LinkedIn

Rock Your Profile

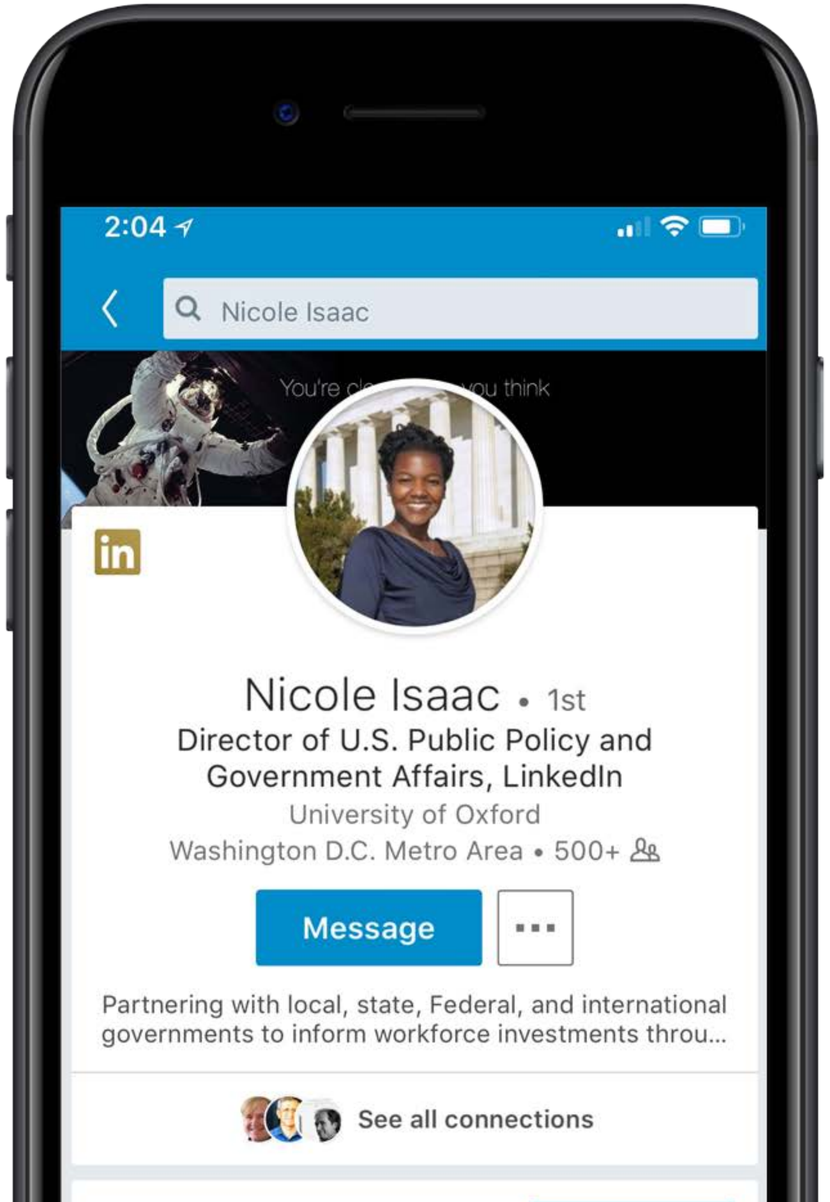
Sarah Wight

Sr. Director, Legal

Jaimi Kerr

Director, Legal

Agenda

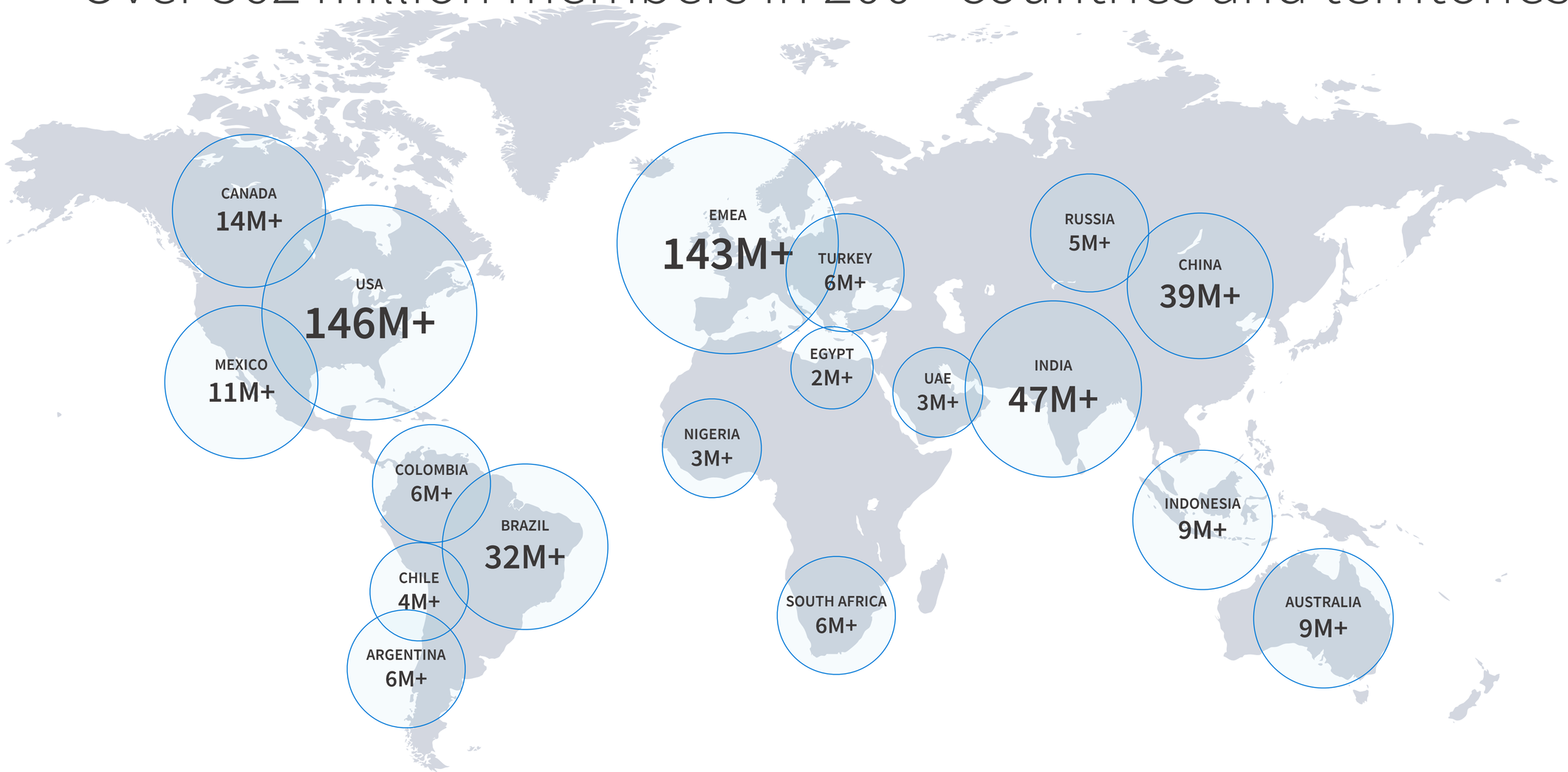


01	What’s LinkedIn?
02	Why Should Lawyers Use LinkedIn?
03	How LinkedIn Can Help
04	Your Profile, Your Story
05	Beyond Your LinkedIn Profile
06	LinkedIn and Attorney Advertising

What’s LinkedIn ?

The world’s largest professional network

- Over 562 million members in 200+ countries and territories



What do you do on other social media?

I like donuts

Watch me eat a donut

Here’s a photo of my donut

Look at these decorated donuts!

I’m listening to “Donuts”

On LinkedIn:

- I have 8 years of experience representing donut companies.
- I connect, interact with, and stay in touch with donut professionals.
- I keep on top of the latest donut industry news.
- I share information about the issues facing donut pros.
- I’m looking for new donut-related opportunities.

OUR VISION

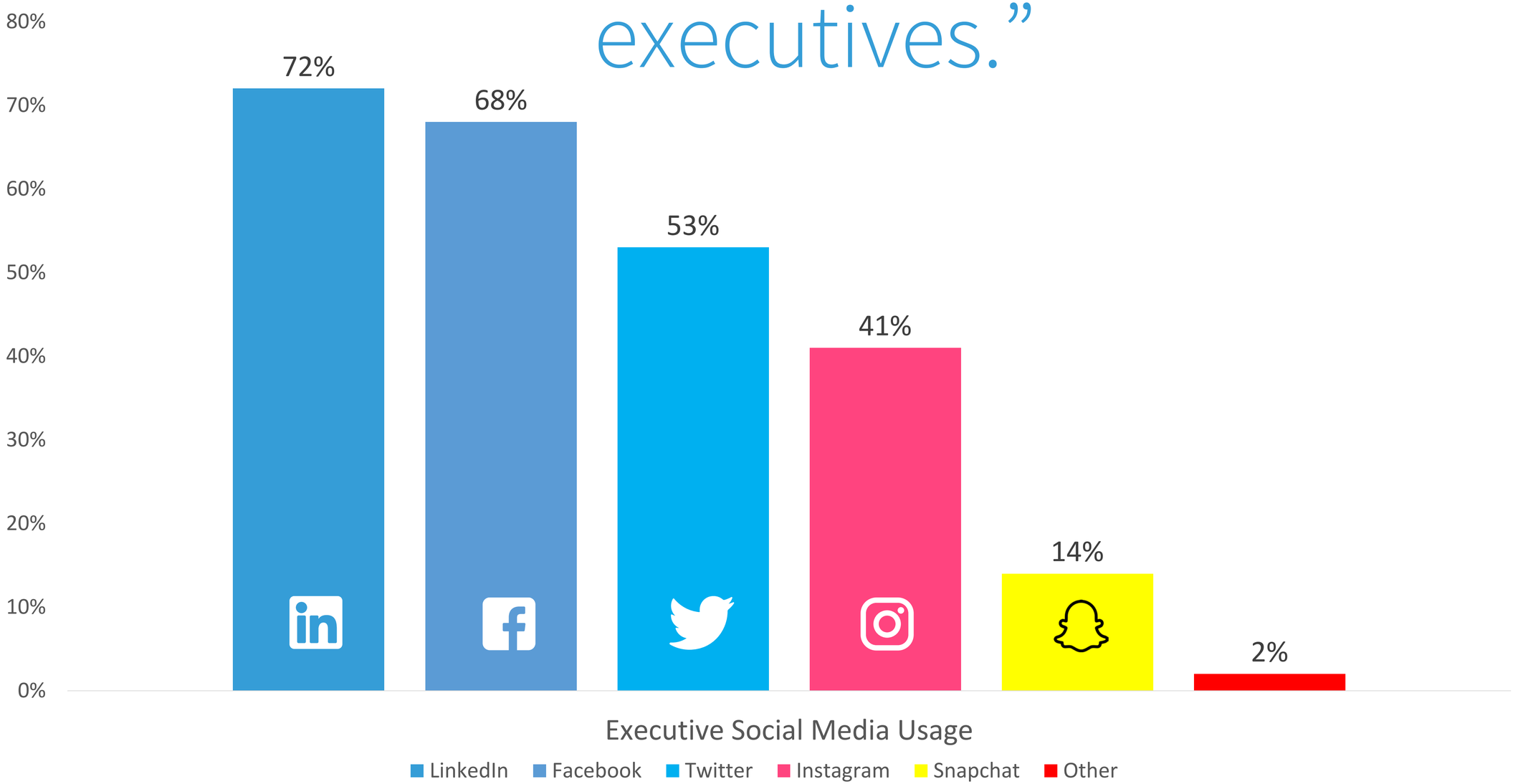
Create economic opportunity for every member of the global workforce

OUR MISSION

Connect the world’s professionals to make them more productive and successful

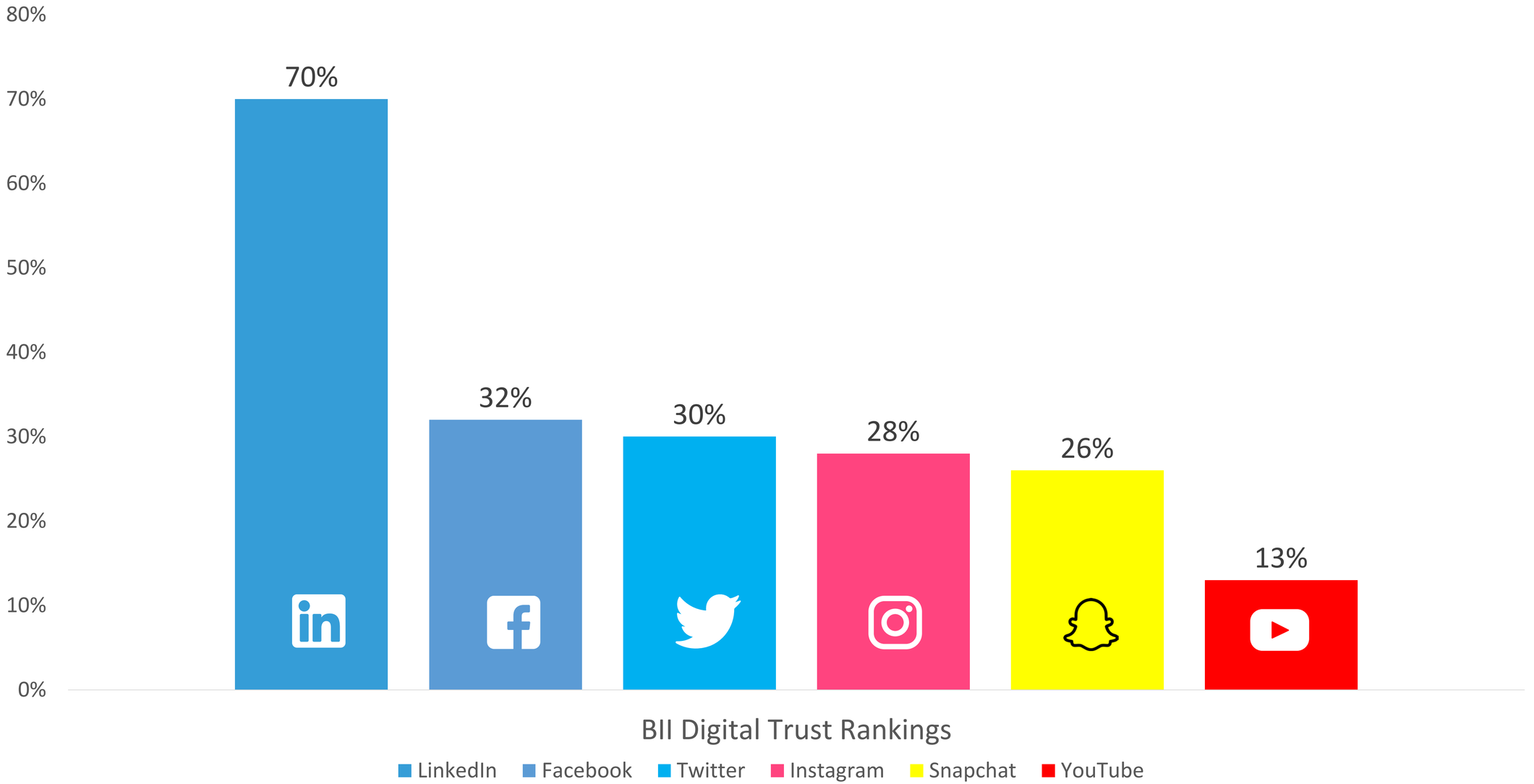
LinkedIn helps its members
advance their careers.

“…the most used social platform among executives.”



Source: Quartz Global Executive Survey

“…indisputably the most trusted platform.”



