

Article

Does Avoiding Judicial Isolation Outweigh the Risks Related to “Professional Death by Facebook”?

Karen Eltis

Faculty of Law, Civil Law Section, University of Ottawa, Fauteux Hall, 57 Louis Pasteur St, Ottawa, Ontario K1N 6N5, Canada; E-Mail: karen.eltis@uottawa.ca

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Abstract: What happens when judges, in light of their role and responsibilities, and the scrutiny to which they are subjected, fall prey to a condition known as the “online disinhibition effect”? More importantly perhaps, what steps might judges reasonably take in order to pre-empt that fate, proactively addressing judicial social networking and its potential ramification for the administration of justice in the digital age? The immediate purpose of this article is to generate greater awareness of the issues specifically surrounding judicial social networking and to highlight some practical steps that those responsible for judicial training might consider in order to better equip judges for dealing with the exigencies of the digital realm. The focus is on understanding how to first recognize and then mitigate privacy and security risks in order to avoid bringing justice into disrepute through mishaps, and to stave off otherwise preventable incidents. This paper endeavors to provide a very brief overview of the emerging normative framework pertinent to the judicial use of social media, from a comparative perspective, concluding with some more practical (however preliminary) recommendations for more prudent and advised ESM use.

Keywords: privacy; courts; internet; judicial ethics; new technologies

1. Introduction

U.S Circuit Judge Mike Maggio recently withdrew from the Court of Appeals race after admitting to “anonymously” posting blatantly racist and sexist comments online that he would have

(presumably) never uttered in a different context, that is to say “offline” [1]. The statements made by this hitherto respected jurist and magistrate are as shocking as they are disturbing, and can under the circumstances most plausibly be attributed to what the popular legal blog “Above the Law” labelled the “online disinhibition effect” [2]. It is loosely yet colorfully defined as “the condition that leads people otherwise aware of proper social and professional behavior to go off the rails and say things they would know not to broadcast publicly if the world could easily identify them” [2].

Closer to home, a Canadian judge faces disciplinary action ranging from a reprimand to a suspension or removal from office after having “crudely criticized two fellow judges on Facebook” [3]. *Inter alia*, Ontario Court Judge Dianne Nichols complained that one of her colleagues had given a woman a reduced sentence because she suffered from a type of cancer which, the judge contemptuously mocked on the social networking site, “is hardly a killer ... in fact the very same f’n cancer that [the sentencing judge] has herself....!!!!” [3].

What then happens when judges, in light of their role and responsibilities, and the scrutiny to which they are subjected, fall prey to this “condition”? More importantly perhaps, what steps might judges reasonably take in order to pre-empt that fate, proactively addressing judicial social networking and its potential ramification for the administration of justice in the digital age?

With an eye towards addressing the above [4–8] the immediate purpose of this article is to generate greater *awareness* of the issues specifically surrounding judicial social networking and to highlight some practical steps that those responsible for judicial training might consider in order to better equip judges for dealing with the exigencies of the digital realm [9]. The focus is on understanding how to first recognize and then mitigate privacy and security risks in order to avoid bringing justice into disrepute through mishaps, and to stave off otherwise preventable incidents.

Following an introduction to the pressing issues more generally related to the digital environment, this paper endeavors to provide a very brief overview of the emerging normative framework pertinent to the judicial use of social media, from a comparative perspective, concluding with some more practical (however preliminary) recommendations for more prudent and advised ESM (electronic social media) use.

2. “Anyone Who Uses Facebook Does so at His or Her Own Peril” [10,11]

That said and in respect of such recommendations, it should be noted that even the most sophisticated Internet user is not immune from the “perils” surveyed in Part I, as evidenced by a recent glitch which exposed the vulnerability of none other than Mark Zuckerberg’s own Facebook account [12,13]. That incident, among others, speaks resoundingly clear to the complexities and uncorrected snags related to the mechanisms currently in place for averting mishaps (most obviously nascent privacy settings).

3. Part I

3.1. Framing the Issues

It was said back in 2010 that at least 40 percent of all US judges engage in social networking practices. According to the Conference of Court Public Information Officers’ 2012 report, 46.1% of

judges use social media, with 86.3% of that number using Facebook and 20.6% using LinkedIn [14]. Needless to say, the statistics are far higher for attorneys and for the general population (although the figures are lower in other jurisdictions such as Quebec, for instance). While the benefits are clear to most users, the pitfalls remain unknown to many judges who could easily avoid unnecessarily bringing their office and the Court into disrepute by taking simple precautions.

