragement.<sup>11</sup> Indeed, my colleagues and I were invited to participate in working groups established by the Administrative Office of the U.S. Courts at the direction of Chief Justice John Roberts, by the U.S. Court of Appeals for the Ninth Circuit, and by the U.S. Court of Appeals for the D.C. Circuit; we have also met or spoken more informally with other courts interested in enhancing their policies and procedures intended to protect employees from harassment and other abusive behaviors.

After these women and I had been working together for about six months—and actually, at the suggestion of members of the Federal Judiciary Workplace Conduct Working Group convened at the direction of Chief Justice John Roberts—we decided to form a formal organization, called Law Clerks for Workplace Accountability (LCWA), and began engaging in the public discourse regarding these issues through our Twitter handle, @ClerksForChange. One of the first actions we took as an organization was to submit comments to the Judicial Conference regarding the Federal Working Group's report and suggestions for reform; we prepared and submitted these comments at the Federal Working Group's request.<sup>12</sup> Our comments praised the action already taken by the judiciary, provided constructive feedback on some of the Federal Working Group's proposals, and offered additional reform measures for future consideration.<sup>13</sup>

On the same day LCWA began engaging in public debate by launching our website and Twitter account,<sup>14</sup> a federal judge took to Twitter and attacked us and our work. The judge suggested that the work of our “[a]ll female” group was akin to a “New Spanish Inquisition by SJWs;”<sup>15</sup> referred to us as “uninformed busybodies who should largely be ignored” and that “understand very little;” tweeted that we were “presumptuous” for having proposed reforms to begin with; and, juxtaposing me against a federal judge who resigned after more than a dozen women accused him of sexual harassment or sexual assault, said, “Kozinski is brilliant & flawed. But true believers like Ms. Santos scare me.”<sup>16</sup>

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Accountability to Committees on Codes of Conduct & Judicial Conduct and Disability (Nov. 13, 2018) (on Commentary, Proposed Changes to the Code of Conduct and Judicial Conduct & Disability Rules), <http://www.clerksforaccountability.org/docs/2018-11-13-lcwa-comments.pdf>; *Confronting Sexual Harassment and Other Workplace Misconduct in the Federal Judiciary*, COMM. ON THE JUDIC. (2018), <https://www.judiciary.senate.gov/meetings/confronting-sexual-harassment-and-other-workplace-misconduct-in-the-federal-judiciary> (Senate Committee on the Judiciary for the 115th Congress committee hearing and written testimony).

11. REPORT OF THE FEDERAL JUDICIARY WORKPLACE CONDUCT WORKING GROUP TO THE JUDICIAL CONFERENCE OF THE UNITED STATES 1 n.3 (2018), [https://www.uscourts.gov/sites/default/files/workplace\\_conduct\\_working\\_group\\_final\\_report\\_0.pdf](https://www.uscourts.gov/sites/default/files/workplace_conduct_working_group_final_report_0.pdf).

12. MEMORANDUM FROM THE LAW CLERKS FOR WORKPLACE ACCOUNTABILITY, RESPONSE TO THE FEDERAL JUDICIARY WORKPLACE CONDUCT WORKING GROUP'S JUNE 1, 2018, REPORT (2018), <http://www.clerksforaccountability.org/response-to-working-group-report?v2>.

13. See generally *id.*

14. Howard Bashman (@howappealing), TWITTER (July 20, 2018, 11:53 AM), <https://twitter.com/howappealing/status/1020335876205932545>.

15. “SJWs” stands for “social justice warriors,” a derogatory term used to describe individuals who promote feminism and multiculturalism.

16. See Roberta Kaplan & Rachel Tuchman, *Time's Up for Lawyers Too*, N.Y. L.J. (July 27, 2018, 8:58 AM), <https://www.law.com/newyorklawjournal/2018/07/27/times-up-for-lawyers-too/>; Andrew Strickler, *Kopf Twitter Flap Shows #MeToo Reform Must Be Inclusive*, LAW360 (July 25, 2018, 8:58 PM),

As in the above example, when women in the legal profession who engage in public discourse are criticized, the criticism often relates not to the substance of their views (which is, of course, fair game), but to the *fact* that they engaged or the *way* in which they engaged. When a woman appellate attorney on Twitter was quoted in an article about the Supreme Court’s proposed new word limits, for example, she was gratuitously attacked for not being “qualified” to opine on such a topic (which, again, was the word limits for briefs).<sup>17</sup> When another woman appellate attorney criticized a prominent Supreme Court podcast for failing to address sexual harassment issues in the judiciary, she was told by one of the show’s hosts that her criticism was not a “constructive way to engage us on this.”<sup>18</sup> Similarly, when the @ladylawyerdiaries Twitter account—which is operated by a group of women attorneys<sup>19</sup>—offered a list of potential female appellate specialists as potential guests on the podcast *in response to an express request* for guest suggestions, it was immediately criticized by one of the hosts as being “actually not helpful,” even while the same host had responded with gratitude to a male listener who had proposed a list of guests just minutes earlier.<sup>20</sup>

