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## **Keeping It Real: Using Facebook Posts to Teach Professional Responsibility and Professionalism**

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# KEEPING IT REAL: USING FACEBOOK POSTS TO TEACH PROFESSIONAL RESPONSIBILITY AND PROFESSIONALISM

Anna P. Hemingway\*

WARNING: The examples cited within are reproduced in their original context and contain strong language that may be offensive to some readers.

## INTRODUCTION

Why should law professors use actual Facebook posts to teach professional responsibility and professionalism? Consider this recent Facebook post by a first-year law student commenting on a legal writing assignment: “My appellate brief is a cum dump.”<sup>1</sup> This graphic example demonstrates two key reasons to integrate examples from Facebook into the law school curriculum. First, the commonplace usage of inappropriate and crude language underscores a need to educate law students on these topics. Second, students already use Facebook, and thus it makes an advantageous teaching tool because awareness and learning among law students increases when they are interested in the material.

Legal education needs to lead with instruction on the appropriate use of social networking tools because today’s lack of directives is causing law students, lawyers, and judges a veritable cornucopia of ethical dilemmas. Judges are admonished and lawyers are sanctioned and disbarred for their posts to Facebook and other social media sites.<sup>2</sup> As Facebook continues to blur “the boundaries between personal and professional

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1. This quote is from an actual law student’s Facebook post, but should be treated as a hypothetical for the purposes of this article. The post has since been removed from Facebook, which is just one example of the fleeting nature of social media.

2. See Shannon M. Awsumb & Karen Wells Roby, *The Intersection of Online Communications and Legal Ethics*, FED. LAW., Aug. 2012, at 33-36.

worlds,”<sup>3</sup> law students will require more guidance on how to “navigate social networking in the legal landscape.”<sup>4</sup> Many law students, similar to other Facebook users, “lack[ ] limits to what they will share”<sup>5</sup> because they either have not been schooled on the privacy implications of using Facebook, or they are members of Generation Y, who more “willingly broadcast[ ] their lives online”<sup>6</sup> and have not fully considered the impact their postings may have on their professional lives. Without instruction, or at least generalizable guidance, law students will remain naive about the applicability of the rules of professional responsibility and professionalism to Facebook posts.

When using Facebook, both law students and legal professionals routinely post inappropriate content that brings into question their professionalism and knowledge of professional responsibility rules. The proliferation of ill-advised posts by law students, lawyers, and judges provides a plethora of ready-made materials that professors can use to educate law students. The use of actual language posted to Facebook by those either entering the field as law students or those with many years of experience prompts students to consider the identities they will create for themselves as lawyers and to reflect on their professional values as they embark upon their careers.

Moreover, Facebook posts can capture students’ interest in a way many cases and hypotheticals often cannot do. Law students are “highly motivated to learn once they see the relevance of what is being taught.”<sup>7</sup> Although the relevance of professional responsibility rules should be apparent to most law students, many of the cases from which the rules are taught were decided before the students were even born. This hoary framework for teaching professionalism can dim enthusiasm for the subject because it does not place the material within most law students’ sociological organization and knowledge.

Adult learning theory proposes that adults learn best when they can connect teachings to previous life experience and knowledge.<sup>8</sup> With some estimates indicating that ninety-eight percent of all students use

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3. Kathleen E. Vinson, *The Blurred Boundaries of Social Networking in the Legal Field: Just “Face” It*, 41 U. MEM. L. REV. 355, 357 (2010).

4. *Id.*

5. *Id.* at 362.

6. *Id.* at 363.

7. Eric A. DeGroff, *Training Tomorrow’s Lawyers: What Empirical Research Can Tell Us About the Effect of Law School Pedagogy on Law Student Learning Styles*, 36 S. ILL. U. L.J. 251, 253 (2012).

8. See Malcolm S. Knowles, *THE MODERN PRACTICE OF ADULT EDUCATION: FROM PEDAGOGY TO ANDRAGOGY* 43-44 (2d ed. 1980).

Facebook,<sup>9</sup> social media is an undeniable part of students' lives and popular culture.<sup>10</sup> Using Facebook posts to teach professional responsibility and professionalism goes beyond the "enthusiastic use of fictional representation in many modern law school ethics classes"<sup>11</sup> by illustrating ethical dilemmas with actual posts that are meaningful to students with first-hand experience using this social media tool. While Facebook posts provide a new and fresh approach to teaching legal ethics, they also tackle the crux of many of the traditional questions arising in the course of lawyers' careers and asked in professional responsibility courses throughout the country. For example, Facebook posts made by law students can be used to teach the professionalism ideals of credibility, civility, and respect. Facebook posts made by lawyers can be used to teach the Model Rules of Professional Conduct on deception,<sup>12</sup> candor to the court,<sup>13</sup> and obstruction of evidence.<sup>14</sup> Finally, Facebook posts made by judges can be used to teach law students both professionalism and professional responsibility, teaching them to avoid the appearance of impropriety and conflicts of interest. In short, the use of actual Facebook posts made by legal professionals can help move students from lofty aspirational discussions of professional responsibility in the abstract to a more realistic professional practice grounded in the examination of concrete, everyday examples.

This article begins by tackling the intricate task of defining professional responsibility and professionalism. The article suggests that today's Generation Y<sup>15</sup> law students develop and define their professionalism ideals and understand their professional responsibility, in part, in conjunc-

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9. See Allison F. Alden & Anthony G. Naglieri, *Reaching Real-Time Moving Targets: The Use of Digital Communications to Inform and Mobilize College Students*, CSPA-NYS J. STUDENT AFF., April 2012, at 8, available at <http://journals.canisius.edu/index.php/CSPANY/article/view/224/338> (citing Steve Kolowich, *Slow Train to the Future*, INSIDE HIGHER ED (Nov. 17, 2011), <http://www.insidehighered.com/news/2011/11/17/survey-says-young-students-still-computer-labs-digital-cameras-ms-word>).

10. See, e.g., Kyung Won & Rainy Schermerhorn, *Social Networking Sites Impact Lives of Students*, DAILY TEXAN, Aug. 31, 2011, available at <http://www.dailytexanonline.com/life-and-arts/2011/08/31/social-networking-sites-impact-lives-of-students>; Eric Ditzian, *Mark Zuckerberg and Facebook Were All Over Pop Culture in 2010*, MTV (Dec. 15, 2010, 3:51 PM), <http://www.mtv.com/news/articles/1654364/mark-zuckerberg-facebook-were-all-over-pop-culture-2010.jhtml>.

11. Alexander Scherr & Hillary Farber, *Popular Culture as a Lens on Legal Professionalism*, 55 S. C. L. REV. 351, 353 (2003).

12. MODEL RULES OF PROF'L CONDUCT R. 8.4 (2009).

13. *Id.* R. 3.3.

14. *Id.* R. 3.4.

15. Generation Y is also known as the Millennials and were born between 1981 and 1995. See Melissa H. Weresh, *I'll Start Walking Your Way, You Start Walking*

tion with the development of their online personas and their use of Facebook. Part II provides a brief history of Facebook and traces its evolution to the present day. Part III of the article suggests concrete ways to incorporate Facebook posts into the teaching of professional responsibility and professionalism. Part IV introduces and explains the advantages to using a multiple-choice format and clickers to teach the material. Part V provides a sampling of four actual Facebook posts made by law students, lawyers, clients, and judges, along with the professionalism lessons and the professional responsibility rules they can teach. Finally, Part VI considers the minimal drawbacks to using Facebook posts in legal ethics courses.

## I. PROFESSIONAL RESPONSIBILITY, PROFESSIONALISM, AND GENERATION Y

Legal scholars struggle with the distinction between professional responsibility and professionalism.<sup>16</sup> Most agree that professional responsibility is tied to outer, professional roles and can be contrasted to professionalism, which is connected more closely to inward, personal identities.<sup>17</sup> In its narrow sense, professional responsibility refers “to the system of professional regulations governing the conduct of lawyers,”<sup>18</sup> and professionalism refers more broadly to morality or a person’s inner ethos.<sup>19</sup> While professional responsibility envelops the ethical norms held by the lawyering profession, professionalism “is the ethical system that guides the individual.”<sup>20</sup>

When most law students and lawyers consider the term “professional responsibility,” they envision the model or state rules that govern the profession of lawyering. The ABA Model Rules of Professional Conduct and state professional responsibility rules do not proscribe “moral” behavior. Rather, they are “rules of reason.”<sup>21</sup> They “serve to define [the]

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*Mine: Sociological Perspectives on Professional Identity Development and Influence of Generational Differences*, 61 S. C. L. REV. 337, 360 (2009).

16. See, e.g., Keith W. Rizzardi, *Defining Professionalism: I Know It When I See It*, 79 FLA. B.J., no. 7, Aug. 2005, at 38-40 (discussing that while there is an institutional commitment to encouraging adherence by lawyers to standards of professionalism, the concept of professionalism remains undefined).

17. Natasha Martin, *Role, Identity, and Lawyering: Empowering Professional Responsibility*, 3 CAL. L. REV. CIRCUIT 44, 46 (2012).

18. Deborah L. Rhode & David Luban, *LEGAL ETHICS* 3 (5th ed. 2009).

19. *Id.*

20. See Jennifer Daehler, Note, *Professional Versus Moral Responsibility in the Developing World*, 9 GEO. J. LEGAL ETHICS 229, 231 (1995).

21. MODEL RULES OF PROF'L CONDUCT, Scope § 4 (2009).

relationship” between lawyers and their role in society.<sup>22</sup> Some of the rules attempt to “define proper conduct for purposes of professional discipline,”<sup>23</sup> but others “are permissive” and allow lawyers to “exercise professional judgment.”<sup>24</sup>

The definition of professionalism, on the other hand, is a bit more dynamic. Definitions of professionalism have not yet been penned that shape a satisfactory meaning with which the bench, the bar, and the academy concur.<sup>25</sup> Although members of all three would likely agree that professionalism goes beyond the generic definition of “the set of qualities that are characteristic of a particular profession,”<sup>26</sup> or a set of vague aspirational goals,<sup>27</sup> an exact definition is transient because our concept of professionalism changes in response to cultural shifts and global life perspectives.<sup>28</sup>

Cultural shifts demand an evolving definition of professionalism: technology has imprinted its own meaning on the word, causing its substance to morph from a sociological definition to a descriptive list of specific characteristics<sup>29</sup> to a list of online tips.<sup>30</sup> At a communal level, professionalism was defined in 1996 as “a public profession serving public interests.”<sup>31</sup> In 2000, Steven Goldberg declared that “professionalism remain[ed] a label in search of content”<sup>32</sup> and suggested that practitioners and academics may not share the same semantic cluster when discussing professionalism.<sup>33</sup> Reacting to more current social speech, professionalism

22. *Id.* Pmbl. § 13.

