

Judges and Social Networks

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Abstract: It is essential that the judicial function be public, discreet, and professional. Its legitimacy as a public authority is acquired through the recognition of judgments, in which there is an identification between decisions and society. But what type of communication must be made by the judiciary, and especially by judges, to provide information about their activities, and ensure that their interaction strengthens the republic, generating proximity between the sovereign and the public power.

Keywords: Expression, rights, information, judges, self-censorship.

INTRODUCTION

Communication has evolved over time, manifesting as conversation, print, censorship, and social networks, among the many forms that have generated new social and personal interactions. This has allowed us to enter another dimension of public space, in which social networks provide a place to learn, have fun, contact others, and spread knowledge, among the many uses to which they can be put.

Many companies are dedicated to providing and facilitating a space on the internet so that their users can root, locate, trade, entertain, externalize, discuss, propose, and discuss their ideas, feelings, and thoughts; within which the companies impose a series of guidelines regarding conduct and responsibility for the content of their affiliates (who accepted their terms of use).

Since this is a public space, anyone can request and possess an identity to use on any social network, subject to the compulsory and established requirements of the provider.

Judges can also participate as users of social networks, either for advertising their work, giving personal opinions, posting private information, using it for family issues, disseminating knowledge, uploading news, etc. But there is room for debate regarding certain aspects of members of the judiciary using social networks: is the judge a citizen who can manage the networks under his free will without limitation? Is the internet part of the public res? Should judges self-censor themselves in the content of their cyber interaction? Should their publications be monitored and

sanctioned by the networks of magistrates? Should guidelines be established for the implementation and use of networks for judges?

Does it create a link with contacts, enough to recuse oneself or declare an impediment to dealing with and/or resolving a matter you are resolving? Would it be appropriate to criticize the work of their judicial peers? Should a personal or professional opinion of the judge made on their social networks by the Council of the Judiciary be sanctioned? Could a liberal system be left in place, and self-censorship be the limit to the judge's publications and interaction with his cyber friends and network contacts?

But let's look at some cases to understand the reach of social media and the judiciary. A judge uploads a photograph of a gay march and places the message that says: "these shameless people feel very proud walking in the street without clothes". Some may believe that it is homophobic, and others, that this judge does not respect the free development of the personality. In another case, a judge made her relationship with another woman public, and not only was she suspended pending an investigation, but it affected the custody regime of her daughters, by casting doubt on her good reputation. A magistrate was investigated for posting his collection of cars, his trips abroad, his meals in prime places, his attending parties with socialites, his English Cashmere suits, his taste for smoking only Cuban cigars and drinking only French wines; but his financial situation had to be compared with his egotistical and opulent life. A magistrate is mentioned in a possible influence-peddling case when she uploads a photo of herself with a person at a meeting; could she or should she defend herself on social media, making use of the right of reply? At a Judicial Branch event to celebrate judges, the Judicial Council decided to give Mont Blanc pens to judges.

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Several members of the Judiciary decided to thank them, carrying and displaying their valuable pens. Almost immediately, their superiors asked them to lower their posts, because it could generate a problem with the Legislative Branch and the Comptroller General; but who was watching them and for what reason was that invisible supervision carried out? Or let's think about this possibility: someone creates a false profile with data from a judge to disseminate information. To what extent is it the responsibility of the magistrate to request that the platform cancel and remove this profile? What if the judge and a prosecutor are friends on social media, and one day, they meet in a hearing; would there be a conflict of interest? On many occasions, the dicasteries of justice raise their draft sentences; but to what extent is public debate of their work healthy and correct, and, on the other hand, how much care and secrecy must be employed by the justice giver on the *litis* and the protection of the personal data of the petitioners of justice?

The power of social media transcends the personal acts of its users. But the way and extent to which it happens depends on the content and importance the operator gives it. In the case we present, we must meditate on the private space of the judge, his behaviors on social networks, the judgment of his personal opinions, the regulation of electronic acts that could be considered "improper" (unethical), the sanctions that could be imposed for his personal posts, the due honor of his investiture, and the care given to the public portrayal of the Judiciary.

It is indubitable that judges have a special mandate in a State, since justice is one of the objects of its creation and the validity of its existence; therefore, the personal representative of the judiciary must be safeguarded and protected, and here we are referring to the judge's public profile. On the other hand, judges enjoy their civil and political rights like other citizens. However, in their exercise, they must observe the institutionality, consider that they are the representation of public power and they must maintain immaculate conduct and image, almost as a model of life.

This text shows the different sides of justice providers and social networks, as they may be a possible source of wrongdoing, and considers the possible existence of soft surveillance over the judiciary, or whether they should be allowed to manage their cyber freedom diligently (with self-imposed limits), respecting his institution, his work, his investiture and his person.