In other instances, the contributions of women who engage in public discourse about legal issues are ignored altogether. Benjamin Wittes, the editor in chief of *Lawfare* and a Senior Fellow in Governance Studies at the Brookings Institution who is very active on social media, recently complained about this phenomenon when he was (once again) credited for an analysis of Special Counsel’s Russia investigation, even though he was just one of two authors on the by-line and his

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<https://www.law360.com/articles/1066968/kopf-twitter-flap-shows-metoo-reform-must-be-inclusive>; Joe Patrice, *Outspoken Federal Judge Launches Amazingly Dumb Twitter Tirade*, ABOVE THE LAW (July 24, 2018, 12:20 PM), <https://abovethelaw.com/2018/07/outspoken-federal-judge-launches-amazingly-dumb-twitter-tirade/>; Max Mitchell, *Judge Who Stirred Controversy With Tweet Unlikely to Face Discipline, Experts Say*, LAW.COM (July 23, 2018, 5:31 AM), <https://www.law.com/2018/07/23/judge-who-stirred-controversy-with-tweet-unlikely-to-face-discipline-experts-say/>; Emily Nitche, *Outspoken Nebraska Judge Draws Criticism for Tweets About Harassment*, OMAHA WORLD-HERALD (July 27, 2018), [https://www.omaha.com/news/politics/outspoken-nebraska-judge-draws-criticism-for-tweets-about-harassment/article\\_d3819308-625e-5b77-941d-b42d587bc7f9.html](https://www.omaha.com/news/politics/outspoken-nebraska-judge-draws-criticism-for-tweets-about-harassment/article_d3819308-625e-5b77-941d-b42d587bc7f9.html).

17. Privilege (@privilegelog), TWITTER (Nov. 2, 2018, 7:29 AM), <https://twitter.com/privilegelog/status/1058365526228066304>; Jay M. Wolman (@wolmanj), TWITTER (Nov. 2, 2018, 8:56 AM), <https://twitter.com/wolmanj/status/1058387311350681600>.

18. Ian Samuel (@isamuel), TWITTER (Apr. 5, 2018, 8:31 AM), <https://twitter.com/isamuel/status/981917308921753601>.

19. *Lady Lawyer Diaries: Support for Women in Law*, LEGAL TALK NETWORK (Nov. 6, 2018), <https://legaltalknetwork.com/podcasts/state-bar-texas/2018/11/lady-lawyer-diaries-support-for-women-in-law/>; see also Aebra Coe, *Female Attys Take to Twitter as Senate Looks at Harassment*, LAW360 (June 15, 2018, 4:35 PM), <https://www.law360.com/articles/1054135/female-attys-take-to-twitter-as-senate-looks-at-harassment>.

20. *Compare* Ian Samuel (@isamuel), TWITTER (Aug. 15, 2018, 2:19 PM), <https://twitter.com/isamuel/status/1029839940681719827> (requesting suggestions for guests), and Ian Samuel (@isamuel), TWITTER (Aug. 15, 2018, 5:11 PM), <https://twitter.com/isamuel/status/1029883192482906112> (commenting that a list of conservative potential guests offered by a male attorney was “great”), with Ian Samuel (@isamuel), TWITTER (Aug. 15, 5:35 PM), <https://twitter.com/isamuel/status/1029889344893538309> (criticizing women for “[j]ust giving me a long list of women who are lawyers” and commenting that doing so was “actually not helpful”), and Ian Samuel (@isamuel), TWITTER (Aug. 15, 2018, 5:51 PM), <https://twitter.com/isamuel/status/1029893250830794753> (continuing to criticize @ladylawyerdiaries’ “unordered list of prominent women lawyers”).

female co-author, Quinta Jurecic, was listed first.<sup>21</sup> Mr. Wittes tweeted, “Seriously, people: Stop erasing my female coauthors. Just stop.”<sup>22</sup> It happened again a few months later when a Mr. Wittes was publicly praised by a renowned Supreme Court attorney for his “[f]abulous piece” published in the Atlantic<sup>23</sup>—except the fabulous piece was also published by Mikhaila Fogel, who again was listed first in the byline.<sup>24</sup>

