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#Advocacy: Social Media Activism's Power to Transform Law

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#Advocacy: Social Media Activism's Power to Transform Law

Stacey B. Steinberg¹

ABSTRACT

Attorneys influence the actions of legislators, courts, and community leaders by working alongside social movements. Together, these advocates seek to challenge the status quo by setting precedent that will ensure equality and justice for all individuals. While social movements often use social media to convey their message or to gather support for their cause, many attorneys are unfamiliar with leveraging this powerful new technology.

Social media platforms provide a low-cost, fast, and easy-to-use tool that effectively disseminates information and helps advocates garner support for their cause. However, some social change advocates, including lawyers and policymakers, are hesitant to get involved in social media activities. These advocates are missing unique and powerful opportunities to move their causes forward, and are perhaps doing so at their peril.

Online activism has both amplified the voices of marginalized individuals and shifted national conversations on important legal and social issues. This Article explores the role of social movements in cause-lawyering, and introduces advocates to social media's role in creating meaningful legal change. This Article first discusses social movements and community activism in the context of law. Then, this Article illustrates the unique power of online advocacy (often referred to as #activism) to create legal and social reform. Finally, this Article concludes by proposing that

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attorneys should come to understand and embrace social media, as it has revolutionized how laws are created and enforced in all aspects of society.

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INTRODUCTION

In a 2012 speech at the University of North Carolina, President Obama spoke about student loans.¹ He explained that in 2007, Congress cut student loan rates in half, but that the reductions were set to expire.² The President told the crowd that upon expiration, student loan rates would double overnight.³ He warned that the expiration is “basically a tax hike for more than [seven] million students.”⁴ President Obama explained that students needed a vote from Congress to stop this from occurring.⁵

President Obama asked students to get involved.⁶ He encouraged students to call Congress and to send their representatives a letter.⁷ He went a step further, asking students to “[w]rite on their Facebook page. Tweet them—we’ve got a hashtag. Here’s the hashtag for you to tweet them: #dontdoublemyrate.”⁸ Websites such as Credit.com also tried to influence student loan policy.⁹ The website’s blog encouraged students to “Occupy Student Debt” by sharing pictures of how much money they borrowed for school and to compare it to the amount of money they now owe.¹⁰ Students were also encouraged to share their stories via Tumblr and to join movements on Facebook.¹¹ Like President Obama, the website encouraged readers to tweet about the issue, suggesting hashtags like #DontDoubleMyRate, as well as, #studentloans, #StudentDebtCrisis, #DreamsNotDebt, and #StrikeDebt.¹² Student loan reform had a new voice in the policy arena—hashtag activism had come of age.

¹ Megan Slack, *President Obama Asks Students to Tell Congress: #DontDoubleMyRate*, WHITE HOUSE (Apr. 24, 2012, 3:07 PM), <https://www.whitehouse.gov/blog/2012/04/24/presiden-obama-asks-students-tell-congress-dontdoublemyrate> [https://perma.cc/6MM9-A58X].

² *Id.* The student loan interest rate set by Congress in 2007 was set to expire in July of 2012. *See id.* Without a renewal by Congress, the interest rates for approximately 7.4 million student loans would increase by approximately 3%. Press Release, Office of the Press Sec’y, The White House, *Educating Our Way to an Economy Built to Last: Stopping the Student Loan Interest Rate Hike* (Apr. 23, 2012), <https://www.whitehouse.gov/the-press-office/2012/04/23/educating-our-way-economy-built-last-stopping-student-loan-interest-rate> [https://perma.cc/S5TX-SJT2]. For a detailed discussion of the potential rate increase, see Kayla Webly, *Students, Your Student Loan Interest Rate is About to Double*, TIME (Mar. 20, 2012), <http://business.time.com/2012/03/20/students-your-loan-interest-rate-is-about-to-double/> [https://perma.cc/N67D-S2HJ].

³ Slack, *supra* note 1.

⁴ *Id.*

⁵ *See id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *See generally* Gerri Detweiler, *How to Influence the Student Loan Debate*, CREDIT.COM (June 14, 2013), <http://blog.credit.com/2013/06/how-to-influence-the-student-loan-debate-66968/> [https://perma.cc/J8QC-PFA2].

¹⁰ *Id.*

¹¹ *Id.* (explaining how students and parents were encouraged to share such stories).

¹² *Id.*

While many smirk at the efficacy of social media advocacy,¹³ these student debt campaigns appeared to work.¹⁴ At the end of June 2012, just a few months after President Obama's speech at the University of North Carolina, Congress voted to extend the rates of federally subsidized student loans.¹⁵ The discussion over student loans looms on,¹⁶ but social media advocacy seems to have earned a seat at the table, with policy makers on both sides of the aisle utilizing hashtags to engage the public in the debate.¹⁷

The student loan debt crisis is only one of what are now perhaps thousands of instances wherein lawyers and lawmakers have used online activism to advance their cause. These change agents are able to influence individuals and gain support through many online platforms. Social media provides users with a low-cost yet highly effective method to rally support around established causes that they find important, and it also offers a way for individuals to put forth new ideas to a large and often receptive audience. Online advocacy now plays a critical role in the work of social movements.¹⁸

Social media can be used by policy makers and lawyers working on behalf of advocacy groups in many ways. It can be used to promote an in-person event, like

¹³ See *Slackivism*, HUFFINGTON POST, <http://www.huffingtonpost.com/news/slackivism/> [<https://perma.cc/WBA9-ZY7B>] (last visited Feb. 1, 2017); see also *Slackivism*, DICTIONARY.COM, <http://www.dictionary.com/browse/slackivism> [<https://perma.cc/9PY8-UKNY>] (last visited Feb. 1, 2017).

¹⁴ See Jennifer Liberto, *Congress Extends Low Student Loan Rates*, CNN MONEY (June 29, 2012, 9:16 PM), <http://money.cnn.com/2012/06/29/pf/college/student-loans/> [<https://perma.cc/59AQ-MMJT>].

¹⁵ *Id.*; see also Moving Ahead for Progress in the 21st Century Act, Pub. L. No. 112–141, § 100301, 126 Stat. 405, 979 (2012) (extending the expiration date until 2013).

¹⁶ See, e.g., Student Loan Relief Act of 2015, S. 2099, 114th Cong.

¹⁷ See Don Seymour, *#SmarterSolutions for Students, Families & Taxpayers*, SPEAKER OF THE HOUSE (July 2, 2013), <http://www.speaker.gov/general/smartersolutions-students-families-taxpayers> [<https://perma.cc/RMT9-CS48>] (indicating that the Speaker of the House, a Republican, used a separate hashtag than did the President, a Democrat, when publicly discussing student loan debt legislation).

¹⁸ See Renee Davidson, *Social Media 201: Leveraging Social Media to Increase Your Visibility*, AM. ASS'N U. WOMEN, <http://www.aauw.org/resource/how-to-use-social-media-for-advocacy/> [<https://perma.cc/YY8X-68ZD>] (last visited Feb. 1, 2017); see also *Using Social Media for Advocacy and Legislative Visits*, AM. PSYCHOL. ASS'N GRADUATE STUDENTS, <http://www.apa.org/apags/resources/advocacy/social-media-advocacy.pdf> [<https://perma.cc/Y6QJ-3RHC>] (last modified Mar. 2015) (explaining how students can use social media to appropriately advocate for legislative change); Dawn Ennis, *Show Your Pride With A Rainbow Filter For Your Facebook Profile Pic*, ADVOCATE (June 27, 2015, 10:51 AM), <http://www.advocate.com/politics/marriage-equality/2015/06/27/show-your-pride-rainbow-filter-your-facebook-profile-pic> [<https://perma.cc/VV6G-XQ5D>] (describing how Facebook users can show support for social movements); Alan Rosenblatt, *Social Advocacy and Politics: Is Facebook Gutting the Power of Social Advocacy Tools?*, SOCIAL MEDIA TODAY (Nov. 17, 2015), <http://www.socialmediatoday.com/special-columns/social-advocacy-and-politics-facebook-gutting-power-social-advocacy-tools> [<https://perma.cc/699W-ZLCC>] (explaining how Facebook allowed users to show support through their profile pictures).

the types seen by traditional social movements, such as sit-ins and protests.¹⁹ But social media also provides a platform for virtual advocacy, including the use hashtags to promote a common cause, sharing memes that relay information, suggesting individuals place overlays on their profile pictures, and encouraging supporters to simply 'like' a status on an online newsfeed.²⁰ With little more than a click, social media allows individuals to become a part of a much larger movement.²¹ The impact of these online interactions is often large.²² This Article proposes that lawyers must come to understand how online platforms are reshaping traditional social movements because online advocacy is transforming traditional social movements.

The access and influence social media offers is especially important for individuals who have traditionally been marginalized by the democratic process.²³ Attorneys often assist these individuals through litigation when they have identified legal needs. This assistance can also come from social justice campaigns that are not

¹⁹ See, e.g., *The Greensboro Sit-In*, HISTORY, <http://www.history.com/topics/black-history/the-greensboro-sit-in> [<https://perma.cc/FR25-HBGS>] (last visited Feb. 1, 2017); see also Sara Joseph, *Social Media, Political Change, and Human Rights*, 35 B.C. INT'L COMP. L. REV. 145, 150 (2012) (providing well-known examples of social activism).

²⁰ See Paul Gil, *What is a 'Meme'? What are Examples of Modern Internet Memes?*, ABOUT.COM (Feb. 2, 2016), <http://netforbeginners.about.com/od/weirdwebculture/f/What-Is-an-Internet-Meme.htm> [<https://perma.cc/U4E2-C4Q5>] ("Historically, a meme is a discrete 'package of culture' that would travel via word of mouth, usually as a mesmerizing story, a fable/parable, a joke, or an expression of speech. Today, memes travel much faster than simple speech. As internet email forwards, instant messages, and web page links, memes now travel instantly via the Internet."); see also Nolan Feeney, *Facebook's New Photo Filter Lets You Show Solidarity With Paris*, TIME (Nov. 14, 2015), <http://time.com/4113171/paris-attacks-facebook-filter-french-flag-profile-picture/> [<https://perma.cc/Q5GP-AXBW>] (giving an example of a popular overlay); *Newsfeed*, DICTIONARY.COM, <http://www.dictionary.com/browse/newsfeed> [<https://perma.cc/WD79-8UPT>] (last visited Feb. 1, 2017) (defining newsfeed as "a system of computer servers by which Usenet data is transferred to provide newsgroup access"). In the context of social media, a simpler explanation is that a newsfeed is what a user sees when they log into a social media platform and curates the posts made by the accounts the user follows.

²¹ See, e.g., Ennis, *supra* note 18; see also Rosenblatt, *supra* note 18. The Women's March on Washington provides a powerful example of the power of online social movements. For an overview on the Women's March on Washington, see *Mission & Vision*, WOMEN'S MARCH ON WASHINGTON, <https://www.womensmarch.com/mission/> [<https://perma.cc/UP8Y-HH4R>]. The author intends to address the Women's March on Washington as a powerful example of the intersection of #advocacy and social movements in a future article.

²² See generally Henrik Serup Christensen, *Political Activities on the Internet: Slacktivism or Political Participation by Other Means?*, FIRST MONDAY, Feb. 7, 2011, at 1, <http://firstmonday.org/ojs/index.php/fm/article/view/3336/27678"%3B>%3B> [<https://perma.cc/24X4-6HVS>]; J. Taylor Scott & J'Vonnah Maryman, *Using Social Media as a Tool to Complement Advocacy Efforts*, GLOBAL J. COMMUNITY PSYCHOL. PRAC., Feb. 2016, at 1, <http://www.gjcpp.org/en/article.php?issue=21&article=121> [<https://perma.cc/Z6SB-79RS>].

²³ Ali Tayebi, *Planning Activism: Using Social Media to Claim Marginalized Citizens' Right to the City*, CITIES: INT'L J. URB. POL. AND PLAN., June 2013, at 88, 91, <http://www.arhns.uns.ac.rs/wp-content/uploads/Planning-activism.pdf> [<https://perma.cc/8288-YFV9>].

related to their client's individual concern.²⁴ Cause-lawyers, who advocate alongside social movements, are often seeking "structural and enduring changes that increase the power of those who are most disadvantaged politically, economically, and socially."²⁵ With the advent of social media, cause-lawyers can reach a large audience, as social media provides a novel mechanism for the creation of social change.²⁶

This Article offers a comprehensive legal analysis as to the role of social media in cause lawyering and social justice advocacy. This Article first explores the work of traditional social activists, specifically looking at the manner in which these movements have been able to mobilize and change the status quo. It highlights the methodologies used by a handful of the most influential social movements of our time. Part I discusses the role of both community activists and court actors in creating social change. It is critical that attorneys look through the lens of traditional social justice advocacy *before* applying its core concepts to the new technologies available today.

Next, in Part II, this Article provides a taxonomy of the most commonly used social media platforms. It highlights the manner in which social media has influenced public perceptions and reactions to world events. This Article provides examples of social media campaigns that were successful in their advocacy efforts. It explores critiques of social media advocacy and illustrates that online activism has dramatically altered the manner in which individuals show support and voice dissent for a multitude of issues and causes, and it is an effective mechanism for implementing political and social change.

Lastly, Part III of this Article discusses the role of lawyers in social justice movements and online advocacy campaigns. It highlights how social media will likely continue to inform decision-makers, specifically those who create, judge, and enforce law and policy. Part III explores the potential pitfalls of using social media in legal advocacy work, but encourages attorneys to embrace social media as a means of informing and effectuating inclusive social justice. To that end, attorneys can empower traditionally marginalized individuals to influence law and society.

As a whole, this Article encourages attorneys to consider how social media activism can enhance their advocacy work, paying particular attention to the work they do on behalf of disadvantaged individuals. As suggested by legal scholars who have studied the effects of social movements generally, significant societal change rarely results from litigation alone.²⁷ Social movements are most effective when their

²⁴ See generally Barbara Klugman, *Evaluating Social Justice Advocacy: A Values Based Approach*, CTR. FOR EVALUATION INNOVATION 2–4 (Aug. 2010), http://www.innonet.org/resources/files/klugman_evaluating_social_justice_advocacy.pdf [https://perma.cc/Q5TP-5PGW].

²⁵ *Id.* at 2.

²⁶ See Tayebi, *supra* note 23, at 91–92.