23. *Id.* Scope § 14.

24. *Id.*

25. See generally Steven H. Goldberg, *Bringing The Practice to the Classroom: An Approach to the Professionalism Problem*, 50 J. LEGAL EDUC. 414, 414-30 (2000) (providing a history and description of the professionalism movement and discussing the failure of the current law school curriculum to address professionalism).

26. Patrick E. Longan, *Teaching Professionalism*, 60 MERCER L. REV. 659, 665 (2009).

27. See Goldberg, *supra* note 25.

28. See generally Melissa L. Breger et al., *Teaching Professionalism in Context: Insights from Students, Clients, Adversaries, and Judges*, 55 S.C. L. REV. 303, 304-07 (2003) (exploring professionalism from various perspectives).

29. John E. Montgomery, *Incorporating Emotional Intelligence in Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 330-31 (2008).

30. Agnieszka A. McPeak, *Ten Tips for Maintaining Professionalism Online*, 16 YOUNG LAWYER (June 2012), [http://www.americanbar.org/publications/young\\_lawyer/2011-12/june\\_2012\\_vol\\_16\\_no\\_8/tips\\_maintaining\\_professionalism\\_online.html](http://www.americanbar.org/publications/young_lawyer/2011-12/june_2012_vol_16_no_8/tips_maintaining_professionalism_online.html).

31. Goldberg, *supra* note 25, at 416.

32. *Id.* at 418.

33. *Id.* at 416.

was defined in 2008 as a type of emotional intelligence “requir[ing] empathetic understanding of the interest of others. . . [and] competency.”<sup>34</sup> In 2009, lawyer professionalism was further defined through the descriptive characteristics of acting with competence, showing “fidelity to the client, fidelity to the law and its institutions, and civility.”<sup>35</sup> Most recently in 2012, the American Bar Association provided “tips for maintaining professionalism online” by characterizing responsibilities as being three-fold: “(1) treat fellow members of the bar with the utmost respect and dignity; (2) uphold client confidences and avoid conflicts and dishonesty[;] and (3) strive to improve the public image of the legal profession.”<sup>36</sup>

As the tips for online behavior suggest, social networking, professional responsibility, and professionalism, all intersect and take part in advancing the professional identity of burgeoning lawyers. Most of these law students and young lawyers belong a generation whose defining characteristic has been described as a “reliance on electronic, digital communication.”<sup>37</sup> Many believe that reliance on this form of communication has led to a decline in “face-to-face social skills,”<sup>38</sup> yet the availability of documenting their lives publicly on Facebook has led most from Generation Y to have an almost “compulsive honesty.”<sup>39</sup>

Generation Yers seem willing to share without stopping to filter content or limit audiences. The public posting of people’s lives has resulted in a respect for transparency<sup>40</sup> and an increased lack of separation between public and private personas. While Generation Yers maintain a strong interest in work-life balance,<sup>41</sup> most are interested in working environments that are less hierarchal,<sup>42</sup> more collaborative,<sup>43</sup> and more integrated with their online lives.<sup>44</sup> This work model has resulted in imprecise lines between professional lives and personal lives with more friendships

34. Montgomery, *supra* note 29, at 336.

35. Longan, *supra* note 26, at 669.

36. McPeak, *supra* note 30.

37. Weresh, *supra* note 15, at 360.

38. *Id.* at 366.

39. *Id.* at 369.

40. *Id.* (citing JEAN M. TWENGE, *GENERATION ME: WHY TODAY’S YOUNG AMERICANS ARE MORE CONFIDENT, ASSERTIVE, ENTITLED-AND MORE MISERABLE THAN EVER BEFORE* 39 (2006)).

41. Weresh, *supra* note 15, at 362–63.

42. *Id.* at 368.

43. *Id.* (citing Melody Finnemore, *Meet the Millennials: Young Attorneys Prompt Need for Firms to Explore New Ways of Doing Business*, OR. ST. B. BULL., Nov. 2005, at 9, available at <http://www.osbar.org/publications/bulletin/05nov/millennials.html>).

44. See Dan Schawbel, *Millennial Branding Survey Reveals that Gen-Y is Connected to an Average of 16 Co-Workers on Facebook*, MILLENNIAL BRANDING BLOG (Jan. 9, 2012), <http://millennialbranding.com/2012/01/millennial-branding-gen-y-face>

and social interaction often resulting from the less formal work environment.<sup>45</sup> Facebook profiles are increasingly becoming “extension[s] of their professional personalit[ies]”<sup>46</sup> as Generation Yers, including many law students and lawyers, frequently have Facebook accounts that include friends from their workplaces.<sup>47</sup>

Today, those venturing to define professional responsibility and professionalism must muse over the impact Facebook is having on current and future law students and lawyers. While the 2009 notions of competency and fidelity should remain largely unaffected by social networking, civility has been impacted. Facebook creates more specialized concepts of civility as they relate to online communication. Because posing always involves some level of rumination, it also allows for the role reflection has in shaping civility to be brought to the forefront of the discussion of how professionalism is developed and defined. In addition, the American Bar Association’s view of legal professionals’ duties regarding public image are being challenged through the use of Facebook as so many lawyers and law students live their lives online and cause their public and private images to be intertwined and constantly available for scrutiny to a much larger audience than before.

## II. THE FACEBOOK PHENOMENON

In February 2004, Facebook was founded as a social networking place for Harvard students.<sup>48</sup> Called “The Facebook,” it allowed students to connect to one another online by creating profiles, posting pictures, forming groups, and arranging events.<sup>49</sup> Before the end of the year, it expanded to all Ivy League and Boston schools, and in 2005 went interna-

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book-study/ (summarizing results of a study of four million Generation Y Facebook users).

45. Emil Protalinski, *21% Are Facebook Friends With Their Boss*, ZDNET (Feb. 14, 2012), <http://www.zdnet.com/blog/facebook/21-are-facebook-friends-with-their-boss/9090>.

46. See Ekaterina Walter, *Generation Y: The New Kind of Workforce*, NEXT WEB (Jan. 25, 2012), <http://thenextweb.com/insider/2012/01/25/generation-y-the-new-kind-of-workforce/>.

47. *Id.* Most Generation Yers do not list employers on the Facebook page, but on average they include sixteen co-workers as Facebook friends. *Id.*

48. Zachary M. Seward, *Judge Expresses Skepticism About Facebook Lawsuit*, WALL ST. J., July 25, 2007, available at [http://online.wsj.com/article/SB118539991204578084.html?mod=googlenews\\_wsj](http://online.wsj.com/article/SB118539991204578084.html?mod=googlenews_wsj). (enter URL into a search engine to avoid an advertising impediment).

49. See Sid Yadav, *Facebook – The Complete Biography*, MASHABLE SOC. MEDIA (Aug. 25, 2006), <http://mashable.com/2006/08/25/facebook-profile/>. Interestingly, Facebook’s predecessor was called Facemash. Jessi Hempel, *How Facebook is Taking*

tional. In 2006, Facebook lifted its student-only restriction and opened its doors to everyone.<sup>50</sup> Today, it allows “millions of people [to] use [it] everyday to keep up with friends, upload an unlimited number of photos, share links and videos, and learn more about the people they meet.”<sup>51</sup> The company “give[s] people the power to share and make the world more open and connected.”<sup>52</sup>

Among social networking websites, Facebook is currently the irrefutable king of the hill.<sup>53</sup> According to Facebook’s fourth initial public offering amendment filed with the Securities and Exchange Commission on April 23, 2012, Facebook had 901 million monthly active users as of March 31, 2012, and 526 million daily active users in March, 2012.<sup>54</sup> In the United States, Facebook accounts for nearly ten percent of all web use, surpassing even Google.<sup>55</sup> In comparison, Myspace, a social networking site started in 2003,<sup>56</sup> had only 25 million registered users in February 2012.<sup>57</sup> Other social networking sites, including Twitter,<sup>58</sup> YouTube,<sup>59</sup> and

*Over Our Lives*, FORTUNE MAG., Mar. 11, 2009, available at [http://money.cnn.com/2009/02/16/technology/hempel\\_facebook.fortune/index.htm](http://money.cnn.com/2009/02/16/technology/hempel_facebook.fortune/index.htm).

50. See Rachel Rosmarin, *Open Facebook*, FORBES (Sept. 11, 2006), [http://www.forbes.com/2006/09/11/facebook-opens-up-cx\\_tr\\_0911facebook.html](http://www.forbes.com/2006/09/11/facebook-opens-up-cx_tr_0911facebook.html).

51. *About Facebook*, FACEBOOK, <http://www.facebook.com/pages/Facebook-USA/125296484157657?sk=info> (last visited January 1, 2013).

52. *Id.*

53. Although it is the leading social networking tool, it is not the king of the stock market. After an initial offering of \$42.05 a share, Facebook stock had lost nearly a third of its value by June 26, 2012 and continues to fluctuate. *Ups and Downs: How Facebook Stock Has Traded Since Long-Awaited Public Offering*, HUFFINGTON POST CANADA, June, 26, 2012, available at [http://www.huffingtonpost.ca/2012/06/26/ups-and-downs-how-facebo\\_n\\_1629033.html?view=print&comm\\_ref=false](http://www.huffingtonpost.ca/2012/06/26/ups-and-downs-how-facebo_n_1629033.html?view=print&comm_ref=false).

54. Facebook Inc., Amendment No. 4 to Form S-1 Registration Statement at 1 (Apr. 23, 2012), available at <http://www.sec.gov/Archives/edgar/data/1326801/000119312512175673/d287954ds1a.htm>.

55. Jeffrey F. Rayport, *What is Facebook, Really?*, HARV. BUS. REV. BLOG NETWORK (Feb. 2, 2011), available at [http://blogs.hbr.org/cs/2011/02/what\\_is\\_facebook\\_is\\_becoming.html](http://blogs.hbr.org/cs/2011/02/what_is_facebook_is_becoming.html). Facebook was also the top search term in 2010 and 2011. Emil Protalinski, *Facebook Top Search Term in 2011*, ZDNET (Dec. 22, 2011), available at <http://www.zdnet.com/blog/facebook/facebook-top-search-term-in-2011/6525>.

