



# Taking the Heat for a Tweet

A look at lawyers, the First Amendment, and social media.

BY JOHN G. BROWNING

Your hands glide over the keyboard as you post a comment here, a “like” or share there. Checking your Twitter feed, you scroll until something catches your interest and you decide to enter the online conversation with a tweet of your own, or maybe a retweet. Perhaps the topic du jour is something you’ve seen in the news. You do this in the shadow of that Texas Bar license hanging on the wall, secure in the knowledge that you enjoy just as much First Amendment protection as anyone else does.

But as many lawyers (and even judges) are finding out nowadays, that doesn’t mean there won’t be consequences professionally. Just because you can air your innermost thoughts on Facebook or Twitter doesn’t mean you should, especially when one considers not just the potential backlash from the general public, but also from colleagues, clients, and even disciplinary authorities.

Consider some recent examples. In December 2017, Andrew Leonie, an associate deputy attorney general to Attorney General Ken Paxton, wrote a Facebook post critical of the #MeToo movement, stating “Aren’t you also tired of all of the pathetic ‘me too’ victim claims? If every woman is a ‘victim,’ so is every man. If everyone is a victim, no one is. Victim means nothing anymore.” He also linked to an article about how women purportedly “want” to be objectified.<sup>1</sup> The response from members of the public and the media was swift, condemning the remarks. The Texas Attorney General’s Office responded quickly as well. A spokesperson for the office announced within several hours of the media reports that Leonie had resigned “effective immediately,” and that the “views he expressed on social media do not reflect our values.”<sup>2</sup>

In September 2017, Austin-based attorney Robert Ranco used his Twitter account to express his anger over Secretary of Education Betsy DeVos’ decision to revamp certain Obama administration Title IX guidelines on the investigation of on-campus sexual assault claims. Asserting that the move was “bad for young women,” he tweeted that he’d “be ok if #BetsyDeVos was sexually assaulted.”<sup>3</sup> A firestorm quickly ensued, prompting Ranco to delete his Twitter account but not before acknowledging that his words “were harsh,” while insisting that “I don’t wish harm on anyone.”<sup>4</sup> He later apologized, telling the media that his tweet “was a mistake” and that “I take full responsibility [for] it.”<sup>5</sup> How-

ever, that wasn’t sufficient for his employer, the Carlson Law Firm. The firm announced the same day as Ranco’s apology that he had resigned and released a statement that said given the firm’s makeup (75 percent of its employees are women), “anyone in our company advocating or even expressing apathy towards sexual assault is [an] affront to all victims and a line that simply cannot be uncrossed.”<sup>6</sup>

And in October 2017, a senior in-house lawyer at CBS posted insensitive comments on Facebook in the aftermath of the Las Vegas mass shooting. Vice president and senior counsel Hayley Geftman-Gold proclaimed that she was “actually not even sympathetic” because “country music fans often are Republican gun toters.” She also referred to Republicans as “Repugs” who “wouldn’t do anything when children were murdered.”<sup>7</sup> A screenshot of her post identifies Geftman-Gold as vice president and senior counsel of strategic transactions at CBS and former Big Law attorney. The response from CBS was quick and decisive. Geftman-Gold was fired, and the network issued a statement saying that she had “violated the standards of our company” and that “Her views as expressed on social media are deeply unacceptable to all of us at CBS.”<sup>8</sup>

But losing a prestigious job and being at the epicenter of a high-profile controversy were just the beginning for Geftman-Gold. A group called Citizens for Judicial Reform initiated an online petition calling for the New York State Bar Association to take professional disciplinary actions against Geftman-Gold over her “reprehensible and despicable remarks,” questioning whether she was capable of remaining professional in response to a national tragedy. Within just days, the petition had over 12,000 signatures.<sup>9</sup>

Speaking out on social media can also have grave consequences when it’s perceived as an attempt to influence a case. In January 2018, a Philadelphia County Court of Common Pleas judge punished two lawyers who had represented the plaintiff in a December 2017 trial over the medication Xarelto. The two lawyers, Ned McWilliams of Pensacola, Florida, and Emily Jeffcott of New Orleans, had posted a photograph of the courtroom on Instagram with the hashtag “#killinnazis” (a reference to both the Quentin Tarantino movie *Inglourious Basterds* and Germany-based Bayer, the co-developer of Xarelto).<sup>10</sup> Post-trial motions by the defense had argued that the plaintiff’s counsel’s social media posts were intended to create a link in the minds of the jurors between the German pharmaceutical company and Nazi Germany, calling it a “xenophobic” strategy. The court issued a judgment notwithstanding the verdict and set aside the \$27.8 million verdict (on grounds unrelated to the social media posts). It also revoked the pro hac vice admission of McWilliams and sanctioned Jeffcott \$2,500 and ordered her to perform 25 hours of community service. The judge noted that the Instagram posts in question and the #killinnazis hashtag (which Jeffcott’s firm subsequently used in promotional materials) were “well beneath the dignity of the legal profession.”<sup>11</sup>

In fact, even when you win in the courtroom, your social media posts can turn it into a pyrrhic victory. For example, in 2016 British lawyer Mark Small went on Twitter to celebrate a win for a local government client in a case brought by the parents of a disabled child (Small’s firm had a niche practice of defending such entities in suits seeking additional benefits and accommodations). His tweets, characterized as “insensitive,” resulted in a publicity nightmare. The controversy was too much for many of Small’s clients, half of whom terminated the firm’s representation or elected not to renew their contracts.<sup>12</sup>

Beyond negative publicity, loss of employment, and loss of clients,

lawyers' expressing themselves on social media can have ethical consequences as well. In November 2016, the District of Columbia Bar Legal Ethics Committee became the first in the country to address the risk of creating positional conflicts when blogging, posting, or tweeting about legal developments or even news.<sup>13</sup> When a lawyer advances one position online but is called upon to argue the opposite on a client's behalf, a positional conflict exists. For example, a lawyer whose firm represents the National Rifle Association or a firearms manufacturer might be seen as having taken a position contrary to her client if she sent a tweet deploring the proliferation of guns.