SOCIAL NETWORKS AND JUDGES

The judge is a citizen and a public servant. Therefore, we have three areas of action and hence of behavior regarding their respective rights and obligations. Then there is a concentric space, in which these forms of exercise of civil and political rights are reduced by their public office. In other words, a justice giver should be impartial, so he might not be able to practice as a private lawyer or promote someone's vote if he thinks it is a good political offer. Or consider a magistrate dressed as a Drag Queen in a bar. Some would say that he is a citizen like anyone and that it is his life, and others would talk about the decorum and the good image that he should project; but does this act affect his good character? Does it affect his conduct and the resolution of his cases? Should his private space be judged? Let's look at another scenario: a judge uploading photos of herself half-naked. Should the council of the magistracy reprimand her and request conduct more appropriate to her jurisdictional function? Can or should a labor judge attend a union meeting? In all this one issue stands out: what kind of conduct should a judge demonstrate when he is not judging?

There are already several cases in which the impartiality of the judge has been questioned precisely because of the content, followers, friends, and comments poured into these electronic networks. The following are paradigmatic examples: (i) the recusal of a criminal judge in whose office proceedings were being processed for the crime of animal abuse, because, according to the profile of the official's Facebook, she presented herself as a fervent militant animal rights activist; (ii) the disciplinary investigation of a colleague who, in addition to her work of administering justice, was a recognized "influencer" in the fitness world on Twitter; (iii) Youtube videos of a Caribbean judge, preaching his religious faith, etc.

A few years ago the Chicago Tribune published the news that a judge from Louisville, USA had published a post on Facebook because of his outrage that a prosecutor questioned his decision to dismiss the formation of a jury. The judge (of African-American descent) had considered that the jury's composition lacked sufficient minority members, which led the County Attorney to go to the state Supreme Court to review the decision of the judge who dismissed the jury. Faced with this situation, Judge Olu Stevens attacked prosecutor Tom Wine (who is white), publishing on his Facebook page that the conduct of

the prosecutor amounted to an attempt to «protect the right to list a jury who are all white».

In the case of social networks, administrators have membership rules that are accepted at the time of registration and when using the same, and thus, conditions of use are imposed as to the content that can be published. There are penalties for infringing these guidelines. Now, if we think of a judge and his publications, they must be done with care, because they could create a personal problem, generate a bad image of the Judiciary, or be criticized by the social conglomerate.

Now, I will present a classification of the different types of control that exist in the issue of judges and social networks.

SURVEILLANCE MODELS

No intervener/self-censorship. In this type of surveillance, the Judiciary does not intervene in any way in the private activities of the judge. The jurisdictional work and the administration of his judicial position are the elements used for the qualification of his work and the preservation of his office. His personal actions have no impact on his status as a judge; his stability and permanence are exclusively related to his performance as a judge. This model is liberal in terms of its statements, being administratively responsible before the judiciary in criminal matters for violating some protected property or being sued for damages in civil courts.

To continue on the topic of communication models, a set of guidelines can be established that the judge must heed when making a public statement or using the mass or electronic media.

Invisible Gaze (official surveillance and observation of users). In this model there is an area of the Judicial Council that monitors the publications on social networks of judges in a public and permanent way. An alert system is used in the event that a post reflects badly on the judge's conduct, his institutional image, or the value of his judicial work. In this type, the judge may be asked to withdraw his publication (censoring but without repercussions), or a sanctioning administrative process may be initiated for violating the ethics of the judiciary.

This model functions as a panopticon. Surveillance and supervision are conceptualized as follows: "the ability to see, with a glance, everything that happens

there". This means, that you see little and feel much of the monitoring of the judges' publications, and it becomes noticeable when a post or opinion attacks another user, generates social annoyance, disqualifies a public good or attacks a person.

This model establishes a catalog of the values to be protected by judges on the basis of the ethical principles of the judiciary, the exercise of public service, and private conduct in accordance with norms, morals, and ethics. This builds and shapes a type of institutional and personal behavior that limits the publications and opinions of judges. At the same time, there must be a process for the defendants to be able to argue and defend their guarantees, their freedoms, their privacy, and their personal opinions.

Public guidelines for private use. This model is established through a publication of the Council of the Magistracy, which indicates certain non-binding guidelines for the use of social networks. This should not be seen as recommendations to the servants of the judiciary, but as limitations on the goods to be cared for and observed, and in case of a violation of jurisdictional ethics or the judiciary, it is the Council that is responsible for imposing the sanctions that the matter in question merits.