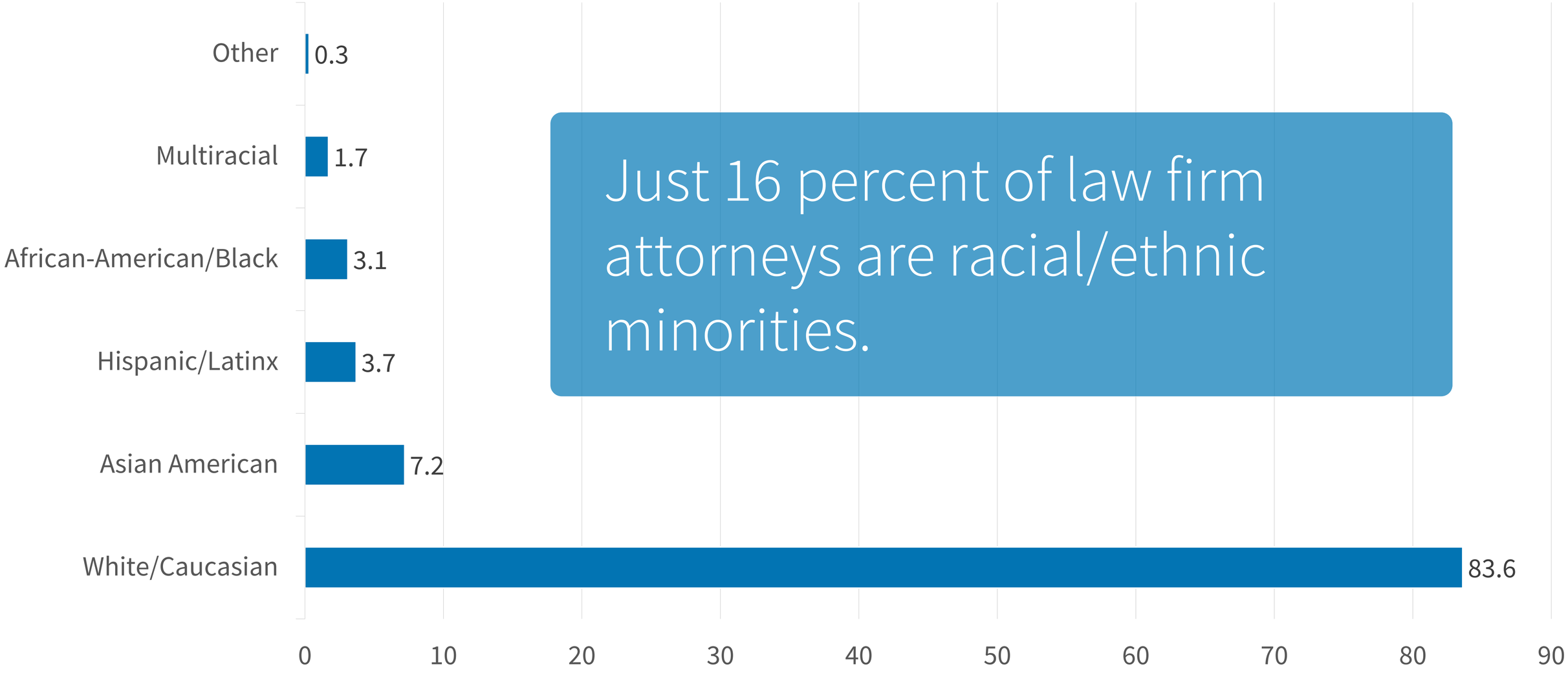
Source: Business Insider Intelligence “Digital Trust Report” (June 2017)

Why should
lawyers use
LinkedIn?

OUR OPPORTUNITY

Law remains the least diverse profession in the United States.

Law Firm Attorneys by Race/Ethnicity



Just 16 percent of law firm attorneys are racial/ethnic minorities.

Source: Vault/MCCA Law Firm Diversity Survey 2017 Report

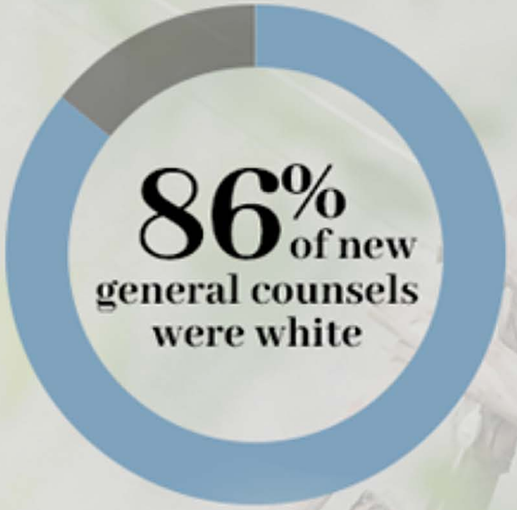
MCCA™

Inclusive leadership in the legal field is critical

U.S. Law Firms

Fortune 500

*in 2017



Even fewer women & minorities at the top

Law Firm Partners

20

percent are women

8

percent are minorities

Fortune 500 GCs

25

percent are women

11

percent are minorities

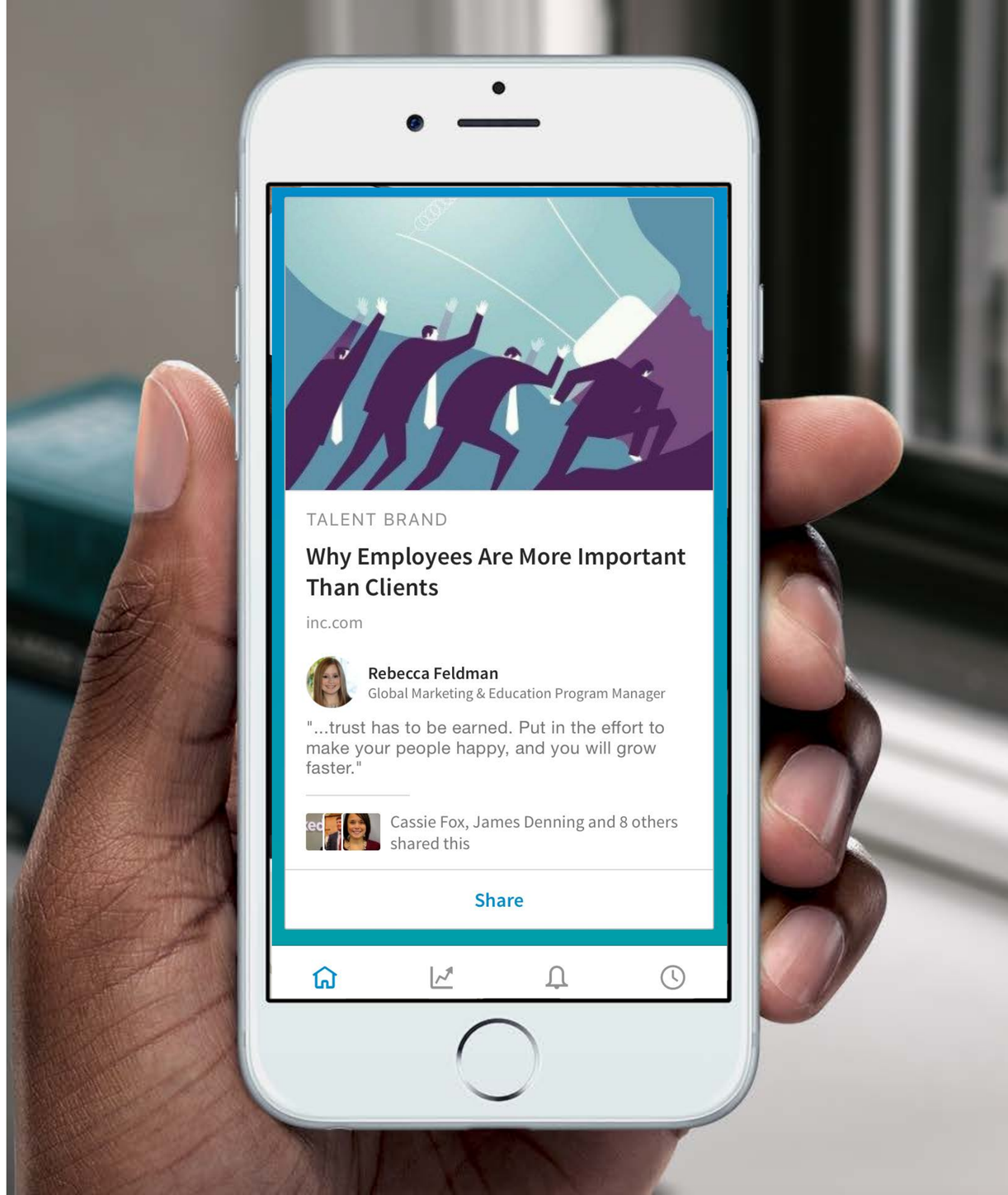
Source: Vault/MCCA Law Firm Diversity Survey 2017 Report

How LinkedIn can help

There are over 1 million lawyers on LinkedIn.

Lawyers come to LinkedIn to:

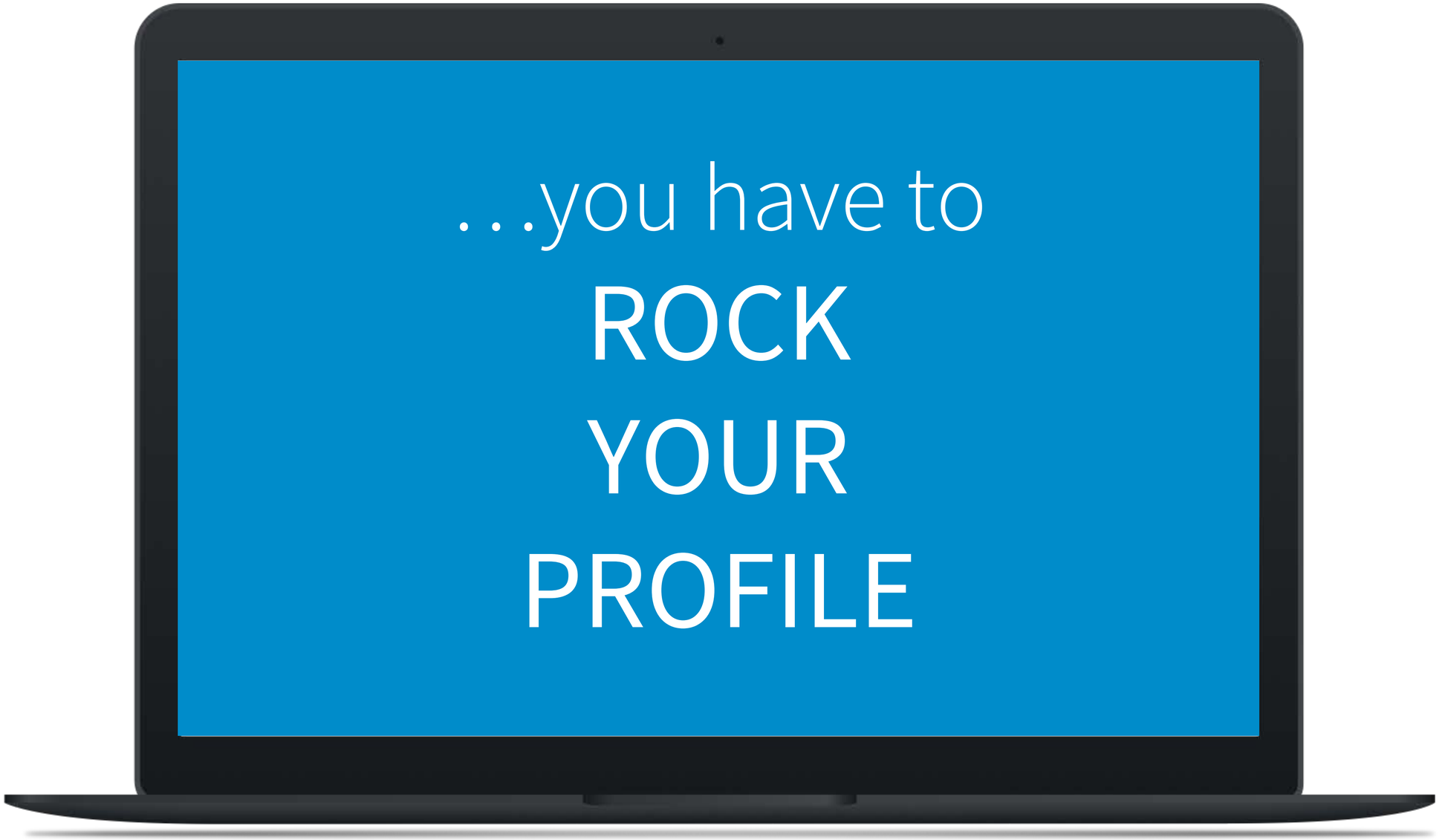
- Interact with clients, contacts, and other legal professionals
- Stay well informed about industry news and legal trends
- Share professional content
- Research and contact people
- Recruit and look for career opportunities



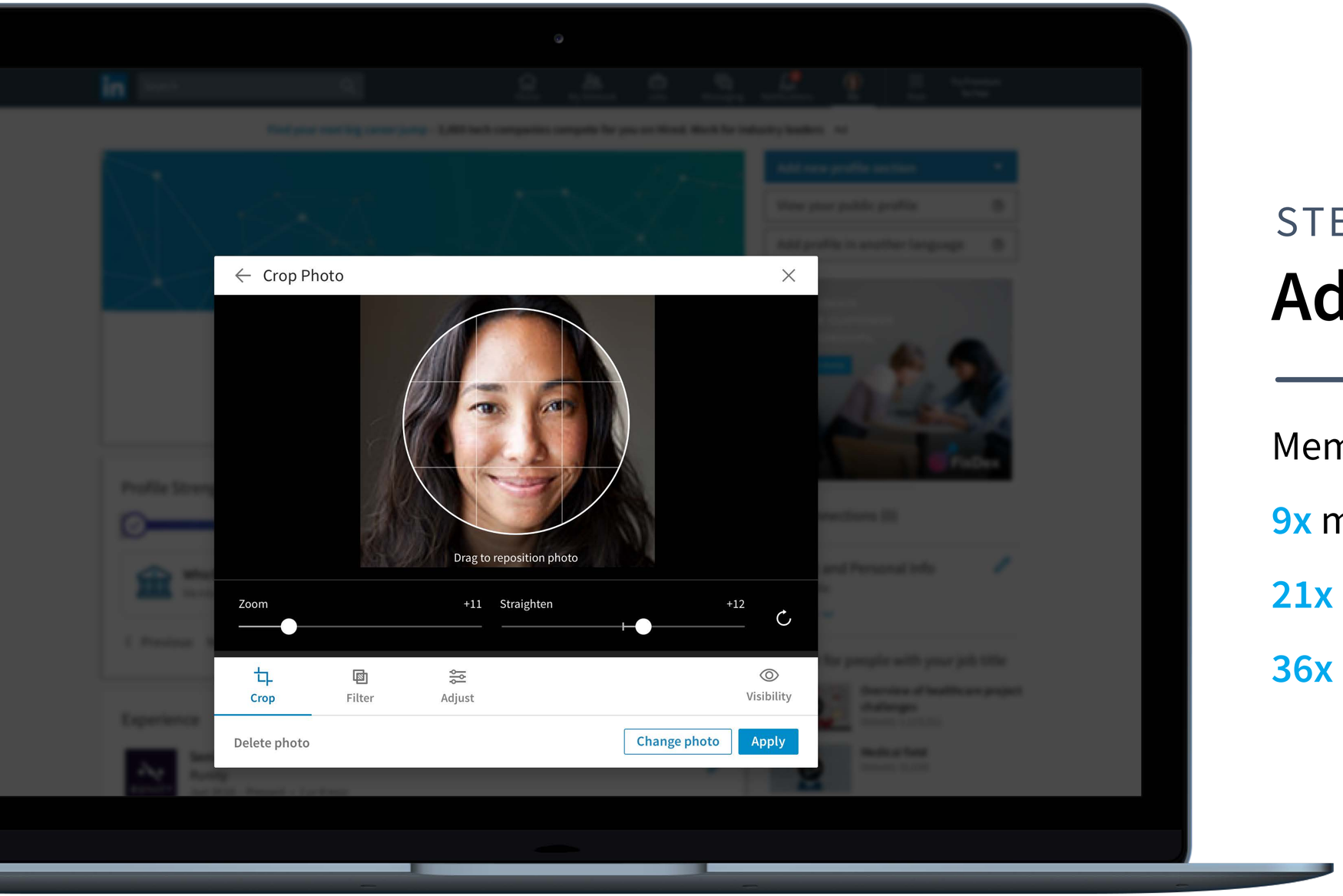
OUR OPPORTUNITY

LinkedIn helps attorneys network, learn, and build their practices and careers.