This pernicious yet generalized lack of awareness is evidenced by one attorney getting caught in an embarrassing lie by the judge in front of who she was pleading, after the latter simply bothered to check her Facebook page [15]:

“...the lawyer had asked for a continuance because of the death of her father. The lawyer had earlier posted a string of status updates on Facebook, detailing her week of drinking, going out and partying. But in court, in front of [Judge] Criss, she told a completely different story...” [15,16].

Interestingly, the magistrate in question, Susan Criss, an (elected) state judge in Texas, was herself the source of controversy with respect to social networking as she used Facebook to “friend” lawyers for possible future campaign purposes. It appears that “[Judge] Criss gets around the ethical rules prohibiting *ex parte* communications between judges and lawyers by asking lawyers to ‘de-friend’ her when they’re trying cases before her...” [16].

Significant developments in technology coupled with disturbing incidents, the number of which is likely to only increase, brings the debate respecting judicial social networking to the forefront, and progressively prompts judges and court administrators to take a far more sober look at a number of pressing questions. Foremost, perhaps, is the correct balance to be struck between two essential values. On the one hand, preventing judicial isolation, noting that the judge’s proximity to and immersion in the community is always of the essence [17,18], especially in European countries (Germany in particular [19], and all jurisdictions where magistrates are “career judges” or appointed young) [20]. On the other hand, pre-empting the sort of unfortunate occurrences that risk tarnishing the image of individual judges and the justice they impart.

The paradox here is evident—judges should not be cut off from the community that they serve but must, at the same time, most cautiously guard against impropriety and maintain a certain distance from those who come before them. Reconciling these two competing currents is indeed the greatest challenge in developing guidelines for judicial use of the internet, broadly speaking and respecting social media in particular.

3.2. The “End of Forgetting”?

To the specific challenge begging our attention, that is to say permitting judges to avail themselves of the promise of the social networking without compromising their individual integrity and that of the judiciary, we add the more general contextual peculiarities of the Internet, by way of introduction. These include chiefly (although not exhaustively), the possibility of severe decontextualization, distorting and irreparably misrepresenting one’s statements, activities and identity; instantaneous and worldwide dissemination of such misrepresentations and permanent survival of such untruths for the most part unchallenged in the digital realm. In fact, the most important thing to be mindful of is that

information once unleashed online—irrespective of its accuracy—spreads, and may even go viral, thus reaching countless unintended parties. As previously noted, it is for the most part indelible, thereby raising the stakes and inviting a far more cautious approach than one would presumably adopt offline. In truth, the fact that we cannot simply erase or withdraw that which is “online” has particularly serious implications for judges, who generally cannot even respond to, let alone challenge or correct misinformation by reason of their duty of reserve. Not surprisingly, it has memorably been referred to by the *New York Times* as the “end of forgetting” [21].

Consider the case of Alex Kozinski, a Ninth Circuit (US Federal) judge, who some commentators believed was a potential candidate for the US Supreme Court. The judge was conducting an obscenity trial when the *Los Angeles Times* broke a story alleging judge Kozinski collected pornography, bordering on bestiality, on his personal computer server [22]. The server in the judge’s home was connected to the Internet, and the images on his personal website had become publicly available via that same connection.

Significantly, it later averred that a disgruntled former litigant may have found a way to access these files in order to impugn the already outspoken and controversial judge’s character. Mired in scandal (the *Times* piece having spread throughout cyberspace in a matter of minutes), Judge Kozinski disqualified himself from hearing the prominent case and proceeded to declare a mistrial. Despite his wife’s subsequent explanation that the so-called pornography videos were in fact their twenty-one-year-old son Yale’s jokes (albeit in poor taste) and not the judge’s [23], the mere story (and its prominent voyage “across” the Internet) served to raise suspicion of the court’s bias in favor of the defendants in what was an obscenity case. Needless to say, it similarly harmed the judge’s reputation and the perception of his impartiality in a far broader sense ([24], pp. 71–90).