²⁷ See generally Jonathan A. Obar et al., *Advocacy 2.0: An Analysis of How Advocacy Groups in the United States Perceive and Use Social Media as Tools for Facilitating Civic Engagement and Collective Action*, 2 J. INFO. POL'Y 1 (2012); see also Lewis M. Killian et al., *Social Movement*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/topic/social-movement> [https://perma.cc/YZ82-CK43] (last visited Feb. 1, 2017).

members advocate both in the courtroom and on the streets—as change is best realized when the general public understands and supports their position.²⁸

I. A FOUNDATION FOR CHANGE

Historically, social justice advocates expressed their loyalty to a common cause both through their physical presence in group activities and also by their expressed beliefs in the shared norms of the group.²⁹ These individuals often belonged to social movements, groups united by their efforts in hopes of changing law and shaping policy.³⁰ Social movements gained membership as their organizational structure allowed individuals to voice concern over the enforcement of a particular issue.³¹ Often, social movements provided their group members with a set of ideologies as to the particular issue centered at the heart of the group's mission.³² While some groups were very straightforward with regard to the set of ideologies, arguments, and positions that members were expected to follow, other groups were less direct, and, instead, placed “subtle pressure” on members to adopt the shared position.³³ Groups requiring greater levels of physical presence from their members might have also required a greater public showing of ideological support.³⁴ These core values are still apparent in social movements today.³⁵

A. *The History of Social Movements*

The phrase “social movement” was originally coined by a German sociologist named Lorenz von Stein.³⁶ Stein used the term in a book he published in 1850, *History of the French Social Movement from 1789 to Present*.³⁷ While he was the first to identify social movements using this terminology, the individual characteristics of these groups certainly predates the term.³⁸ Social movements all

²⁸ See Tayebi, *supra* note 23, at 91.

²⁹ See Obar et al., *supra* note 27, at 3.

³⁰ See *id.* at 3–4.

³¹ See *id.* at 4.

³² See *id.* at 3–4. The authors write, “[c]entral to the concept of collective action is political mobilization, a process that can involve a variety of strategies and tactics for bringing people together to effect political, social, and ideological change. The focus is often the development and maintenance of a form of social relationship between actors, individuals, and parties, with the goal of participating together in mobilization activities within the political realm, such as interest formation, community building, and forms of action.” *Id.* at 3 (citations omitted).

³³ Killian et al., *supra* note 27.

³⁴ See Tabatha Abu El-Haj, *The Neglected Right of Assembly*, 56 UCLA L. REV. 543, 554–61 (2009) (explaining how “workers, poor people, racial minorities, and social movements” took to the streets to further their goals).

³⁵ See Obar et al., *supra* note 27, at 4.

³⁶ *Social Movement*, NEW WORLD ENCYCLOPEDIA, http://www.newworldencyclopedia.org/entry/Social_movement [https://perma.cc/EC48-GUJZ] (last modified Oct. 8, 2015, 3:40 PM).

³⁷ *Id.*

³⁸ *Id.*

share a number of characteristics.³⁹ At the heart of a social movement is the belief that—through action and advocacy—a group of individuals can change the status quo.⁴⁰ Members of a social movement might lead very different lives, but they join the group because they all share similar values on at least one particular issue.⁴¹ Additionally, members of a social movement prescribe to a set of group norms.⁴² These norms solidify the unity of the group and demonstrate that each individual member is truly committed to the goal.⁴³ Members often participate in group activities, and in so doing, they become even more connected to the movement's ideals.⁴⁴

American sociologist Charles Tilly further explored the dynamics of social movements.⁴⁵ He identified that social movements are made up of individuals who either support or are in opposition to a policy, person, or status quo.⁴⁶ Tilly noted that social movements have a common “repertoire, including organization of associations and coalitions, public meetings, demonstrations, petitioning, statements for the media, and pamphleteering.”⁴⁷ He also opined that social movements require members to show a public commitment to the group's shared values.⁴⁸ These characteristics continue to be at the heart of today's social movements.

Traditionally, social movements lasted for significant lengths of time, although the set amount of time varied widely.⁴⁹ Social movements were more loosely organized than political parties, religious groups, and clubs of the time.⁵⁰ Unlike many other organized groups, leaders of social movements rarely possessed any actual authority over their members.⁵¹ Indeed, membership could fluctuate over time, depending on individual loyalty to the group's stated mission and ideals.⁵² However, like some formal organizations and religions, such groups' greatest power and control stemmed from their leaderships' ability to require members to demonstrate faith and commitment to missions through individual and group action.⁵³ Social media, however, has changed some of these traditional dynamics, as most social movements

³⁹ *See id.*

⁴⁰ *See* Killian et al., *supra* note 27.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *See id.*

⁴⁴ *Id.*

⁴⁵ *See* Claire Riegelman, *Environmentalism: A Symbiotic Relationship Between a Social Movement and U.S. Law?*, 16 MO. ENVTL. L. & POL'Y REV. 522, 526 (2009).

⁴⁶ *See id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *See* Killian, *supra* note 27.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *See id.*

⁵³ *See id.*

welcome the momentary participation of internet users who might share, like, or donate to a particular cause via an online platform.⁵⁴

Before the advent of the Internet, being a part of a social movement often required hard labor.⁵⁵ Individuals had to band together to create a collective group that could physically mobilize and influence change.⁵⁶ For example, the Communist Party of America required its members to attend weekly meetings, lasting three to four hours in length.⁵⁷ In another example, the Student Non-Violent Coordination Committee ("SNCC"), founded in 1960 to combat school segregation, encouraged its members to take part in freedom rides and sit-in demonstrations.⁵⁸ Members of the SNCC often participated in the demonstrations despite the risk of arrests, beatings, and jail time.⁵⁹ Indeed, individuals choosing to become a part of the SNCC often put their lives, both in terms of time and physical safety, on the line in order to maintain membership in their group and influence in society.⁶⁰ Today's social movement momentum can take place from the comfort of one's home or office through social media. This requires a dramatically different level of involvement than participants of an earlier time.

One social movement that demonstrates the effectiveness of physical mobilization in effectuating change was the Montgomery Bus Protest of 1955–1956.⁶¹ In response to public transportation segregation laws, Martin Luther King Jr. helped to organize a carpool that could transport African Americans to work during the city bus boycott.⁶² Local individuals participated in the peaceful protest while attorneys took the movement to the Court.⁶³ In 1956, the United States Supreme Court declared bus segregation unconstitutional.⁶⁴

Civil rights advocates feared that despite the Court's ruling, buses might not effectively desegregate without continued advocacy at the local level.⁶⁵ They had

⁵⁴ See *In Social Movements, "Slacktivists" Matter*, ANNENBERG SCH. FOR COMM. (Dec. 7, 2015), <https://www.asc.upenn.edu/news-events/news/social-movements-slacktivists-matter> [<https://perma.cc/LDL3-WHBD>]. In the context of the Arab Spring protests, social media use played a large role. *Id.* This modern form of protest had tremendous effects on the movement. *Id.* While many slacktivists were merely re-sharing posts that were authored by the central movement organizers, these slacktivists helped the movement reach a significantly greater audience. *See id.*

⁵⁵ See, e.g., Robert A. Goldberg, *The Challenge of Change: Social Movements as Non-State Actors*, 2010 UTAH L. REV. 65, 65–68 (2010).

⁵⁶ *Id.* at 66.

⁵⁷ *Id.* at 67.

⁵⁸ See *Student Nonviolent Coordinating Committee (SNCC)*, STANFORD.EDU, http://kingencyclopedia.stanford.edu/encyclopedia/encyclopedia/enc_student_nonviolent_coordinating_committee_sncc.1.html [<https://perma.cc/U67S-3963>] (last visited Feb. 2, 2017).

⁵⁹ Goldberg, *supra* note 55, at 68.

⁶⁰ *See id.*

⁶¹ See generally Christopher Coleman et al., *Social Movements and Social-Change Litigation: Synergy in the Montgomery Bus Protest*, 30 L. & SOC. INQUIRY 663, 663 (2005).

⁶² *Id.* at 663–64.

⁶³ *See id.* at 665.

⁶⁴ *Gayle v. Browder*, 352 U.S. 903, 903 (1956), *aff'g* 142 F. Supp. 707 (M.D. Ala. 1956); see also Coleman et al., *supra* note 61, at 665.

⁶⁵ Coleman, *supra* note 61, at 666, 686–89.

cause to be concerned. Despite the landmark ruling in *Brown v. Board of Education*, which held that school segregation was unconstitutional,⁶⁶ schools are in fact still very much segregated in Alabama,⁶⁷ even though buses in that state were desegregated shortly after the Court's ruling.⁶⁸

Scholars opine that one of the reasons for the success of the Montgomery Bus Protest and the accompanying Court decision was the physical actions of the social movement members themselves.⁶⁹ One commenter writes:

Two distinct schools of thought have emerged from the numerous attempts to explain why the protest was able to do so. The dominant explanation—the one that had such a dramatic impact on the modern civil rights movement—basically attributes the changes that occurred to the bus boycott: the remarkably disciplined and organized nonviolent mass movement in which most of Montgomery's Blacks refused to ride the city's buses for over a year to protest the racist policies and practices of public officials and the private bus company. In so doing, the protesters proved that the Black community, acting collectively, could demand and obtain relief from the degrading treatment of Black riders.⁷⁰

The organizers rented office space, hired staff, and communicated with large numbers of people on a regular basis.⁷¹ Churches served as meeting places and were used to disseminate information.⁷² These in-person meetings not only helped organization and morale, but also were a source for collecting donations to keep the movement running.⁷³ The social movement's organizers also recruited drivers and employed vehicles.⁷⁴

Prior to the Supreme Court's ruling, the direct actions of the Montgomery citizens were unable to change the status quo.⁷⁵ However, once the Supreme Court issued its ruling, things quickly changed.⁷⁶ While the Court's ruling was determinate, it provided little implementation guidance to the city of Montgomery.⁷⁷ The organizers, however, were able to quickly plan and create proactive and reactive

⁶⁶ 347 U.S. 483, 495 (1954).

⁶⁷ Greg Toppo, *GAO Study: Segregation Worsening in U.S. Schools*, USA TODAY (May 17, 2016, 6:36 PM), <http://www.usatoday.com/story/news/2016/05/17/gao-study-segregation-worsening-us-schools/84508438/> [https://perma.cc/T2T6-VJP8].

⁶⁸ See Coleman et al., *supra* note 61, at 665–66.

⁶⁹ *Id.* at 665.

⁷⁰ *Id.* (internal citations omitted).

⁷¹ *Id.* at 675.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 676.

⁷⁵ See *id.* at 675.

⁷⁶ *Id.* at 666.

⁷⁷ See *id.* at 685.

measures for the newly desegregated bus riders.⁷⁸ Working alone, lawyers and social movement members were left without tangible solutions.⁷⁹ But—collectively, with the aid of movement organizers—powerful change occurred.⁸⁰

Social movements have historically attempted to enact change through a number of lenses, but perhaps the most visible and most effective avenue for collective activism appears in the political process.⁸¹ Through legal mobilization, groups are able to channel their ideologies into effective social change.⁸² Attorneys representing marginalized individuals, for example, can present powerful narratives through litigation.⁸³ This allows an individual to demonstrate how the current status quo is either ineffective or oppressive.⁸⁴ While some argue that the legal mobilization of shared values can potentially hurt the group's unified position,⁸⁵ this litigation is an important part of cause-lawyering and social change.

Attorneys have historically worked hand-in-hand with social movements, advocating on behalf of individuals who have been traditionally marginalized or discriminated against by state actions.⁸⁶ Individuals, such as those who formed the civil rights movement, fought for women's rights, or against LGBTQA⁸⁷ discrimination, employed lawyers to advocate on behalf of their cause in the courtroom.⁸⁸ These attorneys provided much-needed support and helped shape the persuasive narratives that resulted in social change.

Social movements have attempted to effectuate change through many other avenues as well, including the legislative process.⁸⁹ The American Foundation for Equal Rights ("AFER") provides a powerful example of how social movements and attorneys have worked together to successfully achieve legal and social objectives.⁹⁰ AFER, responsible for successfully arguing the California Supreme Court case

⁷⁸ *Id.* at 688.

⁷⁹ *Id.* at 665.

⁸⁰ *Id.* at 666.

⁸¹ See Douglas NeJaime, *The Legal Mobilization Dilemma*, 61 EMORY L.J. 663, 666 (2012).

⁸² See *id.* See also Darren Lenard Hutchinson, *Sexual Politics and Social Change*, 41 CONN. L. REV. 1523, 1529 (2009) (arguing that social movements play an integral role in creating legal and social change for the LGBT community) [hereinafter Hutchinson, *Sexual Politics and Social Change*].

⁸³ See Mary Ziegler, *Framing Change: Cause Lawyering, Constitutional Decisions, and Social Change*, 94 MARQ. L. REV. 263, 307–10 (2010).

⁸⁴ See *id.* at 276–77.

⁸⁵ See NeJaime, *supra* note 81, at 666. Professor NeJaime points out that “[s]trategic choices are often hotly contested within movements.” *Id.* at 694. For example, some attorneys working outside or on the fringes of a social movement might file lawsuits that could potentially be favorable to their client, but could be detrimental to the social movement as a whole. *Id.* at 666.

⁸⁶ See William N. Eskridge, Jr., *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 MICH. L. REV. 2062, 2070 (2002).

⁸⁷ LGBTQA is an acronym that represents lesbian, gay, bisexual, transgender, questioning, and allied individuals. LGBTQA, THE FREE DICTIONARY, <http://acronyms.thefreedictionary.com/LGBTQA> [https://perma.cc/S49V-SGFK] (last visited Feb. 2, 2017).

⁸⁸ See NeJaime, *supra* note 81, at 671–75.

⁸⁹ See *id.* at 680.

⁹⁰ *Id.* at 664.

legalizing same-sex marriage in that state,⁹¹ engaged in a comprehensive legal strategy that was not limited to litigation alone.⁹² AFER selectively chose to file suit in a state it viewed as favorable to the LGBTQA movement, and it also pursued favorable legislative action elsewhere, strategically choosing the states in which to do so.⁹³

While it is difficult to quantify the effectiveness of social movements on policy making, scholars often argue that without the influence of organized groups dedicated to social causes, novel, important, and effective legal changes in a number of key social areas would have likely not occurred.⁹⁴ For example, the effective advocacy of the environmentalist movement in the 1960s and 70s likely gave way to sweeping legal reform.⁹⁵ Because of the movement's advocacy, Congress passed laws focused on protecting the environment, expressing its commitment to take environmental issues seriously.⁹⁶ The social movement gave individuals an outlet to express their concerns and allowed participants to speak in a united voice to their representatives.⁹⁷ This demonstrates that, while organizations can potentially raise important issues, it is the "buy-in" from the public that often results in legal reform.⁹⁸ Most likely this is because legislatures are elected officials, and they are influenced by the common ideals of the voters they represent.

