Are You Sure You Want to Post That? Examining Student Social Media Use and Constitutional Rights

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I. INTRODUCTION

If there is one universal truth in the realm of education, it is this — students will rant. It is natural, what with students' seemingly natural dislike and enmity towards school. With homework, strict teachers, heavy workloads, tricky exams, annoying classmates, and the pressure imposed by parents and society to get impossibly high grades, who can blame them? Students need a place to vent; an outlet to let out steam, lest their pent-up hormonally charged emotions cause them to explode in destructive and unhealthy ways.

In the years leading to the turn of the century and the early noughties, the typical avenue for repressed rage was the "burn book" — a book which contained rants and diatribes about anything that had to do with school, whether it be an unreasonable teacher, a class bully, a betrayed friend, or an insanely tough subject. Perhaps the most popular burn book was in the movie Mean Girls,[1] where Regina George and her clique of popular girls

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called the "Plastics" wrote particularly mean and unkind testimonies about their fellow schoolmates in the fictional North Shore High School.[2]

The advent of social media in the late noughties has all but eliminated a student's need to grab a paper and pen to write something exceptionally nasty about a fellow student or a teacher. One need only log on to Twitter, Facebook, or Instagram, think of (or at least, *try* to think of) something witty or scathing, press the relevant button, and instantly the rant is online for everyone in one's social media network to see.

The problem begins, of course, when someone — often the target of the rant, or heaven-forbid, the school authorities — sees the said post and takes offense. Rants are only the start of it. What if the student posts something controversial, like an unfounded student-teacher relationship, or illegal, like drug use, or lewd, like a nude selfie? What then? Can a student hide behind his or her constitutional right to free speech and expression? Can the school subject the student to discipline for something said or posted online? And what about the student's rights to privacy?

This Article will discuss the constitutional implications of social media use in the context of students and schools. It will focus on three constitutional rights that come into play whenever a student goes on a tirade or posts something scandalous on social media: the right to free speech,[3] the right to privacy,[4] and the right to due process.[5] All these shall be viewed in light of the school's authority to discipline. It will provide a survey and analysis of local and foreign jurisprudence and in the end present a framework for answering constitutional issues involving the use of social media by students.

II. SCOPE

Before the interplay of constitutional rights and social media can be explored, the question of scope must first be discussed. Will the discussion be

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1. MEAN GIRLS (Paramount Pictures 2004).
2. *Id.*
3. PHIL. CONST. art. III, § 4.
4. PHIL. CONST. art. III, § 3, ¶ 1.
5. PHIL. CONST. art. III, § 1.

limited to public school students, or will it also affect private school students? The question stems from the basic doctrine that the Bill of Rights was crafted to protect citizens from the power of a potentially unscrupulous government.[6] Can a private school student invoke his constitutional rights against his teachers or school administrators?

Yes, in three ways.

First, a private school student can invoke his constitutional rights through Article 32 of the Civil Code of the Philippines (Civil Code),[7] which holds that any private individual is liable for damages for "directly or indirectly [obstructing, defeating, violating] or in any manner [impeding] or [impairing]" the constitutional rights of others.[8]

Second, a private school student can choose among the Basic Education Act of 1982 (Basic Education Act)[9] the 2010 Revised Manual of Regulations for Private Schools in Basic Education,[10] the Manual of Regulations for Private Higher Education of 2008,[11] or even the Writ of *Habeas Data*,[12] depending on the alleged constitutional right infringed. For free speech and assembly, the student can invoke Section 9 of the Basic Education Act.[13] For due process, the Private School Manuals are available, depending on his or her level of education.[14] Finally, for privacy issues, the student can use the Writ of *Habeas Data*, which applies to private individuals,[15] similar to how

6. JOAQUIN G. BERNAS, S.J., THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER 105 (2011 ed.).

7. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 32 (1950).

8. *Id.*

9. An Act Providing for the Establishment and Maintenance of an Integrated System of Education [Education Act of 1982], Batas Pambansa Blg. 232 (1982).

10. Department of Education, 2010 Revised Manual of Regulations for Private Schools in Basic Education, Department Order No. 88 [DepEd D.O. No. 88] (June 24, 2010).

11. Commission on Higher Education, Manual of Regulations for Private Higher Education, CHED Memorandum Order No. 40 [CHED M.O. No. 40] (July 31, 2008).

12. THE RULE ON THE WRIT OF HABEAS DATA, A.M. No. 08-1-16-SC, Jan. 22, 2008.

13. Education Act of 1982, § 9.

14. CHED M.O. No. 40, §§ 108 & 131.

15. THE RULE ON THE WRIT OF HABEAS DATA, § 1.

the students used the writ in *Vivares v. St. Theresa's College* (albeit unsuccessfully).[16]

Third, a private school student can also find authority in the long line of Supreme Court of the Philippines (Supreme Court) cases that have dealt with constitutional rights in private schools. While the leading United States (U.S.) cases on the constitutional rights of students primarily involve public schools and their respective school districts,[17] the Supreme Court has decided numerous cases involving private schools and the constitutional rights of its students. The Supreme Court has done so without so much as batting an eye as to its propriety or making any significant reference to the Civil Code, the Basic Education Act, or the Private School Manuals. These cases will be discussed throughout this Article. *Miriam College Foundation, Inc. v. Court of Appeals*[18] decides a case on free speech in a private university. *Ateneo de Manila University v. Capulong*,[19] *Guzman v. National University*,[20] and *De La Salle University, Inc. v. Court of Appeals* [21] involve private schools and the constitutional right of due process. In these cases, the Supreme Court, instead of brushing aside any constitutional rights-based arguments as inapplicable to the private sphere, applied constitutional standards to decide upon such controversies.[22]

Why the Supreme Court has opted to diverge from its American counterpart will be difficult to know, but as it is, the current state of the law allows private school students to invoke their constitutional rights against their teachers and administrators. A possible point of divergence could be the oft-cited 1984 case of *Malabanan v. Ramento*.[23]

In *Malabanan*, Crispin Malabanan and his schoolmates caused a considerable ruckus by holding a rally outside an area previously approved by the administrators of private university Gregorio Araneta University.[24] Their

16. Vivares v. St. Theresa's College, 737 SCRA 92 (2014).

17. DONALD E. LIVELY & RUSSELL L. WEAVER, CONTEMPORARY SUPREME COURT CASES: LANDMARK DECISIONS SINCE ROE V. WADE 105 (2006).