3.3. Leaving Breadcrumbs

What is more, whereas few but the most dedicated (or scholarly interested) would take it upon themselves to conduct or even collect empirical research, the mere click of a button results in a ‘*bilan*’ (taking stock) not only of the judges’ decisions (previously available data) but of personal connections and associations. In other words, in contrast to an access to information request [25], a search engine expedition can reap inaccurate if not misleading data, an aggregate of oft-unrelated and potentially unreliable morsels of information supposedly concerning the judge directly or indirectly.

Consequently, judicial activities or associations previously deemed perfectly acceptable at best, or innocuous if not completely irrelevant (such as membership in cultural or religious community) at the very least, now risk tainting the perception of impartiality, thereby further constricting the realm of “ethical” expression and association outside Chambers ([24], pp. 50–63).

Finally, as regards the cardinal principle of competence, a judge’s deliberation and decision making process can in principle now be tracked by documenting their Internet research pertaining to a given case (what sources and with whom they may have consulted). It stands to reason that parties will eventually take opposing this practice as *ex parte* or offending the bar on independent factual research [26]. In the alternative, they might demand access to such information as a matter of transparency respecting the decision making process. Did the judge allot sufficient time to the matter (productivity)? Was their “Lexis” or “Quicklaw” query flawed? Did they “Google” the litigant or consult with an outside party

(such as an academic)? Where there is trepidation there is also hope, as the Internet and its resources can serve to attenuate judicial unfamiliarity with new science and technology.

For, to quote Evgeny Morozov of the New York Times once more: “Today, the ‘death of privacy’ is more like death by a thousand cuts: information leaks out slowly and invisibly, and so routinely that we’re hardly shocked when it does” [27]. Justice, needless to say, rests on perception. In the Internet age, that perception in turn depends, increasingly and at least in part, on the product of cyber searches. Simply put, “you aren’t who you are. You are who Google says you are” [28,29].

Perhaps the most prominent illustration of the above-described (non-scholarly) “judicial profiling” is that of Justice Hazel Cosgrove, the first female Supreme Court judge in Scotland, who stood accused of bias in a recent immigration case. Namely, charges that her Jewish background and membership in the International Association of Jewish Lawyers and Jurists [30] should have disqualified her from hearing a case involving the denial of asylum to a Palestinian refugee, Ms. Fatima Helow [31–33]. This after the party’s attorneys “googled” the judge and found that she was a member in this Jewish professional association [34,35]. This notwithstanding the crucial fact that Ms. Helow did not in any way claim that the judge’s decision *itself* disclosed or reflected any bias. While the judge in this case was cleared of “lacking impartiality” [36,37], the mere incident stands as a warning to judges regarding the ready dissemination of personal and unrelated information over the Internet, and its availability to litigants and potential frivolous claims or manipulation [38].

3.4. From the General to the Particular: Values to be Balanced in Articulating Guidelines for Judicial Social Networking

Returning more precisely to social networking for judges [39], as noted there is a delicate balance to be struck. Accordingly, it is of the essence to explicitly highlight the judge’s proximity to and immersion in the community in any policy or articulated norm. In effect, preventing judicial isolation has been recognized as a crucial value in Common law countries countervailing (some) of the associated risks [40].

3.5. Internet Use (Including Social Networking) qua Freedom of Expression

Furthermore, social networking may soon come to be construed as a basic or constitutional right, akin or integral to freedom of expression in the digital age, as recently opined by the German Federal Court of Justice. According to the Federal Court: [Translation] “the majority of German residents use the Internet on a daily basis. It has become a medium that plays a vital role in the lives of most people, and whose absence has a significant impact on daily life” [41,42]. This decision pertains to Internet access more generally but may by analogy easily be extended to ESM use as possibly the most common form of Internet use.

3.6. The Modern Soapbox?

Most significantly, and echoing the above, a US Court has recently ruled that Facebook “likes” are considered speech protected by the First Amendment. “Liking”, the Fourth U.S. Circuit Court of

Appeals held in *Bland v. Roberts*, is the “Internet equivalent of displaying a political sign in one’s front yard, which the Supreme Court has held is substantive speech” [43]. As summarized by Skan:

“In *Bland*, a suit was brought against the recently re-elected, Sheriff B.J. Roberts, alleg[ing] that the Sheriff violated the plaintiff’s First Amendment rights to freedom of speech and freedom of association when he fired them for supporting the candidacy of his election opponent through their ‘speech’ on Facebook” [44].

The ruling against the Sheriff’s department, reversing the trial court’s decision, is regarded as ground-breaking in the Internet age as the First Amendment now applies to digital phenomena [45], confirming that cyber speech merits robust constitutional protection.