The same thing occurred after Ronan Farrow and Jane Mayer published an explosive story about sexual misconduct by Justice Kavanaugh during his college years, and also after these two authors published a story about sexual violence by then-New York Attorney General Eric Schneiderman: in both instances, Ronan Farrow was given credit, while Jane Mayer largely was not even mentioned.<sup>25</sup> Even a story purporting to provide Jane Mayer with credit over these ground-breaking #MeToo stories bungled the effort by referring to Jane Mayer as a “Key Part of Ronan Farrow’s Kavanaugh Scoops,” as if she were simply his research assistant rather than a co-author and veteran of journalism who was breaking news while Ronan Farrow was still in diapers.<sup>26</sup> This experience is common to women economics professors,<sup>27</sup> women academics writing on national security,<sup>28</sup> women literature professors,<sup>29</sup> and women sociologists.<sup>30</sup>

Women in the legal profession who engage on social media are also criticized for the literal sound of their voices<sup>31</sup> and for their appearance. As just one example from the week this Essay was written, when a woman lawyer and journalist tweeted that the President was canceling his trip to Davos for the World Economic Forum,

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21. Chuck Ross (@ChuckRossDC), TWITTER (Aug. 18, 2018, 1:31 PM), <https://twitter.com/ChuckRossDC/status/1030915129943052288>.

22. Benjamin Wittes (@benjaminwittes), TWITTER (Aug. 19, 2018, 3:57 AM), <https://twitter.com/benjaminwittes/status/1031133025826947072>.

23. Neal Katyal (@neal\_katyal), TWITTER (Feb. 12, 2019, 1:32 PM), [https://twitter.com/neal\\_katyal/status/1095390298526633984](https://twitter.com/neal_katyal/status/1095390298526633984).

24. Mikhaila Fogel & Benjamin Wittes, *The Much-Heralded End of the Mueller Investigation*, ATLANTIC (Feb. 12, 2019), <https://www.theatlantic.com/ideas/archive/2019/02/when-will-mueller-finish-his-investigation/582592/>.

25. Ruth Graham, *Jane Mayer Has Been Reporting Alongside Ronan Farrow. So Why Isn’t She Getting Branded as a Hero of #MeToo?*, SLATE (Sept. 24, 2018, 6:24 PM), <https://slate.com/human-interest/2018/09/jane-mayer-ronan-farrow-metoo-reporting-new-yorker.html>.

26. John Bonazzo, *Veteran Reporter Jane Mayer Is a Key Part of Ronan Farrow’s Kavanaugh Scoops*, OBSERVER (Sept. 24, 2018, 2:05 PM), <https://observer.com/2018/09/new-yorker-jane-mayer-ronan-farrow-brett-kavanaugh/>.

27. Christina Pazzanese, *Women, Overshadowed*, HARVARD GAZETTE (Feb. 16, 2016), <https://news.harvard.edu/gazette/story/2016/02/women-in-mens-shadows/>; Justin Wolfers, *When Teamwork Doesn’t Work for Women*, N.Y. TIMES (Jan. 8, 2016), <https://www.nytimes.com/2016/01/10/upshot/when-teamwork-doesnt-work-for-women.html>.

28. Tamara Wittes (@tcwittes), TWITTER (Aug. 22, 2018, 7:24 PM), <https://twitter.com/tcwittes/status/1032453386090762240>.

29. Silke-Maria Weineck, *All Things Ill-Considered: NPR’s Sexist Blunder*, CHRON. REV. (July 8, 2018), <https://www.chronicle.com/article/All-Things-Ill-Considered-/243865>.

30. Columbia Social Science (@ColumbiaSocSci), TWITTER (Dec. 28, 2018, 8:47 AM), <https://twitter.com/ColumbiaSocSci/status/1078694019461455874>.

31. *Reviews for First Mondays*, POD PARADISE, <https://www.podparadise.com/Podcast/Reviews/1161435501> (last visited Mar. 31, 2019) (numerous reviews criticizing the voice of Professor Leah Litman, a prolific academic author, blogger, podcaster, and attorney).

her tweet received the following reply, criticizing her choice of a profile picture that did not project an adequately serious image<sup>32</sup>:



They are also regularly subjected to unwanted sexual photos, obscene remarks, and inappropriate advances by private direct message (DM), including the following sample of the many similar DMs in just my own Twitter account during the past few months<sup>33</sup>:



The experience is generally even worse for women of color than it is for white women. Professor Nancy Leong, a law professor at the University of Denver who frequently blogs and engages in social media, has discussed her own experiences in this vein in a four-part series of blog posts hosted by the blog *Feminist Law*

32. Rogue Wave (@BillGallagher20), TWITTER (Jan. 10, 2019, 1:28 PM), <https://twitter.com/BillGallagher20/status/1083475624461848579> (multiple grammatical errors in original).