18. Miriam College Foundation, Inc. v. Court of Appeals, 348 SCRA 265 (2000).

19. Ateneo de Manila University v. Capulong, 222 SCRA 644 (1993).

20. Guzman v. National University, 142 SCRA 699 (1986).

21. De La Salle University, Inc. v. Court of Appeals, 541 SCRA 22 (2007).

22. *See, e.g.*, *Ateneo de Manila University*, 222 SCRA 644; *Guzman*, 142 SCRA 699; & *De La Salle University Inc.*, 541 SCRA 22.

23. Malabanan v. Ramento, 129 SCRA 359 (1984).

24. *Id.* at 363-64.

rally disrupted classes and work in the university.[25] Unsurprisingly, school officials (along with Anastacio Ramento, the Director of the National Capital Region of the then Ministry of Education, Culture, and Sports) punished Malabanan and his schoolmates with a one-year suspension for conducting an illegal assembly.[26] The students then invoked their constitutional rights to peaceful assembly and free speech.[27]

In deciding that the students could indeed invoke such rights, the Supreme Court stated, "[students] enjoy[,] like the rest of the citizens[,] the freedom to express their views and communicate their thoughts to those disposed to listen in gatherings such as was held in this case."[28] The Supreme Court then quoted the leading U.S. case of *Tinker v. Des Moines Community School District*,[29] stating that students "do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[30] Using *Tinker*, the Supreme Court ruled that the students, while they properly invoked their constitutional rights, still materially disrupted classes and work — a result that warranted punishment (which the Supreme Court dwindled down to a one-week suspension).[31] The Supreme Court ended by noting, "the rights of peaceable assembly and free speech are guaranteed [to] students of educational institutions."[32]

Interestingly enough, *Malabanan* did not distinguish between private and public school students in its pronouncement.[33] It used the lessons of *Tinker* — a case involving free speech in a public school in Iowa — and applied it to the private school setting.[34] Whether such application was proper or not is subject to debate, but subsequent cases quoting *Malabanan* have strengthened the view that private school students can invoke their constitutional rights.[35] Add *Ateneo de Manila University*, *Guzman*, *De La Salle University, Inc.*, and

25. *Id.*

26. *Id.*

27. *Id.* at 366.

28. *Id.* at 366-67.

29. Tinker v. Des Moines Community School District, 393 U.S. 503 (1969).

30. *Malabanan*, 129 SCRA at 368 (citing *Tinker*, 393 U.S. at 506).

31. *Id.* at 370-71.

32. *Id.* at 372.

33. *Id.*

34. *See Tinker*, 393 U.S. 503.

35. *See generally* Villar v. Technological Institute of the Philippines, 135 SCRA 706, 709 (1985); Non v. Dames II, 185 SCRA 523, 533-34 (1990); & Arreza v. Gregorio Araneta University Foundation, 137 SCRA 94, 96 (1985).

Miriam College Foundation, Inc. to the mix and it becomes obvious that current jurisprudence allows private school students to invoke constitutional rights as much as their public school counterparts. The extent that students can, of course, is the tricky part. There are a number of factors to consider — the first of which is discussed in the following Section.

III. *SITUS*

Analysis of any controversy involving the constitutional rights of a student must first be grounded on the location of the subject of controversy, which in this Article's case, is a social media post. It is important to determine whether a social media post is done on-campus or off-campus; constitutional rights are not necessarily shed at the "school-house gates,"[36] but these rights are "not automatically coextensive with the rights of adults in other settings"[37] due to the special nature and function of schools to rear future members of a civilized society. In other words, a social media post which would have been constitutionally protected if made off-campus can lose some of its protection if it was found to have been made on-campus.[38] The most immediate (and possibly important) implication of this determination is the school's power and authority to discipline a student for something that would have been otherwise constitutionally protected.

Simply, if the post was done on-campus, then the constitutional protection given to the student is limited and the school has a greater leeway to discipline.[39] If it was done off-campus, the student's protection would be greater (and the school's power lesser), only subject to present rules of unprotected speech like libel and obscenity.[40]

The Internet poses a natural problem in determining *situs*. The Internet is ethereal, passing through the boundaries of school campuses like a digital waif. It is difficult to pinpoint its exact location; it is simply out there. The same can be said about social media posts. While geolocation services help determine where a post was actually made,[41] most cases are rarely straightforward. Is a hateful rant on Facebook about a fellow student, made

36. *Tinker*, 393 U.S. at 506.

37. Bethel School District v. Fraser 478 U.S. 675, 682 (1986) [hereinafter *Fraser*].

38. *See* J.S. v. Bethlehem Area School District, 807 A.2d 847 (Pa. 2002) (U.S.) [hereinafter *Bethlehem Area*].

39. *Id.*

40. *See Bethlehem Area*, 807 A.2d 847. *See also* BERNAS, *supra* note 6, at 74-79.

41. *See, e.g.*, Facebook and Location, *available at* https://www.facebook.com/help/337244676357509 (last accessed Nov. 21, 2015).

in a home computer, considered on-campus or off-campus? Is an unflattering Instagram photo of a teacher, shot and shared using an iPhone, considered on-campus or off-campus? These issues pose practical problems, which this Section will attempt to sort out.

To begin, U.S. cases have already established that the geographic origin of the speech is not material.[42] A social media post made miles from school can well be considered on-campus and within the reach of the school under certain circumstances.[43]

The first circumstance can be gleaned from *Morse v. Frederick*.[44] Joseph Frederick was a high school senior in Salt Lake City, Utah.[45] To celebrate the 2002 Winter Olympics, Frederick and his fellow students were allowed to watch the Olympic torch relay.[46] While waiting across the street from the school, Frederick and some friends unfurled a banner that read "BONG HiTS 4 JESUS."[47] Principal Deborah Morse was not pleased at what she considered a promotion of illegal drug use and suspended Frederick.[48]

Frederick claimed that school-speech precedents did not apply to him (and therefore, he was entitled to greater constitutional protection) because he was *across* the street and not physically within the school campus.[49] The U.S. Supreme Court dismissed this argument, stating that Frederick's actions happened during a school-sanctioned event.[50] The U.S. Supreme Court noted that the torch relay occurred during school hours, that teachers and administrators were present to supervise the students, and that Frederick's audacious banner was even directed at his fellow students.[51]

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42. *See* J.C. v. Beverly Hills Unified School District, 711 F.Supp.2d 1094 (9th Cir. 2010) (U.S.) [hereinafter *Beverly Hills*]. *See also* Shanley v. Northeast Independent School District, 462 F.2d 960, 970-71 (5th Cir. 1972) (U.S.) & Boucher v. School Board of the School District of Greenfield, 14 F.3d 821, 827-28 (7th Cir. 1998) (U.S.).

