2012

Advancing Social Justice as Lawyers: And How Social Media Can Be Part of Your Effort

Chai R. Feldblum
Georgetown University Law Center, feldblum@law.georgetown.edu

This paper can be downloaded free of charge from:
http://scholarship.law.georgetown.edu/facpub/1088
Commencement Address to the 2012 Graduating Class of UCLA Law
May 11, 2012

Advancing Social Justice as Lawyers
(and how social media can be part of your effort)

Thank you Dean Moran – thank you to the wonderful faculty and staff of UCLA Law School -- and many thanks to you -- the Graduating Class of 2012 – for inviting me here today.

My theme is how you can be part of advancing social justice as lawyers – and how the time that people might say you are “wasting” on social media (be it Twitter or FB or whatever you may use) can, in fact, be an essential part of social justice work.

Before I begin -- let me see if I have a cultural divide in my audience. For all you folks wearing graduation robes – how many of you use FB, Twitter or some other social media on a pretty regular basis? And now – for everyone else in this audience – what about you? [Let the record reflect that – we’ll see what the raised hands demonstrate! I actually don’t know what it will be.] This talk is intended to be intelligible regardless of where you are on this cultural spectrum.

Full disclosure -- I am a Twitter fiend. You can follow me @chaifeldblum. I started about a year ago and I just passed 1,000 followers last week. (So guys – follow me and take me on to 2,000!]

For purposes of this talk, what’s important is that the time I spend on Twitter and FB is completely entwined – for me -- with my legal work and my efforts towards social justice.

Let me explain. I believe that the achievement of any social justice goal – and that means, whatever you might conceive to be social justice -- will always need three variables to converge:

- Law
- Policies in practice and
- Social norms.

This framework applies to the achievement of any social goal. For example:

- the goal of getting people with disabilities into real jobs;
- the goal of obtaining true equality for LGBT people;
- the goal of valuing caregiving in our society; and
- the goal of protecting religious beliefs and practices.

I just picked four social justice goals that I have happened to work on over the past 30 years of my career!
These three variables operate best when they operate in a dynamic and synergistic manner. And you, as lawyers, can be a force both within each variable – and in bringing these variables together.

So what do I mean by – law, policies in practice, and social norms?

By law – I mean the text of a statute, as written and enacted by a legislature – federal, state or local; the text of regulations and guidance implementing that statute, as written by an administrative agency – again, federal, state or local, and finally, the text of court decisions interpreting the statute or regulations. In other words -- lots of words.

By policies in practice – I mean how the text of a law – be it a statute, an agency regulation, or a court case -- is actually absorbed into the sinews of an organization; whether and how our country’s legal requirements are truly ingrained into the daily practices of our social entities. I also include in this category activities that are voluntarily taken by an entity – perhaps because there is no law yet to comply with.

By social norms – I mean the underlying normative assumptions or beliefs that are necessary for the full achievement of a social justice goal. This variable is about changing hearts and minds.

As I said, these three variables should operate synergistically with each other. So let’s talk about each one.

First, law: We tend to think of law as the all-important variable in terms of achieving social goals.

Let me be clear -- I love laws! I often say – I don’t have kids, I have laws. (“It’s a boy. It’s a girl. It’s a law!”)

My first law was the Americans with Disabilities Act of 1990. That year, 22 years ago, Congress passed a law prohibiting discrimination against people with disabilities. Now, as all you parents know, kids go off to school, they meet new friends, suddenly they’re showing up with purple hair & nose rings – and you are thinking – “who are you??” Well, laws go off to court, they meet judges -- and suddenly they look pretty different from what you – the legislature – thought you had passed. That’s because judges interpret the text of a law. That’s their job – it’s part of law creation. And sometimes that comes out in unexpected bad ways.

So the courts, including the Supreme Court, interpreted the definition of disability under the ADA so narrowly that – by the time the law was about 12 or 13 years old -- almost no one was covered any more as a person with a disability. Or, as I used to say, by the time the ADA would have been having its bar mitzvah where I grew up in NYC, it clearly needed a sibling. And I was lucky enough to have the chance to work with many groups – disability & business -- to get Congress to pass a new law -- the ADA Amendments Act of 2008, which restored the broad definition of disability.


And then, one reason I said yes when the White House asked if I was interested in being named as one of the five Commissioners who make up the EEOC (the Equal Employment Opportunity Commission) was that I felt the original regulations that the EEOC had issued on the ADA back in 1991 had been part of what had led the courts astray in the first place. So I decided to be active in step two of law creation – that is, to join the agency that would now interpret the new 2008 law through regulations. And, indeed, during my first year at the agency, I worked very hard with my fellow Commissioners and the EEOC issued strong and bipartisan regulations for the new law.

So the text of a law and the text of regulations can be key to achieving, for example, the goal of non-discrimination protection for people with disabilities.