Finally, it may be worth noting that in an otherwise negligible unreported case *re Andre B* [46], the California court of appeals struck down the prohibition on inmate (convicted felon) use of social media as infringing upon the First Amendment. That is not surprising as the US Supreme Court has made clear that First Amendment protections for speech extend to Internet communications, as well as to anonymous speech [47].

3.7. Pertinence to the Judiciary

Although importing notably distinct considerations, the above cited cases’ relevance to the judiciary is that social networking (and Internet access more broadly) is increasingly being construed as a *basic right*. Accordingly, it stands to reason that absolutist policies seeking to entirely proscribe, rather than moderately/reasonably regulate judicial use in the digital age, will be met with resistance (as unnecessarily infringing on freedom of expression as well fostering judicial isolation) [48]. Instead, it appears more likely that policies imposing narrowly tailored restrictions, logically related and *adapted* to the judicial office (and values such as restraint and impartiality) will prevail. Restricted judicial use of social media (guided by the adoption of proportional or minimally intrusive limitations) appears to be the burgeoning direction of most jurisdictions, as views on the point crystallize.

In this vein, mandatory social media training can assist in further fleshing out the content of such proportional or least restrictive restrictions, with particular emphasis on the indelible nature of ESM, the illusory perception of anonymity that tends to embolden unnecessarily, and the risk of third party use of replicated posts [49,50].

4. Part II: An Overview of the Emerging Normative Framework

4.1. The 2013 ABA Report: Proceed, but with Caution

The American Bar Association (ABA)’s Formal Opinion 462: Judge’s Use of Electronic Social Networking Media, issued on 21 February 2013 [46] is an important step in attempting to more uniformly regulate judicial social networking. Mindful of the importance of judges not being isolated from their community, the Opinion “allows” judges’ use of social media, recognizing that this “has become an everyday part of worldwide culture” ([51], p. 1). Thus, unlike many (although not all...) of its state counterparts, the ABA appears to take a moderate stance, commensurate with the above-suggested “balance” or least restrictive means, as dictated by the imperatives of judicial office.

Indeed, “When used with proper care, judges’ use of ESM does not necessarily compromise their duties under the Model Code any more than use of traditional and less public forms of social connection such as U.S. mail, telephone, email or texting” ([51], p. 4).

Not insignificantly, it similarly highlights the community immersion rationale, opining “Social interactions of all kinds, including ESM, can be beneficial to judges to prevent them from being thought of as isolated or out of touch” ([51], p. 1).

Importantly, it recognizes issues related to third party use and loss of control over information posted, and urges caution and sobriety. It warns of an issue, (that we might consider highlighting in the report) namely:

“Judges must assume that comments posted to an ESM site will not remain within the circle of the judge’s connections...[C]omments, images or profile information—some of which might prove embarrassing if publicly revealed—may be electronically transmitted without the judge’s knowledge or permission to persons unknown to the judge or to other unintended recipients. Such dissemination has the potential to compromise or appear to compromise the independence, integrity and impartiality of the judge, as well as to undermine public confidence in the judiciary” ([51], pp. 1–2).

Plainly put, and somewhat more explicitly, judges should be wary not only of their own posts but of those of their family, friends, and (former) associates who may (often unbeknownst to them) use their name and/or image in their own social networking pursuits. In fact, although an unreported case dismissed an appeal where the trial court judge’s daughter was a “Facebook friend” of the victim’s sister (because the defendant apparently did not explicitly invoke recusal) [52], the case foreshadows issues to come.

Finally, the ABA opinion remains nebulous on matters of disqualification and has been criticized in some circles for failing to provide clear guidelines on what constitutes “reasonable” ESM conduct more generally. Notwithstanding, it is submitted that in an emerging and dynamic context such as this, open-ended, flexible positions might be preferable to their more dogmatic or detailed counterparts, which risk being outpaced by technology no later than the ink dries.