Community building also offers an avenue for social movements to change the status quo. Instead of seeking change through impact litigation and legislative advocacy, social movements can also effectuate change by working within existing systems and encouraging community leaders to see things "a different way."⁹⁹ This sort of teambuilding eliminates the "us versus them" mentality that can exist when a social movement is pursuing change through legal action.¹⁰⁰ While many social movements hope to change the law, informally mediating with community influencers can often create inroads to change perspectives on key social issues.¹⁰¹

⁹¹ *Perry v. Brown*, 671 F.3d 1052, 1052–54, 1058 (9th Cir. 2012); see also NeJaime, *supra* note 81, at 698–99 (establishing that Ted Olson and David Boies were the attorneys that argued on behalf of AFER).

⁹² NeJaime, *supra* note 81, at 664.

⁹³ See *id.* at 681, 725.

⁹⁴ E.g., Yelena Margaret Bidé, *Social Movements and Processes of Political Change: The Political Outcomes of the Chilean Student Movement, 2011–2015* 24–25 (May 2015) (unpublished B.A. thesis, Brown University) (on file with the Brown University Library System), http://watson.brown.edu/ir/files/ir/imce/honors/Bid%C3%A9_Final2015.pdf [<https://perma.cc/5UGY-GZXX>].

⁹⁵ Riegelman, *supra* note 45, at 539.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 541.

⁹⁹ See, e.g., Corey S. Shdaimah, *Lawyers and the Power of Community: The Story of South Ardmore*, 42 J. MARSHALL L. REV. 595, 625 (2009).

¹⁰⁰ See *id.*

¹⁰¹ See *id.*

Professor David Dominguez argues that for many marginalized individuals, the legal process is a daunting place to go when seeking to change the social norms.¹⁰² While these individuals can use their narratives to attempt legal reform, the path is often paved with high costs, power imbalances, and confusion.¹⁰³ Moreover, litigation and lobbying without community activism often results in hostility, which might negate potential short-term benefits.¹⁰⁴ Instead, scholars such as Professor Dominguez argue that by creating partnerships amongst community members, often with the aid of lawyers, marginalized individuals can help policy makers rethink their perspectives on key issues.¹⁰⁵

In sum, social movements create change through a number of practices. Social movements have effectuated legal change through the application of advocacy in the courtroom, the influence of larger groups on the legislative process, and the power of narratives in the community sphere. Traditionally, social movements were characterized by the organizational forces of individuals collaborating face-to-face and organizing group actions that physically mobilized its members to demonstrate its shared mission. The rise of social media, however, offers activists a new, innovative way to engage new members and reach their goals. Section *B* explores this medium and its potential to strengthen the efficacy of social movements.

B. Web 2.0 and the Invention of Social Media

To fully comprehend how social media can affect policy changes, one must first understand social media generally.¹⁰⁶ While there are many social media platforms, a few common attributes are apparent across the spectrum. Social media encourages individuals to share ideas.¹⁰⁷ Social media forums offer users outlets for writing and sharing individual opinions, posting pictures of things they have seen or heard about, and sharing internet links with their friends and followers. While many social media websites remove offensive or harmful content, information is instantaneously shared without editorial approval.¹⁰⁸ Theoretically, this promotes the free expression of ideas of one individual into something often called “the newsfeed” of another individual.

Social media provides users with a powerful platform to share narratives and personal experiences. While many users intend to share only with their friends and families, other individuals share publicly, hoping to change the perceptions and

¹⁰² See David Dominguez, *Redemptive Lawyering: The First (and Missing) Half of Legal Education and Law Practice*, 37 CAL. W.L. REV. 27, 33 (2000).

¹⁰³ See *id.* at 45–46.

¹⁰⁴ See *id.* at 29–30.

¹⁰⁵ See *id.* at 48–49.

¹⁰⁶ See W. Lance Bennett, *Changing Citizenship in the Digital Age*, in CIVIC LIFE ONLINE: LEARNING HOW DIGITAL MEDIA CAN ENGAGE YOUTH 1, 2–3 (W. Lance Bennett ed., 2008); see also RUSSELL J. DALTON, *THE GOOD CITIZEN: HOW A YOUNGER GENERATION IS RESHAPING AMERICAN POLITICS* 66, 76 (2008) (providing an in depth overview on millennials and social media).

¹⁰⁷ See, e.g., *How to Report Things*, FACEBOOK, <https://www.facebook.com/help/reportlinks> [<https://perma.cc/UND3-PLBZ>] (last visited Feb. 2, 2017).

¹⁰⁸ See *id.*

opinions of a larger social network. For example, in 2010, Brandon Stanton started a photography blog project titled *Humans of New York*.¹⁰⁹ His blog, filled with pictures and narratives of individuals living in New York City, quickly became popular. *Humans of New York* “now has over twenty million followers on social media.”¹¹⁰ When individual users saw his posts, they chose to share it with their friends and online communities. Some of Stanton’s social media posts have resulted in social change. Stanton, for example, has helped raise money for both pediatric cancer research and children’s summer programming.¹¹¹

Facebook is the most commonly used social media platform in the United States.¹¹² Statista, which ranks social media sites based on number of visits, ranks YouTube¹¹³ as the second largest social media platform.¹¹⁴ Twitter and Reddit follow closely behind.¹¹⁵ All social media platforms spread information quickly between users, and many individual users rely on their social media accounts to learn about

¹⁰⁹ Brandon Stanton, *About, Humans of New York*, HUMS. N.Y., <http://www.humansofnewyork.com/about> [<https://perma.cc/EPJ3-89T2>] (last visited Feb. 2, 2017) (“Humans of New York began as a photography project in 2010. The initial goal was to photograph 10,000 New Yorkers on the street, and create an exhaustive catalogue of the city’s inhabitants.”).

¹¹⁰ *Id.*

¹¹¹ Eun Kyung Kim, ‘Humans of New York’ Project Raises \$3.8 Million to Fight Pediatric Cancer in Just 3 Weeks, TODAY (May 24, 2016, 3:02 PM), <http://www.today.com/health/humans-new-york-project-raises-3-8-million-fight-pediatric-t94501> [<https://perma.cc/FCR4-X6QE>] (indicating that within three weeks, the post by Humans of New York resulted in 3.8 million dollars donated to pediatric cancer research at Memorial Sloan Kettering Cancer Center); see also Emanuella Grinberg & Lisa Respers France, *Boy’s ‘Humans of New York’ Image Helps Raise More than \$1 Million*, CNN, <http://www.cnn.com/2015/01/24/living/feat-humans-of-new-york-harvard-fundraiser/> [<https://perma.cc/9RTP-E3FB>] (last updated Jan. 29, 2015, 7:59 AM). A post by Humans of New York resulted in a campaign to raise money for a summer program that sends middle schoolers to visit Harvard. *Id.* The campaign raised more than one million dollars. *Id.*; Kimberly Yam, *Dedicated ‘Humans Of New York’ Fans Raise Money to Send Underserved Kids on Harvard Visit*, HUFFINGTON POST (Jan. 23, 2015, 7:28 PM), http://www.huffingtonpost.com/2015/01/23/humans-of-new-york-harvard_n_6535340.html [<https://perma.cc/HTZ3-HWD3>].

¹¹² *Most Popular Social Network Websites in the United States in August 2016, Based on Share of Visits*, STATISTA, <http://www.statista.com/statistics/265773/market-share-of-the-most-popular-social-media-websites-in-the-us/> [<https://perma.cc/85JS-SMBF>] (last visited Feb. 2, 2017) [hereinafter STATISTA].

¹¹³ *About YouTube*, YOUTUBE, <https://www.youtube.com/yt/about/> [<https://perma.cc/ALA4-GPHY>] (last visited Feb. 2, 2017) (“Launched in May 2005, YouTube allows billions of people to discover, watch and share originally-created videos. YouTube provides a forum for people to connect, inform, and inspire others across the globe and acts as a distribution platform for original content creators and advertisers large and small.”).

¹¹⁴ STATISTA, *supra* note 112.

¹¹⁵ See *id.*; see also Tom Risen, *Reddit, Twitter, Facebook Lead News Traffic on Social Networks*, USA NEWS (Nov. 14, 2013, 3:37 PM), <http://www.usnews.com/news/articles/2013/11/14/reddit-twitter-facebook-lead-news-traffic-on-social-networks> [<https://perma.cc/JF8R-XJQQ>] (“Though it’s the newsiest site, just 3 percent of U.S. adults 18 years of age or older access Reddit, whereas Facebook reaches the largest social networking audience for news because 64 percent of U.S. adults use it. YouTube comes in second place, thanks to it’s [sic] widespread use in America - approximately 51 percent of U.S. adults use YouTube - translating to 10 percent of U.S. adults getting their news from the site. Twitter comes in third place, with 8 percent of U.S. adults reading news on that social network, based on the 16 percent of adults accessing the site.”).

breaking news, important social issues, and general information.¹¹⁶ Each social media user has a unique “newsfeed,” curated by the individuals, business, communities, and groups they choose to follow. When a social media user sees something of interest in his or her newsfeed, the user can re-share the information with their own followers, and he or she can often “dive deeper” into the background of the posting that attracted their attention. For example, if a user sees a post about energy conservation, he or she can often back track through the poster’s newsfeed, through the website of the shared content, or through the content of other interested followers’ newsfeeds. With each new post, users have almost limitless data through which to explore.

Facebook is one of the most popular and widely recognized social media hubs in the world.¹¹⁷ Individuals can create an account in less than five minutes and, once the account is created, Facebook’s algorithm will suggest “friends” for them to follow based on the basic information provided by the user.¹¹⁸ With each new follower, Facebook’s technology learns a little more about the user.¹¹⁹ It then suggests new “pages” that the user might want to follow, including targeted advertisements.¹²⁰ This technology, along with the continuous input from the user, quickly allows the user to construct unique network of Facebook “friends” and interests.¹²¹ These friends and pages form the basis for the user’s newsfeed, which shows a running stream of information shared by the user’s friends.¹²² Facebook has been a key mobilizer for social reforms on the Internet. This is likely due to its easy-to-use interface that is successful in encouraging users to share ideas amongst their personal online networks.¹²³

¹¹⁶ See generally Risen, *supra* note 115.

¹¹⁷ Agnieszka A. McPeak, *The Facebook Digital Footprint: Paving Fair and Consistent Pathways to Civil Discovery of Social Media Data*, 48 WAKE FOREST L. REV. 887, 894 (2013).

¹¹⁸ See generally *What is People You May Know?*, FACEBOOK, www.facebook.com/help/163810437015615?helpref=faq_content [https://perma.cc/6EV4-492D] (last visited Feb. 2, 2017).

¹¹⁹ See generally *Fraleigh v. Facebook, Inc.*, 830 F. Supp. 2d 785, 791 (N.D. Cal. 2011).

¹²⁰ *Id.* at 791.

¹²¹ *Id.*

¹²² See *id.*

¹²³ See generally Neal Caren & Sarah Gaby, *Occupy Online: Facebook and the Spread of Occupy Wall Street* (Oct. 24, 2011) (unpublished manuscript), <http://dx.doi.org/10.2139/ssrn.1943168> [https://perma.cc/LKD5-Y65P]. The article highlights why Facebook was so influential in the Occupy Wall Street Movement. *Id.* “Through an analysis of a random sample of pages, we identify five general types of activities that occur on Facebook: recruitment of members, sharing news stories, requests for resources, reaction, and re-posting.” *Id.* While this movement was primarily an “offline activity,” it had a large social media following. See Joseph Oteng, *Generational Ideal: Millennials and Social Media Activism*, USA TODAY C. (Aug. 18, 2014, 2:28 PM), <http://college.usatoday.com/2014/08/18/generation-ideal-millennials-and-social-media-activism/> [https://perma.cc/62NP-X4K7] (expressing a number of best practices for millennials to consider when engaging in social media activism); see also Brian D. Wassom, *Uncertainty Squared: The Right of Publicity and Social Media*, 63 SYRACUSE L. REV. 227, 240 (2013) (“[T]he judge quoted Facebook founder Mark Zuckerberg as saying that ‘[n]othing influences people more than a recommendation from a trusted friend. A trusted referral influences people more than the best broadcast message. A trusted referral is the Holy Grail of advertising.’”).

Individuals can also set up “Pages” on Facebook.¹²⁴ “Pages” are a way for businesses, communities, groups, schools, etc., to share information and become a part of the Facebook network.¹²⁵ Each “Page” is run by one or more administrators, who have the ability to share information on the “Page.”¹²⁶ Unlike individual Facebook users, who have the ability to limit the audience for their posts (to just friends, close friends, family members, or any other set of individual users they choose), “Pages” share their information publicly.¹²⁷ The shared information is available to all Facebook users and is often also available to non-Facebook users via general Internet searches.¹²⁸

A user can “like” a Facebook Page.¹²⁹ Once a user “likes” a Facebook Page, the Page’s shared content often will appear in the user’s newsfeed, alongside their “friends” shared content.¹³⁰ Users can also join and create Facebook “Groups,” which allow individuals with shared interests to have conversations in a curated forum.¹³¹ Groups can be private (where the group members and shared content are only visible to members of the group), closed (where the group members are publicly known, but the shared content is only visible to members of the group), or public (where both the group members and shared content is visible to the public).¹³²

There are “over 1.86 billion monthly active Facebook users” worldwide.¹³³ Over 1.23 billion people visit the website daily.¹³⁴ While there are over 83 million “fake profiles,” the vast majority appear to be authentic users who upload photos, share information, and internalize content.¹³⁵ Statistically, Facebook reaches far more individuals than other social networking sites—as Twitter has approximately 284 million monthly active users and WhatsApp has approximately 500 million active users.¹³⁶

¹²⁴ *How Do I Create a Page?*, FACEBOOK, <https://www.facebook.com/help/104002523024878> [<https://perma.cc/M2S6-2P3F>] (last visited Feb. 2, 2017).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *See How To Change a Page From Public To Private?*, FACEBOOK, <https://www.facebook.com/business/help/community/question/?id=10153671509980073> [<https://perma.cc/Y5BX-YWDT>] (last visited Feb. 2, 2017).

¹²⁸ *See id.*

¹²⁹ *How Do I Like a Page?*, FACEBOOK, <https://www.facebook.com/help/216630288356463> [<https://perma.cc/WKC5-776R>] (last visited Feb. 2, 2017).

