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Hypotheticals on Legal Ethics and Social Media

Paul Poster is an associate at a mid-sized firm. He is active in social media, including Facebook, Twitter and blogging. His firm is defending a corporation and one of its executives against sexual harassment claims by two women. Initially, Paul is not involved, but about six months into the case, the associate working on the case leaves the firm and Paul is added to the case. Over the course of the litigation, the following events take place. What are the ethical implications and possible consequences of these events?

- A. After joining the case, Paul does some online research on the plaintiffs. He locates Plaintiff A's Facebook page and sees a photo from a company holiday party showing Plaintiffs A and B drinking, laughing and sitting on the lap of the executive who is being sued. Paul immediately sends a document preservation notice to Plaintiffs' counsel admonishing them to "preserve all documents, materials, photographs, and data, including content of any social media sites," relating to the Plaintiffs' employment with the company, including all company events," and then follows up with a document request.
- B. Plaintiff B also has a Facebook account, but because her privacy settings prevent Paul from accessing her content, he sends her a friend request, which she accepts. Paul then finds additional photos and status updates, which he believes might be helpful to the defense.
- C. A few days later, Paul notices that the photos and updates have been removed from Plaintiffs' Facebook pages and Plaintiff B has defriended him. When Plaintiffs produce their documents, none of the social media content is included.
- D. As the case gears up for trial, Paul posts on Facebook (after a few drinks): "Just finished a week of all-nighters prepping clients for their testimony. Job would be a lot easier if they shared more than one brain between them."
- E. After day one of the trial, Paul does some Internet research on each of the jurors. Several of the jurors have Twitter accounts so Paul follows them.

- F. On day three, Paul posts on Facebook: “Judge overruled all of our objections today (even the ones that weren’t completely frivolous). She is obviously a complete witch and an idiot.”
- G. On day four, he posts: “Juror no. 5 is cute. Wonder if she’ll go on a date with me.” He finds Juror no. 5’s Facebook page and discovers she is “friends” with more than 1000 people, including both Plaintiffs, although she stated at *voir dire* that she did not know them. Paul informs the partner who is lead counsel on the case.
- H. On the last day of trial, the Judge requests that all counsel meet with her in chambers to discuss a “Facebook” issue. Paul attends the meeting nervously. The Judge discloses that during the course of the trial, Plaintiffs’ counsel sent her a friend request, which she accepted, and they exchanged several “innocuous” posts about the trial – mostly relating to the timetable and scheduling. Paul’s partner immediately moves for a mistrial, based on (1) the judge’s communication with Plaintiffs’ counsel and (2) Juror no. 5’s deceptive responses to the *voir dire* questions.
- I. Ultimately, Paul and his colleagues prevail in the lawsuit. Thrilled with the outcome, Paul tweets: “Won complete victory for my client today! Who wants to be next?”
- J. After the case ends, Paul publishes a series of posts on his blog describing his experiences working on the case, the testimony and evidence, some of the procedural issues, and the outcome.