43. *See Bethlehem Area*, 807 A.2d 847.

44. Morse v. Frederick, 551 U.S. 393 (2007).

45. *Id.* at 397.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Morse*, 551 U.S. at 401.

51. *Id.*

While not an Internet case, *Morse* strengthens the view that an issue involving the location of speech does not simply turn into a question of geography.[52] If it is done during a school-sanctioned event, it will still be within the reach of the school.[53] Applying this to a social media setting, then a social media post made during a school-sanctioned event, such as a field trip or an athletic event, can still be subject to school scrutiny even if it were made outside school grounds.

The next circumstance comes from *J.S. v. Bethlehem Area School District* (*Bethlehem Area*).[54] Decided by the Pennsylvania Supreme Court in 2002, *Bethlehem Area* focused on an angsty 14-year-old student (J.S.) at the Nitschmann Middle School who, in turn, focused his teenage rage on his Algebra teacher, Mrs. Kathleen Fulmer and school principal, Mr. Thomas Kartsotis.[55]

J.S. created a website called "Teacher Sux" on his home computer.[56] The website was open to all and had a number of webpages.[57] While one webpage insinuated quite profanely that Principal Kartsotis was engaged in sexual relations with a principal from another school, the rest of the site was dedicated to mocking poor Mrs. Fulmer.[58] One page enumerated reasons why she should be fired.[59] Another page referenced her as a "bigger bitch" than the mom of South Park cartoon character Kyle.[60] In another, J.S. managed to morph Mrs. Fulmer's face to Adolf Hitler's, with the caption "The new Fulmer Hitler movie. The similarities astound me."[61] The worst of it was the page entitled "Why Should She Die?" which solicited $20 for the hiring of a hitman to kill Mrs. Fulmer, listed J.S.' personal reasons why she should be killed (all 136 of which said, "Fuck you Mrs. Fulmer. You are a Bitch. You Are A Stupid Bitch."), and included a drawing of a decapitated Mrs. Fulmer with "blood dripping from her neck."[62]

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52. *See Morse*, 551 U.S. 393.

53. *Id.*

54. *Bethlehem Area*, 807 A.2d 847 (Pa. 2002).

55. *Id.*

56. *Id.* at 851.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Bethlehem Area*, 807 A.2d at 851.

61. *Id.*

62. *Id.*

J.S. then told other students about the website, showing it to his fellow classmates in school.[63] Students and school officials soon had wind of the site.[64] Fearing a threat to Mrs. Fulmer's life, Principal Kartsotis even contacted the local police and the Federal Bureau of Investigation.[65] Principal Kartsotis noted that the website also had a "demoralizing impact" on the school, as if a student or a staff member had actually died.[66]

Mrs. Fulmer took it badly.[67] She testified that she feared for her life and that she even "suffered from short-term memory loss and the inability to go out of the house and mingle with crowds."[68] Mrs. Fulmer, who had been teaching for 25 years, was unable to teach the rest of the school year (and the subsequent year) and three substitute teachers were hired to take her place.[69]

For the trouble he caused, J.S. was expelled.[70]

His parents appealed the expulsion.[71] They first argued that the website was purely off-campus as it was made using their home computer.[72] However, the Pennsylvania Supreme Court found that "a sufficient nexus [existed] between the website and the school campus to consider the speech as occurring on-campus."[73] This sufficient nexus existed because the website was accessed in school, either by J.S. informing his schoolmates about it and showing it to them or by the teachers and officers who saw it in school computers.[74] The Pennsylvania Supreme Court also noted that the website was aimed at a specific audience, namely the school, thus, it was inevitable that "Teacher Sux" would be accessed on-campus.[75]

63. *Id.* at 852.

64. *Id.*

65. *Id.*

66. *Bethlehem Area*, 807 A.2d at 851.

67. *Id.* at 852.

68. *Id.*

69. *Id.*

70. *Id.* at 853.

71. *Id.*

72. *Bethlehem Area*, 807 A.2d at 853.

73. *Id.* at 865.

74. *Id.*

75. *Id.*

As an Internet case, *Bethlehem Area* is instructive. Essentially, it adds two more instances when a "sufficient nexus" might exist to consider off-campus speech as on-campus speech:

(1) If the speech (or social media post) is brought into the school and accessed on-campus;[76] and

(2) If it had a targeted audience, namely the school, its teachers, or its students.[77]

Obviously, there is no hard and fast rule in determining what specific facts or patterns constitute a "sufficient nexus." The totality of facts must be considered. In *J.S.*, it was straightforward — J.S. actually shared the website to his classmates in school.

Evans v. Bayer[78] showed how, when applying *J.S.*, a different set of facts renders a different result. A senior at Pembroke Pines Charter High School, Katherine Evans did not particularly like her teacher, Ms. Sarah Phelps.[79] She created a Facebook group entitled "Ms. Sarah Phelps is the worst teacher I've ever met[,]" and posted the following — "Ms. Sarah Phelps is the worst teacher I've ever met! To those select students who have had the displeasure of having Ms. Sarah Phelps, or simply knowing her and her insane antics [—] Here is the place to express your feelings of hatred."[80]

The Facebook group was made in her home computer and after school hours.[81] Contrary to Evans' intention to disparage Ms. Phelps, students actually posted their support for Ms. Phelps on the page.[82] After two days, Evans took down the post.[83] Ms. Phelps never saw the post nor did it disrupt any school activities.[84] However, Principal Peter Bayer found out about it and suspended Evans.[85]

76. *Id.* at 852.

77. *Id.* at 865.

78. Evans v. Bayer, 684 F.Supp.2d 1365 (11th Cir. 2010) (U.S.).

79. *Id.* at 1367.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Evans*, 684 F.Supp.2d at 1367.