33. @Jaime\_ASantos, Screenshot of Author's Private Direct Messages, TWITTER, (Oct. 2, 2018); (@Jaime\_ASantos, Screenshot of Author's Private Direct Messages, TWITTER, (Sept. 23, 2018); @Jaime\_ASantos, Screenshot of Author's Private Direct Messages, TWITTER, (Dec. 23, 2017); @Jaime\_ASantos, Screenshot of Author's Private Direct Messages, TWITTER, (Aug. 7, 2018); @Jaime\_ASantos, Screenshot of Author's Private Direct Messages, TWITTER, (Dec. 29, 2018).



*Professors*.<sup>34</sup> Professor Leong described the myriad sexist, racist, and sexualized comments that she receives in response to her academic articles and public remarks.<sup>35</sup> For example, her threads on social media relating to her scholarship about race elicited the following comments: “lol at an asian bitch writing about this shit bet she gets ass reamed by white men only,” “I’d hit that hapa all night and then some, bro,” and “She love someone leong time to get herself a law professor position at such a young age.”<sup>36</sup> Professor Leong said that she could provide “literally hundreds of” similar examples just about herself.<sup>37</sup> Indeed, after she began the blog series specifically discussing online discrimination and harassment, she found that someone started a blog devoted entirely to “derogatory racial and sexual statements” about her, including pictures that were copied from online sources.<sup>38</sup>

These experiences are not unique to women in the legal profession—the harassment and mistreatment of women professionals on social media has been well documented for several years.<sup>40</sup> In one study, analysts from Havas UK, a media and communications group, identified 152 women across five “power groups” (including politics, news, entertainment, and sports) and gathered data about how they are treated on Twitter.<sup>41</sup> The analysts examined 51 million tweets over a six-month period and found that 6.5 million tweets (an average of 238 tweets per women per day) involved attacks on their intellect or ability, gender-specific slurs, sexually explicit and objectifying comments, or threats of sexual violence.<sup>42</sup> Women politicians faced threats of sexual violence in 19% of these tweets.<sup>43</sup>

Indeed, women politicians (many of whom are lawyers) are “three times more likely than their male counterparts to receive comments [on social media platforms] containing sexually abusive language,”<sup>44</sup> including threats of sexual violence.<sup>45</sup> In one study of women parliamentarians, researchers found that 45% “had received

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34. See Nancy Leong, *Identity and Ideas*, FEMINIST LAW PROFESSORS (Nov. 12, 2013), <http://www.feministlawprofessors.com/2013/11/identity-ideas/> [hereinafter Leong, *Identity and Ideas*]; Nancy Leong, *Anonymity and Abuse*, FEMINIST LAW PROFESSORS (Nov. 19, 2013), <http://www.feministlawprofessors.com/2013/11/anonymity-abuse/> [hereinafter Leong, *Anonymity and Abuse*]; Nancy Leong, *Privilege and Passivity*, FEMINIST LAW PROFESSORS (Dec. 4, 2013), <http://www.feministlawprofessors.com/2013/12/privileging/> [hereinafter Leong, *Privilege and Passivity*]; Nancy Leong, *Consequences and Conclusions*, FEMINIST LAW PROFESSORS (Dec. 17, 2013), <http://www.feministlawprofessors.com/2013/12/consequences-conclusions/> [hereinafter Leong, *Consequences and Conclusions*].

35. See generally Leong, *Anonymity and Abuse*, *supra* note 34; Leong, *Identity and Ideas*, *supra* note 34; Leong, *Privilege and Passivity*, *supra* note 34; Leong, *Consequences and Conclusions*, *supra* note 34.

36. See Leong, *Anonymity and Abuse*, *supra* note 34; Leong, *Identity and Ideas*, *supra* note 34.

37. See Leong, *Identity and Ideas*, *supra* note 34.

38. See Leong, *Anonymity and Abuse*, *supra* note 34.

40. See, e.g., Michelle King, *How Powerful Women Experience Extreme Online Sexual Harassment and What You Can Do To Stop It*, FORBES (Nov. 14, 2017), <https://www.forbes.com/sites/michelle-king/2017/11/14/how-powerful-women-experience-extreme-online-sexual-harassment-and-what-you-can-do-to-stop-it/#7171f03f7b73>; Emily Tan, *Women in Power Face Sexual Harassment Online and in the Media Every Day*, CAMPAIGN US (Oct. 20, 2017), <https://www.campaignlive.com/article/women-power-face-sexual-harassment-online-media-every-day/1447898>.