4.2. European Case Law/Incidents more Specific to Judicial Social Networking

4.2.1. England

The UK for its part has imposed onerous restrictions on online judicial expression (specifically blogging and tweeting) in order to maintain public confidence in the office. Thus,

“[B]logging by members of the judiciary is not prohibited. However, office holders who blog (or who post comments on other people’s blogs) must not identify themselves as members of the judiciary. They must also avoid expressing opinions which, were it to become known that they hold judicial office, could damage public confidence in their own impartiality or in the judiciary in general... The above guidance also applies to blogs, which purport to be anonymous. This is because it is impossible for somebody who blogs anonymously to guarantee that his or her identity cannot be discovered... Judicial office holders who maintain blogs must adhere to this guidance and should remove any existing

content which conflicts with it forthwith. Failure to do so could ultimately result in disciplinary action” [53].

Although the regulated expression is tweeting and blogging rather than social media more generally, it does present interest by analogy [54,55].

4.2.2. France

Traditionally, French judges were considered likely to “self-censor” [56,57], or to be subject to discipline, thereby presumably doing away with the need for explicit regulation [58]. A recent scandal however, has catapulted judicial social media use into the spotlight. Two judges, with profile names Proc_Gascogne and Bip_Ed, were found joking on Twitter during a hearing of the Cour d’assises, mocking the witnesses, exchanging tweets the likes of: “on, ça y est, j’ai fait pleurer le témoin... #Oranginarouge” [looks like I made the witness cry]; “Question de jurisprudence... Un assesseur exaspéré qui étrangle sa présidente en pleine audience d’assises, ça vaut combien ?” [translation] “Legal question...If an exasperated assessor/magistrate strangles his chief justice during a hearing, how much would that be worth.” or worse “je n’ai plus écouté à partir des deux dernières heures” [I haven’t been listening to anything being said for the past two hours] [59–62]. This gave rise to a profound malaise in France, creating opposition to the use of social media, at least during hearings. However, tweeting is still currently tolerated during proceedings, and the country lacks relevant normative guidelines at this time.

Nonetheless, this grave incident is illuminating, and may in fact have sparked the Twitter interdiction in Quebec, referenced below [63].

For purposes of judicial training, it serves as an instructive example of how judges, not unlike most of the population, somehow (but erroneously) presume ESM to be more innocuous than other forms of communication, and allow themselves to speak in a manner other than the one they are accustomed to in the so-called “brick and mortar world”.

4.2.3. Canada

The Canadian Judicial Council has, to its credit, published a wide array of guidelines offering practical advice on technology use, ranging from skyping for judges to Facebook and social networking security [64,65]. While initially expressing some disapproval of judicial social networking, CJC comments on the subject are neither binding nor specific. That being said, Canadian judges, mindful of balancing opportunities and risks, are attempting to develop a more principled and systematic approach to the use of ESM. The Chief justice has warned about the *media* tweeting (rather than judicial participation in social media) arguing “that live dissemination of court proceedings by Twitter and other social media can pose a risk to fair, accurate and complete court coverage ‘and its correlative—continued public confidence in the judicial system’”[66].

As alluded to, Twitter use by the media and judges is entirely banned from Quebec Courts [67], not unlike most of Canada. Exceptions include the Nova Scotia Court of Appeal (which has had a few incidents) and the British Columbia Superior Court.

4.2.4. Israel

A Special Committee tasked with studying the question of judicial social networking recently recommended that judges continue to use social media privately (as individuals), guided by the ordinary rules governing judicial ethics. The rationale was avoiding isolation. That said, the committee warned judges to engage in such activities with care, and to avoid friending attorneys, unless “that lawyer is already prohibited from appearing in front of that judge due to a prior relationship” [68].

5. Part III: What must We Do? Some Basic Recommendations

It would appear at this stage that, in addition to implementing the above-mentioned mandatory social media training more broadly, courts may wish to systematically put into practice coherent guidelines for judicial ESM use. These “next generation norms” would feature minimally intrusive restrictions on the use of social media, which are directly linked to the values of independence and impartiality.

Further, impropriety for purposes of developing the aforesaid guidelines must be interpreted contextually, and such norms should be far clearer than the rules currently available, which, for the most part, cryptically counsel judges to use their “discretion” as they would in the brick and mortar world [69].

Conversely and further complicating matters, it is in the same breath important that next generation guidelines, whilst clear, be brought to a relatively high level of abstraction in light of rapid, dynamic technological change and the fact that “what we don’t know, we don’t know” [70,71] might in the end present the greatest challenge to those wishing to avail themselves of ESM.