¹³⁰ *Id.*

¹³¹ *How Do I Create a Group?*, FACEBOOK, <https://www.facebook.com/help/167970719931213> [<https://perma.cc/QZ89-JXVZ>] (last visited Feb. 2, 2017).

¹³² *What Are The Privacy Settings For Groups?*, FACEBOOK, <https://www.facebook.com/help/220336891328465> [<https://perma.cc/B6DL-D32W>] (last visited Feb. 2, 2017).

¹³³ *The Top 20 Valuable Facebook Statistics*, ZEPHORIA DIGITAL MARKETING, <https://zephoria.com/top-15-valuable-facebook-statistics/> [<https://perma.cc/E523-2XCM>] (last updated Feb. 2, 2017).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*; see also Jefferson Graham, *What is WhatsApp?*, USA TODAY (Feb. 20, 2014, 11:30 AM), <http://www.usatoday.com/story/tech/2014/02/19/what-is-whats-app/5621175/> [<https://perma.cc/3ZXR85G3>] (describing what WhatsApp is).

Twitter too allows users to form social networks.¹³⁷ Once a user follows another user (or organization) on Twitter, the content posted by the user (or organization) becomes part of the follower's home timeline.¹³⁸ This results in each Twitter user having a personalized newsfeed curated by the accounts he or she chooses to follow.¹³⁹ While sharing content on Facebook is known as "posting," sharing information on Twitter is called "tweeting." Tweets are generally limited in length, and can include quotes, pictures, links, and hashtags. Hashtags are often used to unite similar posts or to create a tagline for the content contained in the tweet.

Unlike Facebook, many Twitter users tweet publicly, although there is a way for users to make their account private.¹⁴⁰ When an individual signs up for Twitter, he or she is encouraged to "follow" people and organizations that interest the individual.¹⁴¹ A Twitter user, for example, might choose to follow newspapers, social organizations, famous people, and business associates. Twitter users can also follow friends, but—unlike Facebook, which is generally used to promote personal relationships—Twitter's platform encourages users to "follow" people outside of their personal social network.¹⁴² When a follower likes what another user "tweets," Twitter allows the user to "retweet" the content, which still leaves the original Tweeter's user name—called a handle and starting with the @ symbol—allowing the audience of the retweet to learn about and possibly follow the original Tweeter.¹⁴³ In addition to retweeting a tweet, users can "favorite" a tweet or comment on the tweet.¹⁴⁴

While Twitter is a popular social media website, ironically, the "median Twitter account has only one follower."¹⁴⁵ This is likely because many individuals set up Twitter accounts, but few use their account regularly.¹⁴⁶ Also, this could be because some of the accounts are not real people, but instead have been created by software programs.¹⁴⁷ Twitter users who tweeted during December 2013 had a median of

¹³⁷ See generally *Twitter*, TWITTER, INC., www.twitter.com [<https://perma.cc/2A6S-PXDL>] (last visited Feb. 3, 2017).

¹³⁸ *The Twitter Glossary*, TWITTER, INC., <https://support.twitter.com/articles/166337#> [<https://perma.cc/3ZFS-K3CB>] (last visited Feb. 3, 2017).

¹³⁹ See *id.*

¹⁴⁰ *About Public and Protected Tweets*, Twitter, Inc., <https://support.twitter.com/articles/14016> [<https://perma.cc/RNV4-7KYY>] (last visited Feb. 3, 2017).

¹⁴¹ *Signing Up With Twitter*, Twitter, Inc., <https://support.twitter.com/articles/100990> [<https://perma.cc/3ECY-ERAL>] (last visited Feb. 3, 2017).

¹⁴² See *id.*

¹⁴³ Jeffrey P. Hinkeldey, Comment, *The 140-Character Campaign: Regulating Social Media Usage in Campaign Advertising*, 40 RUTGERS COMPUTER & TECH. L.J. 78, 84 (2014).

¹⁴⁴ *Id.*

¹⁴⁵ Robinson Meyer, *It's a Lonely World: The Median Twitter User Has 1 Measly Follower and Is Surrounded by the Corpses of Dead Accounts*, ATLANTIC (Dec. 19, 2013), <http://www.theatlantic.com/technology/archive/2013/12/its-a-lonely-world-the-median-twitter-user-has-1-measly-follower/282513/> [<https://perma.cc/N62R-ZHGB>] (citing Jon Bruner, *Tweets Loud and Quiet: Twitter's Long, Long, Long Tail Suggests The Service Is Less Democratic Than It Seems*, O'REILLY (Dec. 18, 2013), <https://www.oreilly.com/ideas/tweets-loud-and-quiet> [<https://perma.cc/9YHP-DCDY>]).

¹⁴⁶ See generally *Inside Twitter: An In-Depth Look Inside the Twitter World*, SYSOMOS (June 2009), <https://sysomos.com/inside-twitter> [<https://perma.cc/H6SM-75BX>].

¹⁴⁷ See Meyer, *supra* note 145.

sixty-one followers.¹⁴⁸ Unlike Facebook, where the common practice is to “friend” someone, resulting in that user acknowledging and accepting the request (resulting in that user following the requestor back), Twitter’s targeted audience is different—“few people follow the people who follow them.”¹⁴⁹ Many users follow influential or famous people, and therefore, those well-known individuals (and businesses and organizations) can often have thousands, if not millions of followers. But these influential and highly followed accounts are rare; one study found that “82% of Twitter users have less than 350 followers.”¹⁵⁰ This could mean that for many users Twitter is used as a source to obtain information, as opposed to being used as a space to share one’s own ideas.¹⁵¹

One way that social media users share and explore content is through the use of hashtags.¹⁵² Hashtags were first used on social media through Twitter.¹⁵³ While hashtags have been a part of computer technology since the 1980s, they first appeared on Twitter in 2007.¹⁵⁴ Hashtags were initially conceptualized as a way for Twitter users to “follow and contribute to conversations on particular topics of interest.”¹⁵⁵ Today, many social media platforms (including Facebook) also have this feature, and similar hashtags are often used on multiple websites.¹⁵⁶ For example, #IceBucketChallenge was a popular hashtag in 2014, when individuals were dared to share recorded videos of themselves pouring ice water over their heads to raise money for ALS, a fatal and rare disease more commonly known as Lou Gehrig’s disease.¹⁵⁷ In less than three weeks, this online social movement raised \$15.6 million dollars for ALS research.¹⁵⁸ In all, the movement not only raised over \$115 million dollars, but also funded, in part, the research leading to the discovery of NEK1, one of the most common genes associated with the disease.¹⁵⁹ This is just one example of an effective social media campaign.

¹⁴⁸ See *id.*

¹⁴⁹ *Id.*

¹⁵⁰ Boris Veldhuijzen Van Zanten, *Twitter Statistics: 82% of Twitter Users Have Less Than 350 Followers*, THE NEXTWEB (Sept. 30, 2010), <http://thenextweb.com/socialmedia/2010/09/30/twitter-statistics-82-of-twitter-users-have-less-than-350-followers/#gref> [https://perma.cc/K3E2-7EBH].

¹⁵¹ *Id.*

¹⁵² E.g., *The Twitter Glossary*, *supra* note 138.

¹⁵³ Shea Bennett, *The History of Hashtags In Social Media Marketing [Infographic]*, SOCIALTIMES (Sept. 2, 2014), <http://www.adweek.com/socialtimes/history-hashtag-social-marketing/501237> [https://perma.cc/8MTF-SYLA].

¹⁵⁴ *Id.*; see also Robert T. Sherwin, *#HAVEWEREALLYTHOUGHTTHISTHROUGH?: Why Granting Trademark Protection to Hashtags Is Unnecessary, Duplicative, and Downright Dangerous*, 29 HARV. J.L. & TECH. 455, 461–62 (2016).

¹⁵⁵ Axel Bruns & Jean E. Burgess, *Twitter Hashtags From Ad Hoc to Calculated Publics*, in HASHTAG PUBLICS: THE POWER AND POLITICS OF DISCURSIVE NETWORKS 13, 14 (Nathan Rambukkana ed., 2015).

¹⁵⁶ Rubina Madan Fillion, *The 5 Biggest Social Media Movements of 2014*, WALL STREET J. (Dec. 3, 2014, 12:00 PM), <http://blogs.wsj.com/speakeasy/2014/12/03/the-5-biggest-social-media-movements-of-2014/> [https://perma.cc/D42W-22D2].

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ See Katie Rogers, *The ‘Ice Bucket Challenge’ Helped Scientists Discover a New Gene Tied to A.L.S.*, N.Y. TIMES (July 27, 2016), <http://www.nytimes.com/2016/07/28/health/the-ice-bucket->

Despite the advent of social media, some cause activists continue to deploy traditional methods for fundraising and community building, instead of engaging with their potential constituents in new innovative ways.¹⁶⁰ As a result, these activists tap into their existing audience again and again, instead of engaging with a new, younger audience.¹⁶¹ Non-profit strategists suggest that advocacy groups should shift their focus in order to meet the demands and expectations of the millennial generation.¹⁶²

Millennials want to get involved in social change organizations, but their preferences are different than those of past generations.¹⁶³ Online strategists implore cause advocates to recognize that along with their important objectives, Millennials are regularly exposed to multiple causes vying for their dollars and attention at the same time.¹⁶⁴ Millennials are more likely to get involved in organizations that utilize mobile technologies, and prefer “event- and peer-based giving.”¹⁶⁵ And while all Millennials react to social movement campaigns differently, empirical evidence suggests that social movements can be most effective by using strategic “influencers” on social media to help spread their message.¹⁶⁶

Social media’s platform encourages the dissemination of user- and consumer-generated content.¹⁶⁷ This is different than traditional forms of publishing, which utilizes a “top-down” approach to information sharing.¹⁶⁸ In the health arena, for example, consumers are likely to value online reviews of physicians, choose a medical facility based on shared online content, and trust medical information gathered through their social networks.¹⁶⁹ Peers post much of this information, but health care providers can also disseminate this valued material, and many do so by creating a strong social media presence.¹⁷⁰ This is most successfully done by listening,

challenge-helped-scientists-discover-a-new-gene-tied-to-als.html?_r=0 [https://perma.cc/WT3X-3M5N].

¹⁶⁰ Denise McMahan, *Millennials: Free Agents of Fundraising and Advocacy*, NONPROFIT HUB, <http://nonprofnthub.org/essential-nonprofit-library/millennials-free-agents-fundraising-advocacy/> [https://perma.cc/ZFS4-68ZT] (last visited Feb. 3, 2017).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ See generally *id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* (“Saratovsky and Feldmann present many examples of peer influencers using social media tools to spread ideas more quickly and efficiently. One in particular is the 2012 movement against the Stop Online Piracy Act and the Protect Internet Privacy Act. Through petitions (4.5 million signatures), two million tweets and eight million people looking up their representatives to voice their concerns, the bills were defeated. The influencers worked with and around Wikipedia, Google and Reddit to discuss and protest the cause.”).

¹⁶⁷ Ken Strutin, *Social Media and The Vanishing Points of Ethical and Constitutional Boundaries*, 31 PACE L. REV. 228, 236 (2011).

¹⁶⁸ *Id.*

¹⁶⁹ Laura J. Merisalo, *Harnessing The Power of Social Media in Health Care*, HEALTH CARE REGISTRATION, July 2012, at 9, 10.

¹⁷⁰ *Id.*

participating, and engaging consumers (and potential consumers) on social media.¹⁷¹ The strategies are transferable to the work of social movements.

Social media has created new opportunities for communication, engagement, and policy making.¹⁷² For activists and social movement leaders, this new frontier affords groups the opportunity to come together over shared ideals, providing a platform to gather support, both in terms of movement members and movement sympathizers.¹⁷³ Millennials rely on these online platforms for information and opportunities.¹⁷⁴ Therefore, social justice advocates must understand and utilize it to engage the millennial market.¹⁷⁵

II. SOCIAL MEDIA AND ACTIVISM

For marginalized individuals and groups, online activism offers an incredible tool. By allowing users to instantly share content with their followers, social media provides unique benefits to those seeking to advocate and unite individuals with common interests.¹⁷⁶ Social media is a powerful mechanism with which to disseminate information regarding structural inequities, offer specific examples of state brutalities, and spread the message of societal unrest.¹⁷⁷

A. #Advocacy for Social Change

One way that social movements create societal change is by empowering “opposition movements worldwide,” such as what was seen during the Arab Spring.¹⁷⁸ But while social media played a critical role in organizing protests and

¹⁷¹ *Id.* at 11–12.

¹⁷² Shelley Boulianne, *Social Media Use and Participation: A Meta-Analysis of Current Research*, 18 INFO., COMM. & SOC'Y 524, 525 (2015).

¹⁷³ See, e.g., Noel Diem, *Ferguson and the Effect of Social Media Activism*, L. STREET (Dec. 4, 2014), <http://lawstreetmedia.com/issues/entertainment-and-culture/ferguson-and-the-effect-of-social-media-activism/> [<https://perma.cc/9T9Y-52A4>] (“What would have happened if social media hadn’t been around for Ferguson? It’s unclear, but the impact of social media cannot be denied—it changed the face of a county, the life of a man, and the start of a movement.”).

¹⁷⁴ See, e.g., McMahan, *supra* note 160.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ See, e.g., John G. Browning, *Democracy Unplugged: Social Media, Regime Change, and Governmental Response in the Arab Springs*, 21 MICH. ST. INT’L L. REV. 63, 63–65 (2013).