These guidelines are intended to orient both judges and judicial authorities (as well as other judicial officials and court personnel, as appropriate, since their conduct may also have an impact on judicial integrity and public confidence in the judiciary) and outline a broader framework on how to guide and train judges in the use of different social media platforms, in line with international and regional standards of judicial conduct and ethics and existing codes of conduct.

COMMENTS

In the following paragraphs, various ideas related to the topic in question will be presented: concerns which are indispensable when conducting an analysis of the subject of the use of social networks by judges.

Personal Responsibility

Understanding the extent of the judge's responsibility as a user of his social networks. This implies that there should be a diligent and appropriate administration and that it should only be reviewed in case there is harm to his person, the institution or the administration of justice.

There needs to be a panopticon system, in which surveillance is by all, which is what guarantees the correct administration and safety of users. In relation to our subject, the good name of a judge must be a measure of his performance and his social impact. Likewise, it must protect his public reputation, because his image and work are concrete manifestations of the Judiciary, and this implies living and acting under certain principles and parameters that reinforce a spirit of trust and that is legitimized through their sentences. We must not suffocate, censor or be over-apprehensive with the judges, but neither should we allow libertinism in the absence of limits/sanctions in cases such as harassment, discrimination, and violence, among other pernicious opinions or information that would damage the image of a judge.

Is there a true friendship or empathy between cyberfriends? This topic is very subjective because it is not enough to accept, talk to, or exchange opinions with someone to consider that there is a personal relationship or friendship. We believe that friendship involves more than likes, placing a couple of coincident opinions (or modes) or exchanging information. However, this is a very subjective issue, because some people do think they are friends on social networks, and this implies another category of fraternity, one in which people do not know each other physically, and in which images and opinions are the axes that provoke a kind of personalized relationship.

These relationships must be seen here as an additional product of new communication technologies. Moreover, I do not think it is correct to judge someone if they love to have an entourage of followers, to criticize, to expose, or provoke other people, but it should be noted that the use of social networks passes through a filter of good use or misuse of them.

Are you intimate with network contacts? The type of relationship that is generated between people who have something in common through social networks depends on users. In this matter, we move to a scenario of immediacy, which replaces time, interaction, and recognition of the other person. Feeling a connection with a user and considering him a "friend" will depend on very particular factors, which will have a type of privacy biased by their interests. However, in the case of judges who have entered into a personal relationship, it is vital to assess whether such contact could interfere with their professionalism, independence and impartiality.

Independence, Impartiality, and Objectivity with Virtual Friends

Several principles of jurisdictional function have been presented before, which are undoubtedly those that allow an efficient and optimal administration of justice. Social networks clearly originate a relationship between users, but in the case of people who are judges they must take responsibility for their role. For if there is a conflict of interest, it must be shown to be mutual or it must be demonstrated that its relationship with the jurisdictional matter would lead to contamination and a resolution on the basis of prior contact between the judge and the party in question. But at what point could it be requested or demanded that, being a friend of someone on a social network, the judge recuse himself from the matter, and thus safeguard the pristine administration of justice?

Recuse or Request Impediment in Case of Contact on Social Networks

Would a judge's relationship in a matter in which one of the parties is his contact/friend on a social network really be affected? No general answer can be given because it would demerit the debate; what I consider correct is that it is better to recuse or abstain from this matter, so as not to generate doubts and/or suspicions that affect jurisdiction. There is no need to expose oneself to criticism, confound the issue or create a misunderstanding, because as my mentor said: "problems come alone, do not seek them".

Publications during Working Hours

It should be considered that some publications on social networks do not create problems, but the kind of content or message that could affect the image of the judge, and the judiciary or corrupt their impartiality does. However, there is a subject that must also be reviewed, which is the schedules within these publications are made, because there will be an inconvenience if it is carried out in working hours or if this post is made through the computers of the court; this would involve misuse of computers and a type of liability for the perpetrator.

Sanctions

Another point that emerges from the incorrect use of social networks is the sanctions that the judge deserves, all depending on the damage done. Administrative consequences may range from a

reprimand, suspension, non-payment of assets, or disqualification from their judicial function. These depend on the case, the circumstances, and the defense of the accused judge.