Now sometimes when laws go off to court, good things happen – also unexpectedly! My second kid/law is the Employment Non-Discrimination Act (ENDA) – which has been in utero since 1993. (Btw, the first draft of ENDA was based on a law school exam that I wrote in 1992.) ENDA, when enacted into law, will explicitly prohibit discrimination based on sexual orientation and gender identity in the workplace. And that bill has been pending and pending in Congress.

But a funny thing has happened on the way to its non-passage. The courts have had to interpret what the word “sex” means in our existing federal civil rights law. That law, Title VII of the Civil Rights Act of 1964, prohibits discrimination in employment based on sex. In the 1970s, courts could not imagine how the word “sex” could include discrimination because of someone’s transgender status or sexual orientation. But that began to change in the courts in the 1990s and 2000s. Like hello! – if it was fine for me to be your employee when you thought I was a man, but then when you found out I was born a biological woman, you fired me -- well, you have taken “sex” or “gender” into account in a way that is not permitted under existing sex discrimination law. Indeed, two weeks ago, the EEOC issued a unanimous decision explaining that all transgender people are covered under existing sex discrimination law.

So again, the text of a law – as passed by a legislature, as interpreted by an agency or by a court -- is an incredibly important variable for the achievement of a social justice goal.

By virtue of your graduation here today (oh, and that small element of passing the bar), you have been given an amazing gift and responsibility. You can now be part of this world of law creation. You might do so by working in a legislature or speaking to a legislature, by working in an agency or providing comments to an agency, by arguing a case to a judge or by being a judge. Whatever the venue, you have an opportunity to be part of law creation.

But here’s the thing – you also need to keep up with what’s happening in terms of law creation. My pitch (and Twitter has not paid me for this) is that an incredibly useful method for keeping up with the law is to find the right people to follow on social media. They will post the legal opinions, the legislative changes, the agency guidances, the free
webinars. Twitter is easy and it is FREE – always a good thing in this age of paying back school loans. You find the right people to follow in your legal area of expertise – and you are golden. (For example, if you follow me – you will know whenever EEOC issues anything important. It’s one stop shopping for employment civil rights.)

But while law is a key variable for social change, indeed often a necessary one -- it is not sufficient. (How many times did you hear that in law school: “a necessary, but not sufficient, condition.”) We also need policies in practice – we need the elements of social change – whether embodied in law or not -- to be absorbed into the sinews of an organization, to be reflected in the daily practices of society.

Let me tell you a story that brought this home to me dramatically. Last year, I went to Belgrade, Serbia to speak at the second annual LGBT rights conference in the Balkans. David, who brought my name to your attention as a possible speaker today, heard me speak at that conference. That’s because the Williams Institute, located here at UCLA, was a cosponsor of that conference. And Professor Nan Hunter – who is here today and who is (this is not in rank order of importance) a professor and Associate Dean at Georgetown Law, the legal scholarship director of the Williams Institute, and my partner and the love of my life – also went to speak at the conference.

The night before we attended the conference, Nan and I met with a group of about 20 lesbian activists. We sat around a room for two hours and just talked. We started out by asking them – “what do you want to talk about?” It was amazing. Almost all of them just wanted to know what it was like to be out. Their questions were -- “Are you really out? Totally out? Your students know? People know you are a couple? You are a professional couple who is out and respected??”

It was intense. It felt like what the 1950s might have felt like here. There was an oppressive sense of the closet; an overwhelming atmosphere of fear; the shared knowledge in the room that people on the outside thought you were either sick or criminal and would beat you up for it.

But here’s the irony – I found out at the conference the next day that, in Serbia, they have passed a national law that prohibits discrimination based on sexual orientation in employment.

We haven’t done that yet here on the national level! But of course, a law is only as good as its absorption in practice and only as strong as social norms will support. So practically no one in Serbia uses that law – because they are terrified about coming out as gay in the first place.

Conversely, here in the US – the fact that a national law has not passed for umpteen years – has meant that there has been pressure for the voluntary adoption of protection for gay people inside companies, inside organizations.
And those protections, in turn, have encouraged more gay people to be out and visible. And more gay people being out and visible – was part of what let someone like President Obama say two days ago – “hmm, I think gay couples should be allowed to get married.”

So sometimes the fact that a law has not passed is not entirely bad if it has generated voluntary efforts towards justice. And in light of that fact, I urge you to think of your role as lawyers with regard to “policies in practice” in two distinct ways.

First, if a law has passed, you will be the essential messengers to explain that law in a way that people can understand and absorb. Prior to showing up in any court or before any agency — your job will be to help your clients integrate the requirements of law into their daily practices in a real way.

But you should understand your professional responsibility as going beyond just your responsibility to clients. By virtue of the fact that you are joining a profession that is all about justice, people in your communities will legitimately look to you to be a leader on justice. If you accept that responsibility, as I think you should, you can move social justice forward by supporting voluntary steps towards justice – even in the absence of a law.