85. *Id.*

The Southern District Court of Florida noted that the Facebook group was off-campus speech.[86] While it was directed at a particular audience (the school), it was neither accessed on-campus nor available when the principal learned of it.[87] The District Court opined that no "sufficient nexus" existed to consider it on-campus.[88]

A trickier case involving social media is *Layshock v. Hermitage School District*,[89] a case cited in *Evans*.[90] Student Justin Layshock created a fake MySpace profile of his high school principal using the principal's photo from the school website he accessed at his grandmother's house.[91] The MySpace profile was filled with embarrassing "facts" about the principal.[92] While the MySpace profile was actually accessed in school, the U.S. Court of Appeals Third Circuit refused to consider it on-campus speech. It found that no "sufficient nexus" existed and that Layshock's actions were not enough for the school to "[stretch] its authority into [Layshock's] grandmother's home and [reach] while he is sitting at her computer after school."[93]

Bethlehem Area, *Evans*, and *Layshock* show that characterizing a social media post as on-campus or off-campus is not as simple as merely accessing it on-campus. Note that the "Teacher Sux" website and the fake MySpace profile were both accessed within school walls but led to different results.[94] Where does this lead us, then?

J.C. v. Beverly Hills Unified School District (*Beverly Hills*)[95] offers valuable insight. *Beverly Hills* involved a minor, the petitioner J.C., who took a video of her friends saying nasty things ("slut,"[96] "spoiled,"[97] "ugliest piece of shit I've ever seen in my life"[98]) about a classmate, C.C.[99] J.C. uploaded the

86. *Id.* at 1372.

87. *Id.*

88. *Id.* at 1377.

89. Layshock v. Hermitage School District, 593 F.3d 249 (3d Cir. 2010) (U.S.).

90. *Evans*, 684 F.Supp.2d at 1372.

91. *Layshock*, 593 F.3d at 252.

92. *Id.* at 252–53.

93. Note as well that the School District conceded that no material disruption in classes occurred because of the MySpace profile. *Id.* at 260.

94. *Bethlehem Area*, 807 A.2d 847 & *Layshock*, 593 F.3d 249.

95. *Beverly Hills*, 711 F. Supp.2d 1094.

96. *Id.* at 1098.

97. *Id.*

98. *Id.*

video on YouTube and informed several classmates about it.[100] In fact, she even told C.C. about it.[101] Other students started talking about the video in school.[102] Humiliated and hurt, C.C. refused to go to class.[103] The school suspended J.C.[104]

The California Central District Court found that the YouTube video, while uploaded *outside* school, was on-campus speech because aside from it being actually viewed in school, it was "reasonably foreseeable" that it would make its way into the Beverly Hills school.[105] The District Court noted that the "content of the video [increased] its foreseeability that the video would reach the [s]chool."[106]

The importance of *Beverly Hills* is that it summarizes the current rules in determining whether speech can be considered on-campus or off-campus. Adding *Morse* to the rules laid down by *Beverly Hills*, we have the following rules readily adaptable to social media posts by students:

(1) A social media post made during a school-sanctioned event is subject to school scrutiny.[107]

(2) A social media post that causes (or may foreseeably cause) substantial disruption of school activities is likewise subject to school scrutiny, regardless of its geographic origin.[108] For example, *Bethlehem Area* and *Beverly Hills*, and to a certain extent even *Layshock*, although no substantial disruption was found.

(3) A social media post made off-campus can likewise be subject to school discipline if a "sufficient nexus" exists between said post and the school.[109] The determination of whether a "sufficient nexus" exists will ultimately depend on the totality of facts and

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99. *Id.*

100. *Id.*

101. *Beverly Hills*, 711 F.Supp.2d at 1098.

102. *Id.*

103. *Id.*

104. *Id.* at 1099.

105. *Id.* at 1107.

106. *Id.* at 1108.

107. *See Morse*, 551 U.S. 393.

108. *See Bethlehem Area*, 807 A.2d 847. *See also Layshock*, 593 F.3d 249 & *Beverly Hills*, 711 F. Supp.2d 1094.

109. *Id.*

factors, as was seen in *Layshock* and *Evans*. Some factors that may be considered are the particular target of the post and if the post was accessed in school.

(4) If the student "took specific efforts to keep the [social media posts] off-campus [ ], or clearly did not intend the [posts] to reach campus [ ]," then these should be characterized as off-campus speech which schools have no authority to regulate (aside from normal instances of unprotected speech like libel and obscenity).[110]

With a sufficient framework to determine whether a post is on-campus or not established, the Author will now move to the specific constitutional rights affected and see how they are limited by the specific and special school setting.

IV. FREE SPEECH

When a student posts a scathing rant on social media, his or her first reaction to potential disciplinary action would probably be, "Hey! I can say anything I want! I have freedom of speech!" — but is this really true? Can a student indeed post *anything* he or she fancies on social media and hide behind one of the most cherished rights enshrined in the Constitution? Obviously not. Even freedom has its limits.[111] This Section will explore those limits, delineating when a student's post on his social media account crosses from protected free speech to unprotected speech susceptible to disciplinary action.

The bedrock of the analysis is *Tinker*, a case decided by the U.S. Supreme Court in 1969,[112] in a time when tweets were made by birds and not by celebrities who simply wish to "break the Internet."[113]

John Tinker, his sister Mary Beth, and Christopher Eckhardt were teenagers attending school in Des Moines, Iowa.[114] To protest the Vietnam War, the trio decided to wear black armbands to school.[115] When school

110. *Beverly Hills*, 711 F.Supp.2d at 1106.

111. *See* BERNAS, *supra* note 6, at 74-79.

112. *Tinker*, 393 U.S. 503.

113. Kim Kardashian West (@KimKardashian), Twitter (Sep. 7, 2015, 11:36 PM), http://twitter.com/kimkardashian/status/532356049907355649 (last accessed Nov. 21, 2015).

114. *Tinker*, 393 U.S. at 503.