41. King, *supra* note 40.

42. See Tan, *supra* note 40; King, *supra* note 40.

43. See Tan, *supra* note 40.

44. Lehr & Bechrakis, *supra* note 9.

45. King, *supra* note 40.

threats of rape, beatings, death or abduction,” and nearly 42% had had “extremely humiliating or sexually charged images of themselves spread through social media.”<sup>46</sup> In another study of tweets about male and female politicians in Britain, South Africa, and Chile, researchers found that “nearly three-quarters of Twitter posts sent to women were to do with their appearance or marital status.”<sup>47</sup>

In some instances, the online abuse of women politicians has sometimes become so severe that women abandoned their political ambitions altogether.<sup>48</sup> Kim Weaver, who ran against Congressman Steve King in Iowa, was subjected to an “onslaught” of threats on social media and message boards before ultimately withdrawing from the race out of fear for her safety.<sup>49</sup> When she did so, her opponent tweeted that the threats were likely “a fabrication.”<sup>50</sup> In another extreme example, a congressional candidate in Northern California received tens of thousands of abusive messages on Facebook, Twitter, Instagram, and elsewhere, including jokes about her being gang raped, as well as “photoshopped images of her face stretched into a Nazi lampshade and references to ‘preheating the ovens[.]’”<sup>51</sup>

Women academics, who are encouraged to increase their online activity to network with colleagues and share their research, have similarly faced sexist and sexually violent attacks on social media.<sup>52</sup> And these experiences are not unique to women who engage on feminist-specific issues; rather, “women are harassed when writing about a wide range of topics, including but not limited to: feminism, leadership, science, education, history, religion, race, politics, immigration, art, sociology[,] and technology broadly conceived.”<sup>53</sup> Even the “choice of research method” has been identified “as a topic that attracts misogynistic commentary.”<sup>54</sup>

The experience of women professionals is a microcosm of the experience of women on social media generally. Irrespective of their professions, women are twice as likely as men to be harassed when they engage on social media platforms, and this harassment often takes the form of threats of violence or sexual assault.<sup>55</sup> Even the simple act of using a feminine user name on a social media account “can

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46. Lehr & Bechrakis, *supra* note 9.

47. Lin Taylor, *Online Harassment Takes ‘Heavy Toll’ on Female Politicians: Report*, GLOBAL NEWS (Mar. 12, 2018, 10:43 PM), <https://globalnews.ca/news/4079148/online-harassment-heavy-toll-on-female-politicians/>. See also Maggie Astor, *For Female Candidates, Harassment and Threats Come Every Day*, N.Y. TIMES (Aug. 24, 2018), <https://www.nytimes.com/2018/08/24/us/politics/women-harassment-elections.html> (noting that online harassment against women “is ubiquitous and frequently sexualized”); e.g., Ewan Palmer, *AOC Slams ‘Disgusting’ Conservative Media After Fake Nude Photo Published: ‘No Wonder They Defended Kavanaugh’*, NEWSWEEK (Jan. 10, 2019, 6:49 AM), <https://www.newsweek.com/aoc-slams-disgusting-conservative-media-after-fake-nude-photo-published-no-1286203>.

48. Astor, *supra* note 47.

49. *Id.*

50. Steve King (@SteveKingIA), TWITTER (June 4, 2017, 1:23 PM), <https://twitter.com/SteveKingIA/status/871417060894457856>.

51. Astor, *supra* note 47.

52. George Veletsianos & Jaigris Hodson, *Social Media as a Weapon to Harass Women Academics*, INSIDE HIGHER ED (May 29, 2018), <https://www.insidehighered.com/views/2018/05/29/dealing-social-media-harassment-opinion>.

53. *Id.*

54. *Id.*

55. Lehr & Bechrakis, *supra* note 9.

generate up to 25x the incidence of targeted, gendered abuse.”<sup>56</sup> This type of abuse has serious emotional ramifications for women who engage on social media platforms—including “lower self-esteem or loss of confidence (61 percent), stress, anxiety or panic attacks (55 percent), and loss of concentration (56 percent).”<sup>57</sup> I can verify these emotional side effects, having been the subject of recent, high-profile personal attacks by two serious members of the profession—in one instance, a federal judge (as described above), and in another instance, a law professor, who threatened my job and named my employer after I publicly criticized the Catholic church (of which I am a member) for its long history of systemic sexism and misogyny.<sup>58</sup> The emphasis on “loss of concentration” is key because the sexual harassment is, ultimately, about work—and harassment online is yet another example of how women’s efforts of professional advancement can be hindered. As one journalist crudely but accurately put it: “Imagine all the great things [women] could do if they didn’t have to deal with this shit!”<sup>59</sup>

## II. WOMEN LAWYERS NEED SOCIAL MEDIA, AND THE LEGAL PROFESSION NEEDS WOMEN TO BE THERE TOO.

Despite the negative consequences for women of engaging in public discourse on social media, these platforms might be more important for women lawyers and lawyers from marginalized groups than for other lawyers. Women, people of color, first-generation professionals, and other underrepresented groups are less likely to have the connections that lead to business development, to government and judicial appointments, and to promotions and better job opportunities.

Although women graduate from law school in nearly equal numbers to men (and have for some time), they “remain underrepresented in the ranks of law firm leadership, lag in compensation and often lack the same opportunities for

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56. *WMC Speech Project: Research & Statistics*, WOMEN’S MEDIA CTR., <https://www.womensmediacenter.com/speech-project/research-statistics> (last visited Mar. 31, 2019).