Somewhat more concretely, both training and guidelines would do well to focus on imparting a better understanding of the peculiarities of social media (that are not all “created equal”) and above all emphasize that innocent comments can be misconstrued, compounded by the false sense of security individuals tend to have online as noted in Part I. Although it is beyond the scope of this present endeavor to outline steps to be taken in any great detail, suffice it to note that mastering privacy settings and hiding one’s social networking profile from search engines is helpful [72] as is opting out of instant personalization programs (where one’s name and image may be used for ads [73]). Preventing tagging, sharing little, and avoiding third party apps is, needless to say, desirable.

6. Conclusions

The recent recognition of digital expression—in particular by way of social media—as constitutionally protected speech prompts courts to revisit their policies (or lack thereof) respecting judicial ESM. Indeed, those bodies that have elected to set out guidelines, however preliminary, such as the ABA, recognize the need for judges to immerse themselves in their community by way of virtual means *inter alia*. That being said, much confusion regarding the scope of that immersion endures. This is to a great extent due to the confusing complexity of privacy policies of companies such as Facebook, whose initial policy was longer than the US constitution [74]. For this reason, perhaps, as this article goes to press, Facebook announced its intention to soon allow users to sign on to apps revealing only a few personal details. A move in that direction applied to social networking

itself, might eventually—and when tested—serve to assuage (although not do away with) some of the above mentioned concerns about easing the transition towards judicial use of social media [75].

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Conflicts of Interest

The author declares no conflict of interest.

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30. For a broader description see International Association of Jewish Lawyers and Jurists. “About Us.” Available online: http://www.intjewishlawyers.org/main/index.php?option=com_content&view=article&id=44&Itemid=72 (accessed on 9 May 2014).
31. “Lady Cosgrove’s impartiality when ruling on an immigration case of a Palestinian woman was compromised by being part of the International Association of Jewish Lawyers and Jurists” [28].
32. Damien Henderson. “Judge Cleared of Jewish Bias.” *The Herald*, 17 January 2007. Available online: <http://www.theherald.co.uk/news/news/display.var.1126944.0.0.php> (accessed on 29 August 2014).
33. See also, “Scottish Judge Cleared of Bias Charges.” *JTA.org*, 13 February 2007. Available online: <http://www.heraldsotland.com/judge-cleared-of-jewish-bias-1.851107> (accessed on 29 August 2014).
34. “Accusation of Judge’s Bias Rejected.” *Journal Online*, 17 January 2007. Available online: <http://www.journalonline.co.uk/news/1003819.aspx> (accessed on 29 August 2014).
35. “The Association’s aims include the advancement of human rights, the prevention of war crimes, the punishment of war criminals and international co-operation based on the rule of law and the fair implementation of international covenants and conventions. It ‘is especially committed to issues that are on the agenda of the Jewish people, and works to combat racism, xenophobia, anti-Semitism, Holocaust denial and negation of the State of Israel’” [34].
36. The court’s opinion can be read at *In the Petition of Fatima Helow to the Nobile Officium of the Court of Session*, [2007] CSIH 5, United Kingdom: Court of Session (Scot.). Available online: <http://www.scotcourts.gov.uk/opinions/2007CSIH05.html> (accessed on 29 August 2014).
37. “Upon receiving intimation of the judge’s decision, those representing the petitioner chose, for whatever reason, to make further inquiry about the judge. By means of the Internet search engine Google they discovered information about her which was (and is) publicly available on various websites. One such website was that of The International Association of Jewish Lawyers and Jurists. Available online: www.intjewishlawyers.org (accessed on 29 August 2014) [36].