But first…



Your Profile, Your Story



STEP ONE

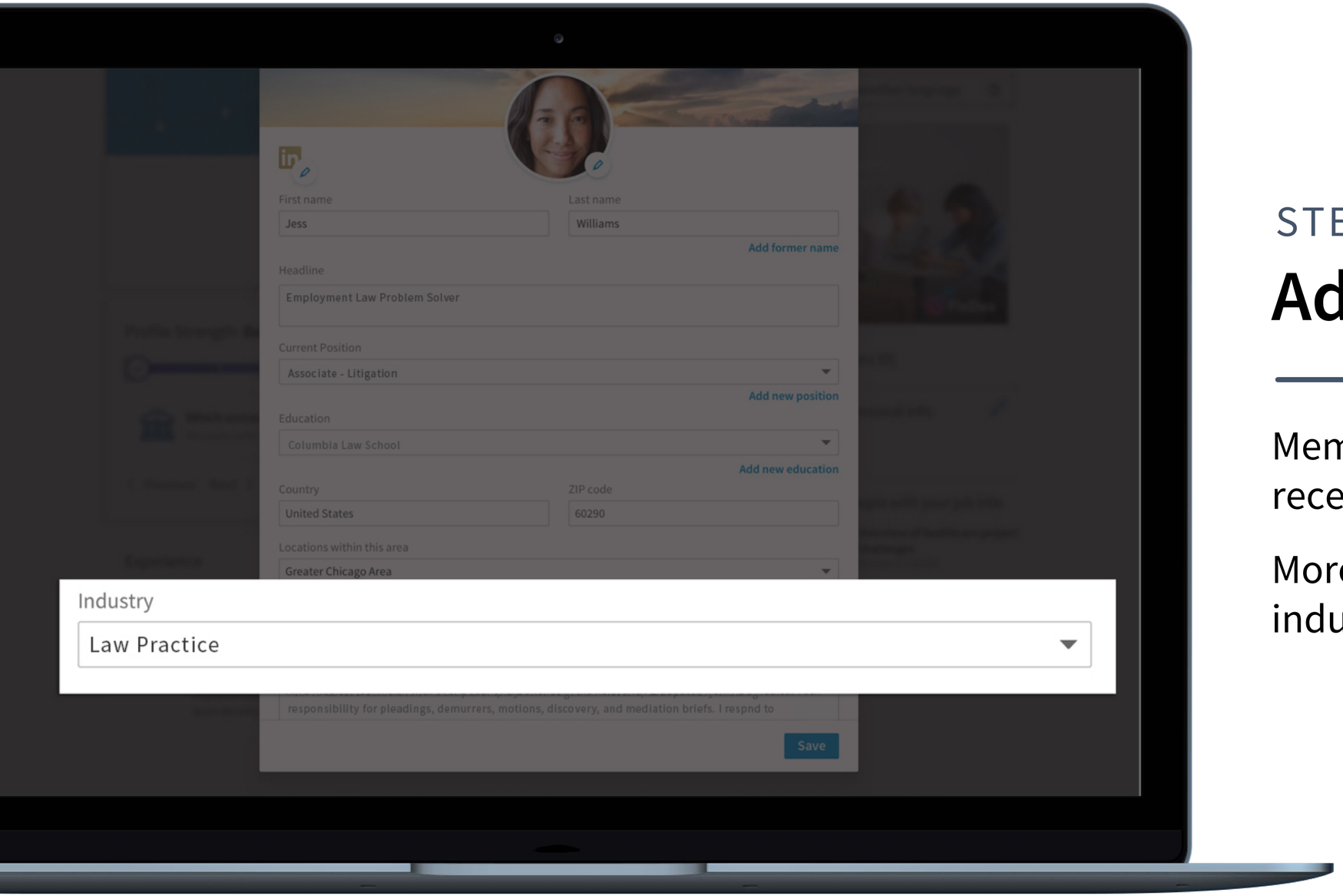
Add a photo

Members with a photo get up to:

9x more connection requests

21x more Profile views

36x more messages

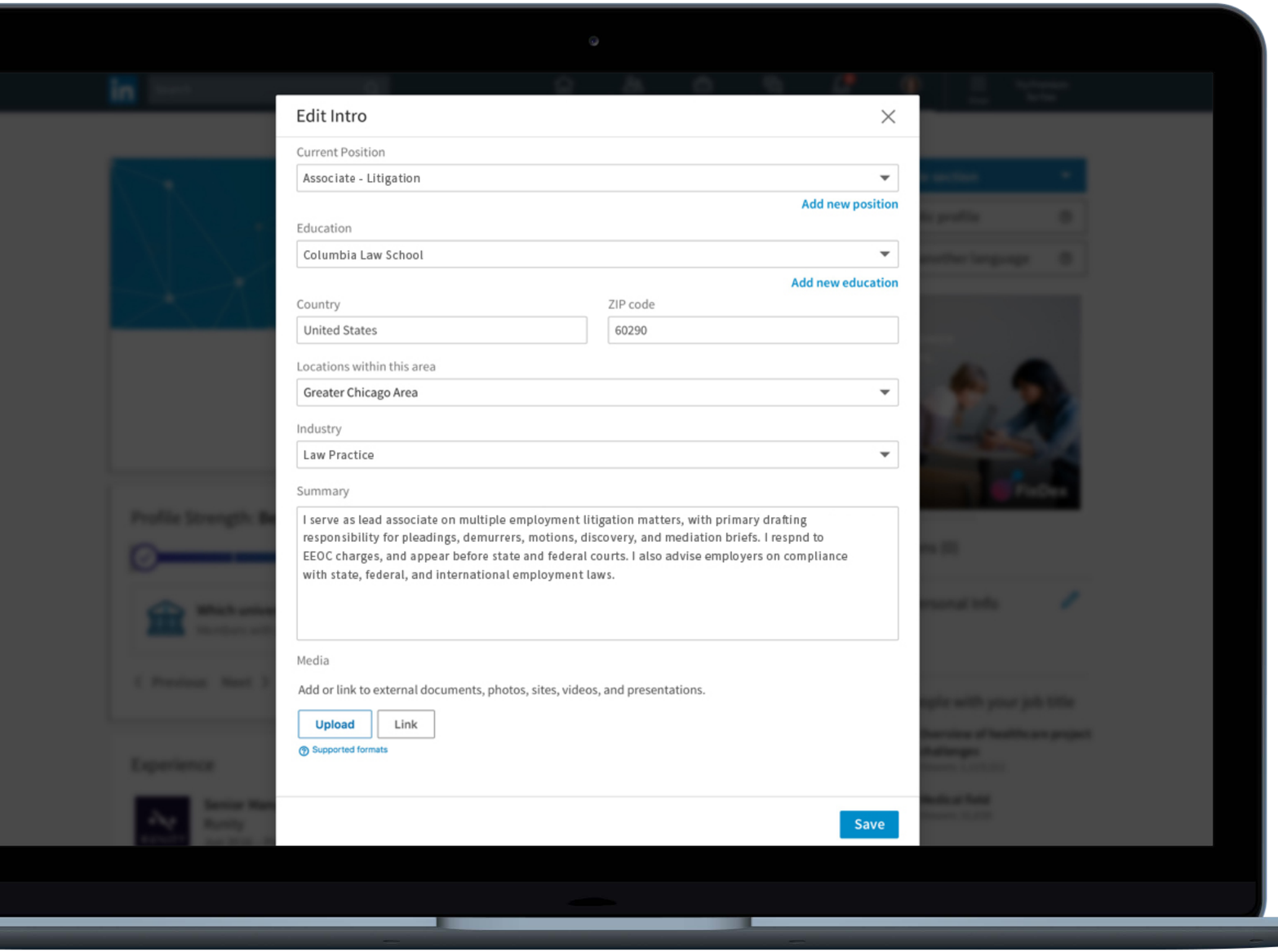


STEP TWO

Add your industry

Members with industry information receive up to **9x** more Profile views

More than 300K people search by industry on LinkedIn every week



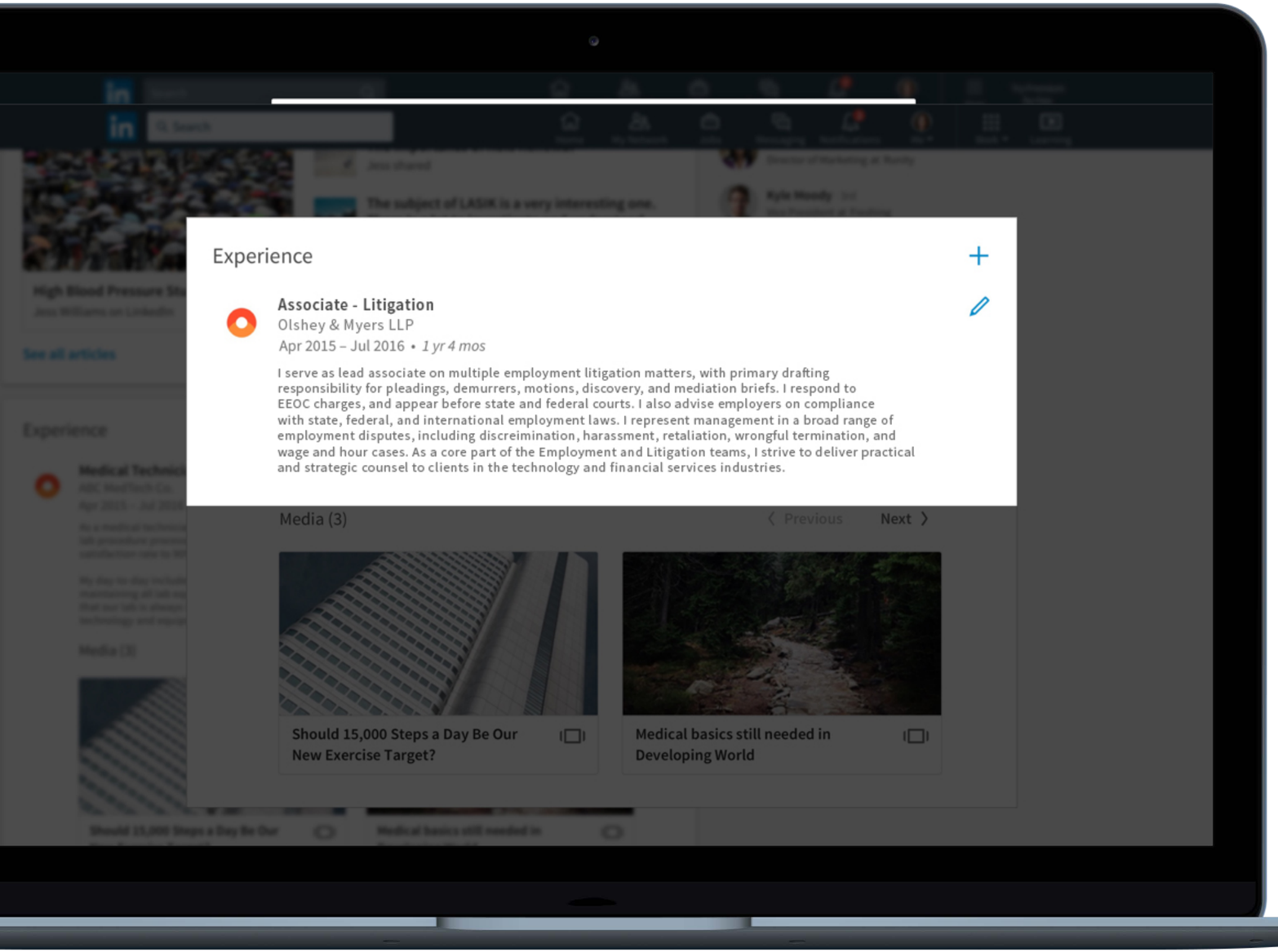
STEP THREE

Draft a compelling summary

Your “elevator pitch”

Focus on career accomplishments & aspirations

40+ words



STEP FOUR

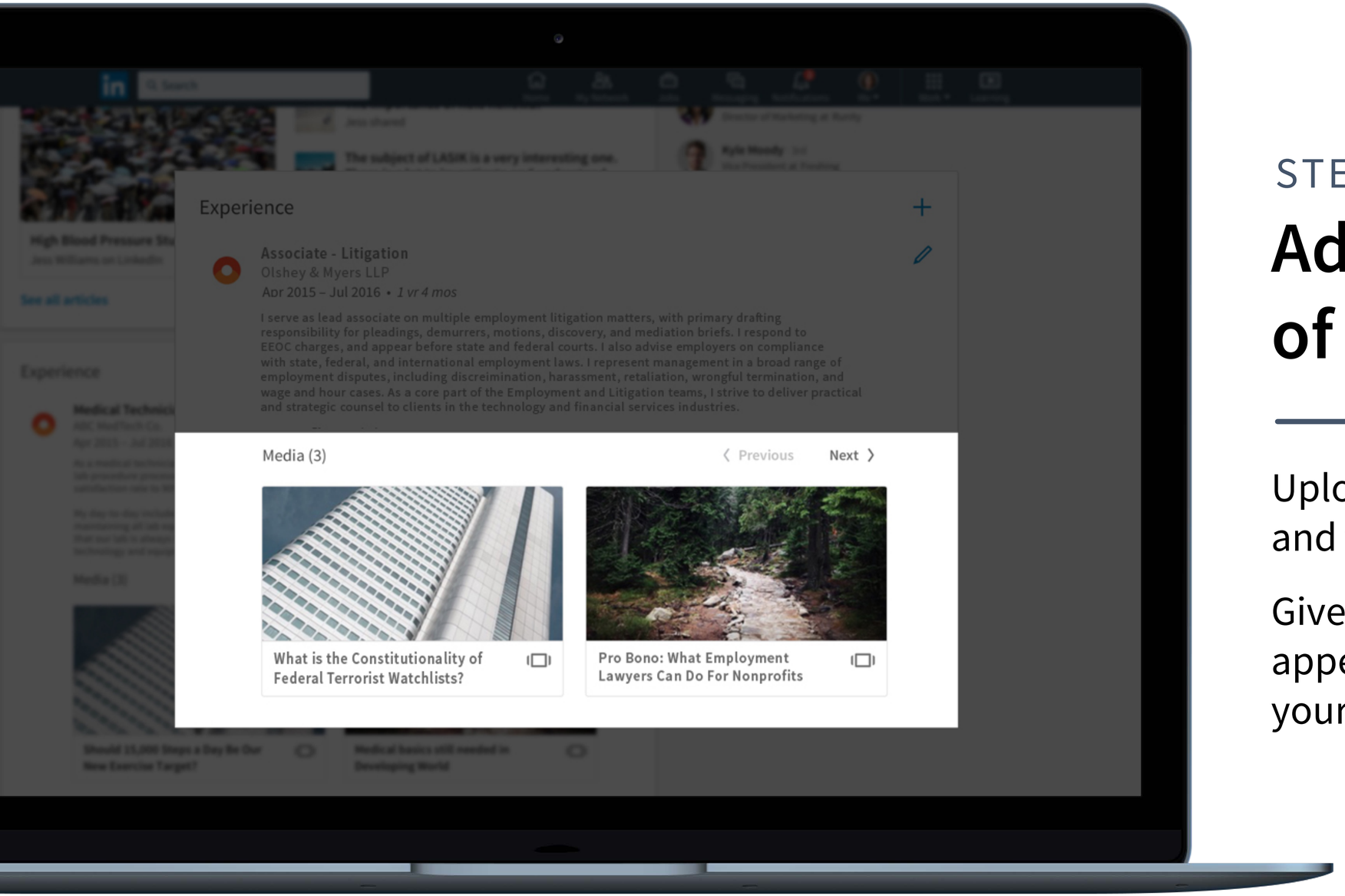
Detail your work experience

Members with up-to-date positions receive up to:

5x more connection requests

8x more Profile views

10x more messages

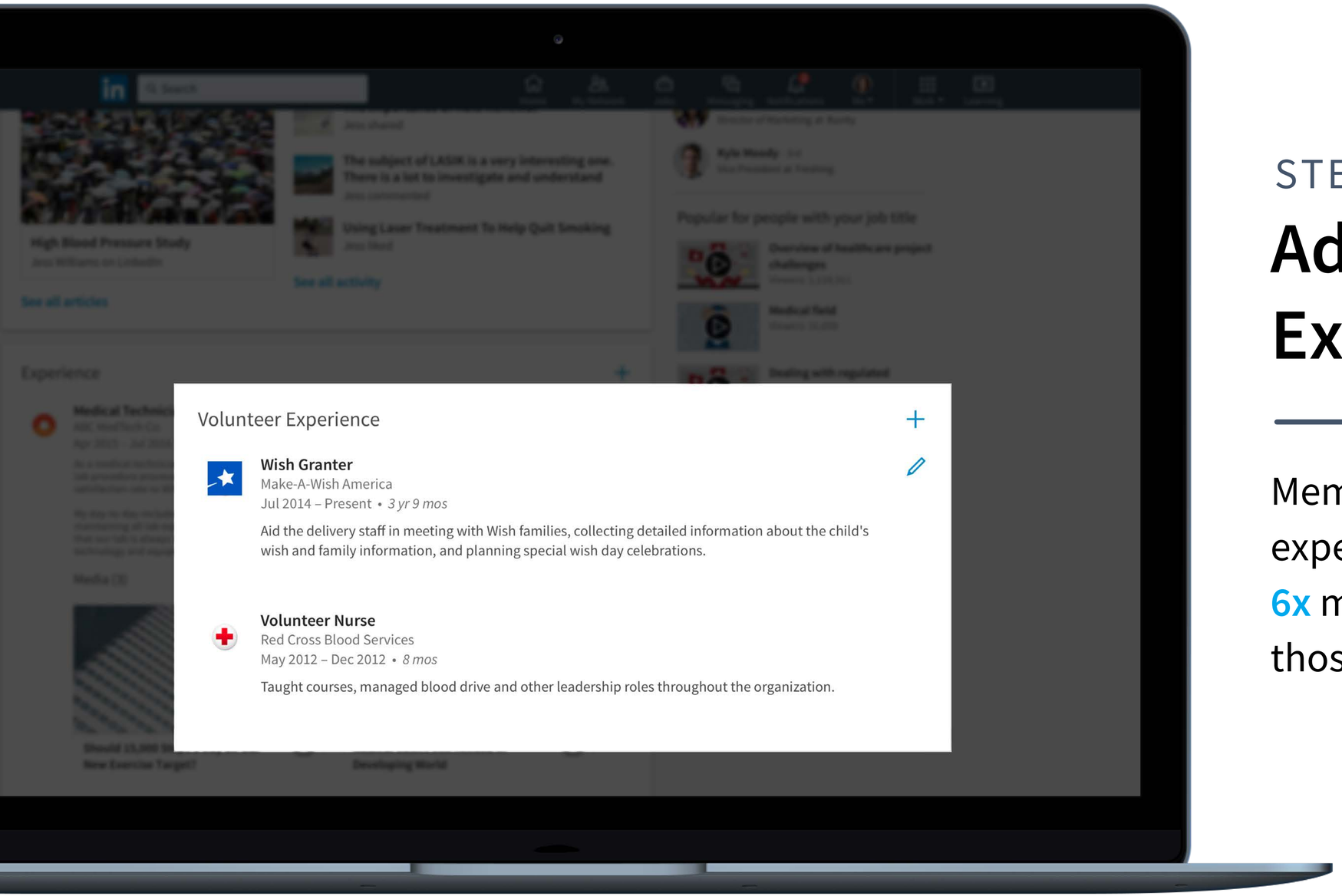


STEP FIVE

Add Examples of Your Work

Upload photos, presentations, and videos

Give a dynamic, visually appealing representation of your professional story

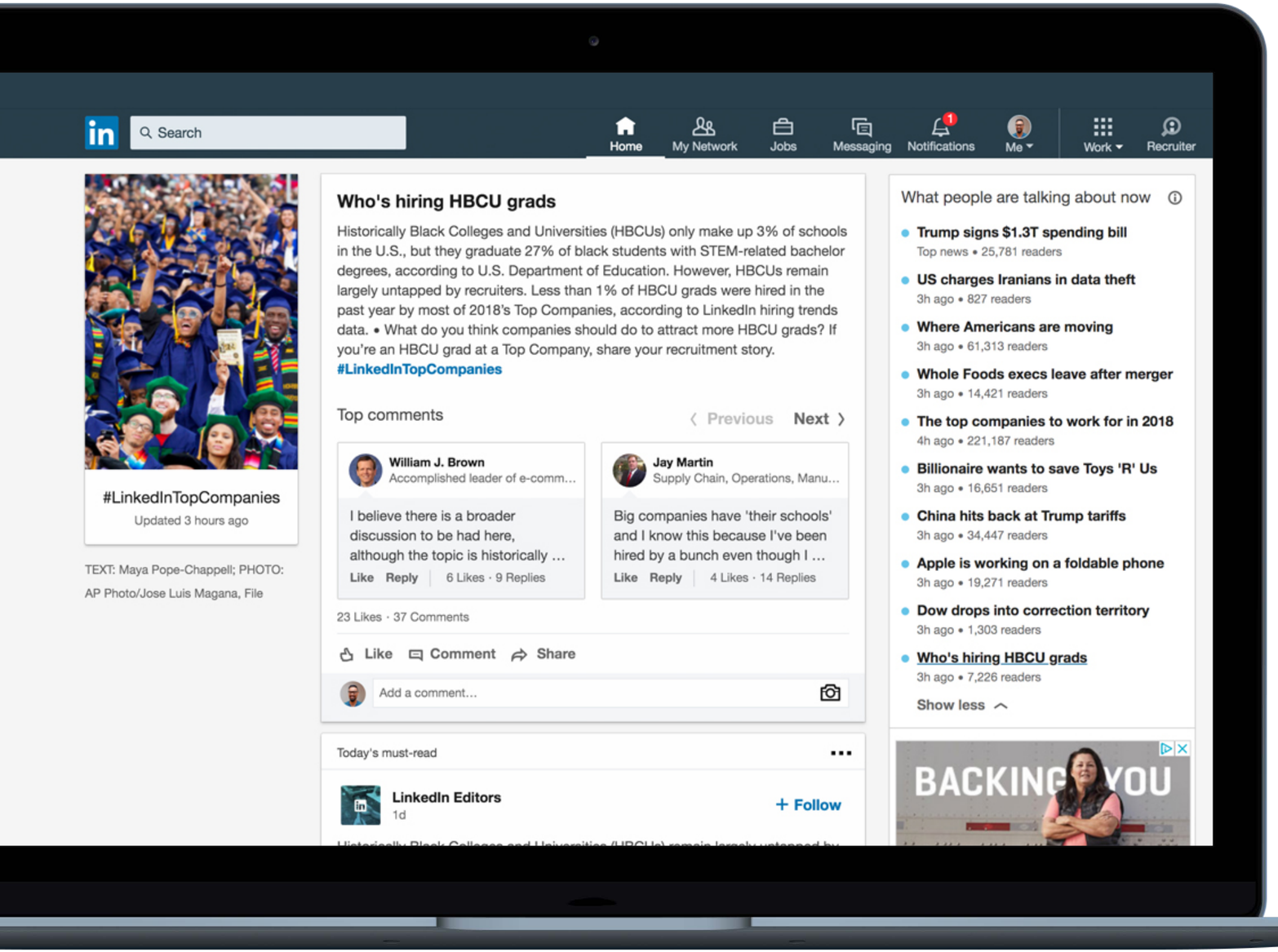


STEP SIX

Add Volunteer Experience

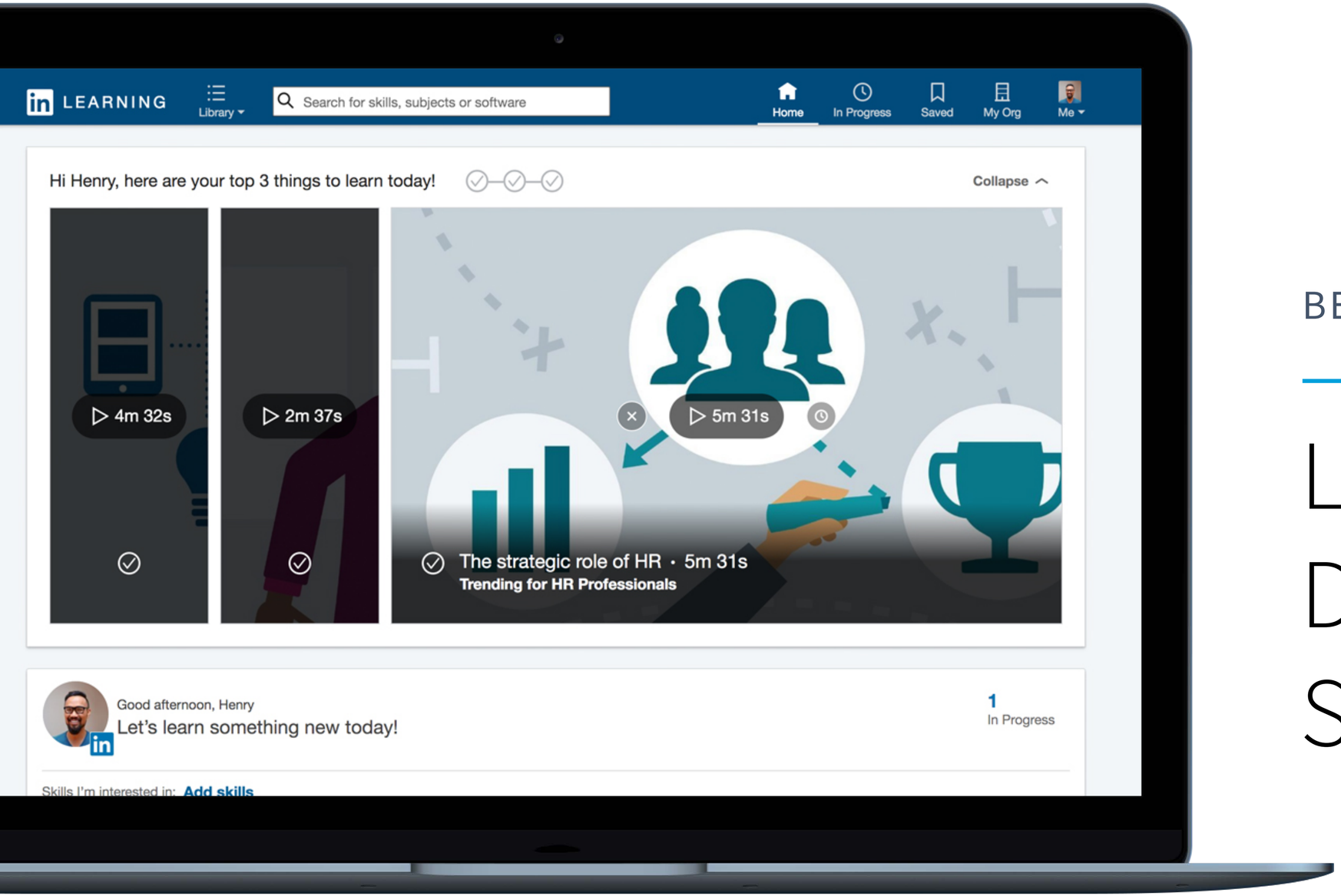
Members who add volunteer experience and causes get up to **6x** more Profile views than those without