56. Lori Kozlowski, *New Life: How Myspace Spawned a Start-Up Ecosystem*, FORBES (May 15, 2012), available at <http://www.forbes.com/sites/lorikozlowski/2012/05/15/how-myspace-spawned-a-startup-ecosystem/>.

57. Josh Halliday, *Myspace Adds 1M New Users in 30 Days*, THE GUARDIAN (Feb. 14, 2012), available at <http://www.guardian.co.uk/technology/2012/feb/14/myspace-one-million-users>.

58. As of March 2012, Twitter had over 140 million active users and over 340 million Tweets per day. *Twitter Turns Six*, BLOGTWITTER.COM (Mar. 21, 2012), available at <http://blog.twitter.com/2012/03/twitter-turns-six.html>.

LinkedIn,<sup>60</sup> are all popular, but different from Facebook in functionality because they do not provide users with the platform to communicate and post information in the same manner as Facebook.<sup>61</sup>

Facebook now allows users to do even more than create profiles, upload photos and videos, form groups, and create events. Instead of just being a social graph providing a structure for online relationships, it has become a taste graph and compiles information on users' likes.<sup>62</sup> Taste graphs connect not only marketers with Facebook users, but also users with other users based on their likes and information they share on the web.<sup>63</sup> As a social graph, Facebook users typically identify other people they want to be "friends" with by electronically searching for people they know with Facebook accounts.<sup>64</sup> On Facebook, a friend is simply "any Facebook member who has agreed" that he has something in common with another Facebook member.<sup>65</sup> The word "friend" does not have the traditional meaning of "one attached to another by affection or esteem."<sup>66</sup> Once a friend connection is made, as opposed to a shared acquaintance, the Facebook users appear on each others' friend lists and, depending on privacy settings, will have access to the posts and information of all the

59. As of January 2012, there were four billion YouTube views every day. Alexi Oreskovic, *Exclusive: YouTube Hits 4 Billion Daily Video Views*, REUTERS (Jan. 23, 2012), available at <http://www.reuters.com/article/2012/01/23/us-google-youtube-idUSTRE80M0TS20120123>.

60. In early 2012, LinkedIn had over 161 million registered users. Josh Bersin, *LinkedIn's Growth Continues: Fueling the Corporate Talent Machine*, FORBES (May, 7, 2012), available at <http://www.forbes.com/sites/joshbersin/2012/05/07/linkedin-growth-continues-fueling-the-corporate-talent-machine/>.

61. Facebook is facing some tougher competition from Google+, a social networking website started in 2011 that already has over 100 million active users. *Google by Numbers*, YAHOO! NEWS (Apr. 6, 2012), available at <http://news.yahoo.com/google-numbers-100-million-active-google-users-350-110834825.html>.

62. See Farhad Manjoo, *Why Facebook Will Win*, FAST CO., Oct. 19, 2011, available at <http://www.fastcompany.com/magazine/160/why-facebook-will-win>. <http://www.fastcompany.com/magazine/160/why-facebook-will-win>. Facebook defines likes as "a way to give positive feedback or to connect with things you care about on Facebook." *Facebook Help Center*, FACEBOOK.COM, <http://www.facebook.com/help/452446998120360/> (last visited December 10, 2012). By clicking on a Facebook like tab, users can provide positive feedback to other users. *Id.*

63. See Kyle Lacy, *The Role of Taste Graphs in Social Commerce*, BUSINESS2COMMUNITY.COM (June 7, 2012), available at <http://www.business2community.com/social-media/the-role-of-taste-graphs-in-social-commerce-0192355>.

64. See E.A. VANDER VEER, *FACEBOOK: THE MISSING MANUAL* 45–46 (2d ed. 2010).

65. *Id.* at 44.

66. MERRIAM-WEBSTER COLLEGIATE DICTIONARY (11th ed. 2003), available at <http://www.merriamwebster.com/dictionary/friend>.

friends on each others' lists.<sup>67</sup> Previously, Facebook made suggestions to users of other people they might want to connect with based on the users' other Facebook friends.<sup>68</sup> With taste graphs, Facebook now makes friend suggestions based on users' fancies.<sup>69</sup> Taste graphs link individuals based on nothing more than a shared proclivity.

Although the impact of taste graphs is just beginning, the potential for additional ethical problems exists if law students, lawyers, and even judges, do not carefully screen who they want to be friends with on Facebook. Currently, professionalism problems occur to Facebook users in the legal profession because many users are not fully cognizant of who can access their posts or even who their Facebook friends are.<sup>70</sup> Although Facebook has privacy settings allowing users to limit who can view their information,<sup>71</sup> nearly thirty percent of Facebook members in the United States fail to use the privacy settings to deny access to their wall posts.<sup>72</sup> Taste graphs will boost professional responsibility problems further if those in the legal profession increasingly become Facebook friends with people they do not know. While Facebook started with limited access to only Harvard students, its increased access to all through social and taste graphs could haunt law students, lawyers, and judges if they are not fully educated on Facebook's reach and the potential professional responsibility and professionalism issues that can result if not managed correctly.

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67. VANDER VEER, *supra* note 64, at 44.

68. *See generally* VANDER VEER, *supra* note 64, at 50–51 (explaining how Facebook.com works).

69. *See generally* Lacy, *supra* note 63 (explaining how marketers connect with consumers and connect consumers to each other via their interests and tastes).

70. *See generally* Kimberly Loges, Student Essay, *Danger Ahead: Use Caution When Traversing Social Media Sites*, CLARK COUNTY BAR ASSOCIATION (Dec.2009), [http://www.clarkcountybar.org/index.php?option=com\\_content&task=view&id=336&Itemid=181](http://www.clarkcountybar.org/index.php?option=com_content&task=view&id=336&Itemid=181) (discussing the dangers the legal profession faces when using social media sites and describing several examples that have brought lawyers and judges before disciplinary boards).

71. *See Basic Controls*, FACEBOOK, <http://www.facebook.com/help/privacy/basic-controls> (last visited July 29, 2009).

72. *Facebook & Your Privacy: Who Sees the Data You Share on the Biggest Social Network?*, CONSUMER REPORTS, June 2012, available at <http://www.consumerreports.org/cro/magazine/2012/06/facebook-your-privacy/index.htm#>. Consumer Reports annual State of the Net estimated that in 2012, “28 percent [of Facebook users in the United States] shared all, or almost all, of their wall posts with an audience wider than just their friends.” *Id.*

### III. CURRICULUM CHOICES—SELECTING THE RIGHT PLACEMENT AND TIMING FOR TEACHING PROFESSIONAL RESPONSIBILITY AND PROFESSIONALISM THROUGH FACEBOOK POSTS

The Carnegie Report suggests that some aspect of professionalism training belongs in every law school course because professionalism is pervasive in lawyers' careers.<sup>73</sup> Professionalism and professional responsibility can be introduced through the use of Facebook posts in several places in the law school curriculum and throughout students' time in law school. Although the professional responsibility course offers a natural fit, the material could also be presented in a legal methods course, or as part of professionalism programs outside of class.

Professional responsibility courses have earned their station alongside other required courses in the law school curriculum and make an obvious first choice for a place to use Facebook posts to teach professionalism.<sup>74</sup> Most professional responsibility courses teach the ethics of lawyering by drawing upon a wealth of teaching materials and methodologies.<sup>75</sup> Going beyond a review of the canons of lawyering, professional responsibility courses offer a legitimate place to embrace Carnegie's call for exploring the "identity, values and dispositions consonant with the fundamental purposes of legal education"<sup>76</sup> in contemporary practice. If a professor's primary goal is to teach some of the ABA Model Rules of Professional Responsibility maxims through an exploration of actual ethical conundrums lawyers and judges have encountered with their use of Facebook, while simultaneously raising awareness of the applicability of the model rules to Facebook posts, the professional responsibility course is a solid choice.

One drawback to waiting for the professional responsibility course to introduce the ideates of professionalism online is that the course is not typically offered during the first year of law study,<sup>77</sup> yet law students will

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73. Denise Platfoot Lacey, *Embedding Professionalism Into Legal Education*, 18 J.L. BUS. & ETHICS 41, 44 (2012).

74. See James E. Moliterno, *Practice Setting as an Organizing Theme for a Law and Ethics of Lawyering Curriculum*, 39 WM. & MARY L. REV. 393, 393 (1998).

75. *Id.*

76. Martin, *supra* note 17, at 46 (citing WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007)).

77. See generally Timothy P. Chinaris, *We Are Who We Admit: The Need to Harmonize Law School Admission and Professionalism Processes with Bar Admission Standards*, 31 MISS C. L. REV. 43, 45 (2012) (discussing the need for law schools to emphasize the qualities most closely considered by bar admission authorities, like professionalism, in law admission decisions). *Id.* at 44.

use Facebook during their first year. Law students need to have a firmer understanding of professionalism and expectations for their behavior earlier than their second year in school. Additionally, waiting until the second year to teach professional responsibility and professionalism neglects the opportunity to work with first-year students' "enthusiasm and respect for the profession."<sup>78</sup> By presenting the material in the first year of law study, an unequivocal message is sent that professionalism is core to the study of law and begins on the first day of law school—the day when law students are most receptive to these ideas.

One way to overcome the difficulty of missing the opportunity the first year of law school presents is to insert the teaching of professionalism through Facebook posts in a legal methods course.<sup>79</sup> Legal methods is the only skills course offered in the first year at most law schools and already ordinarily teaches the rudiments of professionalism issues, such as candor to the court and plagiarism.<sup>80</sup> Furthermore, although Facebook posts are not legal writing, they are a form of writing and thus would not be an unnatural fit for the material.

Introducing professional responsibility and professionalism ideas through Facebook posts in a legal methods course will typically offer additional advantages. First, many legal methods courses have smaller class sizes than other first-year courses. The smaller size should promote a more developed discourse about professionalism issues among the entire class because there is a greater possibility to contribute to class dialogue. Second, some legal methods courses already have students do reflective work, such as journaling or blogging<sup>81</sup> to develop learning skills such as self-awareness.<sup>82</sup> "[S]elf-reflection empowers students, teachers, and practicing lawyers to become more aware of what they do, and thus, more

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78. Melissa H. Weresh, *Fostering a Respect for Our Students, Our Specialty, and the Legal Profession: Introducing Ethics and Professionalism into the Legal Writing Curriculum*, 21 *TOURO L. REV.* 427, 440 (2005).

