

#engage

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time
for
judges
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BY STEPHEN LOUIS A. DILLARD

The judiciary is, in many respects, the least understood branch of government.

The law can be mysterious and a bit frightening to those who do not work in the legal profession. Indeed, the imagery often associated with the judiciary is that of a wise but entirely detached body of individuals who sit on elevated benches, adorn themselves in majestic black robes (with gavels in hand), and dispassionately rule on the various and sundry disputes of the day (and do so largely out of the public eye). And in some respects, this may very well be an accurate understanding of the judiciary's relationship with the public.

I think we can do better.

Judges are public servants, whether they are appointed or elected. And judges are charged with serving their fellow citizens during their most vulnerable moments:

- When someone's liberty, perhaps even his or her life, is at stake in a criminal proceeding.
- When deciding the scope of, severely restricting, or even terminating parental rights.
- When resolving business disputes that may very well make or break a company or an individual.

These are just a few examples of serious matters being decided by our judges on a daily basis. In my view, we judges owe it to our fellow citizens to educate them about, among other things, the role of the judiciary in our tripartite system of

government (as well as the separation of powers), our system of appointing and electing judges, the training judges receive, the structure and operation of our judicial system, the judicial decision-making process, and what rights "we the people" have in relation to the judicial system (e.g., the right of the public to witness courtroom proceedings).

In short, I think judges have a duty to educate those we serve about the important role the judiciary plays in their daily lives. But in order to do that, we need to rethink the way we engage with the public.

In my view, reimagining the judiciary's engagement with those we serve begins with putting to rest the notion that it is a good idea for judges to essentially separate themselves from the rest of society. We have come to expect this from our judges. We have come to believe that judges are somehow different from other public officials. And in some respects, that is true. Judges should not engage in partisan politics or in any other behavior that would call into question their ability to be fair-minded to those who appear before them. Judges also do not have the luxury of acting in a politically expedient manner in difficult cases. We are often called upon to make decisions that will almost certainly prove to be politically unpopular. But as a judge, that is your job: To follow the law, regardless of the consequences you may suffer for doing so. Suffice it to say, these unique duties and attributes of judges need to be promoted and preserved at all costs. The rule of law and the independence of the judiciary depend upon it.

Unfortunately, many judges have done more than just disengage from political life. They also have felt compelled to entirely withdraw from the public eye. I think this is deeply unfortunate. The

pernicious perception that a judge must remain cloistered in his or her chambers in order to foster or maintain judicial independence needs to change.

I'll say it again: Judges are public servants. They are accountable to the people, and they need to be accessible to the people, so long as they do so in a manner that is consistent with their oath of office and the code of judicial conduct. There is no reason that a judge cannot maintain the integrity of his or her office and engage the public in a more meaningful sense. But in order to do this, we — especially those of us in the legal profession — need to get past our collective unease with technology and embrace the social-media platforms that are increasingly used by those we serve. Indeed, there is an increasing desire (some might even say demand) for a far greater degree of engagement by the judiciary with the public.

There are several ways for judges to interact with the public outside of the courtroom. And to be sure, some of the more traditional methods of engagement are still important. Judges need to be actively involved in their local community by speaking to students and community organizations on a regular basis, as well as attending local events where they will have an opportunity to stay involved in the lives of those they serve. Judges will also, naturally, spend a great deal of time with law students and lawyers. This too is time well spent. Judges should be leaders of their respective legal communities, and set the highest possible standards for lawyers to emulate.

But the reality is that there are only so many events that a judge can attend, only so many hands that a judge can shake, and only so many hours in the day. After all, a judge does still have to perform his or her

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judicial duties, which are often extraordinarily difficult and time consuming. So, how can a judge effectively communicate and build relationships with as many of his or her constituents as possible? This is the exact question I asked myself at the beginning of my judicial career. More specifically, and personally, how can an intermediate appellate judge, who is a statewide public official, even begin to meaningfully engage with over ten million constituents? This, in my view, is where technology and social media can be of a tremendous benefit to the public. Indeed, the ability of a judge to use social media to directly reach and communicate with his or her constituents is nothing short of revolutionary.

But the legal community has been slower than others to embrace the benefits and transformative nature of technology. This is especially true when it comes to judges actively using social-media platforms.

One of the primary concerns often voiced by critics of judges using social media is that it is demeaning to the office. I do not consider this argument particularly persuasive. To be sure, a judge can demean his or her office through the use of social media, just as he or she can do so at a local bar event by engaging in unprofessional behavior. The difference is that an unprofessional remark on social media by a judge is far more likely to receive widespread attention than a

similar comment made at an event in front of only a handful of people. Indeed, this type of “viral” incident can and will harm the reputation of that judge and, no doubt, the confidence that many have in the judiciary. Nevertheless, the fact that there is the potential for some judges to embarrass themselves on social media is not, in my view, a compelling reason to support a blanket ban of all judges doing so. One could even argue that there is some benefit to having the missteps of judges documented on social media, just as the missteps of other elected officials are documented. Transparency reveals what it reveals, and it is not always going to be pretty. But knowing more about our public officials’ actions and beliefs allows us to make informed decisions on Election Day. And that, in my view, is a good thing.

That said, if you are a judge who is considering using social media to communicate with your constituents, it is important to have a clear idea of what you wish to convey to those you serve.

Some judges take a very conservative approach to social media, and simply use it to highlight campaign and public appearances. I did a good bit of this when I first became a judge, and there is nothing wrong with getting a certain degree of comfort with a platform before moving beyond this basic approach. But in doing so, you need to be aware that you are not

likely to gain much of a following or establish a true online presence if you are unwilling to engage the public in a more personal way.