38. The judge's ethnicity is well known as she is the first Jewish appointment to that level court.
39. As distinguished from more general judicial Internet use.
40. Interesting analogies may be drawn with extending the right to Vote to judges in Canada.
41. Silke Wünsch. "Internet Access Declared a Basic Right in Germany." *DW*, 27 January 2013. Available online: <http://www.dw.de/internet-access-declared-a-basic-right-in-germany/a-16553916> (accessed on 29 August 2014).
42. Federal Court of Justice in Karlsruhe, Thursday, 24 January 2013. The right is deemed so essential that compensation may be awarded for interruptions in service [41].
43. *Bland v. Roberts*, 857 F. Supp. 2d 599 (E.D. Va. 2012), off's in part, rev'd in part, and remanded, 730 F.3d 368 (4th Cir. 2013).
44. See Alicia Sklan. "@SocialMedia: Speech with the Click of a Button? #SocialSharingButtons." *Cardozo Arts & Entertainment Law Journal* 32 (2013): 377–410.
45. Joe Palazzolo. "Court: Facebook 'Like' Is Protected by the First Amendment." *Law Blog*, 18 September 2013. Available online: <http://blogs.wsj.com/law/2013/09/18/court-facebook-like-is-protected-by-the-first-amendment/> (accessed on 29 August 2014).
46. *The People v. Andre B.*, No. J227937, 2012 WL 5353806 (Cal. App. 4 Dist Oct. 31, 2012).
47. See *Reno v. ACLU*, 521 U.S. 844 (1997).
48. See [24]. In this book, published a mere two years ago, I suggested that judges would do best to entirely abstain from social media, whenever possible: it is far preferable (although not without controversy) that judges temporarily abstain from such practices altogether unless and until clearer guidelines emerge. In the alternative, a social network reserved for judges and their families exclusively, although for obvious reasons not a panacea, can perhaps fill some of the vacuum." ([24], pp. 91–107). While that is still ideal, whenever possible, it would aver, in light of recent case law, particularly in the US (where social media has been explicitly brought under the First Amendment's ambit) that isolating judges entirely from this ever prevalent form of communication would overly infringe on their freedom of expression (see [44]). "A Facebook—like is the internet equivalent of displaying a political sign in one's front yard, which the Supreme court has held is substantive speech." Accordingly, restrictions that are contextual to the digital age and represent the least restrictive means, commensurate with judicial obligations, better lend themselves to a sober balance between judicial duties and rights and would more likely withstand constitutional muster in Canada the United States and similarly situated constitutional democracies. Moreover, while abstinence is best, it might be unreasonable to expect or demand accross the board in light of constitutional constraints and given the near irresistible temptation to engage in these now near ubiquitous social practices. Therefore, the Second Edition of the book (forthcoming in 2016) will propose more, specific concrete guidelines for judicial social media use.
49. Heila Garrido Hull. "Why We Can't Be Friends: Preserving Public Confidence in the Judiciary." *Syracuse Law Review* 63 (2012): 175–98.
50. See also Judicial Conference Committee on Codes of Conduct. "Resource Packet for Developing Guidelines on Use of Social Media by Judicial Employees." Available online: <http://www.uscourts.gov/uscourts/RulesAndPolicies/conduct/SocialMediaLayout.pdf> (accessed 9 May 2014).

51. American Bar Association Standing Committee on Ethics and Professional Responsibility. "Formal Opinion 462: Judge's Use of Electronic Social Networking Media." Available online: http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinion_462.authcheckdam.pdf (accessed on 9 May 2014).
52. *People v. Schiller*, 2012 IL App (2d) 110677-U (Ill. 2012).
53. Martin Beckford. "Judges banned from blogging or Tweeting about cases." *Telegraph*, 15 August 2012. Available online: <http://www.telegraph.co.uk/news/uknews/law-and-order/9477275/Judges-banned-from-blogging-or-Tweeting-about-cases.html> (accessed on 29 August 2014).
54. Particularly in light of recent controversy, where UK judges were criticized for being "out of touch" with social media. See inter alia Zachary Sniderman. "Twitter Joke Trial: Judges Don't Get Social Media, Says Stephen Fry." *Mashable*, 9 February 2012. Available online: <http://mashable.com/2012/02/09/twitter-judges-british-fry-chambers/> (accessed on 29 August 2014).
55. General guidelines were separately issued and are available online at: Lord Chief Justice of England and Wales and Senior President of Tribunals. "IT and Information Security Guidance for the Judiciary." Available online: http://www.magistrates-association.org.uk/members/dmdocuments/it_and_information_security_guidance_26_09_12.pdf (accessed on 9 May 2014).
56. E.g., "Nous sommes soumis à un certain nombre d'obligations déontologiques. Le magistrat doit faire preuve de mesure dans sa communication pour ne pas compromettre l'impartialité de la justice et l'image de l'institution judiciaire..." [52].
57. Marc Leplongeon. "Les juges et avocats français s'autocensurent sur Internet." *Le Point*, 21 August 2012. Available online: http://www.lepoint.fr/societe/les-juges-et-avocats-francais-s-autocensurent-sur-internet-21-08-2012-1497685_23.php (accessed on 9 May 2014).
58. Olivier Bénis. "Des magistrats poussés à quitter Twitter" *france inter*, podcast audio, 28 November 2012. Available online: <http://www.franceinter.fr/les-indiscrets-des-magistrats-pousses-a-quitter-twitter> (accessed on 29 August 2014).
59. See inter alia Frank Johannès. "Quand deux magistrats plaisantent sur Twitter pendant une audience en cour d'assises." *Le Monde*, 28 November 2012. Available online: http://www.lemonde.fr/societe/article/2012/11/28/enquete-ouverte-apres-des-tweets-echanges-entre-magistrats-durant-un-proces-d-assises_1797276_3224.html (accessed on 29 August 2014).
60. See also Pascale Robert-Diard. "Peut-on juger et tweeter à la fois?" *Le Monde*, 30 November 2012. Available online: <http://prdchroniques.blog.lemonde.fr/2012/11/30/peut-on-juger-et-tweeter-a-la-fois> (accessed on 29 August 2014).
61. "Twitter se démocratise dans les tribunaux français." *Le Nouvel Observateur*, 21 April 2012. Available online: <http://tempsreel.nouvelobs.com/societe/20120421.FAP2868/twitter-se-democratise-dans-les-tribunaux-francais.html> (accessed on 29 August 2014).
62. "Twitter dans les tribunaux: Pas de consensus aux Etats-Unis." *Le Nouvel Observateur*, 21 April 2012. Available online: <http://tempsreel.nouvelobs.com/monde/20120421.FAP2867/twitter-dans-les-tribunaux-pas-de-consensus-aux-etats-unis.html> (accessed on 29 August 2014).
63. Olivier Parent. "Twitter banni des tribunaux du Québec." *Le Soleil*, 29 March 2013. Available online: <http://www.lapresse.ca/le-soleil/actualites/justice-et-faits-divers/201303/28/01-4635816-twitter-banni-des-tribunaux-du-quebec.php> (accessed on 29 August 2014).