57. Chase Winter, *Almost a Quarter of Women Experience Online Abuse and Harassment*, DW (Nov. 20, 2017), <https://www.dw.com/en/almost-a-quarter-of-women-experience-online-abuse-and-harassment/a-41447307>.

58. See Nitcher, *supra* note 16; Ian Samuel (@isamuel), TWITTER, Sept. 18, 2018, 6:20 PM), <https://twitter.com/isamuel/status/1042221834584899584>; Ian Samuel (@isamuel), TWITTER (Sept. 18, 6:27 PM), <https://twitter.com/isamuel/status/1042223719895248897>; Ian Samuel (@isamuel), TWITTER (Sept. 18, 2018, 6:45 PM), <https://twitter.com/isamuel/status/1042228205258768385>; Jaime Santos (@Jaime\_ASantos), TWITTER (Sept. 18, 2018, 6:33 PM), [https://twitter.com/Jaime\\_ASantos/status/1042225112785846272](https://twitter.com/Jaime_ASantos/status/1042225112785846272). The Catholic church’s history with these issues has been documented by commentators, scholars, and Catholic nuns. See generally CARMEL MCENROY, GUESTS IN THEIR OWN HOUSE: THE WOMEN OF VATICAN II (1996); Elisabetta Povoledo, *In Vatican Magazine Expose, Nuns Reveal Their Economic Exploitation*, N.Y. TIMES (Mar. 1, 2018), <https://www.nytimes.com/2018/03/01/world/europe/vatican-catholic-church-nuns-work.html>.

59. David Roberts, *What So Many Men are Missing About #MeToo*, VOX (Sept. 12, 2018, 8:41 AM), [https://www.vox.com/2018/9/10/17826168/me-too-louis-ck-men-comeback?fbclid=IwAR32gBYQth4MYkuNxjI4\\_qRFQkXNWQ-zITFiHAT3L3aVbMLqQtPc2SjtW0](https://www.vox.com/2018/9/10/17826168/me-too-louis-ck-men-comeback?fbclid=IwAR32gBYQth4MYkuNxjI4_qRFQkXNWQ-zITFiHAT3L3aVbMLqQtPc2SjtW0). See generally ELYSE SHAW, ET AL., SEXUAL HARASSMENT AND ASSAULT AT WORK: UNDERSTANDING THE COSTS (2018), [https://iwpr.org/wp-content/uploads/2018/10/IWPR-sexual-harassment-brief\\_FINAL.pdf](https://iwpr.org/wp-content/uploads/2018/10/IWPR-sexual-harassment-brief_FINAL.pdf).

mentorship and business development training.”<sup>60</sup> Women comprise nearly 50% of the pool of summer associates at law firms, but just 19% of equity partners and 23% of all partners—numbers that have stayed virtually the same for the last decade.<sup>61</sup> They make less money than their male counterparts at every level of seniority—despite no significant differences between the hours billed by men and women attorneys.<sup>62</sup> Women are also underrepresented among generals counsel—comprising just 26.4% of generals counsel at Fortune 500 companies and 23.8% of generals counsel at Fortune 501-1000 companies—and among judges, comprising 35% of federal judges and just 22% of judges at the state level.<sup>63</sup>

It is more difficult, if not impossible, for attorneys to obtain entry into these positions absent strong mentoring and sponsoring relationships—which are, in turn, more likely to be bestowed upon men.<sup>64</sup> Women are also less likely to have access to other outlets for public engagement that can lead to career

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60. CAROLYN ELEFANT & NICOLE BLACK, THE CASE FOR SOCIAL MEDIA FOR WOMEN LAWYERS 1 (2010), <http://documents.jdsupra.com/dc1a4bfc-267a-4a13-8a69-31a5d7c3a5b0.pdf>; AM. BAR ASS’N, FIRST YEAR AND TOTAL J.D. ENROLLMENT BY GENDER, 1, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/jd\\_enrollment\\_1yr\\_total\\_gender.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf); AM. BAR ASS’N, 1L ENROLLMENT BY GENDER & RACE/ETHNICITY (AGGREGATE) (2018), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2018-fall-fyclass-enrollment-gender-race-aggregate.xlsx](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2018-fall-fyclass-enrollment-gender-race-aggregate.xlsx); Elizabeth Olson, *Women Make Up Majority of U.S. Law Students for First Time*, N.Y. TIMES (Dec. 16, 2016), <https://www.nytimes.com/2016/12/16/business/dealbook/women-majority-of-us-law-students-first-time.html>.