So finally, let’s talk about the third variable -- social norms.

This was the toughest part of the speech to write! That’s because I wanted to talk about the social norms I felt were necessary to achieve each of the four social goals I noted above – employment of people with disabilities, equality for LGBT people, valuing of caregiving, and protection for people’s religious beliefs and practices. But then I would be standing here way too long.

So I chose just one of those goals -- the goal of valuing and supporting caregiving in our society – as an example.

For folks back there in the audience --- mothers, fathers, aunts, uncles, friends -- you know what it takes to raise children. One of the best tweets I read about a month ago, and then retweeted, had this headline – “mothering is not the hardest job.” Hmm – that made me want to read the article. (See that’s the trick of Twitter – you want a tweet that will make people click on the article you’ve linked to.) Well, I clicked on the article – and it was one of the best I’ve read. As the article explained: “mothering is not the hardest job -- parenting is.” Think about it. What sort of social norm are we reinstating and supporting each time we say that “mothering” is the hardest job? Why do we gender it in that way? Well – I know why we do it. But we would all benefit if the social norm became that “parenting” is a really hard job – because it is. And that would go a long way to affecting both laws and policies in practice.

And now let’s flip it around. For all you graduates up here -- you are going to want to take care of all those folks in the back at some point – as well as take care of your own children (if you opt for the biological kind, instead of for laws). The website of
workplaceflexibility 2010 – which is a project I created and ran for 7 years -- has a ton of ideas for laws and policies in practice to make workplaces better accommodate those with caregiving responsibilities. All cool. All great ideas. BUT -- to achieve real change -- we also need to change the social norm that presumes that if you are truly committed to your caregiving responsibilities -- and OMG, you act out on that commitment – then you’re not really that committed to your job. That is so wrong! But we need to change social assumptions.

So how do we do that? How do we change hearts and minds?

I want to end with where I began – explaining how the time that people might say you “waste” on social media can actually be an essential part of achieving social justice.

To me, one of the biggest revelations of being on Twitter & Facebook has been to understand how social media can start and amplify a national conversation on social justice. The echo chamber of social media can be an important vehicle for changing social norms.

Soon after I started on Twitter, the Susan B. Komen Foundation announced it would no longer fund Planned Parenthood. I watched that conversation build on Twitter. It was fascinating. I did not tweet on the topic. I stayed away from it. But I got an insight into the dynamics of information amplification via social media that I would not have otherwise understood.

The next time I noticed this phenomenon was when Rush Limbaugh attacked Sandra Fluke. Again, watching the national conversation build on Twitter and Facebook was fascinating. And again, I mostly stayed away from tweeting on the issue. But I started following @thee_stupid. He was a one-man machine getting people to focus on that issue. And I realized that for every one of @thee_stupids, there were a hundred others, a thousand others, who were committed to being one-man and one-woman machines on Twitter and FB on behalf of social justice.

As I said, I did not tweet at all on the Planned Parenthood issue and I tweeted on Sandra Fluke only twice -- with regard to Georgetown’s support of her. But then the killing of Trayvon Martin happened. I read about that on my twitter feed way before it made it into national news – and I retweeted articles about Trayvon Martin very early. And then I watched how other folks retweeted my tweets about Trayvon Martin.

I was one small tiny piece of the echo chamber around the death of Trayvon Martin. But what made that echo chamber work was that there were thousands and thousands of people like me – each of us being one small piece of that social justice conversation.

I am never going to be a one-woman machine spending hours on Twitter and Facebook putting out some social justice message. But I think it makes a difference when I choose to tweet or retweet something around a social justice message. And I think that will be the same for all of you, as lawyers. If you embrace your role as someone to whom your
community looks to as a leader of justice – you being part of the echo chamber in the social media world can make a difference.

Let me conclude with this: We are all unique individuals. We all bring our complex, full, rich identities to our work, our friendships, our love relationships, our social causes.

As lawyers, you will now have an additional identity — and with it, an amazing gift and responsibility. You can be part of the creation of law – whether through work with legislatures, agencies or courts. You can ensure that laws are well understood and absorbed into the sinews of organizations and you can be a leader who shapes voluntary policies in practice even in the absence of law. And finally, you can be part of shaping and changing social norms.

I have loved my professional life! I could not be happier with having chosen law as a profession. I have felt that what I do helps make this world a better place – and that is an amazing gift.

So my wish and my blessing to you, on this graduation day, is that each of you will feel that same joy and same sense of fulfillment in your work. And every one of you can. Every one of can both help your clients and be a leader in your community. You now have the gifts of skills and status to bring the variables of law, policies in practice and social norms together in the pursuit of what you see as social justice.

Congratulations class of 2012! Go out there and do GOOD!