64. Canadian Judicial Council. “Technology Issues.” Available online: http://www.cjc-ccm.gc.ca/english/news_en.asp?selMenu=news_pub_techissues_en.asp (accessed on 9 May 2014).
65. Most recently Martin Felsky. “Facebook and Social Networking Security.” Available online: <http://www.cjc-ccm.gc.ca/cmslib/general/Facebook%20security%202014-01-17%20E%20v1.pdf> (accessed on 9 May 2014).
66. Cristin Schmitz. “Twitter too Trivial for Some.” *Lawyers Weekly*, 17 February 2012. Available online: <http://www.lawyersweekly.ca/index.php?section=article&articleid=1595> (accessed on 29 August 2014).
67. Sidhartha Banerjee. “Quebec Bans Twitter from Courtrooms.” *Globe and Mail*, 14 April 2013. Available online: <http://www.theglobeandmail.com/news/national/quebec-bans-twitter-from-courtrooms/article11197529/> (accessed on 29 August 2014).
68. English summary available at: Revital Hovel. “Panel: Israeli Judges Can’t ‘friend’ Attorneys on Facebook, LinkedIn.” *Haaretz*, 2 February 2014. Available online: <http://www.haaretz.com/news/national/.premium-1.571879> (accessed on 29 August 2014).
69. See Part II of this article.
70. See US Department of Defence. “DoD News Briefing: Secretary Rumsfeld and Gen. Myers.” News transcript, 12 February 2002. Available online: <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=2636> (accessed on 29 August 2014).
71. In Donald Rumsfeld’s words [70].
72. Account/Privacy Settings/Search and unchecking the Public Search Results box. This is by no means to say that the profile could still not be found.
73. Account/Privacy Settings/Applications and Websites/Instant Personalization Pilot Program, click on the Edit Setting button, and uncheck the box.
74. See e.g., Nick Bilton. “Price of Facebook privacy? Start Clicking.” *New York Times*, 13 May 2010. Available online: <http://www.nytimes.com/2010/05/13/technology/personaltech/13basics.html> (accessed on 29 August 2014). Referring to the earlier 2010 version of Facebook’s privacy policy.
75. Vindu Goel. “Facebook to let users limit data revealed by log-ins.” *New York Times*, 1 May 2014. Available online: <http://www.nytimes.com/2014/05/01/technology/facebook-to-let-users-limit-data-revealed-by-log-ins.html> (accessed on 29 August 2014).