¹⁷⁸ See Bryan H. Druzin & Jessica Li, Essay, *Myth Meets Reality: Civil Disobedience in the Age of the Internet*, 55 VA. J. INT’L L. DIG. 29, 30–31 (Jan. 21, 2015), <http://www.vjil.org/articles/myth-meets-reality-civil-disobedience-in-the-age-of-the-internet> [<https://perma.cc/7UMD-7FAV>]; see also Browning, *supra* note 177, at 65 (“In Egypt in 2010, Khaled Said was beaten and murdered by Egyptian police after he posted a video showing police corruption online. Photos of Said and his swollen, bruised face went viral on the Internet, contradicting police reports and an official autopsy report that had concluded that Said had choked to death on a bag of drugs. Wael Ghonim, an Egyptian Google executive and Internet activist, started a Facebook page entitled ‘We Are All Khaled Said.’ It grew to over 800,000 members, as Egyptians increasingly used social networking platforms to produce and consume political content, organize protests, stay connected, and spread word to others about abuses of the Mubarak regime.”).

supporting a political shift in the Middle East in 2011, social media alone cannot create meaningful change.¹⁷⁹ This was evident when similar protests were seen in Hong Kong shortly thereafter.¹⁸⁰

The failure of the Hong Kong protests demonstrate that Internet technology is not a technological blueprint for social change that can simply be grafted onto a society irrespective of that culture's socio-economic, political, and historical characteristics The mere existence of social media and other Internet technology cannot in themselves guarantee political activism; the impetus for political reform must arise from an energized population eager to agitate forcefully for change.¹⁸¹

Social media offers users more than a means to express an opinion. It provides news and information, especially in areas of conflict and unrest.¹⁸² "A staggering 94.29% of Tunisians surveyed reported getting their news and information on events during the civil unrest in early 2011 from social media resources like Facebook, Twitter, blogs, etc., while 88.10% of Egyptians acknowledged doing so."¹⁸³ For marginalized individuals, this news source offers something not previously available to those living in repressive societies.¹⁸⁴ "Evgeny Morozov wrote that 'Iran's Twitter Revolution revealed the intense Western longing for a world where information technology is the liberator rather than the oppressor.'"¹⁸⁵

Online platforms like Twitter and Facebook contribute to "a process of 'agenda setting' that drives the news media."¹⁸⁶ When Boko Haram terrorists kidnapped nearly 300 girls in Nigeria, many turned to online platforms like Twitter and Facebook not only to express outrage, but also to seek information.¹⁸⁷ #BringBackOurGirls, a hashtag originating from a Nigerian attorney, was used over two million times in 2014 on Twitter.¹⁸⁸ First Lady Michelle Obama, Secretary of State Hillary Clinton, and entertainers Amy Poehler, Chris Brown, and Mary J.

¹⁷⁹ See Druzin & Li, *supra* note 178, at 35.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² See *id.* at 31–32.

¹⁸³ Browning, *supra* note 177, at 74.

¹⁸⁴ *Id.* at 76–77.

¹⁸⁵ See *id.* at 69.

¹⁸⁶ Ben Scott, *In Defense of #BringBackOurGirls and Hashtag Activism*, SLATE (May 16, 2014, 9:45 AM), http://www.slate.com/blogs/future_tense/2014/05/16/bringbackourgirls_a_defense_of_hashtag_activism.html [https://perma.cc/95S3-L2FK] ("It contributes to a process of 'agenda setting' that drives the news media. The media you consume may not dictate your views, but it does focus your attention by elevating stories and topics. It tells you what to think *about* and what is important. Pre-Internet, elites and major media outlets performed this function. Today, hashtag activism is a form of agenda setting in which regular people may participate and lead—and sometimes excel.")

¹⁸⁷ Fillion, *supra* note 156.

¹⁸⁸ *Id.*

Blige were among the users using the hashtag.¹⁸⁹ While many of the girls are still missing, the hashtag #BringBackOurGirls is an example of one hashtag uniting millions of individuals into a social movement.

One of the most well-recognized hashtags is #BlackLivesMatter, which was created in 2013.¹⁹⁰ The hashtag was rarely used until a police officer in Ferguson, Missouri, shot an unarmed Black teenager named Michael Brown in the summer of 2014.¹⁹¹ The social media campaign that followed is credited with raising awareness and educating the public with regard to police brutality in American cities.¹⁹² This public outcry highlighted the need for police reform and amplified the voices of traditionally marginalized individuals.¹⁹³ Few legal scholars have explored how social media offers unique benefits to individuals who, without such technology, were often left out of national conversations on law and policy.¹⁹⁴

While many individuals are familiar with the online #BlackLivesMatter campaign, its reach extends far beyond social media.

Between August 2014 and August 2015, Black Lives Matter chapters around the world have organized more than nine hundred and fifty protest demonstrations. Their call for social justice has ranged from targeting well-known police-involved deaths such as the Eric Garner strangulation in Staten Island, New York, on July 17, 2014, and lesser known cases involving the killing of homosexual and heterosexual black women and children such as twelve-year-old Tamir Rice in Cleveland on November 22, 2014. Partly as a result of the public outcry organized and promoted by Black Lives Matter, the U.S. Department of Justice has investigated police misconduct in several cities, including Albuquerque (New Mexico), Baltimore, Cincinnati, Cleveland, Ferguson, Newark (New Jersey), New Orleans (Louisiana), Portland, New York, North Charleston, Seattle, and St. Louis. On December 18, 2014, the U.S. Congress enacted the Death and Custody Reporting Act which now requires states receiving federal

¹⁸⁹ *Id.*

¹⁹⁰ See DEEN FREELON ET AL., BEYOND THE HASHTAGS: #FERGUSON, #BLACKLIVESMATTER, AND THE ONLINE STRUGGLE FOR OFFLINE JUSTICE 5, 34 (2016), http://cmsimpact.org/wp-content/uploads/2016/03/beyond_the_hashtags_2016.pdf [<https://perma.cc/F3AX-PDDY>].

¹⁹¹ *Id.* at 9, 11, 14 (“For more than a year, #Blacklivesmatter was only a hashtag, and not a very popular one: it was used in only 48 public tweets in June 2014 and in 398 tweets in July 2014. But by August 2014 that number had skyrocketed to 52,288, partly due to the slogan’s frequent use in the context of the Ferguson protests.”).

¹⁹² *Id.* at 42.

¹⁹³ *Id.* at 8 (“BLM is an apt test case for the idea that social media uniquely benefits oppressed populations. The general idea here is that social media helps level a media playing field dominated by pro-corporate, pro-government, and (in the United States) anti-Black ideologies.”) (internal citation omitted).

¹⁹⁴ See *id.* The Freelon article explores this phenomenon, however, it does so from a communications standpoint, not as much as from a legal perspective, as this Article attempts to do.

funds to document and report all deaths at the hands of police in local jurisdictions “that occur in the process of arrest.”¹⁹⁵

The movement is also active in politics, evidenced by its efforts to engage the 2016 presidential candidates in addressing discrimination, law enforcement, and the improvement of Black communities on the campaign trails.¹⁹⁶ These efforts are accomplished by the efforts of individuals working outside of social media, but their reach is amplified by the movement’s online presence.¹⁹⁷ The #BlackLivesMatter campaign maintains a website, where it stresses that the campaign is “[n]ot a moment, but a movement.”¹⁹⁸ This powerful message has transformed national conversations on race and society.¹⁹⁹ The members effectively demonstrate how effective advocacy can spark comprehensive social dialogs and challenge the status quo in the twenty-first century.²⁰⁰

B. Social Media and the Courts

Lawyers, as advocates, listen to their clients and frame their legal issues. In order to effectively “win” in court, lawyers must raise legal questions in a manner that can reflect their client’s position in a favorable manner. Certain societal issues, for example, “can be defined in a number of different ways. . . . Some reasons may appeal to us more than others and make us more likely to tolerate or even endorse a cause.”²⁰¹ Professor Mary Ziegler explains, “[f]raming an issue is a way of defining, labeling, and understanding it.”²⁰² This occurs in both the courtroom and in the court of public opinion—the media and perhaps even more so, social media.²⁰³ This is especially true

¹⁹⁵ Herbert G. Ruffin II, *Black Lives Matter: The Growth of a New Social Justice Movement*, BLACKPAST, <http://www.blackpast.org/perspectives/black-lives-matter-growth-new-social-justice-movement#sthash.OzmlYmE7.dpuf> [<https://perma.cc/E22T-CGU9>] (last visited Feb. 3, 2017).

¹⁹⁶ *Id.*

¹⁹⁷ See generally *About the Black Lives Matter Network*, <http://blacklivesmatter.com/about/> [<https://perma.cc/PCP3-FN6J>] (last visited Feb. 3, 2017); see also FREELON ET AL., *supra* note 190, at 5, 14.

¹⁹⁸ See *About the Black Lives Matter Network*, *supra* note 197.

¹⁹⁹ See *id.*

²⁰⁰ Jelani Cobb, *The Matter of Black Lives*, NEW YORKER (Mar. 14, 2016), <http://www.newyorker.com/magazine/2016/03/14/where-is-black-lives-matter-headed> [<https://perma.cc/29R6-VDPY>] (“Black Lives Matter has been described as ‘not your grandfather’s civil-rights movement,’ to distinguish its tactics and its philosophy from those of nineteen-sixties-style activism.”); see also FREELON ET AL., *supra* note 190, at 27 (“One of the simplest ways to express support echoed some variant of the following sentiment: ‘what happened was wrong and I support those seeking justice.’”).

²⁰¹ See Ziegler, *supra* note 83, at 280.

²⁰² *Id.* at 279–80.

²⁰³ Sarahfina Aubrey Peterson, *The Effect of Social Media on Public Awareness and Extra-Judicial Effects: The Gay Marriage Cases and Litigating for New Rights 10–15* (Oct. 17, 2014) (unpublished M.S. thesis, Portland State University) (on file with the Portland State University Library), http://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=3086&context=open_access_etds.

for historically marginalized individuals who have struggled to have their interests recognized in the public agenda.²⁰⁴

Social media has had a profound effect on the gay rights movement.²⁰⁵ Indeed, the use of social media in favor of LGBTQA causes provides a powerful example of how social networking and online relationships can forge new conversations in social justice arenas.²⁰⁶ As the United States Supreme Court moved closer to a decision ruling on the constitutionality of the Defense of Marriage Act (“DOMA”), many Facebook users changed their profile picture to an image of a red and pink equal sign, a symbol recognized as representing gay rights.²⁰⁷ Through social media, individuals learn how LGBTQA issues affect their friends and community.²⁰⁸ One of the inherent features of social media is its ability to allow individuals to share their stories.²⁰⁹ This was an essential component of the gay rights movement, as narratives transformed an abstract issue into a very personal one.²¹⁰ The director of media efforts for the Human Rights Campaign, Michael Cole-Schwartz, explained, “we win these fights because Americans know that LGBTQA people are their neighbors, their cousins, their aunts and uncles, the people they sit next to in church, and the people they shop with at the grocery store.”²¹¹ Peer-to-peer networks like Facebook connect cause supporters to their potential allies and provide a platform to share powerful narratives that can often reframe an individual's opinion on trending social issues.²¹²

²⁰⁴ See *id.* at 76.

²⁰⁵ See Hutchinson, *Sexual Politics and Social Change*, *supra* note 82, at 1526; see also Christopher Dale, *How your Facebook Posts are Changing the World*, ADVOCATE (July 27, 2015, 4:00 AM), <http://www.advocate.com/commentary/2015/07/27/op-ed-how-your-facebook-posts-are-changing-world> [https://perma.cc/8L6Z-8P27]; John Hoffman, *Sharing Our Way Toward Equality: Social Media and Gay Rights*, NONPROFIT Q. (May 14, 2012), <https://nonprofitquarterly.org/2012/05/14/sharing-our-way-toward-equality-social-media-and-gay-rights/> [https://perma.cc/LSF4-KUBQ]; David McCabe, *Facebook a Force on Gay Marriage*, HILL (July 3, 2015, 7:49 AM), <http://thehill.com/policy/technology/246828-facebook-a-force-on-gay-marriage> [https://perma.cc/VB26-VTD6].

²⁰⁶ Hoffman, *supra* note 205 (“For the upcoming generation of digital natives, these attitudes have been shaped in large part through personal relationships with openly gay peers who connect via Tumblr, Instagram, Viddy, and other social networking platforms. As Sarah Audelo, senior manager of domestic policy at Advocates for Youth, states, ‘The thought that [LGBT] people should somehow be denied the same rights and privileges that straight members of our society often take for granted is a moral outrage. I think I am like the majority of my generation in that I don’t arrive at this position via ideology or politics: I arrive at this position from my personal experience with people around me and the core assumptions of empathy, equality and social justice that are the hallmarks of my generation.’”).

²⁰⁷ Ellen Belluomini, *Social Media Advocacy—Legalizing Same Sex Marriage*, ACADEMIA, http://www.academia.edu/5160493/Social_Media_Advocacy-Legalizing_Same_Sex_Marriage [https://perma.cc/2G48-JTBS] (last visited Feb. 3, 2017).

²⁰⁸ Nancy Scola, *The Social-Network Effect that is Helping Legalize Gay Marriage*, ATLANTIC (Nov. 30, 2012), <http://www.theatlantic.com/politics/archive/2012/11/the-social-network-effect-that-is-helping-legalize-gay-marriage/265793/> [https://perma.cc/DA5G-NCSZ].

²⁰⁹ See Hoffman, *supra* note 205.

²¹⁰ Scola, *supra* note 208.

²¹¹ *Id.*

²¹² See *id.*

Not only do these networks offer social movements an opportunity to engage new members and spread their ideas to larger audiences, but such networks also enable social movement organizers to tap into an individual's past behaviors and predict whether that individual is likely to participate or donate to their cause.²¹³ Organizations can use tools that collect publicly available data about potential supporters and directly target information to individuals who have supported similar causes in the past.²¹⁴ Since many Millennials identify with individual issues as opposed to general platforms of political parties, this new data could transform not only law, but also the entire political process.

Legal scholar Gerald Rosenberg, who studied the effectiveness of lawsuits in generating reform, concluded that since litigation did not require buy-in from the public, even profoundly important court decisions were inadequate to implement broad social change.²¹⁵ Part I of this Article discussed the landmark ruling of *Brown v. Board of Education*, highlighting that while this decision was one of the key victories in the civil rights movement, it did not have the effect of desegregating schools as many had hoped.²¹⁶ In fact, our society continues to struggle with school segregation.²¹⁷ There are many reasons for this occurrence, and a full discussion of this issue is outside the scope of this Article.²¹⁸ But Professor Rosenberg argues that while legal victories can have large symbolic effects on society; alone, courts struggle to effectively influence public opinion.²¹⁹ Thus the media and social movements are essential for their ability to offer a meaningful way to highlight the need for and actually implement reform.²²⁰ Nonetheless, there will always be a role for litigation in social movements, as court actions effectively strike "down outliers and produce and elaborate on remedies already supported by popular consensus."²²¹

²¹³ See, e.g., *Amicus: Nonprofit Digital Organizing Tools*, AMICUS POST, [https://amicushq.com/\[https://perma.cc/68F9-CEPX\]](https://amicushq.com/[https://perma.cc/68F9-CEPX]) (last visited Feb. 3, 2017). Amicus is one website which allows organizations to more effectively target their desired audience through direct mailing solicitations.

²¹⁴ See Scola, *supra* note 208 (describing the use of Amicus by HRC (a nonprofit) in raising awareness, seeking votes, and raising money).