115. *Id.* at 504.

authorities learned of such decision, they issued a policy requiring students to remove their armbands; if the kids refused, they would be suspended until they removed their armbands.[116] Undeterred, the three wore their armbands in school and were immediately suspended and sent home.[117]

Faced with the issue of balancing free speech and the authority of the school to control conduct and discipline of their students, the U.S. Supreme Court stated, "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[118] While recognizing that students *do* indeed have their free speech rights in school, the U.S. Supreme Court fixed some boundaries for its exercise.[119] *Tinker* taught that speech or conduct that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others"[120] lay unprotected and vulnerable to disciplinary action.[121] The U.S. Supreme Court applied the test on Tinker and his friends and found their suspension unwarranted, as their donning of a piece of black cloth did not interrupt school activities or invade the lives of others.[122]

What is now popularly known as the "Tinker Test" is still being used today. It was the same test used in *Malabanan*.[123] At its simplest, the Tinker Test protects a student's speech from disciplinary action, as long as it does not materially disrupt school activities, or invade the rights of others.[124]

But how do we determine if speech "materially disrupts classwork or involves substantial disorder?"[125] This is easily answered when the speech or conduct is in the physical world. We can readily see a group of students wearing black armbands or instantly hear a noisy rally in campus. But how will the Tinker Test apply to posts on social media, which, by their nature,

116. *Id.*

117. *Id.*

118. *Id.* at 506.

119. *Id.* at 513.

120. *Tinker*, 393 U.S. at 513.

121. *Id.*

122. *Id.* at 514.

123. *Malabanan*, 129 SCRA at 369.

124. *Tinker*, 393 U.S. at 513.

125. *Id.*

are confined to the cyber world and can simply be hidden by privacy settings?

Bethlehem Area is instructive. Aside from the *situs* issue of "Teacher Sux," J.S.'s parents claimed that the website was protected speech and that whatever disruption it may have caused did not reach the levels envisioned in *Tinker*.[126]

Addressing the issue, the Pennsylvania Supreme Court found that "Teacher Sux" caused an "actual and substantial disruption of the work of the school."[127] It found that the events that followed J.S.'s creation of the website (low morale in school, hiring of three substitute teachers, anxiety among students, the website being a "hot topic," and Mrs. Fulmer's breakdown) were sufficient to pass the Tinker Test.[128] More importantly, the court noted that while material disruption "must be more than some mild distraction or curiosity created by the speech, complete chaos is not required for a school district to punish student speech."[129]

Bethlehem Area, while not a case dealing strictly with social media (as it was a website), is a judicial affirmation that a post on the Internet can make the jump from the ethereal cyber world to the physical world of the school community and can still disrupt the school.

Whether a post materially disrupts schoolwork or not will always be based on specific facts. *Beverly Hills*, nevertheless, has again provided helpful guidelines. Students discussing a specific post alone will not necessarily equate to a material disruption.[130] This was seen in *Tinker* where the student body talked about their armband-wearing schoolmates but the court found no material disruption.[131] However, when the speech is violent or threatening (as in the case of *Beverly Hills*), there is still a material disruption.[132] The same can be said when the post results to school officials being "pulled away from their ordinary tasks to respond or mitigate the effects of a student's [post]."[133]

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126. *Bethlehem Area*, 807 A.2d at 868.

127. *Id.* at 869.

128. *Id.*

129. *Id.* at 868.

130. *See Beverly Hills*, 711 F.Supp.2d 1094.

131. *Tinker*, 393 U.S. at 514.

132. *See Beverly Hills*, 711 F.Supp.2d 1094.

133. *Id.* at 1114.

Applying these principles to poor C.C. who was called a "slut" by her classmates on YouTube,[134] the California District Court found that the events that followed the uploaded video did not pass the Tinker Test.[135] C.C.'s hurt feelings were not substantial.[136] To be considered such, it must "equate to something more than the ordinary personality conflicts among middle school students that may leave one student feeling hurt or insecure ... and greater than one individual student's difficult day (or hour) on campus."[137] The District Court, in essence, stated that gossip was part of growing up and that C.C., in so many words, should just "suck it up."

As a quick aside, what about *Tinker*'s second standard — were not C.C.'s rights invaded by the hurtful video? The District Court ruled in the negative, as it was "not aware of any authority [ ] that extends the *Tinker* rights of others prong so far as to hold that a school may regulate any speech that may cause some emotional harm to a student."[138]

Must the school wait for actual disruption to occur before acting? Of course not. While school officials need not wait until the disruption actually occurs, there still must be "specific facts that could reasonably lead school officials to forecast disruption."[139] If these are not supported by evidence or do not reasonably lead to a conclusion that a material disruption could (or would) occur, then the school disciplinary action would violate a student's rights.

Bethel School District v. Fraser (*Fraser*)[140] provides another instance when a student's speech is unprotected. This 1986 U.S. Supreme Court case centered on Matthew Fraser, a wise-cracking high school senior from Bethel High School in Pierce County, Washington.[141] Fraser delivered a sexual-innuendo-laden speech in front of the entire high school student body.[142]

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134. *Id.* at 1098.

135. *Id.* at 1119.

136. *Id.*

137. *Id.*

138. *Beverly Hills*, 711 F.Supp.2d at 1123.

139. *Id.* at 1111.

140. *Fraser*, 478 U.S. 675.

141. *Id.*

142. The speech provides —

> I know a man who is firm — [he is] firm in his pants, [he is] firm in his shirt, his character is firm — but most ... of all, his belief in you, the students of Bethel, is firm.

Aghast and shocked by Fraser's speech, school officials suspended him.[143] His father appealed the punishment.[144]

The U.S. Supreme Court found that Fraser's speech was unprotected — not because it "materially [disrupted] classwork or [involved substantial disorder]"[145] (as laid down by *Tinker*), but because Fraser's speech was "plainly offensive to both teachers and students,"[146] "insulting to teenage girl students,"[147] and "damaging to its less mature audience, many of whom were only 14 years old and on [the] threshold of awareness of human sexuality."[148] The U.S. Supreme Court dropped the hammer on Fraser, effectively stating that vulgar and lewd speech had no place in school as it "undermine[s] the school's basic educational mission"[149] to inculcate values needed for a civilized society.[150] In essence, *Fraser* added another limitation to free speech in schools — vulgar and lewd speech could well be subject to discipline by the school.

The Supreme Court has ruled on a similar issue involving vulgar and lewd speech in *Miriam College Foundation, Inc.* This case dealt with articles published in the school paper and magazine.[151] Members of the school described these articles as "[o]bscene, vulgar, indecent, gross, sexually explicit, injurious to young readers, and devoid of all moral values."[152] The students involved were disciplined and sought refuge in the Campus

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> Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he [will] take an issue and nail it to the wall. He doesn't attack things in spurts — he drives hard, pushing and pushing until finally — he succeeds.
>
> Jeff is a man who will go to the very end — even the climax, for each and every one of you.
>
> So vote for Jeff for A.S.B. vice-president — [he will] never come between you and the best our high school can be.