Beyond Your LinkedIn Profile



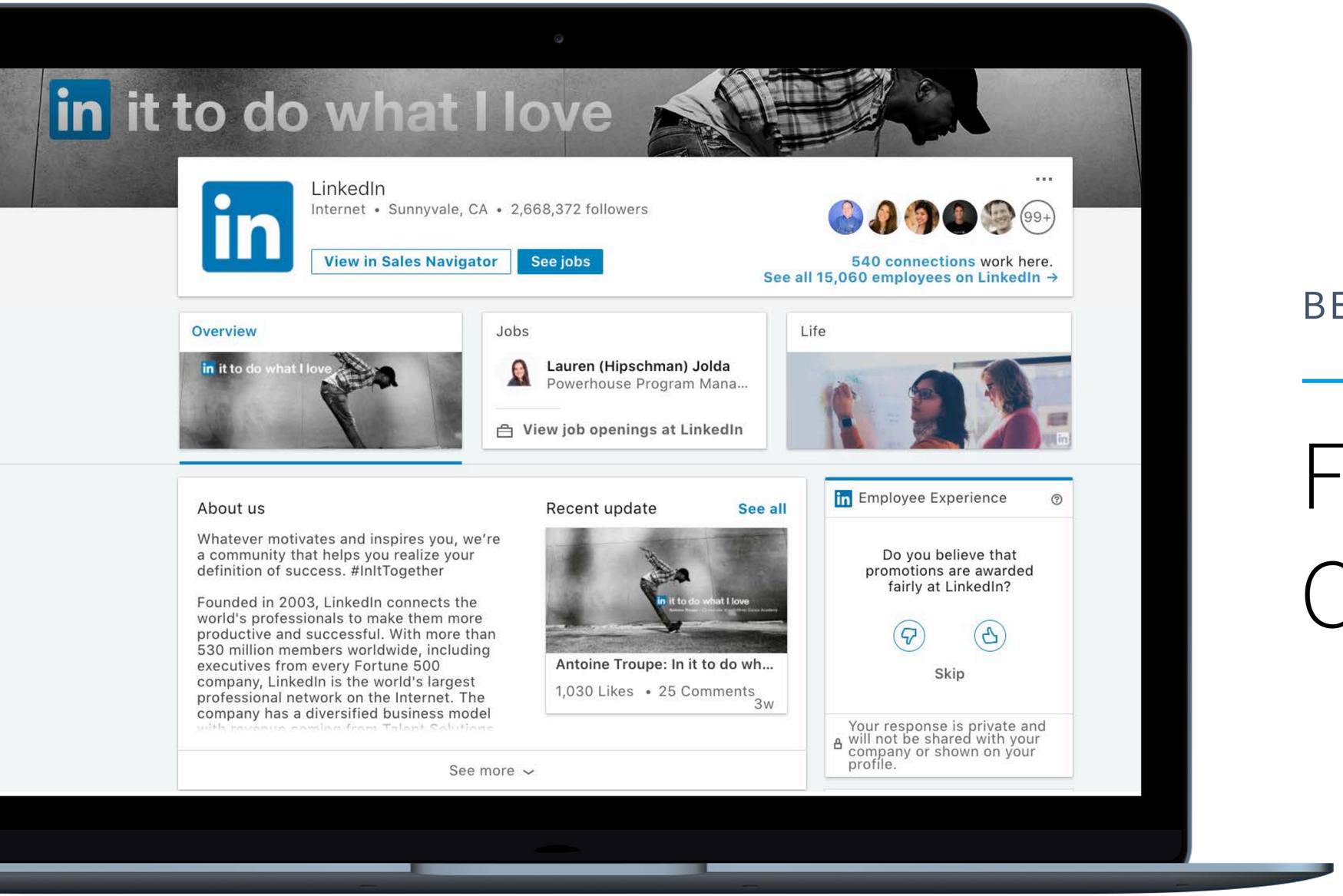
BEYOND YOUR PROFILE

Stay Well Informed



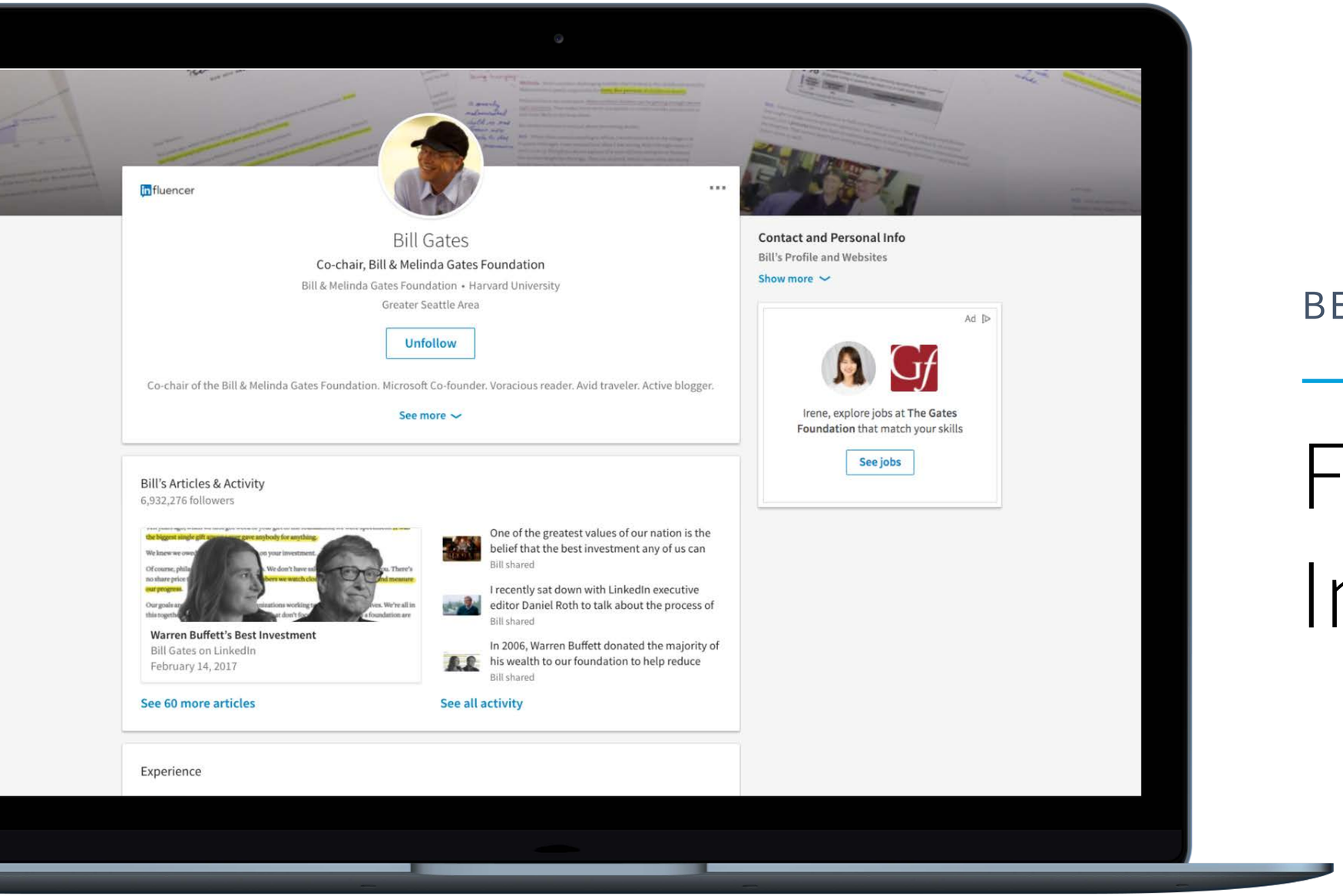
BEYOND YOUR PROFILE

Learn and Develop Your Skills



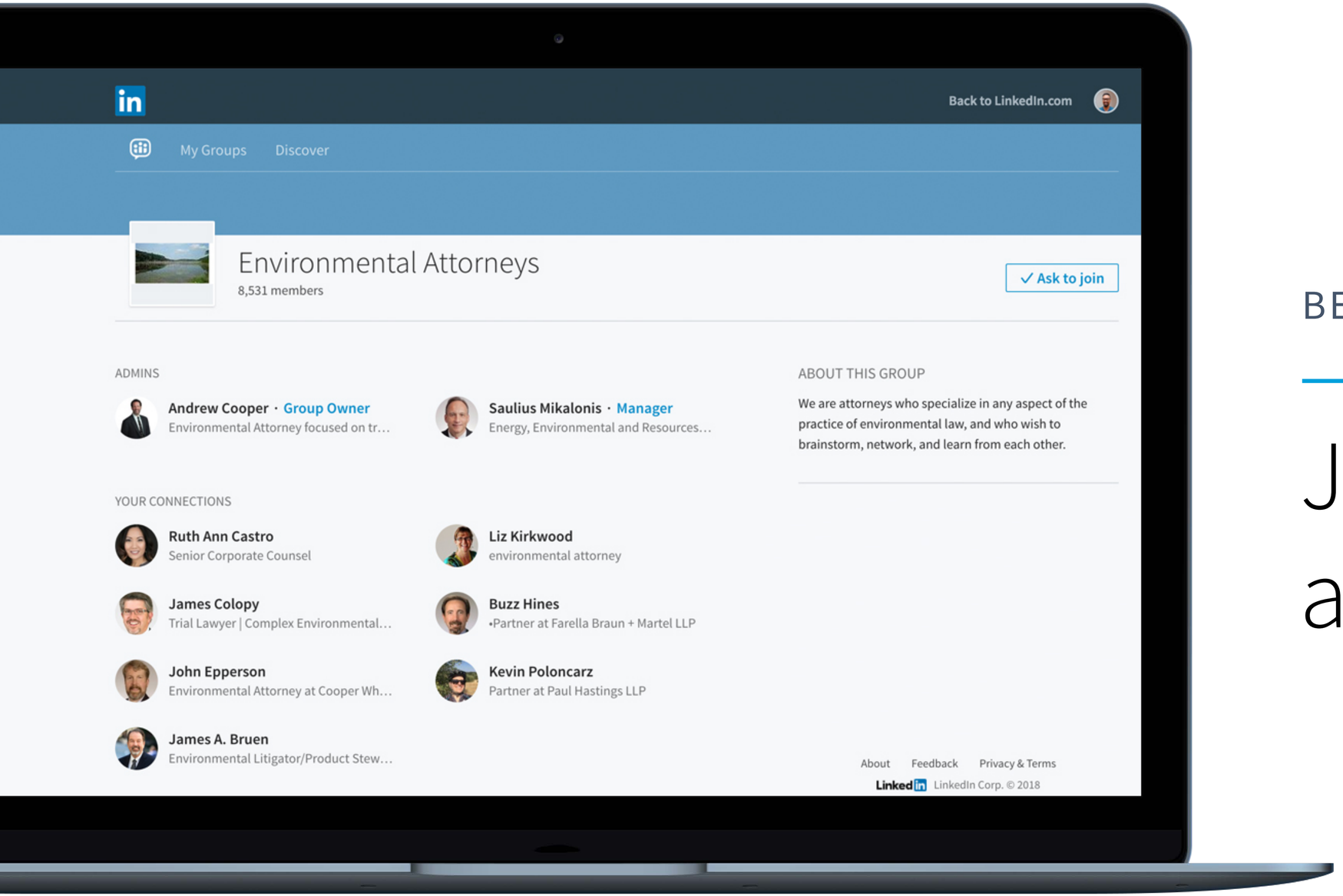
BEYOND YOUR PROFILE

Follow Companies



BEYOND YOUR PROFILE

Follow Influencers



BEYOND YOUR PROFILE

Join Groups and Network

Sharing updates vs. publishing articles

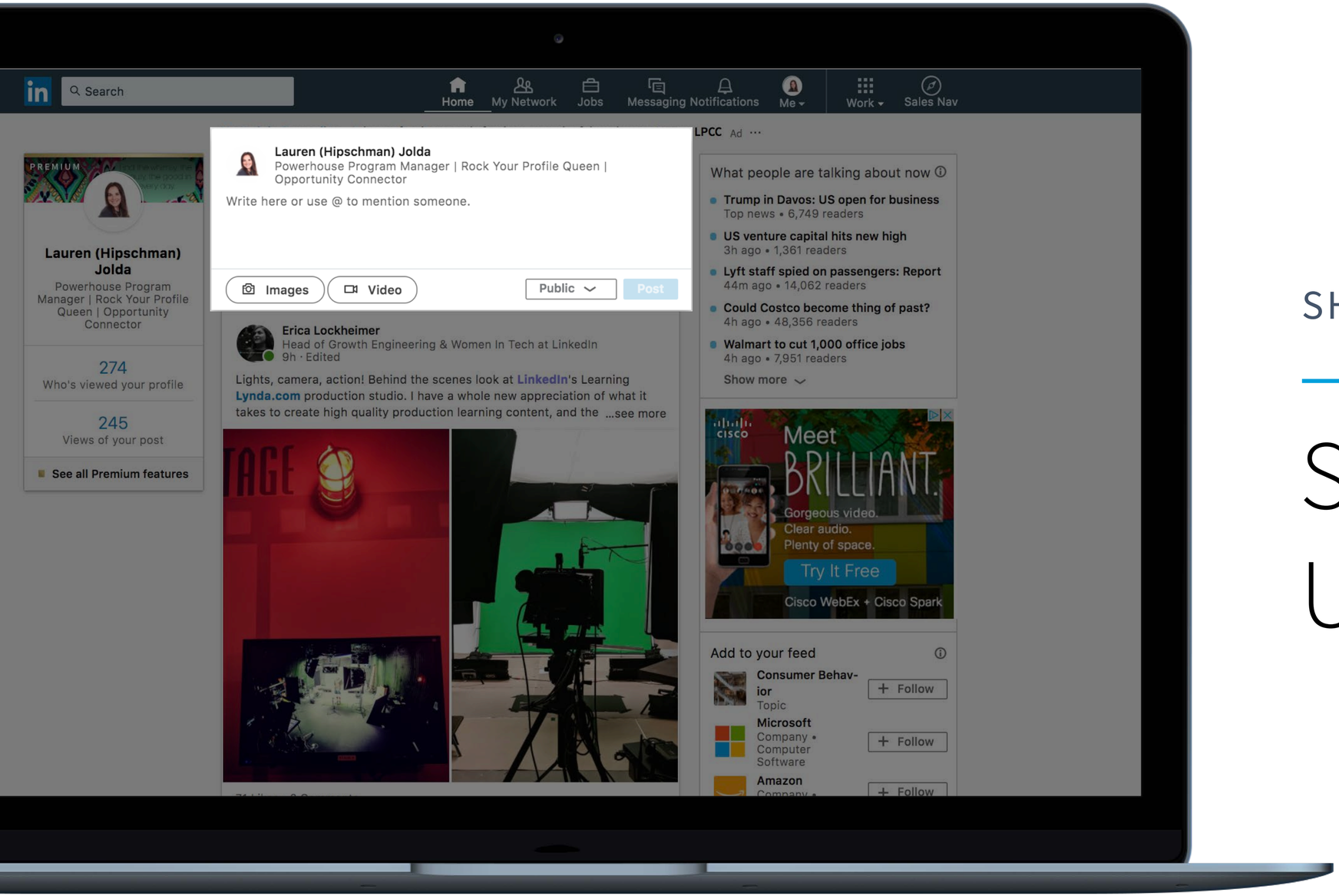
- HELPING YOU GROW AND ENGAGE YOUR NETWORK

Updates

Share links, articles, images, quotes or anything else your followers might be interested in

Publishing

Deeply explore topics that matter to you, then watch the comments to see your impact

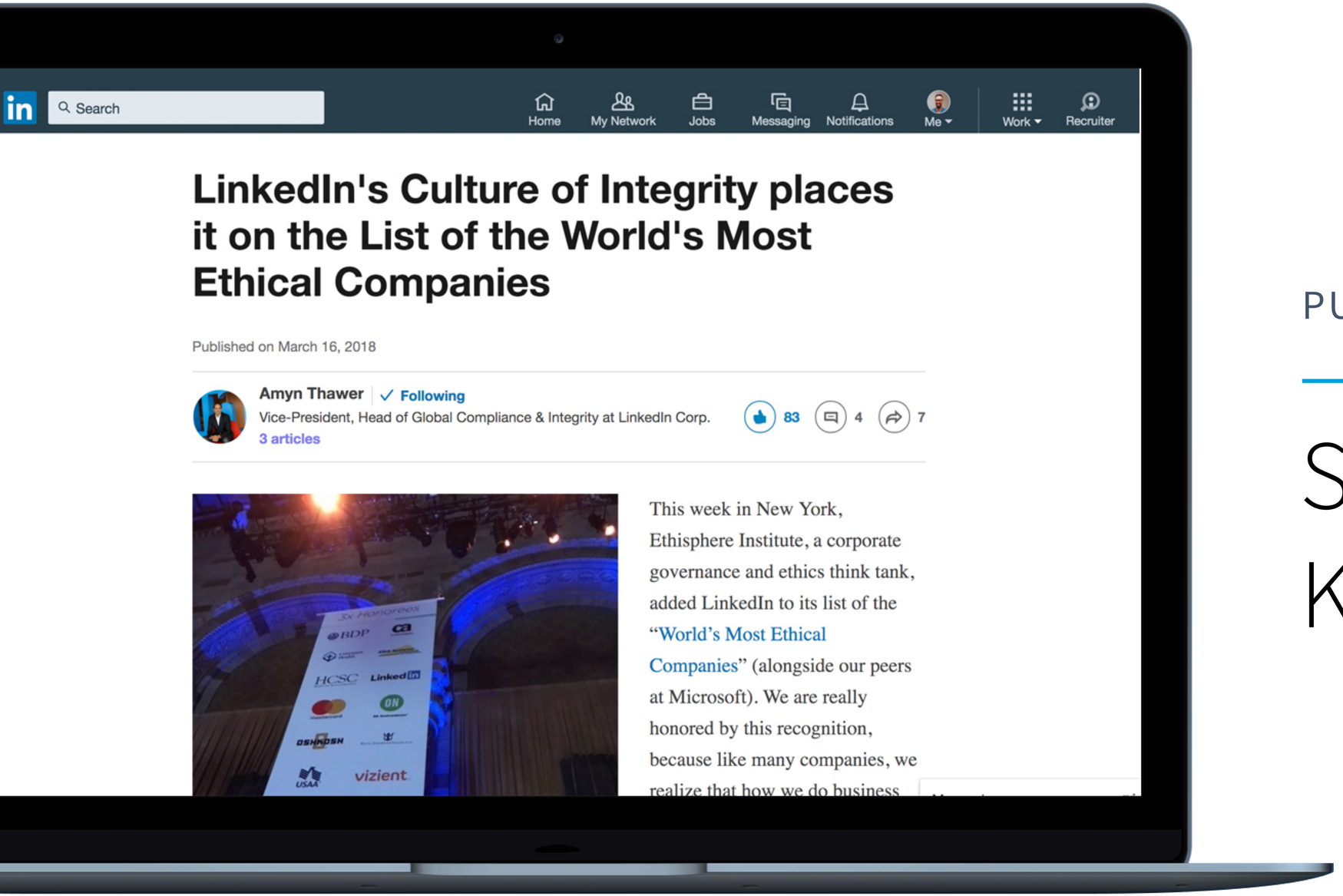


SHARING UPDATES

Share Status Updates

Best practices for sharing updates

1. Share your authentic voice
2. Post frequently
3. Start a conversation or share your point of view
4. Include rich media to increase engagement
5. Create an opportunity for reciprocity