61. COMM’N ON WOMEN IN THE PROFESSION, AM. BAR ASS’N, A CURRENT GLANCE AT WOMEN IN THE LAW 2 (2018), <https://www.americanbar.org/content/dam/aba/administrative/women/a-current-glance-at-women-in-the-law-jan-2018.authcheckdam.pdf> [hereinafter, ABA, WOMEN IN THE LAW]; see also *Law Firms Continue Slow Progress in Promoting Women Lawyers, According to 2018 Survey by National Association of Women Lawyers*, BUS. WIRE (Oct. 9, 2018, 4:39 PM), <https://www.businesswire.com/news/home/20181009006125/en/Law-Firms-Continue-Slow-Progress-Promoting-Women>.

62. DESTINY PEERY, NAT’L ASS’N WOMEN LAWYERS, REPORT OF THE 2018 NAWL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 1, 3–4, 10–11, 12–13 (2018), <https://www.nawl.org/page/2017> (reporting that a median pay differential of nearly \$8,000 per year for associates, about \$8,000 for non-equity partners, and more than \$64,000 per year for equity partners).

63. ABA, WOMEN IN THE LAW, *supra* note 61, at 3, 5.

64. Ida O. Abbott, *Sponsors Are the New Mentors, Especially for Women: For Women to Move Up the Ranks in Law Firms, Mentoring Isn’t Enough*, ATTORNEY AT WORK (Sept. 21, 2018), <https://www.attorneyatwork.com/sponsors-new-mentors-especially-women/>.

advancements, such as speaking invitations at high-profile panels and conferences,<sup>65</sup> op-eds,<sup>66</sup> and podcasts.<sup>67</sup> As Professor Leong has described:

Women and people of color are under-represented in online discourse. As of August 2013, 87% of Wikipedia contributors were men. Women are under-represented on the opinion pages of major news sources, and the number of people of color who write for newspapers is both low and declining. Across disciplines, the most well-known bloggers are predominantly men. The Freakonomics website notes that women economists rarely blog. Closer to home, the regular contributors to many well-regarded group law blogs, such as the Volokh Conspiracy and PrawfsBlawg, are predominantly white men.<sup>68</sup>

Social media does not solve inequality in the legal profession, but it does remove many barriers that frustrate women lawyers' advancement, discussed below. Thus, if women lawyers can tolerate the downsides described above, social media provides a platform for women lawyers that, if they put in enough hard work and attention, will allow them to expand their networks and public visibility beyond what would have previously been possible.

First, social media avoids the problem of selection bias that causes other platforms for public discourse (such as podcasts, conference invitations, and op eds) to exclude women. Social media platforms are also generally free and can be accessed anywhere; they therefore avoid many of the financial and logistical barriers that limit women's participation in public discourse in other ways.

Second, social media provides a solution to one of the biggest barriers to women's advancement—that women tend to be notoriously poor self-promoters

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65. Daniel W. Drezner, *A Few Thoughts on 'Manels'*, WASH. POST (June 7, 2018), [https://www.washingtonpost.com/news/posteverything/wp/2018/06/07/a-few-thoughts-on-manels/?utm\\_term=.2243f75681ea](https://www.washingtonpost.com/news/posteverything/wp/2018/06/07/a-few-thoughts-on-manels/?utm_term=.2243f75681ea); Leila Fadel, *Survey Suggests 'Manels' – All-Male Panels – Are Still the Norm*, NAT'L PUB. RADIO (Nov. 1, 2018), <https://www.npr.org/2018/11/01/663012390/survey-suggests-manels-all-male-panels-are-still-the-norm>; Tracy Thomas, *More on Manels and How to Fix Them*, LAW PROFESSOR BLOGS NETWORK: GENDER AND THE LAW PROF BLOG (Oct. 9, 2017), [https://lawprofessors.typepad.com/gender\\_law/2017/10/more-on-manels-and-how-to-fix-them.html](https://lawprofessors.typepad.com/gender_law/2017/10/more-on-manels-and-how-to-fix-them.html); Lauren M. Whaley, *The Emptiness of the All-Male Panel*, UNDARK (June 5, 2017), <https://undark.org/article/manels-all-male-panel/>; Jeffrey Kosseff, *Guys, We All Need to Put a Stop to the 'Manel'*, IAPP: PRIVACY PERSPECTIVES (Jan. 12, 2018), <https://iapp.org/news/a/guys-we-all-need-to-put-a-stop-to-the-manel/>; *The 'Manel' Excuse Form*, ABOVE THE LAW: LAWPROFBLAWG (Sept. 11, 2018, 6:02 PM), <https://abovethelaw.com/2018/09/the-manel-excuse-form/>.