Fraser, 478 U.S. at 687 (J. Brennan, concurring opinion).

143. *Id.* at 678.

144. *Id.* at 679.

145. *Id.* at 693.

146. *Id.* at 683.

147. *Id.*

148. *Fraser*, 478 U.S. at 683.

149. *Id.* at 686.

150. *Id.*

151. *Miriam College Foundation, Inc.*, 348 SCRA 265.

152. *Id.* at 268.

Journalism Act and their right to free speech.[153] Interestingly, the Supreme Court used *Tinker* and not *Fraser* in deciding the fate of the students.[154] However, *Fraser* can be readily applied in the Philippines, given the constitutional guarantee of academic freedom (at least in institutions of higher education) [155] and the constitutionally-mandated role of all educational institutions to rear the youth to be proper and morally upright citizens.[156] A foul-mouthed student who posts something lewd online (and on-campus) would be hard-pressed to argue that no local legal authority exists for disciplinary action against him or her.

School-sponsored speech is another instance where a school can limit a student's social media post. In *Hazelwood School District et. al. v. Kuhlmeier et. al.*,[157] the U.S. Supreme Court ruled on whether a school had the power to edit student-written articles in a school paper.[158] For their school paper, Hazelwood high school students submitted articles dealing with teenage pregnancy in the school and how certain students dealt with the divorce of their parents.[159] Because of the growing concern that teenage pregnancy and sexual activity was inappropriate and the lack of anonymity of the divorced parents, the principal decided to omit these articles from the paper.[160] The students sued the school, alleging that their right to free speech was violated.[161]

The U.S. Supreme Court ruled in favor of the school.[162] It first differentiated the situation from *Tinker*, as the case was not whether the school had the power to silence student speech, but rather whether the school had the authority to affirmatively promote particular student speech, such as by exercising editorial control over a school paper.[163] The U.S. Supreme Court stated that a school had the power to do so in "school-sponsored expressive activities, so long as [the school's] actions are reasonably

153. *Id.* at 272.

154. *Id.* at 290.

155. PHIL. CONST. art. XIV, § 5, ¶ 2.

156. PHIL. CONST. art. XIV, § 3, ¶ 2.

157. Hazelwood School District et. al. v. Kuhlmeier et al., 484 U.S. 260 (1988).

158. *Id.*

159. *Id.* at 263.

160. *Id.* at 264.

161. *Id.*

162. *Id.* at 266.

163. *Hazelwood School District*, 484 U.S. at 270-73.

related to legitimate pedagogical concerns."[164] The school can impose higher standards for school-sponsored student speech and naturally disassociate itself with speech that is "ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences."[165]

Applying *Hazelwood School District* to social media, a school can therefore rightfully ask or demand a school-sponsored social media post (for example, a school journal article posted on Facebook) to be taken down or deleted without violating a student's right to free speech. Note that *Hazelwood School District* involved the authority of a school to edit or limit school-sponsored speech. Can a school discipline a student for school-sponsored speech, then? Indeed, it can. One can simply turn to *Miriam College Foundation, Inc.* to do so.

Promoting drug use through social media is another form of student speech that can be disciplined by the school. In *Morse*, Joseph Frederick and his "BONG HiTS 4 JESUS" banner got him suspended.[166] A similar social media post will probably land the student in the doghouse as well. *Morse* teaches that the "governmental interest in stopping student drug abuse ... allows schools to restrict student expression that they reasonably regard as promoting illegal drug use."[167] So, a student must think twice before posting a picture of himself or herself smoking weed on Instagram, lest this be considered on-campus speech and he or she gets suspended or expelled for drug advocacy.[168]

To sum, the following are considered unprotected student speech which the school has the authority to discipline (or limit) without violating the student's right to free speech:

(1) Speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others" (the Tinker Test);[169]

(2) Vulgar and lewd speech (as seen in *Fraser* and *Miriam College Foundation, Inc.*);[170]

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164. *Id.* at 273.

165. *Id.* at 283.

166. *Morse*, 551 U.S. at 397.

167. *Id.* at 408.

168. Of course, if the school has a drug policy, the student can be suspended or expelled, not on the basis of speech and drug advocacy, but for drug use and violation of the policy.

169. *Tinker*, 393 U.S. 503.

(3) School-sponsored speech (as limited in *Hazelwood School District* and disciplined in *Miriam College Foundation, Inc.*);[171] and

(4) Speech that promotes illegal drug use (as seen in *Morse*).[172]

Note that the nature of these four as "unprotected speech" stems from the special school environment. Hence, to be subject to discipline, the speech must have been made on-campus as discussed in the previous Section. Note further that a school can likewise discipline students on certain speech that remain unprotected, regardless of the location. Libel and obscenity cannot find solace in the Constitution,[173] whether done in school or not.

V. RIGHT TO PRIVACY

At its core, the right to privacy is the "right to be left alone."[174] Our culture today of sharing (and often, oversharing) information about ourselves voluntarily on social media poses not only an irony, but a legal problem as well — are social media posts protected by the right to privacy? The question is important, especially in the school setting, simply because a case can turn into an issue of privacy. While students have a diminished expectation of privacy,[175] it is beyond question that their right to privacy still exists, even within the walls of the school.[176] Hence, a number of practical concerns arise: can school officials validly browse through a student's Instagram account in search for incriminating pictures; can a student be liable for a Snap intended only for his contacts; or can a student be disciplined for a protected tweet sent to his or her 16 followers? It is a tricky business. Fortunately, the Supreme Court has recently decided a case that provides a decent foundation in examining a student's right to privacy and social media.

Vivares involved the fate of two high school seniors of St. Theresa's College in Cebu, Julia Daluz and Julienne Suzara.[177] Daluz and Suzara attended a beach party, and while changing into their swimsuits, took photos

170. *See Miriam College Foundation, Inc.*, 348 SCRA 265. *See also Fraser*, 478 U.S. 675.

171. *See Miriam College Foundation, Inc.*, 348 SCRA 265. *See also Hazelwood School District*, 484 U.S. at 260.

172. *See Morse*, 551 U.S. 393.