79. Legal Methods is known by many different names, but is being used generically in this article to refer to the legal research and writing courses offered at most law schools in the first year of study.

80. See Julie A. Oseid, *It Happened to Me: Sharing Personal Value Dilemmas to Teach Ethics*, 12 *LEGAL WRITING: J. LEGAL WRITING INST.* 105, 110 (2006).

81. See Filippa Marullo Anzalone, *Education for the Law: Reflective Education for the Law*, in *HANDBOOK OF REFLECTION AND REFLECTIVE INQUIRY: MAPPING A WAY OF KNOWING FOR PROFESSIONAL REFLECTIVE INQUIRY* 85, 90–91, 94–96 (Nona Lyons ed., 2010).

82. See generally ROY STUCKEY, *BEST PRACTICES FOR LEGAL EDUCATION*, 65–67 (2007) (discussing how the law school curriculum should prepare graduates to be effective, responsible lawyers).

able to improve what they are doing.”<sup>83</sup> Journaling and blogging would provide students analyzing professional responsibility dilemmas in the legal methods course with the occasion to engage in the reflective process on some of the more complex problems.<sup>84</sup> Finally, the legal methods course traditionally affords greater interaction between faculty and students<sup>85</sup> through student conferences and thus allows for a relationship to develop between professor and students that encourages the open discussion of conflicts and ideals in professionalism. Professionalism standards are intensely personal, and students may feel more comfortable exploring these concepts with professors whom they have already developed relationships. If a professor’s goal is to introduce ethical dilemmas through Facebook posts in a manner that encourages deep reflection and increases student participation and critical thought, legal methods is a valid emplacement for the material.

An obstacle to placing the material in this course is that most legal methods syllabi are already packed with material and may not have the luxury of adding another topic.<sup>86</sup> Teaching the legal methods curriculum is often considered “daunting in and of itself”<sup>87</sup> and adding to it could be problematic because it is already labor intensive for both the professor and the students.<sup>88</sup> To partially overcome this concern, the Facebook posts could be presented once a week instead of all in one or two classes. Taking five to ten minutes of class time weekly for professionalism would seem less imposing than devoting a block of time that would interrupt teaching legal writing. It could also prove more effective because it would get “the students to think about ethics on a regular basis;”<sup>89</sup> however, five- to ten-minute time constraints may dictate that the analysis would be limited and a bit shallow.

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83. Filippa Marulla Anzalone, *It All Begins with You: Improving Law School Learning Through Professional Self-Awareness and Critical Reflection*, 24 *HAMLIN L. REV.* 324, 337 (2001). This article provides a “map of the learning theory terrain” and a report on self-reflection and growth as a law professor. *Id.* at 326.

84. Of course, journaling and blogging could also be required in professional responsibility and other courses; however, because of their larger class size, professors may have more trouble keeping up with entries.

85. Ben Bratman, *Toward a Deeper Understanding of Professionalism: Learning to Write and Writing to Learn During the First Two Weeks of Law School*, 32 *J. LEGAL PROF.* 115, 122 (2008) (describing the use of a memo assignment to introduce students in a legal writing class to professionalism).

86. Oseid, *supra* note 80, at 110.

87. Weresh, *supra* note 78, at 429.

88. *Id.* at 430.

89. Oseid, *supra* note 80, at 123.

A more problematic concern is that legal methods faculty do not have expertise in professional responsibility and may not be comfortable teaching outside the scope of professionalism problems that arise in legal methods concepts.<sup>90</sup> An argument exists that legal methods topics are best left taught by legal methods experts, and professional responsibility topics are best left taught by professional responsibility experts. Legal methods faculty, however, often provide instruction on topics outside of legal methods because they use substantive law as a vehicle to teach the analytical process. The use of Facebook posts to teach professionalism would serve to reinforce the concepts of critical thought and reflection in the legal methods classroom. It also makes the point that professional responsibility concerns all legal professionals, not just professional responsibility gurus. Doing so would help combat creating “a system of legal education that teaches lawyers the skills of legal thinking and analysis, yet fails to teach them how to act with civility and according to high professional standards.”<sup>91</sup>

If Facebook posts cannot successfully be added to professional responsibility or legal methods courses, a third option would be to include the material in professionalism training outside the required curriculum. The American Bar Association has encouraged law schools to develop professionalism programs and develop activities that express a “genuine concern with professionalism.”<sup>92</sup> As a result, many law schools now require students, beginning in their first semester, to receive additional professionalism training outside of the curriculum through programs such as “Professionalism Day.”<sup>93</sup> Teaching professional responsibility and professionalism through Facebook posts could easily be added as a one- to two-hour part of the day. If a law school’s goal is to introduce professionalism

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90. See Oseid, *supra* note 80, at 118 (explaining that legal writing professors can competently teach values).

91. Chief Justice Warren E. Burger, *Remarks at Dedication of Notre Dame London Law Center: The Role of the Lawyer Today*, 59 NOTRE DAME L. REV. 1, 5 (July 29, 1983).

92. See Lacey, *supra* note 73, at 44.

93. For example, Widener University School of Law and Stetson Law School hold professionalism days. See *Professional Development Day*, WIDENER LAW, <http://law.widener.edu/Gateway/CurrentStudents/HarrisburgStudents/AcademicResources/ProfessionalismDay.aspx> (last visited July 29, 2012); Press Release, Stetson Law, Students Participate in Professionalism Day (Jan. 10, 2011), available at <http://www.law.stetson.edu/news/index.php/2011/01/10/students-participate-in-professionalism-day/>. In addition, some state bars and courts sponsor professionalism days. See Press Release, Flaster Greenberg PC, Flaster/Greenberg’s Philip Kirchner Takes Part in Professional Day (Nov. 3, 2011), available at [http://www.flastergreenberg.com/newsroom-news-Flaster\\_Greenberg\\_Philip\\_Kirchner\\_Takes\\_Part\\_in\\_Professionalism\\_Day.html](http://www.flastergreenberg.com/newsroom-news-Flaster_Greenberg_Philip_Kirchner_Takes_Part_in_Professionalism_Day.html).

training through Facebook posts early in law school and consistently throughout the first-year class, professionalism programs such as “Professionalism Day” are a good placement.

One disadvantage to incorporating the material outside of the curriculum is that it does not help further the goal of integrating professionalism training throughout legal education.<sup>94</sup> As one scholar wrote, “[s]imply put, something so important should be taught early and often.”<sup>95</sup> The use of Facebook posts, of course, is only a supplement, not a replacement, for the more intense professionalism training occurring at law schools. The additional review will help students learn how professionalism works in the practical world, regardless of whether the material is used in a professional responsibility course, a legal methods course, or a separate program.

#### IV. METHODOLOGY FOR TEACHING PROFESSIONAL RESPONSIBILITY AND PROFESSIONALISM THROUGH FACEBOOK POSTS

Although there are several methodologies that could be used to present the material,<sup>96</sup> because professionalism involves choices, one method that is particularly effective is the use of a multiple-choice format. Each post can be written as a factual situation that sets up the question and each question can be framed as a professionalism choice the student must make. The answer choices should include both the correct answer to the question and distracters—choices that look plausible, but are not correct. The distracters allow the professor to design wrong answers that stimulate classroom discussion and review professional points that may not have been presupposed by the correct response.

The multiple-choice format provides “a starting point for discussion”<sup>97</sup> and also helps students realize that professional responsibility often does not involve bright-line rules. Professional responsibility and professionalism dilemmas repeatedly require serious thought and reflection before choices are made. Although the multiple-choice format may unrealistically provide options for students to choose from instead of hav-

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94. See Lacey, *supra* note 73, at 44.

95. Oseid, *supra* note 80, at 112.

96. Some methods would include assigning research and reading, lecturing, developing class or group discussions, and creating online forums for discussions.

97. Oseid, *supra* note 80, at 122.

ing students generate the options themselves,<sup>98</sup> the format helps students realize that there are always choices to consider. Using the options as springboards allows students to “suggest other possible actions,”<sup>99</sup> develop a discourse about the consequences of each action, and realize that professionalism entails making deliberate choices.

When re-writing Facebook scenarios to create situations for multiple-choice questions, professors need to decide if they want to keep the posts as they are, or modify them to make the students the actors. By keeping the actors the same and not changing them to students, the class can more fully appreciate that these are true stories that have recently happened to others. As legal narratives often do, the stories the Facebook posts tell can also help students “develop empathy or sympathetic understanding for others.”<sup>100</sup> On the other hand, casting the students as the actors encourages more realistic decision-making because it helps students envision themselves in the scenarios. Making the students the actors in each factual situation is easily accomplished by eliminating the actor’s name and substituting the word “you.” This simple change helps students envision themselves as legal professionals who need to make tough choices and also encourages them to consider what other choices they might make in that situation. The Facebook stories serve as mini-role enactments for students and allow for deeper levels of analysis to form as contributions are made to class dialogue.

In addition to presenting the situations in a multiple-choice format, technology can enhance class participation and interest. Instead of simply offering each situation on paper or a computer screen, professors could employ automated response systems. These are more commonly referred to as clickers, despite the lack of them emitting a clicking sound. Clickers are useful for reviewing professionalism dilemmas because they allow professors to poll the students anonymously, and thus they “can . . . be helpful to take the temperature of the class on controversial topics.”<sup>101</sup> Because clickers allow professors to immediately show the distribution of responses through graphs, students are sometimes compelled to speak when they would otherwise not. The polling of responses “form[s] the

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98. See Susan M. Case & Beth E. Donahue, *Developing High-Quality Multiple-Choice Questions for Assessment in Legal Education*, 58 J. LEGAL EDUC. 372, 372 (2008).

99. Oseid, *supra* note 80, at 121.

100. Carrie Menkel-Meadow, *Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics*, 69 FORDHAM L. REV. 787, 791–92 (2000).

101. Beth Burkstrand-Reid et al., *Teaching Controversial Topics*, 49 FAM. CT. REV. 678, 682 (2011).

basis for discussion prompts.”<sup>102</sup> The graphs provide students with feedback on whether their responses were in the majority or the minority, and this realization will sometimes compel them to further partake in discussions. This increased participation will lead to richer debates.