²¹⁵ See Gerald Rosenberg, *The 1964 Civil Rights Act: The Crucial Role of Social Movements in the Enactment and Implementation of Anti-Discrimination Law*, 49 ST. LOUIS U.L.J. 1147, 1154 (2005); see also Hutchinson, *Sexual Politics and Social Change*, *supra* note 82, at 1526; Peterson, *supra* note 203, at 2.

²¹⁶ See *supra* text accompanying notes 65–85.

²¹⁷ Lauren Camera, *More than 60 Years After Brown v. Board of Education, School Segregation Still Exists*, U.S. NEWS (May 17, 2016, 1:47 PM), <http://www.usnews.com/news/articles/2016-05-17/after-brown-v-board-of-education-school-segregation-still-exists> [<https://perma.cc/56C6-3G4L>] ("The U.S. Supreme Court struck down school segregation in *Brown v. Board of Education* 62 years ago today. But not only do students of color and poor students often still lack equal access to educational opportunities, segregation, it turns out, is alive and well.").

²¹⁸ For more on this topic, see Kevin Brown, *Has the Supreme Court Allowed the Cure for De Jure Segregation to Replicate the Disease?*, 78 CORNELL L. REV. 1 (1992); G. Scott Williams, Note, *Unitary School Systems and Underlying Vestiges of State-Imposed Segregation*, 87 COLUM. L. REV. 794 (1984).

²¹⁹ See GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 39–40 (1991); see also Rosenberg, *supra* note 215, at 1148; Peterson, *supra* note 203, at 11–12.

²²⁰ See Rosenberg, *supra* note 215, at 1148.

²²¹ See Ziegler, *supra* note 83, at 276.

Indeed, both lawyers and social movement leaders benefit from being able to persuasively frame issues. Lawyers working with social justice campaigns can apply their advocacy training in many ways. When presented with an opportunity to change social injustices, lawyers can help their clients understand that public awareness is often essential to effective legal advocacy.²²² Indeed, social justice lawyers are most effective when they recognize that their client's issues are not limited to the case or matter before them.²²³ Attorneys viewing their client's problem in a broader context have the potential to solve not only their present client's current problem, but perhaps also to solve future clients' problems.²²⁴ Proactively, attorneys can shift public policy and the culture around a particular issue by lending their expertise to broader advocacy efforts, resulting in greater social change than advocating in one client's case alone.²²⁵

C. Social Media and the Legislative Process

Scholars in communication disciplines have explored how social media can influence the lawmaking process.²²⁶ Such scholars conclude that these online platforms offer benefits to lawmaking strategists because the technology increases the "speed, reach, and effectiveness of communication and mobilization efforts."²²⁷ Scholars Obar and Zube, for example, conducted a study wherein they asked civic organizations to report on their usage of social media in advocacy campaigns.²²⁸ Their work found that social media strengthened "outreach efforts,"²²⁹ enabled

²²² See Peterson, *supra* note 203, at 73.

²²³ See generally Margareth Etienne, *The Ethics of Cause Lawyering: An Empirical Examination of Criminal Defense Lawyers as Cause Lawyers*, 95 J. CRIM. L. & CRIMINOLOGY 1195 (2005) (discussing the differences between cause lawyering and traditional legal advocacy).

²²⁴ *Id.* at 1225–26.

²²⁵ *Id.* at 1225.

²²⁶ See generally Obar et al., *supra* note 27 (examining how advocacy groups use social media to facilitate civic engagement and collective action).

²²⁷ *Id.* at 5.

²²⁸ *Id.* at 3–4.

²²⁹ *Id.* at 14 ("For example, participants often referred to social media's ability to create 'awareness' of organizational goals, messages, and strategies. Representatives from large groups including Common Cause and PETA as well as smaller groups including the Arab-American Institute and the National Hispanic Media Coalition referred to the benefits of increased 'exposure.' The NAACP and Greenpeace emphasized how social media contribute to a stronger online 'presence.' The Evangelical-Lutheran Church of America, the National Association of Social Workers (NASW), and others noted linkages to increased 'visibility.' The Writer's Guild of America noted how social media have enabled them to 'become part of a wider conversation, not exist in a bubble.' The National Council of La Raza (NCLR) said, 'as the largest civil rights group for Latinos, we have an amazing opportunity to reach a new population, educate them, and turn them into engaged voters.'").

“engaging feedback loops,”²³⁰ strengthened “collective action” by making communication faster,²³¹ and was “cost effective.”²³²

During the weeks when Congress was voting to potentially defund Planned Parenthood, an individual started the #shoutyourabortion campaign in an effort to change public opinion and destigmatize abortion through individual accounts of abortion in women’s lives.²³³ The movement encourages women to share their personal narratives to challenge the public’s perception of women choosing abortion.²³⁴ Co-founder of the #ShoutYourAbortion movement, Lindy West, explained in a Twitter post, “[i]t’s about destigmatization, normalization, and putting an end to shame.”²³⁵ The social movement sought to change public opinion and to potentially affect public policy by encouraging women to share stories of how abortion affected their lives.²³⁶ The goal was broader than seeking legal reform and instead focused on changing the social culture on abortion.²³⁷ As Kate Cockrill, the executive director of a nonprofit pro-choice social movement explained, “[t]here has been so much focus on legal strategies, and not a lot of attention to strategies for culture change.”²³⁸

Social media’s role in legislative actions continues to evolve. In June 2016, Pulse, a gay nightclub in Orlando, Florida, was the location of a horrific hate crime that

²³⁰ *Id.* at 15 (“Various groups suggested that the interactive, user-generated nature of social media enables advocacy groups to participate in two-way conversations with citizens.”).

²³¹ *Id.* at 15–16 (“[S]ocial media [is] helping groups to mount collective action campaigns for issues that perhaps could not have been addressed in the past due to the time constraints imposed by older communication models. As the ACLU noted, ‘we’re able to put out more action alerts and information on more issues than we ever could if we were only to use our e-mail list.’”).

²³² *Id.* at 16. Many report that social media provides free advertising. *Id.* “Other benefits that groups identified included the ease of use compared to traditional media, associated both with functionality and access to outlets. At the same time, the opportunity to supplement and ‘amplify’ messages distributed via traditional media was also noted.” *Id.*

²³³ See, e.g., Tamar Lewin, *#ShoutYourAbortion Gets Angry Shouts Back*, N.Y. TIMES (Oct. 1, 2015), http://www.nytimes.com/2015/10/02/us/hashtag-campaign-twitter-abortion.html?_r=0 [https://perma.cc/A92]-ACKC] (“She wanted women to talk about it openly as Congress investigates Planned Parenthood and debates cutting off its funding because of undercover videos showing officials of the group’s discussing providing fetal tissue for research.”).

²³⁴ *Mission Statement*, SHOUT YOUR ABORTION, <http://shoutyourabortion.com/about/> [https://perma.cc/FV9G-APWC] (last visited Feb. 3, 2017).

²³⁵ Michael Pearson, *Women Embrace, Criticize #ShoutYourAbortion*, CNN (Sept. 29, 2015, 8:06 PM), <http://www.cnn.com/2015/09/22/living/shout-your-abortion-feat/> [https://perma.cc/6JJU-AWXU].

²³⁶ See generally *Mission Statement*, *supra* note 234 (discussing the mission and goals of the #ShoutYourAbortion movement).

²³⁷ See Pearson, *supra* note 235.

²³⁸ Lewin, *supra* note 233; see also Caitlin Gibson, *How #ShoutYourAbortion Is Transforming the Reproductive Rights Conversation*, WASH. POST (Nov. 15, 2015), https://www.washingtonpost.com/lifestyle/style/how-shoutyourabortion-is-transforming-the-reproductive-rights-conversation/2015/11/13/aa64e68a-895f-11e5-9a07-453018f9a0ec_story.html [https://perma.cc/9X3H-8GZY] (highlighting the desired cultural impact that #ShoutYourAbortion hopes to have).

resulted in the slaughter of forty-nine individuals. Many more were wounded.²³⁹ The tragedy sparked outrage with regard to the United States' gun laws, and many took to social media to express their views on gun control legislation. Legislators took up the issue, and Senate Democrats held a fifteen-hour filibuster.²⁴⁰ Throughout the filibuster, several senators posted messages to Twitter, making it clear that they were paying attention to the social media outcries of their constituents.²⁴¹ When the issue was finally called for a vote, the Senate voted on four individual gun reform measures.²⁴² When the measures in the Senate failed, Rep. John Lewis, a Democrat from Georgia, began a sit-in that lasted approximately twenty-four hours.²⁴³ During the sit-in, Rep. Lewis posted to Twitter using #goodtrouble, #holdthefloor, and #NoBillNoBreak.²⁴⁴ In response to the filibuster and the sit-in, social media exploded using the same hashtags as Congressional leaders.²⁴⁵ Social media will continue to shape the gun reform that takes place in the United States.²⁴⁶

Litigation, standing on its own, cannot create meaningful culture shifts.²⁴⁷ In the instances described above, social media was used not only to reframe the issue, but also to garner public support and create a united voice for each cause. These social media campaigns demonstrate a new—but now perhaps commonplace—phenomenon in social advocacy work. By reframing their clients' issues and gathering

²³⁹ Azadeh Ansari & AnneClaire Stapleton, *Pulse Nightclub Shooting Details Revealed in Police Report*, CNN, <http://www.cnn.com/2016/07/19/us/orlando-pulse-nightclub-officer-accounts/> [https://perma.cc/LTN2-MDSB] (last updated July 19, 2016, 5:06 PM); see also Steve Visser, *Orlando Memorializes Gay Nightclub Massacre*, CNN, <http://www.cnn.com/2016/07/12/us/orlando-pulse-massacre-memorial/index.html> [https://perma.cc/TTH6-Y9ZT] (last updated July 12, 2016, 5:32 PM) (providing a summary of the shooting).

²⁴⁰ Donovan Slack, *Democratic Senators Stage 'Filibuster' to Demand Action on Gun Bills*, USA TODAY (June 16, 2016, 5:52 AM), <http://www.usatoday.com/story/news/politics/2016/06/15/democratic-senators-stage-filibuster-force-action-gun-bills/85929346/> [https://perma.cc/22SY-5VUF].

²⁴¹ See Warren Murray, *Senate Filibuster Ends as Democrat Claims Gun Control Victory*, GUARDIAN (June 16, 2016, 3:11 PM), <https://www.theguardian.com/us-news/2016/jun/16/enough-senate-filibuster-ends-as-democrat-claims-gun-control-victory> [https://perma.cc/B94E-USQ4] (“[U]pdates and messages of support were posted on social media with the hashtags #enough and #holdthefloor.”); see also *After Democratic Filibuster, U.S. Will Debate Some Gun Limits*, TWITTER (June 16, 2016), <https://twitter.com/i/moments/743144814028406785> [https://perma.cc/9DRM-5Y9W] (providing a summary of various legislators tweets over the course of the filibuster).

²⁴² Tom LoBianco et al., *Senate Rejects Series of Gun Measures*, CNN <http://www.cnn.com/2016/06/20/politics/senate-gun-votes-congress/> [https://perma.cc/V89U-ZY8B] (last updated June 20, 2016, 8:47 PM).

²⁴³ Deirdre Walsh et al., *Democrats End House Sit-In Protest Over Gun Control*, CNN, <http://www.cnn.com/2016/06/22/politics/john-lewis-sit-in-gun-violence/> [https://perma.cc/T636-MU9H] (last updated June 24, 2016, 1:08 PM).

²⁴⁴ John Lewis (@repjohnlewis), TWITTER (June 22, 2016, 3:45 PM), <https://twitter.com/repjohnlewis/status/745749509314068480> [https://perma.cc/W88L-C76S].

²⁴⁵ See Walsh et al., *supra* note 243.

²⁴⁶ See *id.* (illustrating social media's role during the Senate's sit-in on gun violence).

²⁴⁷ See Darren Lenard Hutchinson, *Undignified: The Supreme Court, Racial Justice, and Dignity Claims*, 69 FLA. L. REV. (forthcoming 2017) (manuscript at 5–6) (on file with author) [hereinafter Hutchinson, *Undignified*]; see also NeJaime, *supra* note 81, at 664–66, 671, 676 (discussing the positive and negative aspects of pursuing social change through litigation).

public support for such issues, advocates can redefine the role and effect of social movements in public policy.

But does social media really affect public policy? This was the question posed by MIT scholar Amy Zhang and Microsoft researcher Scott Counts.²⁴⁸ By examining state residents' past social media posts, these scholars found they could predict whether a proposed policy measure would pass "with approximately 80% accuracy."²⁴⁹ This accuracy is inherently greater than predictions made through the use of polling data.²⁵⁰ It lends itself to the theory that, indeed, social media *does* have a substantial effect on the law.²⁵¹ Therefore, attorneys, especially those committed to social movements, would be remiss to not consider social media's profound potential to effectuate legislative action.²⁵²

D. Activism or Slacktivism?

While many social movements have a large online base, some question whether such supporters can truly effectuate change on behalf of their stated cause.²⁵³ Supporters who share, tweet, like, or comment on behalf of a cause are often publicly expressing their opinion with regard to a social issue that is important to them, but, unlike traditional social movements, this "armchair activism" often requires no follow-up.²⁵⁴ Membership in online social movements fluctuates, as does the commitment level of each movement member. And while such followers are often passionate for the causes they support online, there is significant variability as to whether this loyalty will transcend into the online advocates' personal lives when they log off social media.

As such, there are many cynics who question the value of social media activism.²⁵⁵ In fact, the term "slacktivism" has even been coined to explain the downside of social

²⁴⁸ Amy X. Zhang & Scott Counts, *Modeling Ideology and Predicting Policy Change with Social Media: Case of Same-Sex Marriage*, PROC. 33RD ANN. ACM CONF. ON HUM. FACTORS COMPUTING SYS., 2015, at 2603, 2603–04.

²⁴⁹ *Id.* at 2603.

²⁵⁰ *Id.* at 2603, 2609–10.

²⁵¹ See *id.* at 2611–12 (highlighting the possibility of employing social media to capture societal views on important issues and more effectively bring about change on major social issues).

²⁵² See generally Deborah J. Cantrell, *Sensational Reports: The Ethical Duty of Cause Lawyers to Be Competent in Public Advocacy*, 30 HAMLINE L. REV. 567, 569–72, 574–75, 584–85 (2007) (arguing that lawyers committed to cause lawyering ethically must have the ability to engage in public advocacy campaigns, which requires communicating in a variety of public forums outside the courtroom).