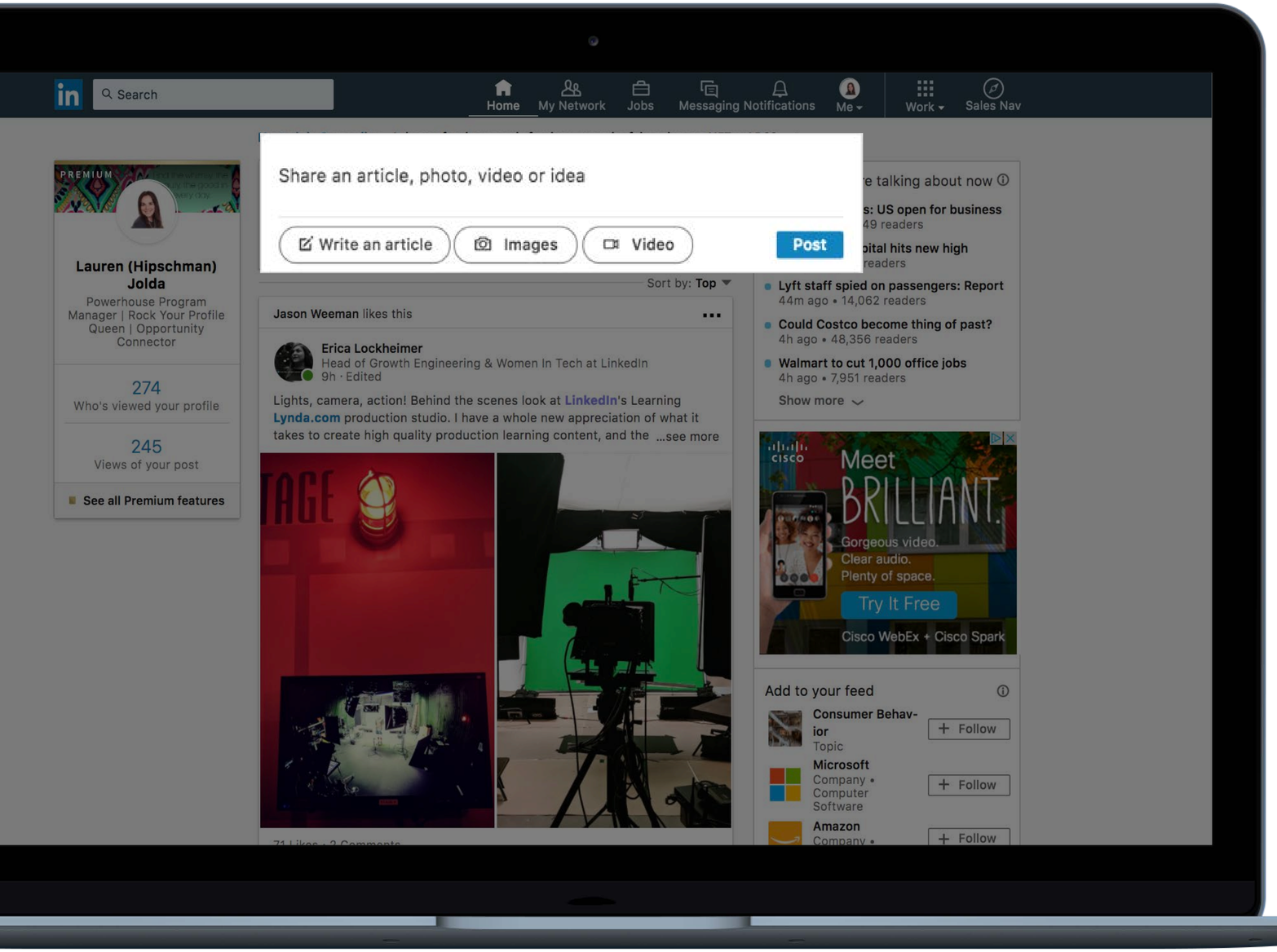


PUBLISHING ARTICLES

Showcase Knowledge

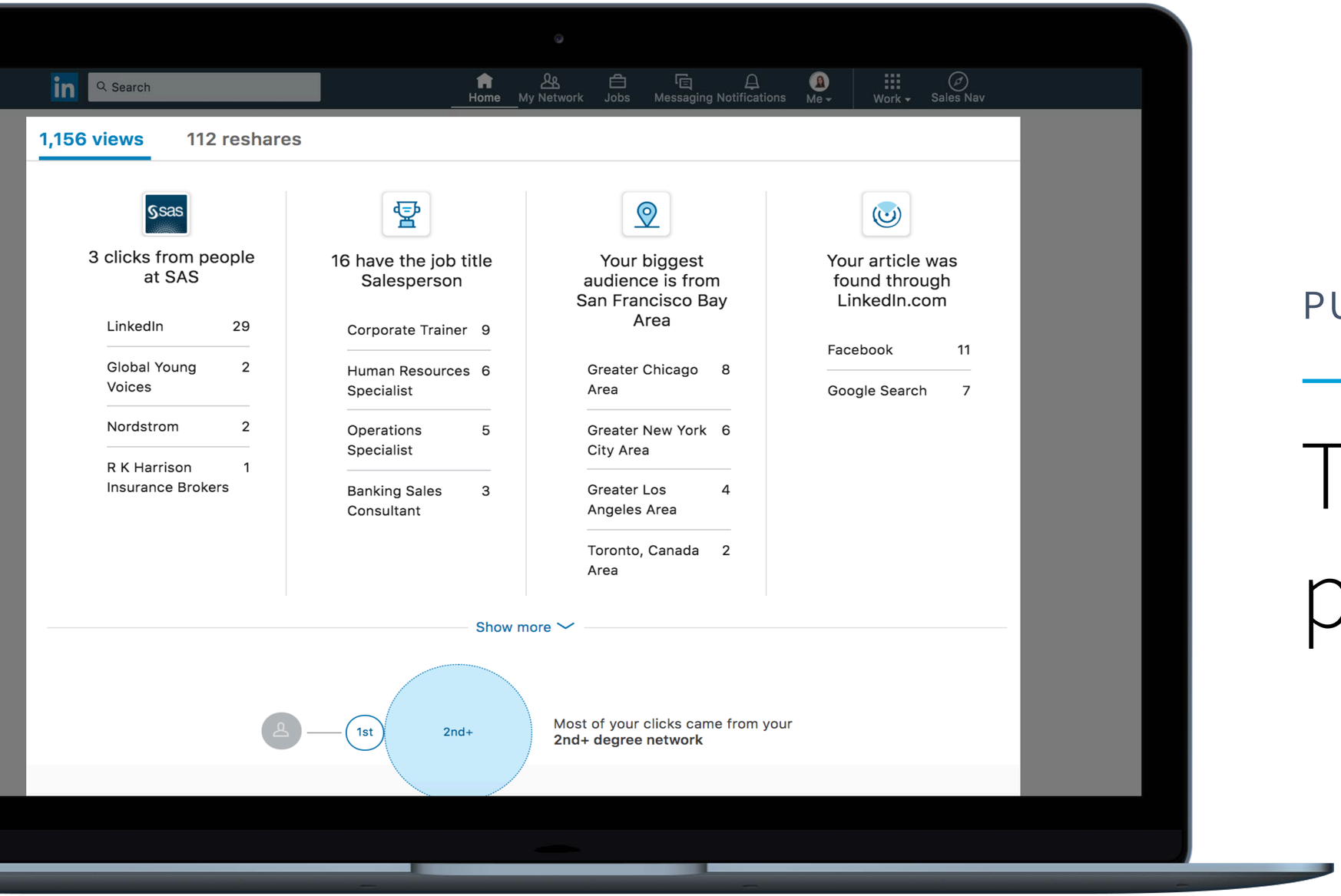
Best practices for publishing content

1. Create a headline that captures attention
2. Include a photo to stand out
3. Be authentic, use your voice
4. Think about your audience
5. Article length matters



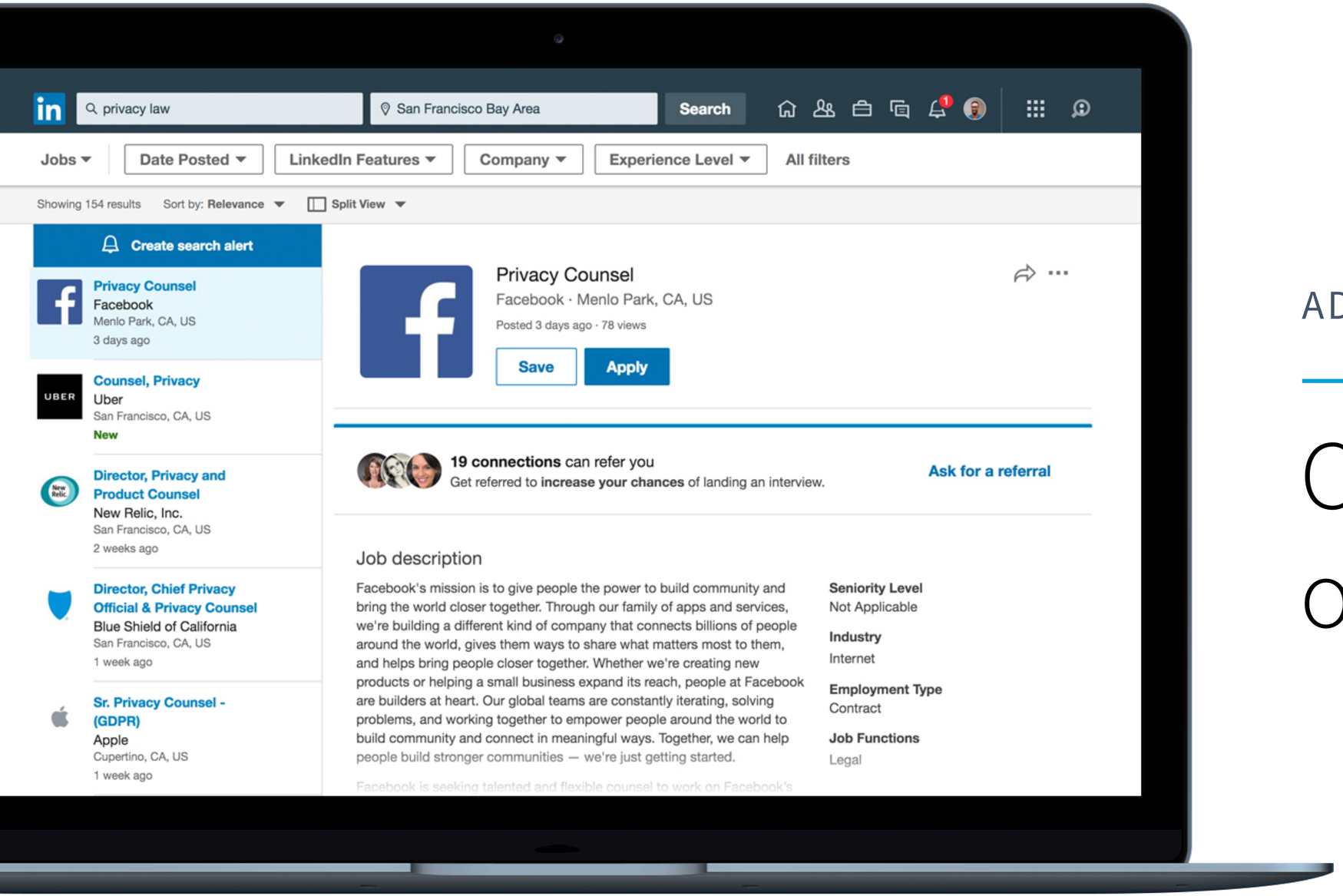
PUBLISHING

Start on your homepage



PUBLISHING

Track your progress

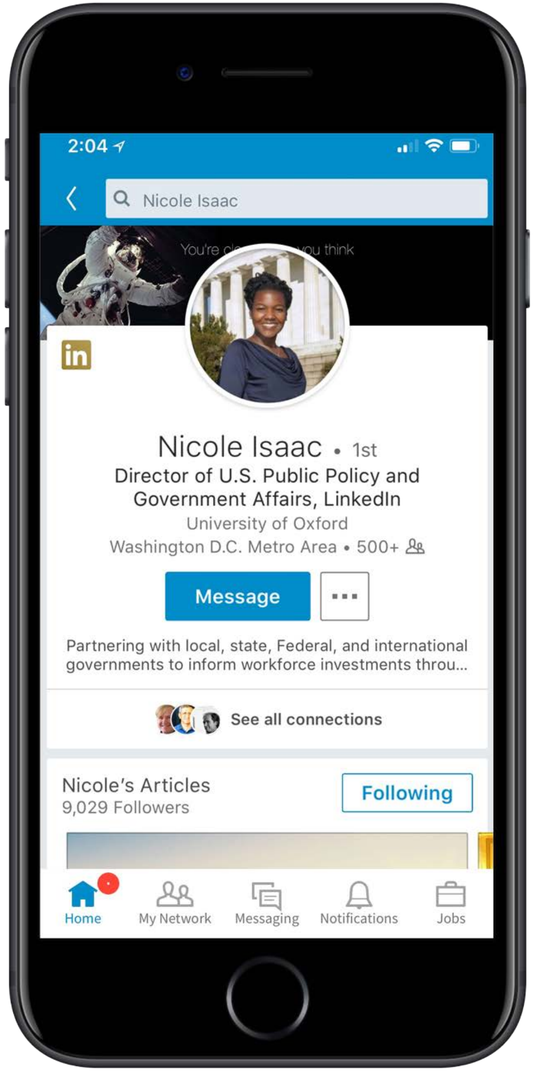


ADVANCE YOUR CAREER

Connect to job opportunities

When Does LinkedIn Activity Constitute Attorney Advertising?

ABA Model Rules of Professional Conduct



- 7.1 – "A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services."
- 7.2.c. – "A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless: (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate authority…and (2) the name of the certifying organization is clearly identified in the communication."
- 7.5(d) – "Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact."

ABA Model Rules of Professional Conduct 7.1-7.5

In other words:

Don’t make false or misleading statements about yourself on LinkedIn.

The fine print: The ABA Model Rules of Professional Conduct have been adopted by all states except California—but many states have added further restrictions.

So check your state bar’s rules.

State-by-State Differences

New York City

- *NYC Bar Association's Committee on Professional Ethics Formal Opinion 2015-7: "An attorney's individual LinkedIn profile or other content constitutes attorney advertising only if…the primary purpose of the LinkedIn content is to attract new clients to retain the lawyer for pecuniary gain."*
- *One must "consider the attorney's primary purpose in making the communication, as well as its intended recipients."*

New York City

"Given the numerous reasons that lawyers use LinkedIn, it should not be presumed that an attorney who posts information about herself on LinkedIn necessarily does so for the primary purpose of attracting paying clients. For example, including a list of "Skills," a description of one's practice areas, or displaying "Endorsements " or "Recommendations," without more, does not constitute attorney advertising."

–NYC Bar Association's Committee on Professional Ethics Formal Opinion 2015-7

Texas

- *Part VII of the Texas Disciplinary Rules of Professional Conduct governs attorney advertising, which includes social media and LinkedIn.*
- *Compliance is monitored by The State Bar of Texas' Advertising Review Committee.*

Texas

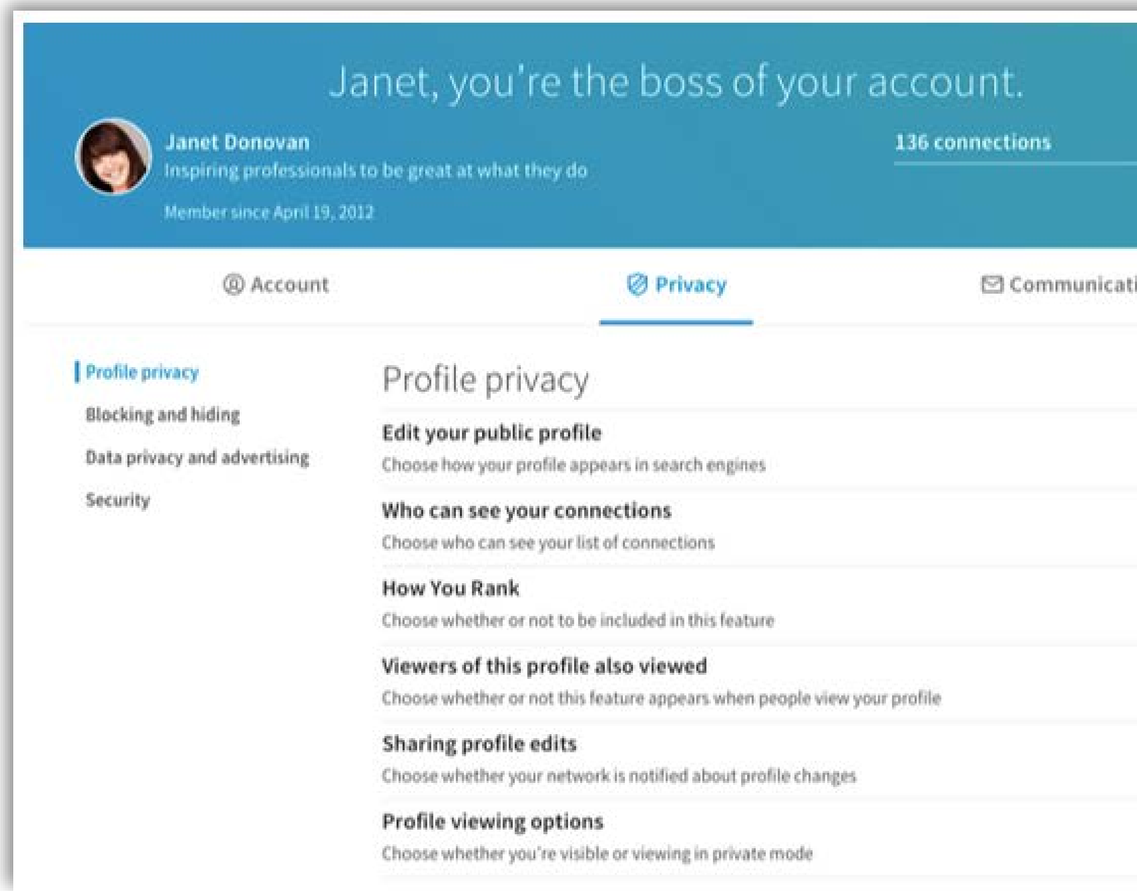
Public attorney advertisements (including LinkedIn profiles) must be submitted for approval by The State Bar of Texas' Advertising Review Committee, unless it includes "only part or all of the following information":

- Lawyer's/law firm's name, address, etc.
- Practice area
- Bar and court admissions
- Technical and professional licenses
- Foreign language ability
- Special certifications (such as Texas Board of Legal Specialization)
- Fee information
- "Other publicly available information concerning legal issues…such as news articles, legal articles, editorial opinions, or other legal developments or events, such as proposed or enacted rules, regulations, or legislation"
- Charitable or civic involvement
- Legally required information and disclosures

Texas

The upshot for Texas lawyers: Use LinkedIn's settings to control what you show on your public profile.

- Generally, your profile is visible to all LinkedIn members signed in to LinkedIn.com or our apps. But you can control what appears on your profile and your profile privacy preferences under Settings & Privacy.
- You can limit and control the visibility of your profile sections, posts, and shares.



California

- *If a posting constitutes attorney advertising in California, the California Rules of Professional Conduct impose a number of requirements, including an "Attorney Advertising" label or disclosure, and a 2-year recordkeeping obligation.*
- *However, attorney postings on social media are considered attorney advertising only if the posted material constitutes a "communication" within the meaning of California Rule of Professional Conduct 1-400.*

California

"[T]he pertinent question for determining whether a posting constitutes a 'communication' [and therefore an attorney advertisement] under rule 1-400(A) is **whether it 'concern[s] the availability for professional employment' of the attorney**."

–California State Bar Committee on Professional Responsibility and Conduct – Formal Opinion No. 2012-186

In California, is this OK or Not OK?

“Case finally over. Unanimous verdict! Celebrating tonight.”

OK!

“Unanimous verdict! My client is delighted. Who wants to be next!”.”

Not OK!

“Just published an article on trade secrets. Let me know if you would like a copy!”

OK!

In California, is it attorney advertising to:

Describe your accomplishments?

- **No.** By itself, a description or listing of your accomplishments on LinkedIn is not considered solicitation under California bar rules.
- Belli v. State Bar, 10 Cal.3d 824, 839 (1974): “[e]xposition of an attorney’s accomplishments in an effort to interest persons” in an attorney did not violate restrictions on attorney advertising.

Provide educational content?

- **No.** Los Angeles County Bar Assn. Formal Opn. 494: “Communications or solicitations solely relating to the availability of seminars or educational programs, or the mailing of bulletins or briefs where there is no solicitation of business, are also constitutionally protected under the State Constitution and First Amendment as noncommercial speech.”

The Upshot:

- Don’t make false or misleading statements about yourself on LinkedIn.
- Make sure your primary goal is to educate and engage your audience, not to directly solicit business.
- Check your state’s bar rules!