173. *See generally* BERNAS, *supra* note 6, at 74-79.

174. Social Justice Society v. Dangerous Drugs Board, 570 SCRA 410, 431 (2008).

175. *See* Board of Education v. Earls, 532 U.S. 822, 832 (2002).

176. PHIL. CONST. art. III, § 3, ¶ 1.

177. *Vivares*, 737 SCRA at 100.

of themselves in their underwear.[178] A schoolmate, Angela Tan, uploaded the photos on her Facebook page.[179]

A teacher learned of the photos and asked her students to log in to their respective Facebook accounts to view the photos.[180] To the teacher's dismay, she saw photos of Daluz and Suzara drinking hard liquor in a bar and hanging out in the streets of Cebu with their black brassieres visible for everyone to see.[181] The pictures were "not confined to the [students'] Facebook friends, but were, in fact, viewable by any Facebook user."[182] The school charged Daluz and Suzara with numerous offenses enumerated in the school's Student Handbook[183] and prohibited the two from joining the school's commencement ceremony.[184]

The parents of Daluz and Suzara filed a Petition for the Issuance of a Writ of *Habeas Data*, claiming that the school violated Daluz and Suzara's right to privacy.[185] They claimed, among others, that "[the] privacy setting of their children's Facebook accounts was set at 'Friends Only.' They, thus, have a reasonable expectation of privacy which must be respected."[186]

In ruling for the school, the Supreme Court made a number of notable pronouncements.[187] It first cited Chief Justice Reynato S. Puno's speech,

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178. *Id.*

179. *Id.*

180. *Id.* at 100–01.

181. *Id.* at 101.

182. *Id.*

183. The Student Handbook provides the following:

(1) Possession of alcoholic drinks outside the school campus;

(2) Engaging in immoral, indecent, obscene [,]or lewd acts;

(3) Smoking and drinking alcoholic beverages in public places;

(4) Apparel that exposes the underwear;

(5) Clothing that advocates unhealthy behaviour; depicts obscenity; contains sexually suggestive messages, language or symbols; and

(6) Posing and uploading pictures on the Internet that entail ample body exposure.

Vivares, 737 SCRA at 101–02.

184. *Id.* at 102.

185. *Id.* at 103.

186. *Id.*

187. *Id.* at 106.

The Common Right to Privacy,[188] and recognized that at stake was the right to informational privacy or the "right of individuals to control information about themselves."[189] The Supreme Court noted the unique interplay of the sharing aspect of social media and right to informational privacy and recognized that "having an expectation of informational privacy is not necessarily incompatible with engaging in cyberspace activities, including those that occur in [online social networks]."[190] The Supreme Court's statement is essential as it recognizes that an expectation of privacy still exists to protect certain personal information, even in today's social media culture where sharing personal information is expected — and has, in fact, become the norm.[191] (Anyone who has that *one* friend who treats Facebook like his or her personal diary can attest to this.)

But to what extent is the expectation of informational privacy protected?

It all boils down to privacy settings. After the Supreme Court's interesting discussion on the ins and outs of Facebook's privacy settings, it stated that the different privacy settings available give users a subjective expectation of privacy.[192] By adjusting the privacy settings in his or her account, a user invokes his or her right to informational privacy.[193] Hence, a Facebook user whose privacy setting is on "Custom"[194] or "Only Me"[195] can claim to have a greater expectation of privacy than a user whose privacy setting is on "Public."[196]

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188. Reynato S. Puno, Justice of the Supreme Court, The Common Right to Privacy Address at National Union of Peoples' Lawyers (Mar. 12, 2008).

189. *Vivares*, 737 SCRA at 111.

190. *Id.* at 112–13.

191. Elizabeth Bernstein, *Thank You For Not Sharing*, WALL ST. J., May 6, 2013, *available at* http://www.wsj.com/articles/SB10001424127887323826804578466831263674230 (last accessed Nov. 21, 2015).

192. *Vivares*, 737 SCRA at 114–15.

193. *Id.* at 116.

194. Where the user can choose particular people to share the post with. Facebook, What audiences can I choose from when I share, *available at* https://www.facebook.com/help/211513702214269 (last accessed Nov. 21, 2015).

195. *Id.*

196. Where anyone can see your posts, even strangers and people who are not on Facebook. Facebook, Basic Privacy Settings & Tools, *available at* https://www.facebook.com/help/325807937506242 (last accessed Nov. 21, 2015).

What if the user's privacy setting is on "Friends," meaning, the post can only be viewed by the user's Facebook friends, will these posts be considered private? The Supreme Court answered in the negative.[197] Taking note of the purpose of Facebook to connect people and the (rather peculiar) habit of people to befriend complete strangers, the Supreme Court stated that "setting a post's or profile detail's privacy to 'Friends' is no assurance that it can no longer be viewed by another user who is not Facebook friends with the source of the content."[198] It reasoned that a Facebook friend can make the post available to other users — even if not these users are not Facebook friends with the one who made the original post — through sharing or tagging.[199]

Did the school violate the privacy rights of Daluz and Suzara? It did not. In the words of the Supreme Court, the School officials were "mere recipients of what were posted"[200] since "the information [ ] was voluntarily given to them by persons who had legitimate access to the said posts."[201] School officials might use the Supreme Court's statement as a ticket to task students to access social media accounts of their suspected schoolmates, raising the defense that they were "mere recipients" of information. The Author cautions against such tactics as the Supreme Court's statement could well be considered *obiter dicta.* In the end, the true test of whether the privacy rights of a student have been violated will be the student's expectation of informational privacy, rather than the means by which the school obtained such information. For example, in a situation where a school learns that a student posted a nude selfie of herself on her Facebook page with a privacy setting set on "Only Me," the school would be hard put to argue that it did not violate the student's privacy rights, regardless of how it learned of or obtained the selfie.

Vivares, while it dealt with Facebook, will readily apply to Twitter, Instagram, and other similar social media outlets which have their own privacy settings. Twitter allows users to either broadcast their tweets publicly or send their protected tweets only to their followers.[202] Instagram gives shutterbugs the option to set their accounts to public or private, so users can

197. *Vivares*, 737 SCRA at 121.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* at 122.