²⁵³ See Laura Seay, *Does Slacktivism Work?*, WASH. POST (Mar. 12, 2014), <https://www.washingtonpost.com/news/monkey-cage/wp/2014/03/12/does-slacktivism-work/> [<https://perma.cc/2LXM-BPKJ>] (noting that one's participation in a social media campaign may not necessarily translate into active engagement); see also Olga Khazan, *UNICEF Tells Slacktivists: Give Money, Not Facebook Likes*, ATLANTIC (Apr. 30, 2013), <http://www.theatlantic.com/international/archive/2013/04/unicef-tells-slacktivism-give-money-not-facebook-likes/275429/> [<https://perma.cc/9ECF-LDWV>] (questioning the impact of social media sharing on furthering social movements).

²⁵⁴ Seay, *supra* note 253.

²⁵⁵ Yu-Hao Lee & Gary Hsieh, *Does Slacktivism Hurt Activism?: The Effects of Moral*

media advocacy.²⁵⁶ A combination of the words “slacker” and “activism,” this term is used to define the phenomenon of people who appear to support a cause, but who rarely put forth true effort to advocate for the change they strive to achieve.²⁵⁷ The efforts allow the individual to feel good—but critics argue that this sort of activism is merely for show and claim it does little to advance meaningful change.²⁵⁸

While some online activists also involve themselves in the grassroots work of social movements, others participate in advocacy for symbolic purposes alone. This is somewhat similar to off-line advocacy efforts such as planting a tree (symbolizing support for the environment) or wearing a ribbon (which might offer support for medical conditions or other causes).²⁵⁹ And while supporters of online activism might argue that their support is similar to signing a petition, others insist that a retweet, hashtag, or share has far less value.²⁶⁰ Therefore, some lawyers might question whether engaging social media in their social justice campaigns is of lasting benefit.

Studies show that when an individual engages in advocacy through private action, such as writing a letter to their congressman, that individual is more likely to later engage in substantive service to the cause she has written about.²⁶¹ Similar studies, however, have also found that this is *not* the case when a person writes about her support of a particular issue on social media.²⁶² This research supports critics who view social media—or hashtag—advocacy as slacktivism, and encourages social movements to ask their supporters for a more personal commitment of time and energy.²⁶³ At first glance, this might suggest that attorneys are more likely to sway public opinion by engaging in more traditional outreach efforts, at least initially. But—despite such studies—perhaps showing online support for a particular cause does lead to deeper, more meaningful activist participation.²⁶⁴

Indeed, the United Nations International Children's Fund (“UNICEF”) offered a powerful example with regard to online sharing in advocacy work. Their Swedish chapter vividly told their audience that a like or a share has little value to an organization trying to feed starving children.²⁶⁵ “We like likes, and social media

Balancing and Consistency in Online Activism, PROC. SIGCHI CONF. ON HUM. FACTORS COMPUTING SYS., 2013, at 811, 811.

²⁵⁶ *Slacktivism*, TECHOPEDIA, [https://www.techopedia.com/definition/28252/\[https://perma.cc/LG64-HKMH\]](https://www.techopedia.com/definition/28252/[https://perma.cc/LG64-HKMH]) (last visited Feb. 3, 2017).

²⁵⁷ Lee & Hsieh, *supra* note 255, at 811.

²⁵⁸ See Christensen, *supra* note 22. The term slacktivism is not original to social media; Slacktivism was first coined in 1995 and referred to individuals who might, for example, plant a tree instead of showing up in protest to deforestation. See *id.*

²⁵⁹ See *id.* (noting similarities between online activism and other “low effort activities” in their inability to facilitate political change).

²⁶⁰ Khazan, *supra* note 253.

²⁶¹ Seay, *supra* note 253.

²⁶² *Id.*

²⁶³ See *id.* (noting that private acts of activism are more likely to lead to deeper forms of engagement than acts done purely on social media).

²⁶⁴ Seay, *supra* note 253.

²⁶⁵ Khazan, *supra* note 253.

could be a good first step to get involved, but it cannot stop there,' said UNICEF Sweden Director of Communications Petra Hallebrant. 'Likes don't save children's lives. We need money to buy vaccines for instance.'²⁶⁶ Interestingly, however, the UNICEF campaign created a slogan to help spread this message, and communicated it through social media.²⁶⁷ The organization created a poster that said, "[l]ike us on Facebook, and we will vaccinate zero children against polio."²⁶⁸ The poster then asked viewers to donate money instead, money that would be used to actually buy polio vaccines.²⁶⁹ The advertisement was effective. It is notable, however, that the successful advertisement likely was effective not only because it sent a clear message asking supporters to donate money, but also because it was interesting *and* available in an easy-to-share digital format on social media.²⁷⁰ Thus, though perhaps unexpected, UNICEF inadvertently provided a prime example of how activists can capture the power of social media to create meaningful change.²⁷¹

In any event, those who participate in online activism fall into one of two categories. For some, online activism will indeed lead to meaningful participation in a cause.²⁷²

A 2,000-person study by Georgetown University and Ogilvy Worldwide found that social promoters were just as likely as non-social-promoters to give money, but they were slightly more likely to volunteer their time (30 percent, versus 15 percent for non-social-promoters). So it seems that at least for some online agitators, liking a cause on Facebook doesn't mean that's all they're doing.²⁷³

For others, online activism might simply be symbolic. This symbolic display of support does not necessarily take away from the importance of the activity, but it might detract from the potential for such symbolic supporters' material participation in a movement. Sociology professor Zeynep Tufekci, for instance, argues that those users showing only symbolic support were not potential movement members to begin with.²⁷⁴ Instead, such symbolic supporters are merely additional voices expressing

²⁶⁶ *Id.*

²⁶⁷ *See id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *See id.*

²⁷¹ *See id.* ("UNICEF's might be an extreme perspective, but it does raise interesting questions about how charity organizations should spread their messages online without allowing their potential donors to get stuck in slacktivist land, retweeting links and changing profile pictures without ever opening their wallets.").

²⁷² *Id.*; *see also* Lee & Hsieh, *supra* note 255, at 811 (noting that participants in the authors' study who engaged in slacktivism were more likely to donate money to a related cause).

²⁷³ Khazan, *supra* note 253.

²⁷⁴ *Id.* (citing and quoting Zeynep Tufekci, #Kony2012, *Understanding Networked Symbolic Action & Why Slacktivism is Conceptually Misleading*, TECHNOSOCIOLOGY (Mar. 10, 2012), <http://technosociology.org/?p=904> [<https://perma.cc/K3UJ-M4QL>]).

opinions on social media.²⁷⁵ But, even then, these additional voices offer support and encouragement to those who are engaged in more material forms of advocacy work.

III. SOCIAL MEDIA IN THE PRACTICE OF LAW

Lawyers are tasked with solving client problems, and often, this involves issues that are not limited to individual clients. Clients might employ an attorney to challenge a policy that affects many similarly situated individuals or to lobby for legal reform at the local, state, or federal level. Typically, attorneys are trained to advocate for their client through court action, and when successful, litigation often returns favorable results. Attorneys working on behalf of traditionally marginalized individuals may also achieve favorable results by working with social movements that align with their client's interests. This form of cause-lawyering acknowledges that perhaps litigation alone is not the best vehicle for implementing social change.²⁷⁶ Judicial action often results in legal change,²⁷⁷ but having public support for reform often strengthens the case and assists with implementation after the ruling. In many circumstances, attorneys are most effective when they work with grassroots and online social movements.²⁷⁸

Lawyers advocating for social justice issues might be reluctant to involve themselves in social media campaigns for well-founded reasons, including the general critiques expressed in Part II and the specific critiques applicable to lawyers outlined below. For marginalized peoples, however, social media offers individuals the empowering opportunity to share their narrative and create networks of like-minded individuals. Advocates of such marginalized groups thus have a new tool that is influential with decision makers—both those in government and those who enforce rules and law. Attorneys are now able to tangibly demonstrate that their client's position on a particular issue has the support of many constituents. Such advocacy efforts might take place in an "armchair," as opposed to a courtroom, but it can be effective nonetheless.

²⁷⁵ *Id.* (citing and quoting Tufekci, *supra* note 274). In her blog post, Tufekci writes, "[s]o, not only are these people not slacking, they are acting symbolically in spheres that previously had higher barriers to entry." Tufekci, *supra* note 274.

²⁷⁶ See generally Peterson, *supra* note 203 (suggesting that the involvement of social advocacy groups in raising public awareness of issues in litigation can be an effective means of implementing social change).

²⁷⁷ See Ziegler, *supra* note 83, at 267 ("[M]ovements may sometimes benefit from using litigation rather than ordinary protest tactics to advance a particular frame. Because litigation can foster the expression of alternative arguments, the courts offer movements an opportunity to present a variety of possibly effective frames. When it does not yet have political influence, a movement may often have to rely on the media to publicize a frame.").

²⁷⁸ See, e.g., *id.* at 300–08 (discussing the success of public advocacy groups in marriage equality litigation).

A. Attorneys and Social Justice Advocacy

Lawyers are most effective when they can convey to governing and adjudicatory bodies that their position is in line with the public voice.²⁷⁹ Social media, incorporated by advocacy groups, provides lawyers with a strong foundation to advocate on behalf of their clients' interests. And while communication scholars have noted some drawbacks to using social media, many believe this is only because the technology is still so new.²⁸⁰

Awareness of social media's effect on law can help attorneys show their clients that success does not come from a verdict or settlement alone.²⁸¹ Participation in broader advocacy groups can provide marginalized individuals an opportunity to take part in a larger conversation with regard to society and culture, and such participation can be a useful tool to use in conjunction with litigation strategies. Attorneys can share this knowledge with their clients, and can connect them to larger social movements through social media. Additionally, lawyers can become participants by leveraging their expertise and advocacy to worthy forward-looking causes.²⁸² Working together, attorneys and social justice activists can profoundly change how laws affect individuals and society.

Attorneys can best serve their clients by helping each client tell his or her story in a manner that allows the finder of fact to empathize and understand the depth of the issue.²⁸³ Many clients are proud to tell their stories and perhaps even benefit from expressing their personal narratives in court.²⁸⁴ But, for some individuals, sharing personal stories can be embarrassing and, when done publicly, run counter to the individual's best interests.²⁸⁵ For example, attorneys advocate for their disabled clients during disability hearings—particularly clients with mental illnesses—the narrative often focuses on “the incompetence and/or victimization of the claimant.”²⁸⁶ While the attorney does this to help the claimant obtain benefits and

²⁷⁹ See Hutchinson, *Undignified*, *supra* note 247, at 48–50 (noting that the decision in *Obergefell v. Hodges* followed decades of a social movement advocacy and a shift in public opinion).

²⁸⁰ Obar et al., *supra* note 27, at 16–17 (“A member of the Religious Coalition for Reproductive Choice added, ‘we are pretty new to it, mostly because a younger wave of employees that have just recently started in the past year have pushed the importance of a social media presence.’”).

²⁸¹ See, e.g., Nina A. Kohn, *The Lawyer's Role in Fostering an Elder Rights Movement*, 37 WM. MITCHELL L. REV. 49, 49, 56–57 (2010) (explaining that lawyers should play a key role in creating an elder rights movement to emerge and that this can be best accomplished “by reframing key elder law concerns as civil rights concerns, and engaging in and with ‘cause lawyering’ activities”).

²⁸² See *id.* at 70–71 (explaining that lawyers can become advocates by using “their professional skills to further a particular form of social change”).

²⁸³ See JoNel Newman, *Identity and Narrative: Turning Oppression Into Client Empowerment in Social Security Disability Cases*, 79 ALB. L. REV. 373, 397–98 (2015).

²⁸⁴ See *id.* at 398 (implying that there is much room for client empowerment when the client is allowed to construct their narrative).

²⁸⁵ See *id.* at 373 (suggesting that presenting a client's story can sometimes include disclosing embarrassing details and may re-victimize the client).

²⁸⁶ *Id.* at 385 (citing Spencer Rand, *New Directions in Clinical Legal Education: Creating My Client's Image: Is Case Theory Value Neutral in Public Benefits Cases?*, 28 WASH. U.J.L. & POL'Y 69, 83–84 (2008)).

win the case, it often has unintended consequences.²⁸⁷ This can undermine the client's efforts to overcome her disability, and the process can ultimately leave the client feeling victimized.²⁸⁸

In her article, *Identity and Narrative: Turning Oppression into Client Empowerment in Social Security*, JoNel Newman suggests that perhaps attorneys need to start at the ground floor—outside the realm of their client's particular case or their current issue before the court—and instead think more broadly about reframing the narrative surrounding the issue generally.²⁸⁹ Newman discusses the work of James Leonard and Jonathan Drimmer, and she explores the role of society in understanding individuals with special needs.²⁹⁰ “Jonathan Drimmer explains the civil rights construct of disability as one that ‘views society, rather than the individual with a disability, as defective.’”²⁹¹ Shifting this construct requires an attorney to think about the issues as affecting more than just their individual client.²⁹² By doing so, clients with reservations about sharing their story might be more comfortable with the process, and therefore more inclined to participate in the advocacy process. As discussed in the next Section of this Article, social media provides a prominent platform through which this sharing and engagement can occur.

B. Lawyers and Social Media

Customarily, raising public awareness required media buy-in, something that was often challenging for attorneys working with smaller social advocacy groups.²⁹³ Social media, however, offers these groups a new, cost effective method of spreading their messages and raising awareness.²⁹⁴ This tool is available to all and does not require an individual or group to have a large platform or microphone. Lawyers who advocate on behalf of social causes would be mistaken to not consider the advantages of these new opportunities.²⁹⁵

²⁸⁷ See *id.* at 389–91 (providing examples of negative effects from client narratives in disability hearings).

²⁸⁸ *Id.* at 384–85. The article provides compelling examples of the unintended effects that often come with the successful litigation of disability claims. *Id.* at 389–91.

²⁸⁹ *Id.* at 397–98.

²⁹⁰ *Id.* at 392–93.

²⁹¹ *Id.* (citing Jonathan C. Drimmer, Comment, *Cripples, Overcomers, and Civil Rights: Tracing the Evolution of Federal Legislation and Social Policy for People with Disabilities*, 40 UCLA L. REV. 1341, 1355 (1993)).

²⁹² See *id.* at 392–93 (explaining that the focus in this construct is the societal environment instead of the individual).

²⁹³ See Peterson, *supra* note 203, at 73–74 (explaining that the media's role in educating the public about issues in court has been dismal).