The infusion of technology through the use of Facebook posts and clickers helps to create a dynamic classroom atmosphere where students can more fully reflect on the options presented in the multiple-choice questions. The questions allow students to become actively involved in the story each post tells and the evaluation of the consequences each choice presents. The format helps to compel students to explore professionalism choices they may otherwise not have considered.

## V. FACEBOOK POSTS AND SCENARIOS USED TO TEACH PROFESSIONAL RESPONSIBILITY AND PROFESSIONALISM

Each of the following situations presents a professional responsibility or professionalism issue faced by a law student, lawyer, or judge.<sup>103</sup> The situations are used to encourage critical thinking, problem solving, and reflection. They are further used to introduce the nuanced distinctions between professional responsibility and professionalism and the applicable rules for both. The scenario or post, the multiple-choice options, the teaching goals, and the results are presented for each situation.

### A. *Understanding Professional Responsibility's Theoretical Underpinnings and Three Model Rules Through Facebook*

#### Situation 1:

You are an attorney who has just finished deposing a witness. During the deposition, you discovered the witness has a Facebook account where she posted information that could help you impeach her testimony on the stand. You are debating whether you should ask your legal assistant to friend the witness on Facebook and then pass the information she gets from the witness's site on to you. Would doing so violate any Model Rules of Professional Conduct?

1. No. Other reasonable means to obtain the evidence are not available, and this is similar to the situations where lawyers are permitted to use deception to stop future unlawful violations from occurring.

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102. Barbara Pinkerton Blumenfeld, *Can Havruta Style Learning be a Best Practice in Law School?*, 18 WILLAMETTE J. INT'L L. & DISP. RESOL. 109, 140 (2010).

103. Each situation is written so the student is the actor.

2. Yes. This communication by a third party with the witness is deceptive and constitutes making a false statement of material fact to a third person.

The Philadelphia Bar Association Professional Guidance Committee tackled this issue in Opinion 2009-2 and concluded that it implicated Model Rule of Professional Conduct 4.1 on truthfulness in statements to others,<sup>104</sup> Rule 5.3 on responsibilities regarding non-lawyer assistants,<sup>105</sup> and Rule 8.4 on misconduct.<sup>106</sup> The committee concluded that the conduct violated Rule 8.4(c):

because the planned communication by the third party with the witness is deceptive. It omits a highly material fact, namely, that the third party who asks to be allowed access to the witness's pages is doing so only because he or she is intent on obtaining information and sharing it with a lawyer for use in a lawsuit to impeach the testimony of the witness.<sup>107</sup>

The committee further concluded that the lawyer would be responsible for the conduct even though he was not the one friending the witness and the conduct would “constitute[ ] the making of a false statement of material fact to the witness.”<sup>108</sup> The correct answer to Situation 1 is option two.

In arriving at its decision regarding deception, the committee reviewed and attempted to distinguish the acts of deception that have been permitted in scenarios involving civil rights and intellectual property rights violations “where the lawyer believes a violation is taking place or

104. Phila. B. Ass'n Comm. on Prof'l Guidance, Advisory Op. 2009-02 (2009), available at [http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/Opinion\\_2009-2.pdf](http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/Opinion_2009-2.pdf) [hereinafter Phila. B. Ass'n, Advisory Opinion 2009-02]. Model Rule of Professional Conduct 4.1 states, “In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person.” MODEL RULES OF PROF'L CONDUCT R. 4.1 (2009).

105. Phila. B. Ass'n, Advisory Op. 2009-02, *supra* note 104, at 2. Rule 5.3 states, With respect to a nonlawyer employed or retained by or associated with a lawyer: . . . (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved.

106. *Id.* Rule 8.4 states, “It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

107. *Id.* at 3.

108. *Id.* at 4.

is imminent, other means are not available to obtain evidence and rights of third parties are not violated.”<sup>109</sup> The committee contrasted this allowance of deception to states that have endorsed the ban of deception as an absolute.<sup>110</sup>

Teaching this situation first or early on in the semester allows professors to introduce some philosophical and theoretical underpinnings to the study of professionalism in a straightforward manner. First, the concepts of monism and pluralism can be presented in a non-minatory fashion to students who lack philosophical training. Simply put, monism ranks “values that are at play in practical reasoning. It requires that the values can be compared so that one of the items can be said to be better than, worse than, or equal to the other in terms of whatever comparison is relevant.”<sup>111</sup> The three implicated rules allow the professor to introduce, albeit at an extricate level, the ranking of the rationale for forbidding the conduct. Option one, which opens the door to a discussion of the committee’s review of states’ opposing approaches to deception, also allows the concept of monism to be explored at a deeper level and the idea of pluralism to be introduced. Pluralism recognizes that ethics “generate a plurality of moral norms, which frequently stand in opposition, and which sometimes cannot be compared or ranked against one another.”<sup>112</sup> Forbidding deception seems like a simple enough idea, i.e., honesty is valued, whereas dishonesty is not. Carving exceptions to this rule for civil rights and intellectual property violations introduces the idea that perhaps sometimes ethics clash and cannot easily be juxtaposed.

Second, the examination of deception through this Facebook situation allows the haughty ideas of consequentialism and deontology to be introduced in a concrete fashion and attached to a realistic problem instead of being examined through a theoretical lens. Consequentialists focus on the end result. Although consequentialists do not necessarily believe that ends always justify the means,<sup>113</sup> most consequentialism theories are based on the notion that the right answer in an ethics debate is based on consequences.<sup>114</sup> Deontology, on the other hand, is “the school

109. *Id.*

110. *See generally id.* at 5.

111. W. Bradley Wendel, *Value Pluralism in Legal Ethics*, 78 WASH. U. L. Q. 113, 116 (2000) (discussing the diverse professional obligations of lawyers and how these values conflict to create ethical dilemmas).

112. *Id.* at 117.

113. Andrew B. Ayers, *The Lawyer’s Perspective: The Gap Between Individual Decisions and Collective Consequences in Legal Ethics*, 36 J. LEGAL PROF. 77, 96 (2011).

114. *See generally id.* at 96–97 (looking at legal ethics from the perspective of the policymaker and the practitioner).

of ethics that focuses on the inherent rightness or wrongness of actions themselves, as opposed to the correctness or incorrectness of the consequences of the actions.”<sup>115</sup> The opinion’s review of states’ different theoretical approaches to deception can introduce students to the notion that their different philosophies can lead to different results and there are not always right and wrong answers to professional responsibility issues.

An examination of whether or not an attorney can have a third party friend a witness on Facebook to obtain impeachment evidence can serve two different goals depending on when the situation is used in class. If it is the first Facebook situation examined, it can introduce philosophical concepts that are often discussed preliminarily in professional responsibility courses but removed from problems later encountered in the course. This union of theory and practice will help students appreciate the ideas more readily because it will give them pause early on to reflect on their own theoretical leanings. If the situation is used later in the course, it can be used to more fully demonstrate the model rules relating to misconduct, false statements, and responsibilities toward non-lawyer assistants. Of course, depending on scope and coverage issues, this Facebook situation could also be used in legal methods or as part of a professionalism program to achieve either of the two goals.

*B. Understanding the Real Meaning of Candor to the Court and the Importance of Knowing Which Laws Apply*

Situation 2:

You are a judge presiding over a civil case. The attorney representing one of the parties requests a continuance because of a death in her family. You grant the continuance. You then recall that you are friends with that attorney on Facebook and you check her Facebook page for an update on how she is doing. You discover that while attending the funeral, she uploaded pictures of herself going out and drinking during the entire week of the continuance. When she returns, she requests another continuance. You take the following action:

1. Deny her request for a second continuance, present her with incriminating print outs of her posts, and report her behavior to her senior partner.

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115. Deborah Paruch, *From Trusted Confidant to Witness of the Prosecution: The Case Against the Recognition of a Dangerous-Patient Exception to the Psychotherapist-Patient Privilege*, 9 U. N.H. L. REV. 327, 332 (2011) (citing Paul S. Appelbaum, *Privacy in Psychiatric Treatment: Threats and Responses*, 159 AM. J. PSYCHIATRY 1809, 1810–11 (2002)). This article discusses the school of deontological thought in relation to the psychotherapist-patient privilege problem. *Id.*

2. Deny her request for a second continuance, remove yourself from being a Facebook friend, but take no further action. As a judge, you should not be friends with an attorney who appears before you in court because it creates an appearance of impropriety.

The judge denied the attorney's second request and reported her behavior to her senior partner<sup>116</sup> because it potentially violated Model Rule of Professional Conduct 3.3 requiring candor to the court<sup>117</sup> and Rule 3.2 requiring lawyers to "make reasonable efforts to expedite litigation consistent with the interest of the client."<sup>118</sup> The correct answer to Situation 2 is option one.

Although this post could be used solely to introduce Article 3 of the Model Rules of Professional Conduct regarding advocates' duties to the court, it could also be used to enter a broader discussion regarding professional behavior, precepts, and Facebook. Many students will read this post and will form the viewpoint that the lawyer used Facebook inappropriately and carelessly. They will say it was stupid of her to post the pictures. From this initial reaction, the professor can segue into a larger discussion on whether the problem was really with the Facebook post, or whether it was with the request for a week's continuance, which was less than honest and delayed the case. The posting of the pictures on Facebook did not potentially run afoul of any duties the advocate owed the tribunal. Although some would like to say that her downfall was her use of Facebook, it was not. Her mistake was potentially lying to the court. Her use of Facebook is what allowed the judge to uncover her lie.

In Texas, the state where Situation 2 occurred, the Committee on Judicial Ethics has not spoken about judges using social networking sites. As a result, Texan judges take varied approaches from not using Facebook at all to using it as a tool of the trade. The judge who was involved in Situation 2 friends all lawyers who ask her in an effort to appear impartial.<sup>119</sup> Another judge in Texas actively uses Facebook on her

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116. John Schwartz, *A Legal Battle: Online Attitude vs. Rules of the Bar*, N.Y. TIMES (Sept. 12, 2009), [http://www.nytimes.com/2009/09/13/us/13lawyers.html?\\_r=1](http://www.nytimes.com/2009/09/13/us/13lawyers.html?_r=1) (last visited Dec. 31, 2012).