202. Twitter, Twitter Privacy Policy, *available at* https://twitter.com/privacy?lang=en (last accessed Nov. 21, 2015) & Twitter, FAQs about following, *available at* https://support.twitter.com/articles/14019 (last accessed Nov. 21, 2015).

choose who they want to share their selfies, food pictures, or cat photos to.[203]

Vivares teaches that approaching issues pertaining to the right to privacy of students in their use of social media must always begin by examining the privacy setting of a student's social media account.[204] However, the Author believes that one should not merely be content with a student's privacy settings. Another indicator that must likewise be considered is the follower or friend count of the user. While *Vivares* did not touch on this subject directly, it is only logical that the user's "audience" must be considered. Surely, the more people who have access to the post, the less expectation of informational privacy the student has, regardless of the student's privacy settings. If only a student's privacy setting is considered, then a student who protects her tweets but has a follower count to rival Katy Perry[205] can argue that her expectation of informational privacy is high. The same can be said about a student who posts a curse-laden rant about a teacher on Facebook, sets his privacy settings to "Custom," but still makes it visible to all his friends in the student body. Obviously, this should not be the case. Hence, a proper determination of a student's expectation of informational privacy should begin by examining both the student's privacy settings and his or her target audience in the form of the number of friends or followers who have access to the post in question.

VI. DUE PROCESS

No article on constitutional rights would be complete without touching on due process. Fortunately, the due process implications of social media posts by students will not dramatically differ from already set due process standards for students.[206] At most, schools may have to update their student manuals or handbooks to include offenses specific to Internet or social media use. This should be done to comply with a basic tenet of due process that a student must at least know the offense he or she is being charged with.[207] Private school manuals likewise mandate that a disciplinary sanction can only be

203. Instagram, Privacy Policy, *available at* https://help.instagram.com/155833707900388 (last accessed Nov. 21, 2015).

204. *Vivares*, 737 SCRA at 105.

205. Katy Perry has 75 million followers. Katy Perry (@katyperry), Twitter (Sep. 7, 2015, 11:39 PM), https://twitter.com/katyperry (last accessed Nov. 21, 2015).

206. *Ateneo de Manila University*, 222 SCRA at 658 (citing *Guzman* 142 SCRA at 706-07); *Guzman*, 142 SCRA at 706-07; & *De La Salle University, Inc.*, 541 SCRA at 51.

207. *See Guzman*, 142 SCRA at 706.

imposed for causes defined in school manuals or handbooks.[208] A good example would be the offense Daluz and Suzara violated by their impromptu photoshoot; the Student Handbook of St. Theresa's College specifically prohibits "posing and uploading pictures on the Internet that entail ample body exposure."[209]

Of course, carefully (even generally) worded offenses will allow the imposition of sanctions for a student's social media post. For example, a student advocating the use of illegal drugs will be liable on any drug policy the school has; it will not matter whether the advocacy was made on social media or not. In the end, a student's inappropriate behavior should be judged on the behavior itself, not whether it was conducted via social media.

In administrative cases involving disciplinary action against the student, the Supreme Court has laid down minimum standards to satisfy procedural due process.[210] According to *Guzman*, *De La Salle University, Inc.*, and *Ateneo de Manila University* (disciplinary cases respectively involving students engaging in mass actions, fraternity members beating up other fraternity members, and fraternity members beating up their *own* fraternity members), the minimum standards are the following:

(1) The students must be informed in writing of the nature and cause of any accusation against them;[211]

(2) That they shall have the right to answer the charges against them with the assistance of counsel, if desired;[212]

(3) They shall be informed of the evidence against them;[213]

(4) They shall have the right to adduce evidence in their own behalf;[214] and

(5) The evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case.[215]

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208. DepEd D.O. No. 88, § 131 & CHED M.O. No. 40, § 103.

209. *Vivares*, 737 SCRA at 101–02.

210. *Ateneo de Manila University*, 222 SCRA at 658 (citing *Guzman* 142 SCRA at 706–07); *Guzman*, 142 SCRA at 706–07; & *De La Salle University, Inc.*, 541 SCRA at 51.

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

The Supreme Court has also clarified that a student's rights in disciplinary cases do not include the right to cross-examination.[216] These standards will likewise apply to any disciplinary case brought by the school against a student involving a social media post.

VII. CONCLUSION

Social media has given the world a new for tool for self-expression. It is a powerful one, known to be a catalyst for social upheaval and revolutions.[217] It is also a seductive one, where constant affirmation in the form of likes and followers can lead to addiction and a distorted view of self-worth.[218] But at its core, social media is simply a tool, similar to a hammer or an axe. How it is to be wielded depends purely on the person behind the screen.

Social media use has its legal consequences. The discussion above makes that pretty obvious. With this in mind, students (or everyone, for that matter) must be mindful of *how* they use social media. It is an easy and dangerous trap to fall into — this addiction to share our thoughts to the world, to endlessly post selfies for no reason — and we must police ourselves against it. It is easy because it is empowering to know that our thoughts are out there to be read, to be considered, to be liked by even the remotest of strangers. It is empowering because it gives us a sense that our thoughts and opinions matter, that *we* matter. It is our digital stamp on the world, us leaving a mark and saying, "I am here! I have something to say!" or "Look at me and like me!" Little do we know that with every post, tweet, snap, and status message, we write our own history — one that cannot be deleted as easily as a browsing history.

In a way, the saying is true and should serve as a warning to everyone — what happens on the Internet *does* stay on the Internet. Forever. And in writing your own history, what mark do you want to leave behind? Is it that invective-heavy rant you posted about how your dean is messing up the school? Or is it that nude selfie you uploaded to gain acceptance? Or is it that quick-to-judge-don't-care-about-facts status message you wrote about a

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215. *Id.*

216. *Ateneo de Manila University*, 222 SCRA at 658.

217. Pierre M. Omidyar, Social Media: Enemy of the State or Power to the People, *available at* http://www.huffingtonpost.com/pierre-omidyar/social-media-enemy-of-the_b_4867421.html (last accessed Nov. 21, 2015).

218. Bruce Feiler, *For the Love of Being 'Liked,'* N.Y. TIMES, May 9, 2014, *available at* http://www.nytimes.com/2014/05/11/fashion/for-some-social-media-users-an-anxiety-from-approval-seeking.html?_r=0 (last accessed Nov. 21, 2015).

hot topic? Or is it that bigoted and hateful tweet about a classmate that you sent to your gazillion followers?

Yes, I did not think so.