²⁹⁴ See *id.* at 10, 75–77 (explaining that social media has allowed advocacy groups to more easily use frequent and focused exposure to their issues).

²⁹⁵ See *id.* at 75 (“A win at the Court level not only changes the law but combined with public awareness, it can in fact generate a number of social effects: salience, elite influence, positive changes in public opinion and movement coherence. The steady indifference of the public to issues in front of the Court combined with the media's episodic and lackadaisical coverage of same has hampered advocates' ability to nourish social change.”).

In 2012, the International Bar Association released a report titled “The Impact of Online Social Networking on the Legal Profession and Practice.”²⁹⁶ The report, generated by the London-based Legal Projects Team, explored how social networking effects the practice of law and the legal profession generally.²⁹⁷ The authors explored how social media impacts lawyers, judges, law students, and even jurors.²⁹⁸ The authors suggested that due to the rise of social media, everyone engaged in the legal profession needed to be aware of how social media could work both within the context of courtroom advocacy and, more generally, how social networking could benefit law practitioners.²⁹⁹ The report also considered whether bar associations and other counsels should devise guidelines for the application of social media to the professionalism and practice of law.³⁰⁰ The report, however, focused almost entirely on “consider[ing] the impact of online social networking on the legal profession and practice,” and the report did not consider how society’s use of online social networking could affect litigants and case work.³⁰¹

Law review articles have also focused on the intersection of lawyers and social media, but the majority of these articles focus on how lawyers should appropriately conduct themselves within these online environments.³⁰² One such article, published in 2011, explored how lawyers used social media.³⁰³ The author reported that at the time, fifty-six percent of all lawyers used social media; the author, too, studied the effects of social media on the court—including how judges deal with abuse of social media in litigation and how judges could control the use of social media in the courtroom.³⁰⁴ Certainly, all parties in the legal process have misused social media, and law review articles have highlighted these issues, paying particular attention to the conduct by judges and jurors.³⁰⁵ Other scholarly articles address ethical concerns with regard to a lawyer’s use of social media, marketing on social media, and discovery through social media.³⁰⁶ Legal scholars, however, are only beginning to explore social media’s power to revolutionize cause-lawyering. While legal advocates

²⁹⁶ INT’L BAR ASS’N, THE IMPACT OF ONLINE SOCIAL NETWORKING ON THE LEGAL PROFESSION AND PRACTICE (2012).

²⁹⁷ *Id.* at 7.

²⁹⁸ *Id.*

²⁹⁹ *See id.*

³⁰⁰ *See id.*

³⁰¹ *Id.*

³⁰² *See generally, e.g.*, Michael E. Lackey, Jr. & Joseph P. Minta, *Lawyers and Social Media: The Legal Ethics of Tweeting, Facebooking and Blogging*, 28 TOURO L. REV. 149 (2012); Hope A. Comisky & William M. Taylor, *Don’t Be a Twit: Avoiding the Ethical Pitfalls Facing Lawyers Utilizing Social Media in Three Important Arenas—Discovery, Communications with Judges and Jurors, and Marketing*, 20 TEMP. POL. & C.R. L. REV. 297 (2011).

³⁰³ *See generally* Emily M. Janoski-Haehlen, *The Courts Are All a ‘Twitter’: The Implications of Social Media Use in the Courts*, 46 VAL. U.L. REV. 43 (2011).

³⁰⁴ *Id.* at 44.

³⁰⁵ *See id.*

³⁰⁶ *See generally, e.g.*, David E. Aaronson & Sydney M. Patterson, *Modernizing Jury Instructions in the Age of Social Media*, A.B.A. SEC. CRIM. JUST., Winter 2013, at 26 (supporting the proposition that jurors’ use of social media creates ethical concerns).

have always worked closely with social justice movements, the advent and widespread use of social media has dramatically shifted how activism is expressed.

Lawyers and social justice leaders can most effectively serve their clients by recognizing this dichotomy—working together—and embracing this new phenomenon. It is important that lawyers remain mindful, however, of their ethical obligations; and in many circumstances, navigating a professional path through social media can present challenges for passionate lawyers. Attorneys must keep in mind that they can only offer legal representation to individuals within the jurisdiction in which they are licensed.³⁰⁷ Attorneys participating in social media activism should not give legal advice to individuals outside of their jurisdiction.³⁰⁸ Similarly, attorneys must remain diligent in protecting their attorney-client relationships and must consider whether their online presence creates the appearance of an attorney-client relationship with someone they communicate with through virtual means.³⁰⁹ Attorneys participating in virtual advocacy must also consider their jurisdictional rules regarding online solicitation.³¹⁰ Passionate advocacy can be perceived as advertising to potential clients.³¹¹ And, of course, attorneys should not use social media during trial in any manner that could influence the trier of fact.³¹²

In light of this reality, this Article suggests that lawyers be mindful before taking an individual case to social media. But lawyers must be equally aware that in some circumstances, social media might offer powerful solutions.³¹³ The American Immigration Lawyers Association (“AILA”) has balanced these issues well. The AILA is “established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members.”³¹⁴ The organization plays a key role in advocating for immigration reform within federal

³⁰⁷ See Julie Tappendorf, *Attorney Ethics & Social Media*, 2015 A.B.A. SEC. ST. & LOC. GOVT L. 1, http://www.americanbar.org/content/dam/aba/administrative/state_local_government/EthicalConsiderationJulieTappendorf.authcheckdam.pdf [<https://perma.cc/MG5T-8U23>]; see also MODEL RULES OF PROF'L CONDUCT r. 5.5 (AM. BAR ASS'N 1983).

³⁰⁸ See Tappendorf, *supra* note 307, at 3.

³⁰⁹ See *id.*

³¹⁰ See *id.* at 4–5.

³¹¹ See *id.* at 4.

³¹² See *id.* at 5.

³¹³ See, e.g., Debra Cassens Weiss, *Lawyer is Disbarred for 'Social Media Blitz' Intended to Influence Custody Case and Top State Court*, A.B.A. J. (July 8, 2015, 5:45 AM), http://www.abajournal.com/news/article/lawyer_is_disbarred_for_social_media_blitz_intended_to_influence_custody [<https://perma.cc/5FEX-8QYJ>]; see also *Tweeting to Disbarment*, LEGAL PROF. BLOG (July 6, 2015), http://lawprofessors.typepad.com/legal_profession/2015/07/disbarment-was-imposed-by-the-louisiana-supreme-court.html [<https://perma.cc/5E4Z-F6XB>] (examining the disbarment of a lawyer who discussed a child custody case on social media). The lawyer posted “online articles and postings . . . contain[ing] numerous false, misleading, and inflammatory statements about the manner in which Judge Gambrell and Judge Amacker were handling the pending cases. But [the lawyer] denie[d] any responsibility for these misstatements, contending these were ‘Raven’s perceptions of what had happened’ and [the lawyer] was simply ‘helping [Raven] get her voice out there.’” *Id.*

³¹⁴ *Mission and Goals*, AM. IMMIGR. L. ASS'N, <http://www.aila.org/about/mission> [<https://perma.cc/AHZ9-G82U>] (last visited Feb. 5, 2017).

agencies, Congress, and through court action.³¹⁵ It helps members engage in pro bono representation for individuals needing legal help on immigration matters and provides litigation assistance to attorneys.³¹⁶ It recognizes that while successful litigation can enhance the lives of individuals represented by competent attorneys, it does little to shift public opinion on immigration issues. Instead of resting on one-time successes, AILA encourages its members to support its efforts of educating the public on immigration issues and to engage in dialog regarding legal reform.³¹⁷ Through their linked Facebook, Twitter, LinkedIn, and YouTube channels, AILA members and website visitors can hear from individuals affected by current immigration law.³¹⁸ The organization is made up of attorneys, and as such, they use their skills and direct their advocacy efforts in more traditional cause-lawyering arenas as well.³¹⁹ The organization seeks meaningful change by combining legal advocacy with social media activism.³²⁰

Attorneys working on behalf of individual clients whose issues might fit in looser with larger social movements can also benefit from online advocacy. Kathleen Zellner, for example, who represents Steven Avery—most well-known for his hotly contested murder conviction, which was explored in great depth through the documentary series “Making a Murderer”—has almost 200,000 Twitter followers.³²¹ Hashtags such as “#FreeStevenAvery” and “#stevenaveryisinnocent” have been trending on Twitter.³²² Zellner uses her social media platform to keep her client’s

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ See *AILA on Social Media*, AM. IMMIGR. L. ASS’N, <http://www.aila.org/advo-media/social-media> [https://perma.cc/B26V-ZXF9] (last visited Feb. 5, 2017); *id.* at 666.

³¹⁹ See *Mission and Goals*, *supra* note 314; see, e.g., Press Release, Am. Immigration Lawyers Ass’n, AILA Statement on the Markup of H.R. 5203 in the House Judiciary Comm. (May 25, 2016), <http://www.aila.org/advo-media/press-releases/2016/statement-hr-5203-markup-house-judiciary-committee> [https://perma.cc/ZSG3-LSZG]; Press Release, Am. Immigration Council, Lawsuit Seeks Transparency in H-1B Lottery Process (May 23, 2016), <https://www.americanimmigrationcouncil.org/news/lawsuit-seeks-transparency-h-1b-lottery-process> [https://perma.cc/98WF-PEQT] (“The American Immigration Council (Council) and the American Immigration Lawyers Association (AILA) have teamed up on a lawsuit against the U.S. Department of Homeland Security and U.S. Citizenship and Immigration Services (USCIS) seeking information about the government’s administration of the H-1B lottery. The lawsuit . . . was brought under the Freedom of Information Act (FOIA). Hughes Socol Piers Resnick & Dym, Ltd. is co-counsel with attorneys from the Council.”).

³²⁰ See *Mission and Goals*, *supra* note 314.

³²¹ See John Ferak, *Avery Attorney’s Social Media Strategy Questioned*, POST-CRESCENT (June 7, 2016, 11:21 AM), <http://www.postcrescent.com/story/news/2016/06/07/avery-attorneys-social-media-strategy-questioned/85233596/> [https://perma.cc/A88G-TEUS].

³²² Sandra González-Bailón, *Could Slacktivism Help Making a Murderer’s Steven Avery?*, NEW REPUBLIC (Jan. 12, 2016), <https://newrepublic.com/article/127462/slacktivism-help-making-murderers-steven-avery> [https://perma.cc/N5DX-29Q6].

case squarely in the public eye.³²³ But she is not without critics.³²⁴ The online advocacy and documentary series has not only garnered much attention and support for Avery's cause, but also shed light on larger related issues surrounding the possibility of wrongful convictions throughout the criminal justice system.³²⁵ As one observer explains, "[m]any strands of popular culture—including newspapers, radio and television news broadcasts, and film and television—shape the public's understanding of crime and punishment."³²⁶

As Stephen Avery's story was trending on social media, those who study Twitter feeds were finding that users were also talking more about law and legal processes generally.³²⁷ As one commenter wrote, "[w]e are living in a time and age where media has a substantial impact on society. It has an incredible pull on how people perceive and view certain things."³²⁸ By highlighting their client's individual case, attorneys set the public agenda with regard these important issues, serving not only their client, but also other similarly situated individuals, and perhaps society as a whole.³²⁹ Indeed, social media is dramatically changing public perceptions of law and justice.

Social media advocacy can play an important role in the lives of all individuals, even those not directly affected by social justice issues. The symbolic gesture of liking or sharing a post has meaning in and of itself, for both the person who decides (perhaps for the first time) to voice their opinion on a contested issue and also for those who are truly engaged in activist work.³³⁰ These actions strengthen social justice movements.³³¹

³²³ Ferak, *supra* note 321.

³²⁴ *Id.* ("These tweets, other than inciting the mob, they don't (accomplish) anything,' said Haiduk, who practices law about 40 miles west of Chicago. 'I could never support what she's doing. And I don't think this is the future of our profession. As a professional colleague, I wish she wasn't doing this. Really, cases are decided in the courtrooms and not on Twitter.'"); see also Tony Connelly, *Trial by Social Media: Steven Avery's Defence [sic] Lawyer Takes the Case to Twitter to Reveal New Facts*, DRUM (Feb. 23, 2016, 4:30 PM), <http://www.thedrum.com/news/2016/02/23/trial-social-media-steven-averys-defence-lawyer-takes-case-twitter-reveal-new-facts> [https://perma.cc/M5J4-XGPF] ("One of the obvious dangers of the immense popularity of an ongoing criminal case is that it will influence those chosen to be part of the jury.").

³²⁵ See Anna Swartz, *Steven Avery's Attorney Kathleen Zellner is Using Twitter to Defend His Innocence*, NEWS.MIC (Jan. 22, 2016), <https://mic.com/articles/133237/steven-avery-s-attorney-kathleen-zellner-is-using-twitter-to-defend-his-innocence#.DlEpXPdeK> [https://perma.cc/RV59-KV36].

³²⁶ Joel S. Johnson, Note, *Benefits of Error in Criminal Justice*, 102 VA. L. REV. 237, 267 (2016).

³²⁷ See Jessica Hammerstein, *Research: An Investigation on How Making a Murderer Made its Mark*, BRANDWATCH (Jan. 26, 2016), <https://www.brandwatch.com/blog/research-an-investigation-on-how-making-a-murderer-made-its-mark/> [https://perma.cc/TCM4-67FP].

³²⁸ Mollie Henry, *Pro/Con: Does the Media Have Too Much Influence on Public Opinion?*, DAILY ILLINI (Jan. 21, 2016), <http://dailyillini.com/opinion/2016/01/21/procon-does-the-media-have-too-much-influence-on-public-opinion/> [https://perma.cc/BN5A-DZKZ] (discussing how the podcast "Serial" influenced the public's views on our criminal justice system).

³²⁹ See Johnson, *supra* note 326, at 269.

³³⁰ See Seay, *supra* note 253.

³³¹ See *id.*

CONCLUSION

Attorneys must recognize their role in online advocacy in the practice of law. This recognition is perhaps most important for attorneys who work on social justice issues.³³² Often, these attorneys view their work as bigger than one case or client and instead as part of a movement focused on human rights and human dignity.³³³ Lawyers advocating for social justice issues might be reluctant to involve themselves in social media campaigns for well-founded reasons, but they would be remiss if they did not understand social media's power to challenge the status quo and improve their clients' lives. Online advocacy offers clients something even larger than a successful courtroom verdict. By embracing social media, attorneys may provide their clients with the opportunity to shift public discourse on the deeper issues affecting their lives.

³³² See Newman, *supra* note 283, at 400.

³³³ See *id.*