Q&A

LinkedIn

Appendix

Specifically, LinkedIn can help you:

1

Build relationships

Network, collaborate, keep in touch, and build your practice

2

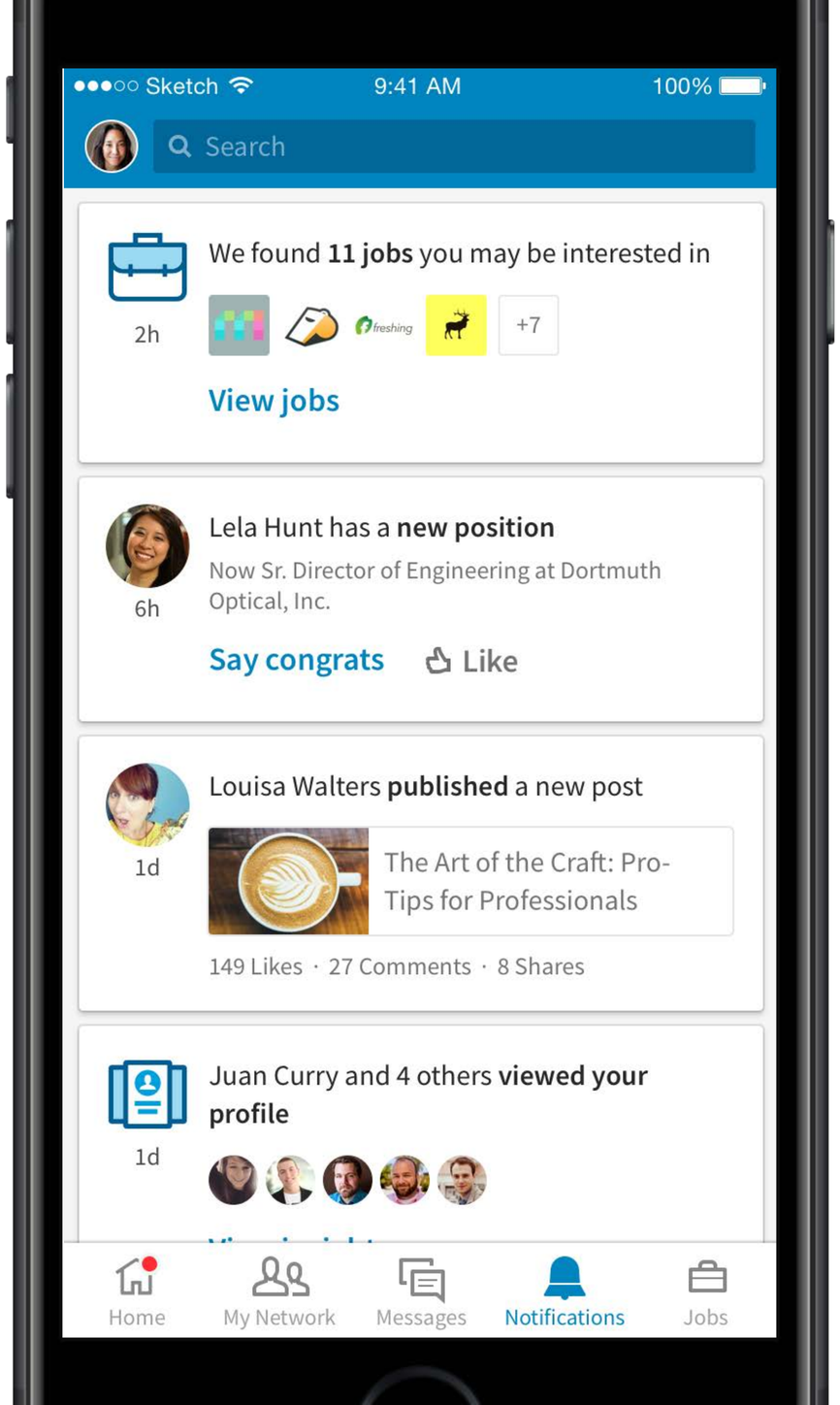
Stay engaged and informed

Learn and share what's relevant to you and your clients

3

Connect to opportunity

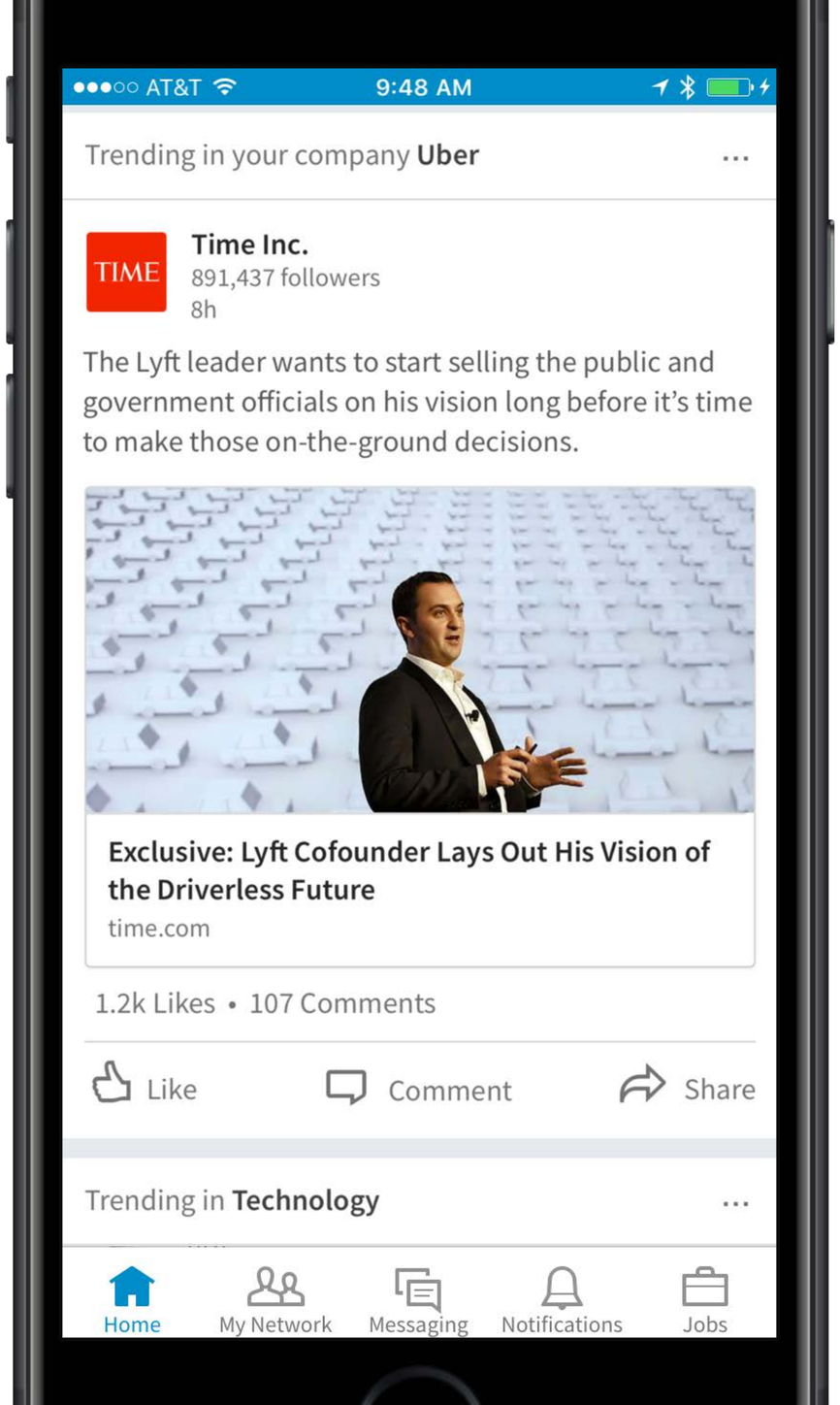
Manage your reputation, get hired, and build your practice



1

ADVANCE MY CAREER

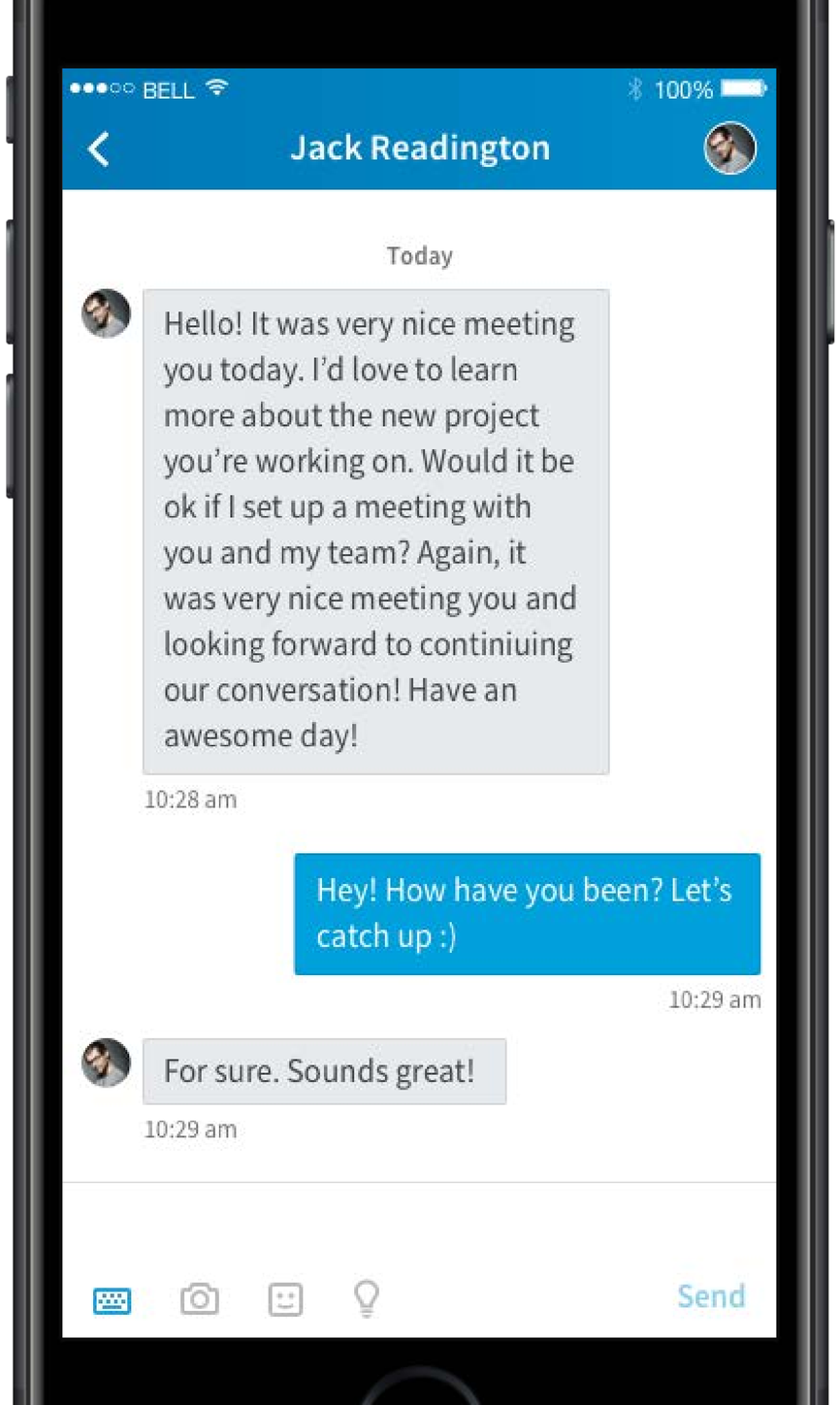
Build meaningful relationships



2

ADVANCE MY CAREER

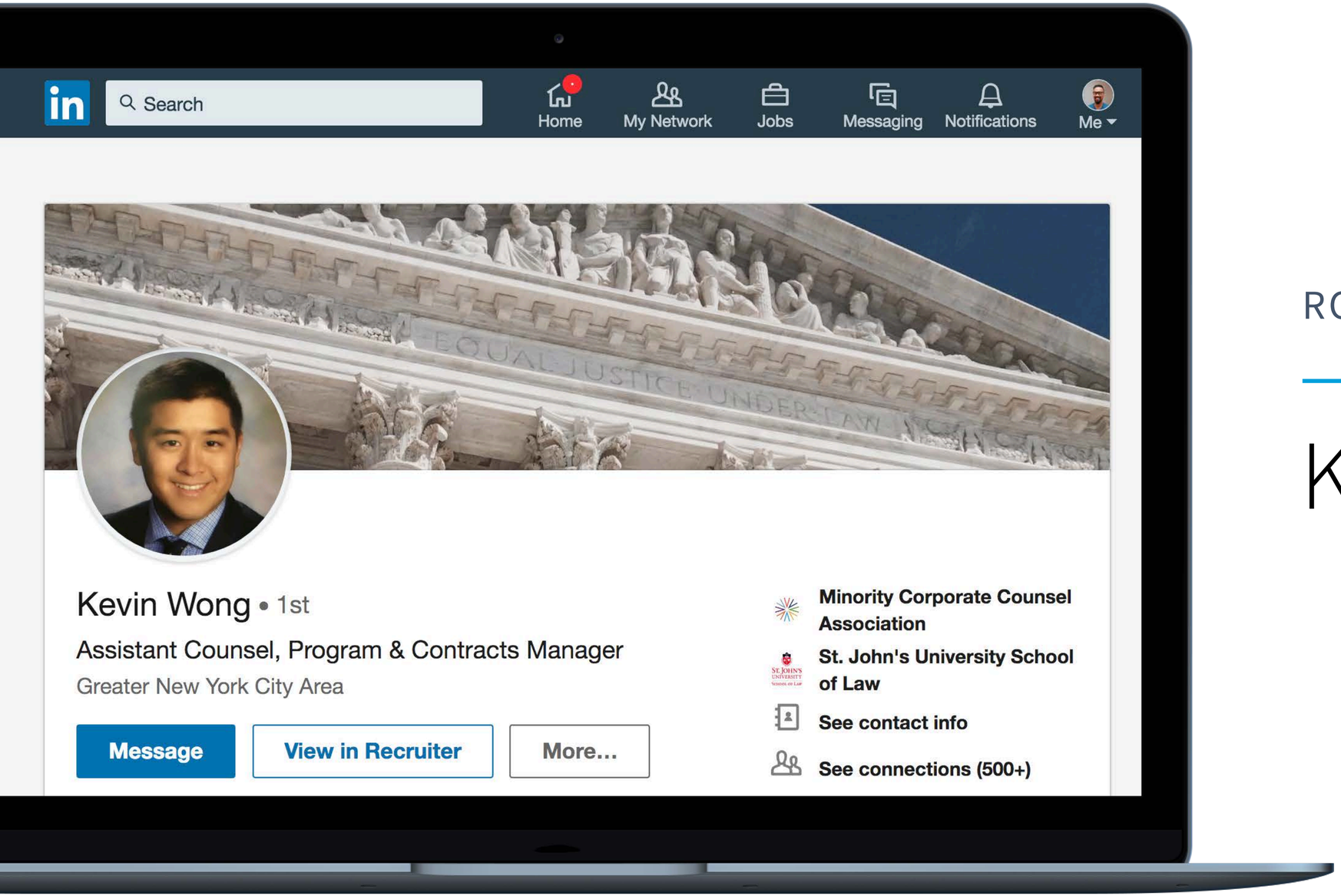
Stay engaged and informed



3

ADVANCE MY CAREER

Connect to opportunity



ROCK THIS PROFILE

Kevin Wong

Attorney Advertising Restrictions on LinkedIn Activity

Keith Swisher – February 8, 2016

Lawyers and LinkedIn now go hand-in-hand; most private practitioners (among many other types of lawyers) are on LinkedIn. But does a LinkedIn profile constitute a form of attorney advertising (and therefore have to comply with all of the ethical restrictions on legal advertising)? Probably not, at least according to the recent ethics opinion of the New York City Bar. See NYCBA Ethics Op. 2015-7.

This new opinion splits "sharply" from the ethics opinion of the New York County Lawyers Association, which had "conclude[d] that a LinkedIn profile containing *only* one's education and a list of one's current and past employment . . . does not constitute attorney advertising." NYCLA Ethics Op. 748 (2015). Under this reasoning, then, many if not most lawyer profiles and other activity on LinkedIn do constitute attorney advertising. Lawyers often, for example, post information about trial or appellate victories, describe their practice areas, and receive endorsements and recommendations from colleagues and clients (among others). As discussed below, such "attorney advertising" may face ethical restrictions (e.g., mandatory disclaimers or record-keeping requirements) in certain states.

Eluding these restrictions, the new city bar opinion reasons that LinkedIn activity constitutes attorney advertising "only if it meets all five of the following criteria: (a) it is a communication made by or on behalf of the lawyer; (b) the primary purpose of the LinkedIn content is to attract new clients to retain the lawyer for pecuniary gain; (c) the LinkedIn content relates to the legal services offered by the lawyer; (d) the LinkedIn content is intended to be viewed by potential new clients; and (e) the LinkedIn content does not fall within any recognized exception to the definition of attorney advertising." In light of this long list of prerequisites, the opinion

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unsurprisingly concludes that regulators should not "presume" that "the *primary* purpose [of] an attorney's LinkedIn content is to attract new clients for pecuniary gain, unless it contains express language or other equally compelling evidence to support that conclusion." NYCBA Ethics Op. 2015-7. This practice point answers below: (1) why the differing approaches in these ethics opinions; and (2) what do they mean, if anything, to the busy practitioner.