Even judges aren't immune to the siren song of social media and have borne the professional consequences that followed their speech. In August 2017, Gwinnett County, Georgia, Judge Jim Hinkle posted his reaction to those protesting against Confederate monuments, calling them "nut cases" and "snowflakes" who "are equivalent to ISIS destroying history."<sup>14</sup> Although Judge Hinkle said he didn't "see anything controversial" about his posts, he was suspended by the chief magistrate judge soon after making them, and he resigned a day later. In May 2017, Orange County, California, Superior Court Judge Jeff Ferguson was publicly admonished by the state's Commission on Judicial Performance over a post he had made on Facebook. The commission found that Judge Ferguson's "reckless" allegations that a prosecutor (and judicial candidate) was sleeping with a defense attorney whose cases she was overseeing "undermined public respect for the judiciary and all the integrity of the electoral process."<sup>15</sup>

Another factor that lawyers need to consider before expressing what they feel online is whether or not the firm, company, or governmental agency they work for has a social media policy or internet usage policy covering such online statements. Such policies have become commonplace in light of digital age concerns about online sharing of confidential information or trade secrets as well as the risk of an employer being viewed negatively thanks to its employee's internet conduct. In 2016, Florida prosecutor Kenneth Lewis was fired after he posted controversial comments in the wake of the Orlando nightclub mass shooting, calling such establishments "utter cesspools of debauchery" and calling the city a "melting pot of third world miscreants and ghetto thugs." Lewis was terminated for violating his office's social media policy, having received a warning over a previous post.<sup>16</sup>

Lawyers need to be mindful that they face heightened public and ethical scrutiny when they express opinions online or on social media platforms. Lawyers also need to remember not only the speed with which our wired world reacts and the ubiquitous nature of social media, but also the fact that the same ethical rules that apply to every other form of communication similarly apply to social networking platforms. If you wouldn't put it in a letter or publish it in a newspaper, don't post it on Facebook or tweet about it. **TBJ**

## Notes

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5. *Id.*
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7. Debra Cassens Weiss, *CBS Fires Lawyer Over Facebook Posts Calling Vegas Shooting Victims Likely 'Republican Gun Toters'*, ABA Journal (Oct. 2, 2017, 2:56 PM), [http://www.abajournal.com/news/article/cbs\\_fires\\_lawyer\\_over\\_facebook\\_comments\\_calling\\_vegas\\_victims\\_likely\\_](http://www.abajournal.com/news/article/cbs_fires_lawyer_over_facebook_comments_calling_vegas_victims_likely_)

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13. District of Columbia Bar Association Legal Ethics Committee, Ethics Opinion 370 (Nov. 2016).
14. Jessica Chasmar, *Georgia Judge Resigns After Calling Anti-Confederate Protestors 'Snowflakes' on Facebook*, Wash. Times (Aug. 17, 2017), <https://www.washingtontimes.com/news/2017/aug/17/jim-hinkle-georgia-judge-resigns-after-calling-ant/>.
15. Cheryl Miller, *California Judge Admonished for 'Reckless' Facebook Post*, Law.com (last updated Oct. 14, 2017, 1:02 PM), <https://www.law.com/legaltechnews/sites/legaltechnews/2017/06/01/california-judge-admonished-for-reckless-facebook-post/>.
16. John G. Browning & Jan L. Jacobowitz, *Legal Ethics and Social Media: A Practitioner's Handbook* 178 (2017).



### JOHN G. BROWNING

is a partner in Passman & Jones in Dallas, where he handles commercial litigation, employment, health care, and personal injury defense matters in state and federal courts. He is an award-winning legal journalist for his syndicated column, "Legally Speaking," and is the author of the Social Media and Litigation Practice Guide and a forthcoming casebook on social media and the law. He is an adjunct professor at SMU Dedman School of Law.

# PUBLIC NOTICE

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS LAREDO, TEXAS

### APPOINTMENT OF FULL-TIME UNITED STATES MAGISTRATE JUDGE

The United States District Court for the Southern District of Texas is soliciting qualified applicants in order to appoint a full-time United States Magistrate Judge for its Laredo Division, pending approval of the position by the Fifth Circuit Judicial Council and the Judicial Conference of the United States Courts. The current annual salary of the position is \$191,360. The term of office is 8 years.

A full public notice for the position, which includes information concerning background and IRS tax checks as well as financial disclosure requirements, and the application form are available in the office of the United States District Clerk at Brownsville, Corpus Christi, Galveston, Houston, Laredo, McAllen and Victoria. The notice is also available on the Court's website at [www.txs.uscourts.gov](http://www.txs.uscourts.gov).

Applications may be submitted in person or by mail and must be received by 5:00 p.m. on May 18, 2018, at the Office of the United States District Clerk, Southern District of Texas; 1300 Victoria St., Suite 1131, Laredo, TX 78040; Attn: Magistrate Judge Merit Selection Committee. If you were an applicant for the most recent Laredo Magistrate Judge vacancy (November 2017), simply submit a letter of interest by the deadline to the address above.

All applications will be kept confidential, unless the applicant consents to disclosure. Applications will be examined only by members of the merit selection committee and judges of the district court. The committee's deliberations will remain confidential.