66. Catherine Taibi, *Women, People of Color Largely Absent From Opinion Pages*, HUFFPOST (June 24, 2014, 12:20 PM), [https://www.huffingtonpost.com/2014/06/24/women-op-eds-newspapers-minorities-opinion-pages\\_n\\_5525898.html](https://www.huffingtonpost.com/2014/06/24/women-op-eds-newspapers-minorities-opinion-pages_n_5525898.html). One op-ed column editor joked to me in an email that she has just barely stopped short of starting an #OpEdsSoWhite hashtag on Twitter.

67. Carrie Kerpen, *The Power of Podcasting to Fight the Patriarchy*, FORBES (Mar. 13, 2018, 8:09 AM), <https://www.forbes.com/sites/carriekerpen/2018/03/13/the-power-of-podcasting-to-fight-the-patriarchy/#73fe3ae06b94>; Lin Taylor, *Podcasts Are Dominated by Male Voices, These Women Want to Change That*, WORLD ECONOMIC FORUM (Dec. 7, 2018), <https://www.weforum.org/agenda/2018/12/podcasts-are-dominated-by-male-voices-these-women-want-to-change-that/>; Josh Morgan, *Data Confirm That Podcasting in the US Is a White Male Thing*, QUARTZ (Jan. 12, 2016), <https://qz.com/591440/data-confirm-that-podcasting-in-the-us-is-a-white-male-thing/>.

68. Leong, *Identity and Ideas*, *supra* note 34.

(but excellent promoters of others), in an industry in which public visibility is incredibly important.<sup>69</sup> Building a social media community provides women with the opportunity for others to promote their work and for them to promote the work of others, even when women have trouble promoting their own work.

Third, a successful social media profile requires and rewards the very skills that women possess in abundance: “strength lies in building relationships, communicating[,] and collaborating.”<sup>70</sup> It also provides women lawyers with a much more extensive network of women mentors, sponsors, role models, and referral sources who may not exist in their own workplaces given the dearth of gender diversity at higher levels of seniority in the legal profession.

Fourth, women lawyers’ engagement on social media is not only vital for women, it is vital for the legal profession as a whole. Due to persistent and systemic inequality in the legal profession, clients and the public at large are less likely to be exposed to competent and accomplished women in the legal profession, and law students are less likely to see women as role models and potential mentors. Social media can therefore, for some populations, serve as an equalizer in some respects.

Social media also provides underrepresented lawyers with a platform to amalgamate their experiences with harassment and discrimination, which helps to demonstrate to other members of the profession that their experiences are part of a pattern that needs to be addressed. Indeed, this—along with touting the successes of women lawyers and creating a community for women lawyers—is one of the primary reasons that the #LadyLawyerDiaries hashtag and @ladylawyerdiary Twitter handle were created: to provide an outlet for women to share their experiences and, hopefully, to make other members of the profession feel invested in helping to change the culture of the profession.<sup>71</sup> The hope, of course, is that the hashtag and Twitter handle will not simply change the culture of the online legal community, but rather than those who are part of the community will help to change the culture in their own workplaces. And there are reasons to believe that these efforts will be successful. Last fall, for example, an appellate public defender who is active on Twitter messaged me to let me know about positive changes he has made in his own workplace: he said that because of the “awareness” that #ladylawyerdiaries has provided to him as a male lawyer, he made a point of ensuring that a woman intern had several opportunities to work and speak with women lawyers in his office, specifically with a focus of talking to her about what it is like being a women in the law. He said that it never occurred to him to do this before, because he “would not have thought about the particular experience of being a women in law as an issue.”<sup>72</sup> Day by day, and person by person, social media can help us to

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69. ELEFANT & BLACK, *supra* note 60, at 3.

70. *Id.*

71. LEGAL TALK NETWORK, *supra* note 19; Melissa Heelan Stanzione, @LadyLawyerDiary: *Promoting Women, ‘Outing Stupid Sexist Stuff’*, BLOOMBERG LAW (Mar. 15, 2018, 5:07 AM), <https://news.bloomberglaw.com/us-law-week/ladylawyerdiary-promoting-women-outing-stupid-sexist-stuff>; Angela Morris, *Women Lawyers Join #MeToo Movement with Hashtag of Their Own*, TEXAS LAWYER (Feb. 15, 2018, 1:09 PM), <https://www.law.com/texaslawyer/2018/02/15/women-lawyers-join-metoo-movement-with-hashtag-of/>; Bradley Reeves, *One Hashtag at a Time: Twitter’s Versatile Tool Is Put to Work in the Legal Industry*, LEXOLOGY (Feb. 28, 2018), <https://www.lexology.com/library/detail.aspx?g=fe3701c9-15fa-4682-a294-98b635e77083>.

72. Twitter Message from an Appellate Public Defender to author (Sept. 14, 2018) (on file with the author).

create more opportunities for ourselves and for women in the profession as a whole—as long as we can stomach all-too-common personal attacks and harassment and continue to participate in the public debate.