117. "A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." MODEL RULES OF PROF'L CONDUCT R. 3.3 (2009).

118. MODEL RULES OF PROF'L CONDUCT R. 3.2 (2009).

119. See Molly McDonough, *Facebooking Judge Catches Lawyer in Lie, Sees Ethical Breaches #ABA Chicago*, ABA J. L. NEWS NOW (July 31, 2009), [http://www.abajournal.com/news/article/facebooking\\_judge\\_catches\\_lawyers\\_in\\_lies\\_crossing\\_ethical\\_lines\\_abachicago/](http://www.abajournal.com/news/article/facebooking_judge_catches_lawyers_in_lies_crossing_ethical_lines_abachicago/) (last visited Dec. 30, 2012).

job by requiring all juveniles on probation to friend her so that she can monitor their online behavior.<sup>120</sup>

A class discussion of Situation 2 and the two options presented can lead students to dialogue on the importance of understanding which rules apply and to whom. Judges follow state or federal rules of judicial conduct.<sup>121</sup> Some states, like Texas, have yet to tackle judges' use of Facebook; however, states that have spoken on the issue disagree. The opinions released by the ethics committees of Florida, New York, and South Carolina are illustrative because they proscribe divergent behavior.

In 2009, the Florida Supreme Court Judicial Ethics Advisory Committee concluded that judges cannot be Facebook friends with lawyers who appear before them in court because doing so would violate Canons 2B and 5A of the Florida Code of Judicial Conduct.<sup>122</sup> Canon 2B states: "A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge."<sup>123</sup> Canon 5A states, "A judge shall conduct all of the judge's extra-judicial activities so that they do not . . . cast reasonable doubt on the judge's capacity to act impartially as a judge."<sup>124</sup> The Advisory Committee opined that a lawyer "who may appear before the judge as 'friends' on a judge's social networking page reasonably conveys to others the impression that these lawyer 'friends' are in a special position to influence the judge."<sup>125</sup>

When addressing the same issue, the New York Advisory Committee on Judicial Ethics could not "discern anything inherently inappropriate about a judge joining and making use of a social network."<sup>126</sup> The committee reasoned that judges could socialize in person with attorneys who appear before them in court and that there was not anything "per se unethical about communicating using other forms of technology, such as

120. Miriam Rozen, *Social Networking Helps Judges Do Their Duty*, *MIAMI DAILY BUS. REVIEW*, Aug. 26, 2009, at A3.

121. The ABA also has a Model Code of Judicial Conduct. Most states have adopted codes of judicial conduct modeled after the model code. See STEPHEN GILBERS ET AL., *REGULATION OF LAWYERS, STATUTES AND STANDARDS* 659–708 (Concise ed. 2012).

122. See Fla. Judicial Ethics Advisory Comm., Op. 2009–20 (2009), available at <http://www.jud6.org/legalcommunity/legalpractice/opinions/jecopinions/2009/2009-20.html> (last visited Dec. 30, 2012).

123. *Id.*

124. *Id.*

125. *Id.*

126. N.Y. Advisory Comm. on Judicial Ethics, Op. 08–176 (2009), available at <http://www.nycourts.gov/ip/judiciaethics/opinions/08-176.htm> (last visited Dec. 30, 2012).

a cell phone or an Internet web page.”<sup>127</sup> The committee focused on how judges use social networking sites, instead of whether they may ethically do so.<sup>128</sup> It “urge[d] all judges using social networks to, as a baseline, employ an appropriate level of prudence, discretion and decorum in how they make use of this technology.”<sup>129</sup>

South Carolina’s Advisory Committee pushed this viewpoint further by seemingly encouraging social networking by judges. Referring to commentary of Canon 4A,<sup>130</sup> the Committee reasoned:

complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives. Allowing a Magistrate to be a member of a social networking site allows the community to see how the judge communicates and gives the community a better understanding of the judge.<sup>131</sup>

These various approaches and philosophies help students understand the importance of precedent and statutory interpretation. The rules and their statutory interpretations differ, not only for lawyers and judges, but also from state to state. Although Florida, New York, South Carolina, and Texas have substantially similar judicial codes of conduct, these codes have been interpreted differently and have resulted in diverse approaches to judges’ Facebook accounts. Without being overwhelmed by nuanced distinctions in court structures and judicial reasoning, Situation 2 helps students grasp the importance of knowing what rules are applicable where and how professionalism opinions are formed, in an easily accessible manner.

### *C. Understanding Divergent Viewpoints, Civility, Credibility, and Online Personas’ Impact on Professionalism Ideals*

#### Situation 3:

Your friend has posted his concern that the law school you both attend is advancing a dean candidate he does not believe should be a finalist in a dean search. He receives a response from a professor who

127. *Id.* (internal citations omitted).

128. *Id.*

129. *Id.*

130. S.C.A.C.R. 501, Canon 4.A. (1990), available at <http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=501.0&subRuleID=Canon%204&ruleType=APP> (last visited Dec.30, 2012).

131. S.C. Advisory Comm. on Standards of Judicial Conduct, Op. 17-2009 (2009), available at <http://www.judicial.state.sc.us/advisoryOpinions/displayadvopin.cfm?advOpinNo=17-2009>.

states that the public post will not help the situation. Believing that the professor's response opens the door for further discussion, you respond by criticizing the professor for not doing stronger service at the school, not advancing further in his career, and for driving an expensive sports car. Several Facebook friends respond that your post was personal and inappropriate. You take the following action:

1. Respond with a post stating that the professor started the shit storm and further criticize him for not responding.
2. Do nothing. Nothing in your post was dishonest, and the professor opened the door for criticism by posting an initial response.
3. Apologize privately and publicly to the professor for the personal nature of the attack.

Situation 3 evolved from an initial one-sentence post criticizing the advancement of a dean candidate at a law school. It garnered over thirty comments by professors and students that bring professionalism and privacy issues to the forefront of legal education.<sup>132</sup> The first and third options reflect actions and comments made by different law students, while the second option was implied in some of the comments. The student who offered personal criticisms of the professor beyond the parameters of the initial post publicly apologized by commenting on the same Facebook thread and also privately apologized to the professor. The correct answer to Situation 3 is option three.

This example explicitly demonstrates how Facebook posts make what were once considered private matters much more public. The Y generation's exhibitionist leanings<sup>133</sup> certainly ring true through this series of posts. It signals that, at least some, if not many, law students are more comfortable with openly discussing what were once considered private matters. Yet, not all legal professionals will condone exposing an institution's private matters. Indicative of this intolerance, the string of posts

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132. The website address with the Facebook posts is on file with the author. The actual Facebook posts were not viewed by the author on Facebook but on a different website and although they appear valid, the authenticity of the posts cannot be assumed. The posts make good teaching tools for professionalism, but the students should be told that they might not be actual posts.

133. See Janna Quitney Anderson & Lee Rainie, *Millenials Will Make Online Sharing in Networks a Lifelong Habit*, PEW RESEARCH CTR. (July 9, 2010), [http://pewinternet.org/~media/Files/Reports/2010/PIP\\_Future\\_Of\\_Millennials.pdf](http://pewinternet.org/~media/Files/Reports/2010/PIP_Future_Of_Millennials.pdf) (discussing personal disclosure and information sharing among the Millennial generation on the Internet). See also Cecilia Kang, *Parting With Privacy With a Quick Click*, WASH. POST, May 8, 2011, available at [http://www.washingtonpost.com/business/technology/parting-with-privacy-with-a-quick-click-for-adolescents/2011/04/28/AF2gSjTG\\_story.html](http://www.washingtonpost.com/business/technology/parting-with-privacy-with-a-quick-click-for-adolescents/2011/04/28/AF2gSjTG_story.html) (discussing the ease with which individuals cede privacy on social media sites).

also purportedly<sup>134</sup> included an entry by another faculty member suggesting that Facebook was not the proper forum for this discussion.

Situation 3 provides students with an opportunity to discuss the concepts of professionalism as they relate to privacy on two levels: (1) whether the initial post publicly criticizing the school for interviewing a particular dean candidate was unprofessional; and (2) whether the public response criticizing the professor was unprofessional. In examining both, law students' expectations of privacy when using Facebook can be discussed.

The interpretation to whether the initial post was unprofessional may depend on the generation of the person being asked. Generation Yers have a propensity to more assertively "question authority" and to also have high expectations of those in authority.<sup>135</sup> This attitude and approach to dealing with those in charge suggest that most Generation Yers would not consider the initial post unprofessional. The generations that are most likely to have authority over the Y generation are the Baby Boomers and the X generation,<sup>136</sup> and their responses to the post would likely diverge. Many in the X generation would also likely suppose that there was nothing wrong with the initial post because they too question authority, albeit to a lesser extent.<sup>137</sup> Most Baby Boomers, however, would believe the original post was unprofessional because they tend to be more loyal to those in charge and prefer to have face-to-face conversations.<sup>138</sup> Discussing these different viewpoints in class allows students to more fully appreciate that not everyone shares the same definitions of professionalism.

The reply to whether the public response by the student was unprofessional, however, is not as dependant on generation, as is denoted by the number of other students who admonished the student for the personal nature of the attack. The personalization of the attack would make many consider it unprofessional because it (1) purportedly lacked in civility; and (2) brought into doubt the student's credibility.

Civility "generally refers to the kinds of virtues associated with good citizenship."<sup>139</sup> In explaining sociologist Philip Selznick's work, Professor

134. *See supra* note 132.

135. Sally A. Kane, *A New Generation of Leaders*, 31 *LEGAL MGMT.* 34, 38 (2012).

136. Baby Boomers were born between 1946 and 1963. Generation X was born between 1964 and 1981. Weresh, *supra* note 15, at 358–59.

137. Kane, *supra* note 135, at 38.

138. *Id.* at 36, 38.

139. Mark Neal Aaronson, *Be Just To One Another: Preliminary Thoughts on Civility, Moral Character, and Professionalism*, 8 *ST. THOMAS L. REV.* 113, 116 (1995–1996).

Mark Aaronson described civility in 1995 as a “community’s commitment to dialogue as the preferred means of social decision”<sup>140</sup> and advised that “rational deliberation with others”<sup>141</sup> has historically been an important part of communication and good citizenship for lawyers.<sup>142</sup> Interestingly, the Facebook community provides a different venue for students to dialogue than the general public could have imagined in 1995. The initial post encourages students to reflect on whether civility should continue to be described in this manner, or whether the size and type of community Facebook now provides makes it an outdated ideology. Furthering this discussion, the student’s subsequent response disparaging the professor pushes the class to contemplate the meaning of “rational deliberation,” generally, as it applies to Facebook posts and whether the two are different.

