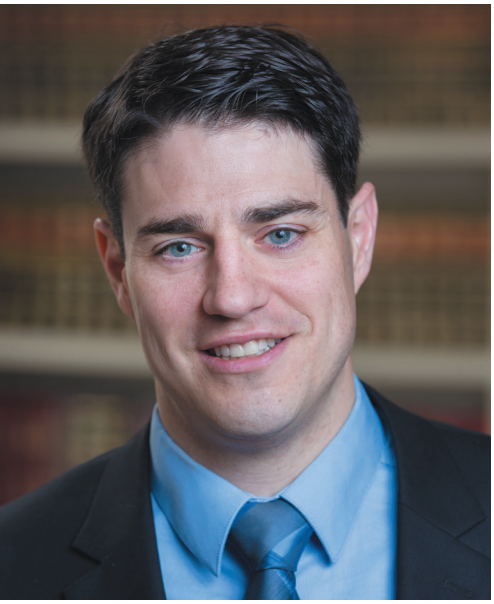

Screaming into the Electronic Void

By David A. McGrath

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I HAVE HEARD RUMORS, SPREAD IN PART by my partners (whose ages I will not disclose) that there was once a Golden Era wherein lawyers worked together as colleagues and the lawyers' lounges were filled with unicorns and free lunch. As I have alluded to in a prior article, I have also heard rumors elsewhere that young lawyers are the root cause of all the changes for the worse in the atmosphere of the legal profession. Yet, the *ad hominem* attacks and various hostilities that I have personally witnessed in my window of time as a young lawyer have not been the exclusive province of the youthful. In my experience, the young and inexperienced are generally more apt to be intimidated by their adversaries than to be sufficiently arrogant as to resort to insults.

While not an original or unique observation, as I see it, the biggest substantive change that has affected the legal profession over the last three decades is the exceedingly rapid advance of technology. That unrelenting advance has had a far bigger effect on the livelihood of lawyers than all other changes in the economy or perceived differences between the generations. While young lawyers may be more fluent and easily immersed in those technological changes, and perhaps more capable of taking advantage of its efficiencies, the changes have affected all age demographics in negative ways more or less equally.

I am not a Luddite. Like everyone else, I use e-mail to efficiently communicate while trying (and occasionally failing) to avoid participating in micturition matches that accomplish nothing. I brought multiple laptops to my last trial so that I could rapidly cross-reference testimony with prior deposition testimony and cross-examine witnesses with the advantage of video evidence. I greatly enjoy the efficiency of online research engines. The Internet made finding the citations for this article a cinch. I have an ever-increasing plethora of screens in my office. However, it is myopic to fail to consider the darker side of technology on our practice.

Technology now occupies much of our downtime when we are in court (and everywhere else), keeping us sequestered on our smartphones with our newsfeeds and social networks when we otherwise might have made conversation with our colleagues. The pull of the phone is a habit-forming and powerful distraction from face-to-face discussion. Over my brief ten years of practice, I have already seen a palpable change in the social environment of the lawyers' lounges of the family court.

Technology has allowed us to communicate by e-mail in lieu of the telephone and in-person meetings. However, when we communicate by e-mail, we remove the personal contact and social cues that spur empathy and cannot engage in the real time back-and-forth that enhances understanding. Sending a letter requires a certain modicum of formality. That formality leads to proofreading or at least considering the contents for longer than the time it takes to physically type them. A letter requires physically placing pen to signature line. I can only imagine that the process of dictation or other older technology further slows the process. Instantaneous written communications remove that formality and all other barriers that would otherwise require any form of careful thought before pressing "send" or, even worse, pressing "tweet."

For an extreme example of the consequences of such communication in the news at the time of this writing, The Florida Bar is currently investigating Representative and licensed Florida Attorney Matthew Gaetz for potential discipline as a result of a tweet which was widely panned as witness tampering.[1] In an era before Twitter, it is hard to imagine how such an impulsive and foolish action would have made it through the filters of formal communication. Sending that message would have required Representative Gaetz to call or write a letter directly to the witness in question, stand up and make such comments at a press conference in the face of an audience, write a letter to the editor, or send out a formal press release which would have been edited, considered and, one assumes, relegated to the circular file. Now all it requires is opposable thumbs that work slightly faster than healthy inhibitions.

Technology has replaced a not insubstantial amount of socializing with social media—which, apart from the professional issues, has been repeatedly demonstrated to make users less happy and less involved in meaningful activities.[2] Our personal lives have been invaded by keeping up with the photos, comments, and spontaneous thoughts of thousands of "friends" and followers. The modern marketing gurus insist that we must be linked, connected, blogged, vlogged, friended, rated, followed, poked, tweeted, and search engine optimized. The line between marketing and our own personal online activities seems to have never been more porous and blurry as we must create and curate online social media personalities to drive traffic in order to make it rain. Time is finite and fleeting. The energy and time expended on screaming into the electronic void of the tweet-link-face-Instagram-blogosphere, in a profession that is already famously time-consuming, necessarily comes at the cost of time spent with our friends, family, and colleagues.