States such as New York, Florida, and Texas (among several others) impose detailed requirements and restrictions on legal advertising, unlike the ABA's Model Rules of Professional Conduct, which impose only relatively modest restrictions. (Although all states except California have essentially adopted the Model Rules, many states have—for better or worse—tinkered with their particular rules on legal advertising.) Had the city bar concluded that most profiles or updates on LinkedIn constitute the feared "attorney advertising," New York lawyers would presumably have to comply with the corresponding regulations, "including, but not limited to: (1) labeling the LinkedIn content 'Attorney Advertising' [either in the profile page's summary section or in the applicable update]; (2) including the name, principal law office address and telephone number of the lawyer; (3) pre-approving any content posted on LinkedIn; [and] (4) preserving a copy for at least one year. . . ." NYCBA Ethics Op. 2015-7. In other jurisdictions, however, lawyers do not have these worries because their rules omit many of these requirements, rendering almost irrelevant the fact that most LinkedIn activity (at least implicitly) advertises the posting lawyer's services, skills, and availability.

But what does the split in the ethics opinions mean for lawyers (the vast majority of whom have LinkedIn profiles)? It means that lawyers who would like to proceed cautiously should follow the first approach, i.e., the more restrictive approach. In other words, if the lawyer's profile goes much beyond educational background and employment history, the lawyer should comply with the jurisdiction's advertising restrictions. Furthermore, if the lawyer practices (and advertises) in two or more states, one of which has detailed advertising requirements, the lawyer generally ought to follow the more restrictive requirements (i.e., practice "double deontology"). For lawyers taking an arguably less cautious approach, the new ethics opinion will provide a bit of corroboration. Under this approach, a lawyer may post additional information on LinkedIn without automatically being engaged in attorney advertising. For example, "the inclusion of Endorsements or Recommendations does not, without more, make the lawyer's LinkedIn profile an 'advertisement.'" NYCBA Ethics Op. 2015-7. Whether the lawyer's primary purpose is attorney advertising depends on "the subjective intent of the lawyer who makes the communication, but that this intent may be inferred . . . from other

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factors, including the content of the communication and the audience for the communication." In short, much LinkedIn activity will not be considered advertising (at least not under New York's "primary purpose" test), but identifying advertising activity will be highly context-dependent.

LinkedIn currently offers powerful networking potential and provokes many interesting ethical questions (e.g., should you send a connection request to a judge before whom you might appear, see Ariz. Judicial Ethics Op. 14-01 (2014), or should you remove from your profile page inaccurate endorsements or recommendations, see Pa. Ethics Op. 2014-300; N.C. Ethics Op. 8 (2012)). As the dueling New York approaches above suggest, the answers are not always unanimous.

— Keith Swisher, Swisher P.C., Phoenix, AZ

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LITIGATION NEWS
ABA Section of Litigation

Social Media May Waive Confidentiality Says ABA

Benjamin E. Long – June 14, 2018

ABA Standing Committee on Ethics and Professional Responsibility (ABA Committee) sought a workable definition to the "generally known" exception to the Model Rules of Professional Conduct 1.9(c)(1).

The opinion sets forth guidelines that many courts will likely adopt in future cases, say ABA Section of Litigation leaders. The opinion concludes that the community will generally know the client information when the public in a certain geographic area widely recognizes the information. The relevant community may also include the former client's trade or profession. The ABA Committee acknowledged that information made widely available through the Internet or social media could qualify as meeting the generally known exception.

Lawyer Owes Duty of Confidentiality to Former Clients with Exceptions

In Formal Opinion 479, the ABA Committee analyzed rule 1.9(c), which "separately regulates the use and disclosure of confidential information." It states a lawyer may not use information relating to representing former clients to their disadvantage without informed consent. One exception includes if the information is "generally known."

The ABA introduced in the 1983 model rules the "generally known" exception regarding attorneys using information against former clients. Neither the model rules nor their official comments explain the exception. Therefore, the ABA Committee recognized the need

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to analyze this issue. The ABA Committee named several states who adopted the position that mere public availability of information was not enough. For the public to generally know information, it must be more widely known and popular.

ABA Committee Weighs in to Create Workable Standard

The ABA Committee concluded "information is generally known within the within the meaning of Model Rule 1.9(c)(1)" under two circumstances. First, "it is widely recognized by members of the public in the relevant geographic area. Or, second, "it is widely recognized in the former client's industry, profession, or trade."

The opinion explained that under the second category lawyers can treat the information as generally known if disclosed in a leading print or online publication. Reasonable members of the former client's industry, profession, or trade must consider the publication "leading."

The committee noted the difference between using "generally known" information, which a lawyer may, and using confidential client information, which a lawyer may not. The information "must previously have been revealed by some source other that the attorney," added the ABA Committee.

Further, the committee clarified that there is a difference between publicly known and publicly available. Information discussed in open court or available in a court record is publicly available but not necessarily publicly known. Therefore, this information is not "generally known" under the standard. Similarly, information available in a library or other public forum also does not necessarily qualify.

Privilege May be Waived by Social Media and Online Postings

Lawyers seeking to use information adverse to a former client may identify any announcement, discussion, post, tweet, or any other information to meet the standard. Thus, a variety of online publications or social media posts or comments may cause previously protected information to become "generally known" and waive that privilege.

This is the first of two recent ABA Committee Formal Opinions that acknowledge the internet and social media as being subject to ethical considerations. The ABA Committee analyzed a different rule relating to confidential client information in Formal Opinion 480.

Unless an exception exists, the committee concluded that "lawyers who blog or engage in other public commentary may not reveal information relating to a representation that is protected by Rule 1.6(a) … ." The committee recognized that attorneys are engaging in online commentary through a variety of ever-increasing

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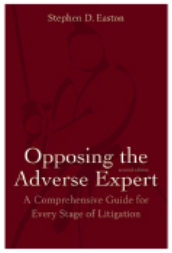

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platforms. The opinion specifically cited blogs, listservs, website postings, and "microblogs" like Twitter as possible forums that may have attorney ethical considerations.

Section Leaders Foresee Problems and Expect Better Clarification

It is difficult to ascertain an exact standard from the committee's opinion as it is "very fact sensitive," explains Scott E. Reiser, Roseland, NJ, cochair of the Section of Litigation's Ethics & Professionalism Committee. Because of this uncertainty, litigators must identify potential issues early. Attorneys should consider getting departing clients' informed consent as significant ambiguity "should weigh in favor of the client," he warns.

States will likely adopt the opinion widely, predicts Michael R. Lied, Peoria, IL, cochair of the Section's Trial Evidence Committee. In fact, some jurisdictions already follow a similar standard, he adds. The ABA Committee acknowledged that social media may play a role in whether information is "generally known," but did not give more specific guidelines for determination.

"My prediction is that we will start getting opinions from courts that will have those specific guidelines," said Lied. Factors that will matter include "who and how many individuals comprise the audience of the message, in

Benjamin E. Long is a contributing editor for Litigation News*.*

Hashtags: #attorneyclient, #confidentiality

Resources

- ABA Comm. On Ethics and Responsibility, Formal Op. 479 (2017).
- ABA Comm. On ethics and Responsibility, Formal Op. 480 (2018).
- Model Rule of Professional Conduct 1.9: Duties to Former Clients
- Amy Mattson, "Attorneys' Online Comments Can Lead to Positional Conflicts," *Litigation News* (March 2, 2017).

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TAKING THE LEAD

March/April 2011 Law Practice Magazine, Volume 37 Number 2

By Simon Chester and Edited Karen MacKay

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Thinking About Social Media in Your Law Firm

You've likely heard the extraordinary statistics that Facebook has 550 million members. That more people are using LinkedIn as a job-seeking tool than anything else. And how a single Twitter post can grow from nothing to a movement within days. Why should you care? Because lawyers and clients will increasingly work together and learn about each other through social networking. Law firm leaders need to think about how social media fits into the firm's business and marketing strategies.

It's Too Late to Do Nothing

One recent survey reported that fully three-quarters of general counsel belonged to a legal networking site. Plus, younger lawyers share their generation's enthusiasm for social media, and as they move up the partnership ladder using these tools to connect with clients will become routine.

Planned or not, your firm already has a social media presence. It's just under your radar. Most of the younger people in your firm already have Facebook pages and active presences on other social media sites. Your IT staff may have told you about strange spikes in Internet bandwidth usage as people view YouTube or other streamed content at work. Should you be worried that the social Web is diverting them from billable work? Is an outright ban a possible strategy? If so, only for a while. A ban tells clients you

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don't want to communicate and younger lawyers that you don't quite trust them.

You can't outright reject these tools—nor should you rush to mindlessly embrace them. Rather, you need to take steps to understand how they can be used to support your lawyers, your clients, your firm and its strategic ambitions.

Touring the Social Media Landscape

Don't allow yourself to become paranoid about social media. But do remind your lawyers to behave professionally and use common sense. Then figure out what they're up to. Find a fresh young lawyer just out of law school to give you a primer on the services available. Visit the social media sites to find out what is being said by and about your firm. Run your firm's name through Google Blog Search. Set up Google alerts or RSS feeds on your firm.

Law firms are conservative places. The temptation will be to look at what your competitors are doing and follow meekly along. Big mistake. You'll never get noticed. Articulating your competitive advantage to clients through social media requires you to think afresh.

But Which Services to Use?

Talk to clients. Find out how they respond to social media in their workplaces. How are they partnering with their professional advisors using social media—and how can you use these tools to collaborate and deepen your relationship? Ask what types of information they find useful, and in what format. For example:

- **Networking sites.** Find out whether legal networking sites like LegalOnRamp or Martindale-Hubbell Connected are relevant to your clients. For broader networking, generally, you'll find that professional business sites such as LinkedIn may give you a faster payback than Facebook, which is currently more of a people site rather than a business platform (although it is evolving). To help build out your networks, encourage your lawyers to add the professional bios written for your firm's Web site and legal directories to LinkedIn, too.

- **Blogs.** Firms have replaced newsletters with blogs for many practice areas. Real-time updates on developments that affect clients are much more useful than quarterly summaries on bond paper. A blog can be a useful marketing tool—especially for highlighting your experience and knowledge. Pick an area of law where there will be enough recent developments to write about regularly. Consider making it a group effort and get lawyers into the habit of posting at least once a week. Make it fresh—marketing material that is stale is counterproductive.

- **Twitter.** If you have a client base that will follow 140 character updates, then go where the clients lead. Otherwise, you may find it difficult to provide helpful information in such short posts. But you could connect with others who follow your tweets. If you do use Twitter, consider this advice from lawyer Jay Shepherd (in 140 characters): Our Twitter policy: Be professional, kind, discreet, authentic. Represent us well. Remember that you can't control it once you hit update.

- **Do test runs.** Experiment and assess which lawyers and practice areas can best connect with clients through a social media group or a targeted blog or tweets. Empower your lawyers and encourage them to experiment. Social media tools are easy and flexible. If you make mistakes, they can be adjusted. But look hard at what works and what doesn't, and learn from your successes.

Avoiding the Dangers

Naturally, the lawyer in us is a bit paranoid about social media. Rightfully so—there are dangers here. But they are not

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insurmountable. Remind your lawyers that professional conduct rules apply fully to lawyers' activities using social media and, by extension, to all firm staff. They must presume that anything done or said online will be public and permanent and act on the assumption that your client, any relevant court, opposing counsel, disciplinary counsel, and anyone hoping to sue your firm may have access to and use your online statements. Once it's out there on the Internet, it can be copied, forwarded or used in evidence. You can't control its ultimate use or dissemination—or get it back.

Developing a Policy and Rolling It Out

I advised our managing partner to expand the firm's social media strategy development team beyond IT, marketing and partners over 40. Here, your smartest thinkers will be young lawyers who are culturally of the Web generation and already understand how that generation uses the tools. Remember the power of these tools is their ability to facilitate relationship building. They necessarily are highly personal and customized. So there will always be a tension with the professionals in IT and marketing who would like to control the firm's online presence and prevent risks in interactions with the outside world.

For a good start on creating a firm policy, see Michael Downey's "Law Firm Online Activity Policy" in *The Professional Lawyer* (ABA, 2009). A sound social media policy can be summarized in two words: Be professional. Your reputation matters. A good reputation, after all, is what gives people the confidence to do business with you. Protecting your firm's reputation is paramount. Other firm policies continue to apply.

One key to a good policy is flexibility to distinguish between personal activity and anything that refers to your firm. You shouldn't be in the business of controlling after-hours speech, although even here, the watchword of professionalism should guide. But also recognize that these tools are in flux and that your policy may soon need adjusting.

Social media will continue to evolve, and new opportunities for use and abuse will open up. Focus on what fits your strategy. Experiment. And have fun. It's a whole new world out there.

Guideposts for Lawyers' Personal Use of Social Media

- Don't post anything that would embarrass you, your clients, your colleagues or the firm itself.
- Be careful not to disclose client confidences or privileged information.
- Don't mention client names without client consent.
- Write in the first person. Don't imply you're speaking for the firm or its clients.
- Respect applicable legal and professional rules (copyright, trademarks, insider trading, tipping, defamation, applicable human rights laws, unauthorized practice, advertising, inadvertent client

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relationships, etc.).

- Temper criticism of the judiciary or regulators—you have to appear before them.
- Lay claim to your posts and comments by putting a name to them. Don't post content on an anonymous basis or fake an identity. The consequences of unmasking are too serious, for the individual and the firm.
- Respect the interests, opinions and privacy of your clients, your colleagues and others online.
- Be professional.

What If I've Connected with the Judge on LinkedIn?

Erin E. Rhinehart

Erin E. Rhinehart is an attorney with the commercial litigation firm Faruki Ireland & Cox PLL, which has offices in Dayton and Cincinnati, Ohio.

After a local bar event one night, Sarah, a first-year litigation associate, was seated at a table with a local judge. Over dinner, Sarah enjoyed talking with the judge and asking her questions about local practice and courtroom decorum. The judge happily answered Sarah's questions and shared her own war stories from her days in private practice. Sarah was eager to get as much insight into the local customs as possible because earlier that day, one of Sarah's partners told Sarah that she would be covering an upcoming hearing in one of the cases that her firm was handling. Sarah had not been working on this particular case, but the partner assured her that the case was small, and she would be able to get up to speed in time. Sarah asked the judge about her preferences on opening statements and proffering evidence, as well as how she preferred lawyers appearing before her to conduct themselves in the courtroom.

Sarah left the bar event feeling confident about her upcoming hearing. She also felt as though she had made a real connection with the judge. Later that evening, Sarah invited the judge to connect with her on LinkedIn. The judge accepted almost immediately.

The next day in the office, Sarah's partner handed her the case file so that she could review it in advance of the hearing. After opening the file and looking at the complaint, Sarah realized that the judge she had talked to the night before was presiding over the case in which Sarah would be appearing. Sarah's stomach began to feel queasy and her mind started to race. She questioned her decision to invite the judge to connect on social media. Sarah wondered if

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she should tell her partner (and potentially miss out on a huge career opportunity) or tell opposing counsel. After pacing her office for a while, Sarah knocked on the door of a more senior associate at her firm. After closing the door behind her, Sarah asked, "Hypothetically speaking . . . what would you do?"

Sarah's predicament is not uncommon. As social media platforms like Facebook, LinkedIn, and Twitter have become ingrained in our culture, states have adopted various rules on whether an attorney may maintain a social media connection or friendship with a judge. While the emerging consensus permits lawyers to connect with judges on social media, a few states (e.g., California and Florida) prohibit judges from making online connections with lawyers who may appear before the judge in court.

Recently, the ABA's Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 462 (2013), which explains:

A judge who has an ESM [Electronic Networking Social Media] connection with a lawyer or party who has a pending or impending matter before the court *must evaluate that ESM connection to determine whether the judge should disclose the relationship prior to, or at the initial appearance of the person before the court*. In this regard, context is significant. Simple designation as an ESM connection does not, in and of itself, indicate the degree or intensity of a judge's relationship with a person. (Emphasis added.)

The ethical rules relating to social media connections between a judge and a lawyer are often focused on the ethical obligations of the judge (not the lawyer). However, the rationale behind these rules is equally applicable. Like judges, lawyers should not be commenting on pending cases. Similarly, be careful not to disparage an opposing party or counsel in online posts or comments. The rules of professionalism extend beyond traditional forums. Therefore, like most ethical conundrums, you (and Sarah) must check your local rules and ethics opinions to know where your state stands on the issue. Assuming that Sarah does not practice in a jurisdiction that specifically precludes online connections between lawyers and judges, it is unlikely that Sarah's LinkedIn connection with the judge runs afoul of any ethical rules.

Social media is a great way to network, build your personal brand, and stay top of mind with clients (and potential clients). Of course, it is important to stay current on your jurisdiction's rules relating to social media, ethical and otherwise, to make certain that you don't find yourself pacing your office like Sarah.

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