The subsequent response also negatively impacts the student’s credibility because of its personal nature. The personalization is adversarial excess. Because the post discusses the professor instead of responding to the professor’s words, the student does not make a persuasive argument and fails in establishing an image of an effective advocate. Situation 3 allows law students to consider how legal professionals behave and how a lawyer’s credibility impacts the ability to effectively represent clients and the profession.

Situation 3 also impels the class to consider the public nature of the dispute and how far reaching a Facebook audience can go. The quasi-confidential nature of Facebook may lure some into a false sense of security, thinking that the audience is somehow limited. Privacy settings on Facebook, however, do not ensure that posts are confidential. “When a user posts information on another user’s profile or comments on another’s post, that information is subject to the other user’s privacy settings.”<sup>143</sup> In addition, other forms of technology increase privacy threats. For example, Situation 3 was found online on a site where it appeared that pictures were taken of the Facebook posts and then loaded onto the computer and shared. Explaining to students where the information was located allows professors, especially in a legal methods course, to focus on how large an audience might be and to further explain the importance of evaluating the trustworthiness of the authority and its impact on credibility.

Finally, the three options presented allow the class to discuss the appropriateness of each response. The student’s professed actual re-

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140. *Id.* at 116–17.

141. *Id.* at 117.

142. *Id.*

143. Vinson, *supra* note 3, at 370–71.

sponse was option three: he made a private apology to the professor and a more public apology on Facebook. Option two, a fabricated result which has the student take no further action because the post was factual in nature and given in response to the professor's post, allows students to consider the truth's role in professionalism and whether the professor acted professionally by publicly commenting. Option one, which was allegedly not fabricated, but rather was posted by a different student, criticized the professor more harshly and also included more extensive use of profanity. This option allows students to consider the image formed in their minds about the writer of the post and whether the poster's professionalism should be judged by his online persona. Option one also opens the door for a discussion of whether opinions regarding others' behavior are, rightly or wrongly, influenced by Facebook posts and whether this should affect online behavior.

*D. Understanding Preservation of Evidence, Due Diligence, Privacy, and the Extensive Scope of Professional Responsibility*

Situation 4:

You are an attorney representing a widower in a wrongful death action brought for his spouse's fatal car accident. As the case is proceeding, you learn that shortly after his wife's death, your client posted pictures on his Facebook account of him drinking a beer and wearing an "I love Hot Moms" t-shirt. You are concerned that this and other pictures he posted could prejudice his case. Should you advise him to remove the pictures from his Facebook account?

1. Yes. Lawyers can and should seek to limit the damage done to their clients' cases.

2. No. Removing the pictures would spoil evidence. You cannot advise him to remove material having potential evidentiary value, even if it is damaging to him.

Removing the evidence would potentially violate Model Rule of Professional Conduct 3.4, instructing that a lawyer "shall not counsel. . .another person" to "alter, destroy, or conceal. . .material having potential evidentiary value."<sup>144</sup> A lawyer in Virginia was fined over half a million dollars for having his legal assistant instruct a client to remove the T-shirt picture and "please, please clean up your Facebook and Mys-

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144. Model Rule of Professional Conduct 3.4 requires fairness to opposing parties and counsel and states, "[a] lawyer shall not: (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act." MODEL RULES OF PROF'L CONDUCT R.3.4 (2009).

pace!” in an e-mail.<sup>145</sup> His client had to pay an additional \$180,000 for following his lawyer’s instructions.<sup>146</sup> The lawyer, facing disciplinary action, voluntarily quit his job as a managing partner at the largest personal injury law firm in Virginia.<sup>147</sup> The correct answer to Situation 4 is option two.

Situation 4 can be used to introduce or further develop Model Rule of Professional Conduct 3.4, but its real value is in serving as a segue to much larger conversations with the class. Situation 4 lends itself to classroom dialogue on whether (1) lawyers should advise clients to beware of what they display on Facebook; (2) their due diligence duties as attorneys include researching Facebook and other social media sites for evidence; and (3) their own posting practices have larger implications for their careers.

First, Situation 4 is a springboard for a class discussion on the larger implications Facebook has on lawyer/client interactions. Although lawyers cannot counsel clients to destroy or hide evidence, students should consider how far lawyers can go in warning clients on their use of Facebook accounts and whether the caveats change during the course of their clients’ cases. Certainly, lawyers can recommend that clients make their Facebook pages private, but they also need to advise clients to disclose the relevant information available on those pages.<sup>148</sup> During the course of a trial, attorneys should not recommend that clients remove existing relevant information from Facebook if that material cannot be retrieved.<sup>149</sup> Of course, that does not mean that clients have no privacy rights. Situation 4 allows students to wrestle with the proper balance of protecting clients’ privacy rights and disclosing information.

The flipside of the ethics coin considers lawyers’ use of Facebook to gather information for their cases. Courts are recognizing that the use of social media to collect information on the opposing side<sup>150</sup> and jurors<sup>151</sup> is

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145. John Patzakis, *Facebook Spoliation Costs Lawyer \$522,000; Ends His Legal Career*, NEXT GENERATION EDISCOVERY LAW & TECH BLOG (Nov. 15, 2011, 9:10 PM), <http://blog.x1discovery.com/2011/11/15/facebook-spoliation-costs-lawyer-522000-ends-his-legal-career/>.

146. *Id.*

147. *Id.*

148. See Dan Nabel, *Ethics of Advising Clients to Make Social Networks Private*, L. TECH. NEWS (Oct. 28, 2010), <http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202474028296>.

149. See Franco P. Tarulli, *The Ethics of Advising Clients to Make Social Networks Private*, ETHICAL LAW. (Nov. 1, 2010), <http://tarullilaw.com/ethicallawyer/2010/11/01/the-ethics-of-advising-clients-to-make-social-networks-private/>.

150. See Scott R. Grubman & Robert H. Snyder, *Web 2.0 Crashes Through the Courthouse Door: Legal and Ethical Issues Related to the Discoverability and Admissi-*

not only acceptable, but perhaps even desirable. For example, divorce lawyers and criminal defense attorneys often find themselves advocating against the introduction of photos found on Facebook. Divorce attorneys routinely investigate Facebook sites to gather evidence that, if relevant and admissible, is used in divorce proceedings as evidence of adultery.<sup>152</sup> District attorneys gather information from Facebook that is used in trial proceedings and to enhance sentencing.<sup>153</sup> In like fashion, the New York City Bar Association issued a 2012 opinion that lawyers can research jurors on social media sites, so long as no ex parte communications occur between the lawyer and the jurors.<sup>154</sup> The opinion noted that “clients now often expect that attorneys will conduct such research.”<sup>155</sup> Situation 4 can be used to help students consider whether online communications are the same as other forms of communications and the impact professional responsibility rules have on their online, due diligence duties. For students who are not technologically savvy, it may help them realize they will most likely need to learn how to research and use social media sites in their law practices.

Finally, Situation 4 can lead students to reflect on their Facebook posting practices and whether their choice of careers as lawyers impacts their online personas. Although many students would most likely prefer to think of their online lives as private and unaffected by career status, Situation 4 can help them realize that their online lives are intermixed with their professional lives in ways they might not have appreciated previously. The far-reaching nature of professional responsibility and professionalism obligations can be explored through the use of examining what happens to others when they post personal material on Facebook.

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*bility of Social Networking Evidence*, 37 RUTGERS COMPUTER & TECH. L.J. 156, 165–81 (2011) (discussing how social networking sites are currently being used in court proceedings).

151. See Adam J. Hoskins, Note, *Armchair Jury Consultants: The Legal Implications and Benefits of Online Research of Prospective Jurors in the Facebook Era*, 96 MINN. L. REV. 1100 (2012) (discussing the use of the Internet by attorneys to research prospective jurors).

152. See Leanne Italie, *Divorce Lawyers: Facebook Tops in Online Evidence in Court*, USA TODAY, June 29, 2010, available at [http://www.usatoday.com/tech/news/2010-06-29-facebook-divorce\\_N.htm](http://www.usatoday.com/tech/news/2010-06-29-facebook-divorce_N.htm).

153. See Eric Tucker, *Facebook Used as Character Evidence, Lands Some in Jail*, USA TODAY, July 16, 2008, available at [http://www.usatoday.com/tech/webguide/internetlife/2008-07-19-facebook-trials\\_N.htm](http://www.usatoday.com/tech/webguide/internetlife/2008-07-19-facebook-trials_N.htm).

154. N.Y.C. B. Ass’n, Formal Op. 2012-2 (2012), available at <http://www.nycbar.org/ethics/ethics-opinions-local/2012opinions/1479-formal-opinion-2012-02>.

155. *Id.*

## VI. DRAWBACKS TO USING FACEBOOK POSTS TO TEACH PROFESSIONAL RESPONSIBILITY AND PROFESSIONALISM

The advantages to using Facebook posts to teach professional responsibility and professionalism are covered throughout this article. Facebook posts allow professors to present stories students can easily relate to because the students can envision themselves in similar scenarios. The posts present opportunities for students to consider professional responsibility rules and theoretical underpinnings; professionalism and ideals; and the similarities and distinctions among them. They provide a starting point for legal discourse in the classroom in a way dated appellate cases in law school textbooks often cannot do because they lack the draw that current material carries with it. Of course, the newness of the material also comes with drawbacks. First, the examples can prove to be a bit academically shallow. Second, as technology changes, the freshness of the material can fade.

### *A. Do Facebook Posts Focus Too Much on the More Common, Practical Professionalism Problems and Ignore Deeper Professional Responsibility Issues?*

Maybe Facebook posts ignore deeper professional responsibility issues, but “common everyday legal ethics problems”<sup>156</sup> are what most students will face in their legal careers, and legal educators are being urged to consider the practical training of students.<sup>157</sup> A multitude of reports on legal education advocate for “greater attention to the practice experience of lawyers within legal education, the development of reflective judgment, and an exploration of the moral experience of lawyering.”<sup>158</sup> Facebook posts put a focus on the “importance of judgment and reflection, and the ethical underpinnings”<sup>159</sup> of law practice in a context students can readily connect to their everyday lives.