I am given to understand that, upon publishing this article, I must tweet it, post it, link to it, take pictures of it, blog it, and jam it into every available algorithm that the Internet has to offer. It would not surprise me in the least if a marketer advised me to read a copy to the camera and post the video to my website to maximize content. Everyone else must write comments, provide an upward facing thumb, and "like" my article as well as every other thought that passes across the Internet in order to drive traffic to *their* websites, their articles, and their social media. In turn, I must then comment on every comment that I receive and "like" every "like" to further promote it.

It does not matter whether anyone actually desires to consume all this content or if it provides any real added value, there is surely an algorithm somewhere measuring it in part of the zero-sum game of Internet traffic. All of these steps, required of us by technology and marketing, may require taking time that might otherwise have been spent going to a bar association function to rub elbows with my colleagues or going home to see my family. Taking our time to engage electronically in this way may drive a narcissism or insecurity borne of constantly seeking electronic feedback. All the while, the process is isolating us, just a little more, from actual social contact. Please be gentle and do not judge me too harshly for hypocrisy when I inevitably and guiltily link this article to my website and LinkedIn account. As penitence, I have deactivated my personal Facebook account. I promise not to videotape it.

In an era where we are less likely than ever before to spend time speaking with and in the company of our colleagues and opposing counsel, it is my firmly held belief that

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Court Decisions
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cient to impose an obligation on the attorney to comply with the statute.

There is no procedure for the "termination" of a proceeding for reinstatement to the Connecticut bar, or for the return of the $1,000 fee to apply for reinstatement. An applicant's only recourse is to withdraw the application while forfeiting the fee. *Disciplinary Counsel v. Spadoni*, 67 CLR 543 (Sheridan, David M., J.).

Trade Regulation

A CUTPA claim may be based on a violation of Connecticut's Corrupt Organizations and Racketeering Activity Act (CORA), even though CORA does not itself authorize a private cause of action. *Fleming v. Bemer*, 67 CLR 593 (Bellis, Barbara N., J.). This opinion holds that allegations that the defendant engaged in a conspiracy to sexually traffic vulnerable individuals, including the plaintiff, in violation of CORA, are sufficient to state a claim for damages in a civil action brought pursuant to CUTPA.

A prevailing mortgagee forced to prosecute a foreclosure counterclaim to a debtor's preemptive CUTPA complaint is entitled under the mortgage's fee-recovery clause to recover the fees incurred both to prosecute the foreclosure counterclaim and the CUTPA complaint. *Wahba v. JP Morgan Chase Bank,* N.A., 67 CLR 462 (Povodator, Kenneth B., J.T.R.). The opinion reasons that the defense of the CUTPA claim was necessary in order to enforce the mortgage note, and the issues involved in defending the note were intertwined with those involved in prosecuting the foreclosure counterclaim.

Unemployment Compensation

Mendes v. Administrator, Unemployment Compensation Act, 67 CLR 574 (Blue, Jon C., J.T.R.), holds that an unemployment compensation appeals referee's reliance on the mail box rule to establish a rebuttable presumption that an applicant had received a hearing notice requires proof of the reliability of the agency's normal procedures for preparing and delivering such notices to the US Postal Service.

Workers' Compensation Law

Malone v. 390 Capitol Avenue, 67 CLR 461 (Moukawsher, Thomas G., J.), holds that the term "corporation" as used in the provision of the Workers' Compensation Statute that extends to "construction design professionals" immunity from liability for construction site injuries, with "construction design professional" defined as licensed architects and engineers and "any *corporation*" licensed to provide such services, Conn. Gen. Stat. § 31-293(c), does not include *limited liability companies*. Rather, the statutory immunity extends only to traditional corporations. This opinion holds that while a design professional who is a member of an LLC is exempt under the statute from common-law liability for injuries to insured construction site workers, the LLC itself is not. ■

Young Lawyers
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it is of increasing importance that we participate in bar association activities where we can get to know our colleagues, as familiarity encourages collegiality. Skip the online CLE and drive to the seminar. Join a section and come out to a meeting. Attend the YLS Charity Karaoke next year so that you may deafen your colleagues and teach them to appreciate professionally recorded music. I do not think it some great coincidence that bar associations across the nation have had diminishing ranks at the same time as professionalism is bemoaned as being lost. If young lawyers today wish to build a positive professional community for the future, I urge them to get involved with the CBA Young Lawyers Section, whether by simply showing up for a social event or joining the executive committee and developing the future of the bar. ■

Notes

1. https://www.washingtonpost.com/nation/2019/02/27/accused-witness-tampering-matt-gaetz-apologizes-deletes-tweet-insists-he-wasnt-threatening-cohen/?utm_term=.2b022def32ab
2. https://hbr.org/2017/04/a-new-more-rigorous-study-confirms-the-more-you-use-facebook-the-worse-you-feel; https://www.newyorker.com/tech/annals-of-technology/how-facebook-makes-us-unhappy

Pro Bono
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tion of my debt to society by serving as a beacon of light to people in need.

If you want to change the trajectory of a person's life forever, if you want to become a beacon of light to guide people out of the legal storms they are facing, you can volunteer to become a lighthouse by joining the CBA's Pro Bono Committee. Just contact the CBA at (860)469-2221 or visit ctbar.org/sectionsandcommitees to find out more information. ■