There are, of course, any number of social-media platforms that a judge can use to communicate with his or her constituents: Facebook, Twitter, Tumblr, YouTube, LinkedIn, Snapchat, to name just a few. A judge can also post entries on a blog detailing life on the campaign trail, upload videos of speeches, live-stream events, display personal and professional photographs, etc. The key, of course, is for the judge to use good judgment.

One judge who has done an excellent job of communicating with his constituents (and others) using social media is Justice Don Willett of the Supreme Court of Texas, who has almost 70,000 followers on Twitter (he is also the editor of this edition of *Judicature*). He is, by any objective measure, the “most avid judicial tweeter in America,” which he likens to being “the tallest munchkin in Oz.”

Justice Willett’s tweets are smart, humorous, and informative; he has quickly established a national reputation on social media as a result of his ability to strike the proper balance between accessibility and appropriate judicial decorum. My colleague on the Georgia Court of Appeals, Judge Carla McMillian, is another good example.

I also seek to strike the balance between accessibility and decorum on a daily basis, and I have clearly defined goals for my Twitter account, which is my preferred social-media platform.

1 ● My primary goal is to explain to the citizens I serve exactly what we do as judges on the Court of Appeals of Georgia. Now, it may very well be that the vast majority of the citizens I serve are not interested in learning more about my court. But for those who are interested, I want to educate them about what we do on a daily basis; how many appeals we handle; the types of cases that come before our court; how many times we hold oral argument, what happens at oral argument, how cases are assigned, how cases are circulated, how cases are decided, our constitutional deadlines, the inner workings and culture of our court, and the like.

I also want to share my experiences as an appellate judge with those who choose to follow me on social media. If I attend the State of the State, State of the Judiciary, a judicial swearing-in ceremony, or any other event that I think may be of interest to my constituents, I will often tweet photos or videos to allow them to experience what I am experiencing in the moment. And in doing so, I have received positive feedback from citizens and lawyers across the state who cannot always make the trek to Atlanta to attend these events.

2 • In my position, I also have a vested interest in promoting excellence in appellate practice, which means that I spend a considerable amount of time sharing articles and tips on how lawyers can improve their legal writing and oral-advocacy skills. I have even held impromptu Q&A sessions with law students and lawyers, offering general advice on how to write a persuasive brief or craft an effective oral argument.

3 • I also care deeply about professionalism and civility. It is important for judges to encourage law students and lawyers to treat our profession as a profession, rather than as just some other job. I want law students and young lawyers to care passionately about their reputations and to constantly strive to improve their skills. I also want to challenge the conventional view that lawyers should be “zealous advocates.” As I am often fond of saying: In what other area of life are zealots considered popular or endearing? Unfortunately, our law schools and profession promote zealotry as the ideal attribute of a lawyer. Respectfully, we need to stop doing this. In my view, a good lawyer is an effective advocate, a problem solver, and someone who tries to resolve disputes in

the most efficient and expeditious manner possible. And I try to do what I can to promote this viewpoint on social media. I also firmly believe in the virtue of civility, both in and out of the courtroom, and I do what I can to encourage those that follow me on social media to treat each other with dignity and respect.

4 • Additionally, I use social media to be a virtual mentor to law students and young lawyers in Georgia and throughout the United States. In my view, one of the most important things that we do as lawyers and judges is to serve as mentors for others. I remember how thankful I was for judges and lawyers who were willing to take even a few minutes out of the day to offer me advice or encouragement. I vividly remember how challenging the transition from law school to law practice was for me, and I often felt as if I was just expected to figure things out on my own. That is not necessarily a bad thing, of course. It is crucial for lawyers to be problem solvers. But more experienced lawyers and judges can and should do a better job of giving law students and young lawyers the benefit of their insights into the profession and experiences in the trenches. And I promised myself, back when I was a young lawyer, that I would never forget what it was like to be in that position. As a lawyer, and now as a judge, I have made mentoring others a top priority. And social media allows me to do that on a widespread basis. Whether it is quickly responding to a question from a law student about applying for a clerkship, or simply offering a word of encouragement to someone taking the bar or arguing her first big motion, I can impact lives in a small but meaningful way on a daily basis. And that means a great deal to me. As trite as it may sound, I firmly believe that

the greatest legacy I will leave as a lawyer, judge, and human being is the time I invest in others. I am truly thankful for social-media platforms like Twitter that allow me to do this.

5 • Finally, I want those who follow me on social media to know who I am as a person. I am not just a judge. I am a husband, a father, a person of faith, and I have a life outside of the courthouse. I love reading, history, sports, music, my church, and spending time with my family and friends. And I am blessed beyond measure to wake up every day and work at a job that I dearly love. My hope is that the people who follow me on social media will sense this about me — that I am a joyful public servant. My goal is for my online personality to be an accurate reflection of who I am in real life. And if my constituents truly get a sense of who I am as a person from my engagement with them on social media, then my time online will have been well spent.



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PROPORTIONALITY GUIDELINES AND PRACTICES AVAILABLE ONLINE NOW

The Duke Law Center for Judicial Studies 2016 publication, *Revised Guidelines and Practices for Implementing the 2015 Discovery Amendments to Achieve Proportionality*, is online at:

> <https://law.duke.edu/judicature/volume100-number4/#guidelines>

Also, find regularly updated annotations to the Guidelines and Practices at

> <https://law.duke.edu/judicialstudies/conferences/publications>