These examples should not be used to supplant other teachings on professional responsibility. Rather, they are offered as one more piece of the arsenal professors can draw upon to infuse professionalism throughout law students’ legal education. By incorporating the technology and the language students use in everyday life into the classroom, professors will help the Y generation understand that professionalism impacts them

156. Menkel-Meadow, *supra* note 100, at 816.

157. See SULLIVAN ET AL., *supra* note 76, at 8.

158. Sharon L. Beckman & Paul R. Tremblay, *Foreword: The Way to Carnegie*, 32 B.C. J.L. & SOC. JUST. 215, 216 (2012) (tracing reports since the 1920s).

159. *Id.*

in ways they may have otherwise failed to realize. Theory and the larger jurisprudential issues can still be worked into discussions through carefully crafted “wrong” answers for students to consider, or these larger issues can simply be exposed through other means. The Facebook posts are primarily meant to connect students with professionalism issues in ways that traditional doctrine does not.

### *B. Will Facebook Posts Lose Their Appeal as Technology Advances?*

Yes, Facebook will most likely lose its appeal as technology advances.<sup>160</sup> The challenges for academicians wishing to use professionalism material that will call to the ever-changing generations of law students are twofold. First, professors must remain current with technology because emergent generations are growing up in a technologically filled world. Second, professors must adapt their teaching materials to keep up with the ever-changing generations so their materials do not become outdated.

Although Facebook is currently popular with Generation Y, it may already be losing some of its allure to the upcoming generation. The generation following the Y generation, commonly referred to as the Z generation or the Internet generation, was born between 1995 and 2012, and sociologists do not yet know much about it because only now are its oldest members starting to come of age.<sup>161</sup> Social media watchers know, however, that the Z generation accounted for only fourteen percent of all Facebook users in 2012.<sup>162</sup>

The Z generation is the first age band that has always known the digital world, and as a result, is more than just web savvy. The Z generation welcomes technology in all forms and as technology advances, its members embrace the changes. To keep up, professors should also embrace these changes.

The Z generation’s preference shift to texts over e-mails<sup>163</sup> is illustrative of how professors need to keep changing their teaching methods as

160. The clickers will likely lose their appeal as well; technology evolves and ages quickly.

161. See William J. Schroer, *Generations X, Y, Z and the Others*, SOC. LIBR. (Apr. 16, 2004), <http://www.socialmarketing.org/newsletter/features/generation3.htm>.

162. The range of ages for people in the fourteen percent is zero to twenty-four, and Facebook welcomes subscribers as young as thirteen. See Alissa Skelton, *Social Demographics: Who’s Using Today’s Biggest Networks*, MASHABLE SOC. MEDIA (Mar. 9, 2012), <http://mashable.com/2012/03/09/social-media-demographics/>; *Facebook Help Center, Creating an Account*, FACEBOOK, <http://www.facebook.com/help/parents> (last visited July 29, 2012).

163. See Dara Kerr, *Teens Prefer Texting Over Phone Calls, E-mail*, CNET NEWS (Mar. 19, 2012), [http://news.cnet.com/8301-1023\\_3-57400439-93/teens-prefer-texting-over-phone-calls-e-mail/](http://news.cnet.com/8301-1023_3-57400439-93/teens-prefer-texting-over-phone-calls-e-mail/).

new generations begin law school. During the last several years, legal methods professors have been updating textbooks and lesson plans to include e-mail communications, a topic rarely addressed in law school even five years ago.<sup>164</sup> Some professors have added class instruction on professionalism in e-mail communications and required students to write e-mails as objective writing assignments. The popularity of e-mail, however, is fading as the Z generation grows up with the ease and convenience of communicating through texting.<sup>165</sup> To many in the Z Generation, e-mail is the new snail mail.<sup>166</sup> The immediacy and relevance of teaching e-mail also seems to be fading as text messages gain popularity and acceptance. Although professors are not yet requiring text messages as assignments, the foreseeable future could bring with it a need for lessons on maintaining professionalism in text messages.

As technology continues to develop, professors wanting to stay current with the Z generation ought to consider seeking examples in vanguard social media services. Other social networking sites that are beginning to garner significant attention from the Z generation include Google+, Pinterest, and Reddit. Although Google+ is substantially similar to Facebook,<sup>167</sup> Pinterest and Reddit offer new platforms for professionalism missteps. For example, Pinterest “is a virtual pin board”<sup>168</sup> allowing users to “share all the beautiful things [they] find on the web.”<sup>169</sup> Recently, an attorney removed all of the photographs she pinned on the site, realizing that she may have been breaking copyright laws by posting others’ work.<sup>170</sup> Although the site is still young and only now gaining in

164. Compare JOHN C. DERNBACH ET AL., *A PRACTICAL GUIDE TO LEGAL WRITING & LEGAL METHOD* (4th ed. 2010), with JOHN C. DERNBACH ET AL., *A PRACTICAL GUIDE TO LEGAL WRITING & LEGAL METHOD* (3d ed. 2007). The fourth edition added a section on e-mails that was not in the third edition.

165. See Kerr, *supra* note 163.

166. See Martha Irvine, *Text Messaging on Rise With Young People*, WASH. POST, July 18, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/07/18/AR2006071800864.html>.

167. Privacy levels are stronger on Google+ because it allows users to choose who to share each piece of information with, and Facebook does not provide this option. See Mark Sullivan, *9 Reasons to Switch from Facebook to Google+*, PC WORLD, June 30, 2011, available at [http://www.pcworld.com/article/234825/9\\_reasons\\_to\\_switch\\_from\\_facebook\\_to\\_google.html](http://www.pcworld.com/article/234825/9_reasons_to_switch_from_facebook_to_google.html).

168. *Help: Pinning 101*, PINTEREST, <http://pinterest.com/about/help/> (last visited July 29, 2012).

169. *Id.*

170. See Alyson Shontell, *A Lawyer Who is Also a Photographer Just Deleted All Her Pinterest Boards Out of Fear*, S.F. CHRON., May 2, 2012, available at <http://www.sfgate.com/news/article/A-Lawyer-Who-Is-Also-A-Photographer-Just-Deleted-3529131.php>.

popularity,<sup>171</sup> it provides many potential professional responsibility stumbling areas. Attorneys could pin items on the site that implicate professional responsibility rules on advertisements,<sup>172</sup> confidentiality,<sup>173</sup> and the unauthorized practice of law.<sup>174</sup>

Reddit is a social news host allowing registered users to post information about most anything to the site that other users rank up or down.<sup>175</sup> Posts are varied and cover news topics, humor pieces, politics, and of course, law-related issues. Twenty-five percent of Reddit users belong to the Z generation.<sup>176</sup> Reddit's "Ask a Lawyer" page has a long disclaimer that begins with the statement "Come here to ask depersonalized, hypothetical questions of lawyers,"<sup>177</sup> and goes on to state that the "posts are for informational purposes only" and no attorney-client relationships are formed by posting or answering posts on Reddit.<sup>178</sup> The disclaimer has already been challenged by a subscriber's post questioning how duties are not formed if a person reasonably believes a relationship was formed on the site.<sup>179</sup> Professionalism issues regarding attorney advertising are also likely to arise as Reddit gains popularity because posts by attorneys describing services or successes could be interpreted as advertisements.<sup>180</sup>

The two drawbacks that arise from using Facebook posts to teach professional responsibility and professionalism are common pedagogical

171. Pinterest was launched in January 2010. Evelyn M. Rusli & Jeremy C. Owens, *2-Year-Old Pinterest Storms Social Media*, CHARLOTTE OBSERVER, Apr. 6, 2012, available at <http://www.charlotteobserver.com/2012/04/06/3157151/2-year-old.html>. As of February 2012, Pinterest had 10.4 million members. Jordan Crook, *This is Everything You Need to Know About Pinterest*, TECHCRUNCH (Mar. 14, 2012), <http://techcrunch.com/2012/03/14/this-is-everything-you-need-to-know-about-pinterest-info-graphic/>.

172. MODEL RULES OF PROF'L CONDUCT R. 7.1, 7.2 & 7.3 (2009).

173. *Id.* R. 1.6 (2009).

174. *Id.* R. 5.5 (2009).

175. See *Frequently Asked Questions*, REDDIT, <http://www.reddit.com/help/faq#Whatisreddit> (last visited July 29, 2012).

176. See Skelton, *supra* note 162.

177. *Ask A Lawyer*, REDDIT, <http://www.reddit.com/r/aal/> (last visited on July 29, 2012).

178. *Id.*

179. *Id.*

180. Attorney postings of videos to YouTube are considered advertising if they go beyond being educational, entertaining, or informational. Just displaying contact information, however, is not always considered advertising. See Debra L. Bruce, Guest Blogger, *12 Social Media Ethics Issues for Lawyers*, SOLO PRAC. U. BLOG (Mar. 11, 2010), <http://solopracticeuniversity.com/2010/03/11/a-dozen-social-media-ethics-issues-for-lawyers/>.

concerns for professors who use new materials. Because new material is still developing, yet aging at the same time, it needs to be supplemented to add depth, while it simultaneously needs to be updated to remain current. The inherent disadvantages of the newness, however, are easily offset by the advantages of using the new material because it ultimately increases the students' interest, level of engagement, and learning.

## CONCLUSION

Using posts from Facebook to teach professional responsibility and professionalism puts a new twist on an old idea while capitalizing on the importance of storytelling in legal education. Clinical law teachers have been using "real" cases to teach lawyering skills for years, and some have even used them to teach legal ethics.<sup>181</sup> By using real, ongoing cases, clinical professors have been able to teach rule application in a non-mechanistic way. Through the use of actual Facebook posts presented with multiple-choice options focused on teaching professional responsibility and professionalism, other professors can also shape disquisitions and help students realize what ethics reasoning and making choices truly entails.

Using Facebook posts to teach professionalism draws upon the power storytelling has on learning. Simple stories help professors avoid the pedantic nature sometimes associated with professional responsibility teachings because they provide compelling examples that allow students to think beyond the rules as they evaluate each situation. The validation for using actual Facebook posts for teaching stems from the assumption that teaching through storytelling enables students to do more than memorize and apply abstract rules. It illuminates the decision-making process and encourages students to explore attorney dilemmas and ethical discretion in a fresh, yet familiar, context.

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181. Menkel-Meadow, *supra* note 100, at 787–91.