CONCLUSIONS

- 1) In light of the foregoing, it may be said that it would be appropriate to regulate certain types of communication in order to protect the image of the judiciary and its social legitimacy.
- 2) Freedom of expression is a human right, which everyone possesses, but it is not absolute. In the case of judges, they do not enjoy this prerogative in the same way as citizens, since their assignment is subject to a special order (right of association, assembly, expression, privacy, among others). Their investiture and decisions should leave no suspicion that they are not independent or impartial, that legality is their governing principle, and that their personal affairs should not transcend the private sphere. Their prudence and good judgment should not only be part of their resolutions but also part of their public acts.
- 3) The weight of publications should be considered, especially when they are produced by a judge. But what their impact is, and when an act of censorship, investigation, and sanction must be carried out by the administrators of the Judiciary. It is a priority that the judge must display conduct appropriate to his jurisdictional commission because his actions are part of his personality, and therefore, his publications must show a serious, responsible, professional person who enjoys good mental and emotional health.
- 4) The personal decorum of the judge must be key not only for his publications on social networks but as a life guide in his personal ethics. And here, an important issue arises. Is the judge a person subject to his position 24 hours a day? The answer is in the affirmative because his responsibility is not only in his commission to impart justice; his behavior must also be immaculate, giving no reason to doubt the judge. For the same reason, he must behave in line with the ethics issued by the Judiciary.
- 5) The cyber conduct of the magistrate is a topic that is little explored, but that has its background in ethical standards according to which he must act outside the judicial body, and this is nothing new. The principles contained in their actions and behavior are the basis for having a professional and responsible judge, and the measure of their acts is not only the applied norm but the coherence between their acts and their social presence.
- 6) As can be seen, the personal responsibility of the judge is not only for his judicial functions: his external acts must also be included. In the case of social media, the judge is responsible for his posts and the kind of content he makes public. And it is not being proposed that the use of networks be denied to them, but that there be a control (personal or external) that protects the magistrate, the jurisdiction, and the Judiciary.
- 7) Sanctions against the judge for unethical advertising on social networks is a matter that will use the ethical principles of the Judiciary as a basis. These resolutions will be secondary, a type of pseudo-regulation by generating deontology for the use of social networks by judges.
- 8) The image of the judiciary is a reflection of its performance and is rated by society. The citizenry expects to have institutions that are properly administered. This means that they must be managed efficiently and professionally, and thus the performance of public servants will be the measure of expressing opinions and judgement on their governments. In our case, the physical representation of the judiciary is the personnel who work there, imparting justice and administering the judiciary. This group of professionals must carry out their duties on the basis of the rules, ethics, and administrative requirements established by the Council of the Judiciary, in order to have a good judicial system.
- 9) Soft surveillance is the mechanism most used by the judicial authorities in the world, to be aware of the social media posts of judges. Such supervision would appear to be innocuous, but it is not; its purpose is to protect the interests of the judiciary while waiting and being able to punish the offender if necessary. Here we are concerned with the issue of the resources used for this unofficial supervision, in which the publication is qualified and classified under the

canon of professional and personal ethics of the judge.

- 10) The panoptic model of social networks allows everyone to be monitored, with users being the first to know about a publication, and logically, they will realise and report if there is nonsense, improper recognition, a repudiable post, or any act on social networks that produces shame, blame, or scandal.
- 11) This investigation is not an attempt to curb the freedom of expression of judges or to impose a gag or restrict the right of judges and society to information. It is a question of exercising responsible communication, which proposes a guideline that directs, controls and protects the judge, and consequently benefits the jurisdiction and the justiciable.
- 12) In July 2006, the United Nations Economic and Social Council adopted a resolution recognizing the Bangalore Principles: We are interested in paragraph 4.6: "A judge, like any other citizen, has the right to freedom of expression and belief, the right of association and the right of assembly but, when exercising the above rights and freedoms, shall always behave in such a way as to preserve the dignity of the judicial functions and the impartiality and independence of the judiciary".
- 13) The current use of social networks has given birth to Judge influencers. In which their jurisdiction, opinions, news, deferences, public and private activities are disseminated through their networks; but to what extent is this desirable, and what kind of sobriety and decorum should be kept in their publications?

Undoubtedly, a magistrate can maintain a distant relationship with his friends and contacts in cyberspace, thus protecting his independence, impartiality, and objectivity, and, where appropriate, excuse himself from hearing a matter in which he has a conflict by dealing closely with a contact. So appropriate socialization with their network contacts and due decorum in their publications on the internet are to be expected, to protect proper conduct and an image worthy of professional and institutional investiture.

- 14) There is a theme throughout this work, the occupation of our social media information by third parties. By this, I mean that, on occasion, employers investigate the profiles of networks of applicants to a vacancy to discover their activities, tastes, political positions, character, etc., This will definitely influence the decision of the company to hire that person. In the case of public servants, it is not very different, because they seek an individual who corresponds to certain characteristics, an institutional subject.

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Received on 14-02-2024

Accepted on 09-03-2024

Published on 20-03-2024

<https://doi.org/10.6000/2817-2302.2024.03.04>

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