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**Social Media and Its Effect on Law Enforcement**

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**A Leadership White Paper  
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## **ABSTRACT**

A review of previous and current research on the effects on law enforcement and the criminal justice field by social media through internal departmental reports, scholarly journals, court decisions, newspaper articles, and interviews with ranking police officials indicated there is a significant phenomenon occurring, not only with officers, but with agencies and administrations as well. The effects are both positive and negative and have various consequences and benefits associated with the behavior of interacting with the social media outlets in various capacities.

Agency administrators will have to address these issues from both a micro and macro perspective and determine what behavior will be allowed and accepted. There is little doubt that social media has huge potential for agencies to exhibit a positive, progressive standpoint, especially for public image and support. For example, they can use social media as an effective recruiting tool to entice young men and women to join the agency, or keep in touch with constituents and citizens in real-time, informing them of dangers or emergencies, or provide a current calendar of events.

But officers using social media themselves can (and often do) find themselves in trouble with administrators (or even the law) by posting inappropriate pictures, materials, or statements which might compromise agency goals or operations. Additionally, the posting of police identification or insignia, or placing themselves in compromising positions (such as possible sexual, racial, or religious settings, or the use of alcohol) can have negative personal consequences.

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## INTRODUCTION

Communication, information, and news today is initiated, generated, disseminated, and delivered differently than ever before. The desire for information from friends, family, coworkers, the general public, and even the criminal justice system mandates that the aforementioned media be delivered almost instantly and in a format that can be read without difficulty. For example, news is delivered by text messages, the internet, emails, phone, video conferencing, and social media networking sites.

Social media sites include outlets or other media that does not fall into the traditional types of television, radio, and newspaper; social media sites imply that society formulates the information and disseminates the content to whomever they choose. These outlets include (but are not limited to) Facebook, MySpace, Twitter, YouTube, Flickr, and LinkedIn to name just a few. For purposes of this paper, Facebook, Twitter, and YouTube will be the focus social media sites.

According to Facebook (2011), they employ over 3,000 people around the world and service over 800 million subscribers. These subscribers post more than 20 million photographs each day and have over 150 friends on their particular page. Of these subscribers, more than 350 million utilize the application on a mobile device (iPad, Kindle, smartphone, etc.) instead of a computer, and more than 75% are located outside the United States. A real-time cyber information media connecting users to the most recent and up-to-date status of someone or a group is called Twitter. Users “follow” people or groups of interest and are able to ascertain their “status” when those people or groups post a message of up to 140 characters, which are called “tweets”. YouTube, on the other hand, is another social media outlet and a place where people

can upload videos taken by digital recorders and available for anyone around the World to see for free. According to YouTube ("Statistics," n.d.), "300 hours of video are uploaded every minute" (para. 1); this is the equivalent of having eight years of data posted each day. Also, YouTube ("Statistics," n.d.), claimed there are billions of views each day by people, who also watch millions of hours of video.

The ability to send and read information from one source to another instantaneously is amazing, and with that should come responsibility and ethical conduct; unfortunately, that is not the case the majority of the time. According to Tow, Dell, & Venable (2010), "the advent of social media sites presents further opportunities to obtain information for use in identity theft and cyber stalking" (p. 126). Also, there are cases where social media sites have been misused to harm government officials, city and county police agencies, supervisors, and rank-and-file officers. In fact, there is a large number of instances where social media sites have been used inappropriately in some form, resulting in disciplinary actions, termination, civil and criminal cases filed, and even Supreme Court rulings.

There are many positive aspects for social media sites and law enforcement, which include conducting background checks on applicants, disseminating important information to the public (such as major accidents or active shooter incidents), gathering intelligence in a criminal investigation (such as pictures and postings of suspects or associates), and improving community relations. In fact, many believe that law enforcement and the criminal justice system should find ways to embrace the potential in a way that is authentic and compelling to the users of social media sites (Copitch & Fox, 2010). However, according to Goldsmith (2010), there will be challenges to law

enforcement administrations and policies, procedures, and the way they respond to the media will have to be re-evaluated. Due to this, law enforcement agencies should implement policies concerning the use and abuse of social media sites.

## **POSITION**

In 2010, the International Association of Chiefs of Police (IACP) conducted a survey of 728 police agencies from 48 states and the District of Columbia regarding their use of social media and related policies. Of those surveyed, 35.5% had a social media policy and another 23.3% were in the process of drafting policies at the time of the survey. Additionally, 61.6% of agencies that were not using social media currently were considering implementing a program in the near future (IACP, 2012). To further prove this point, Cellem (2012) stated “a growing number of police agencies are implementing policies to guide employee’s on- and off-duty use of social media” (p. 1). In fact, the IACP has developed a model social media policy as of August 2011 because of the growing impact to agencies and the discipline as a whole.

In summary, the IACP model social media policy goes along the premise that what an officer posts has the potential to affect the officer, the agency, and the profession in general, even if the officer is acting in the role of a private citizen. Further, it is the latter statement that brings into the possible infringement on a person’s First Amendment rights, specifically free speech. Their model policy articulates and defines social media sites, blogging, photo and video-sharing websites (such as YouTube), news websites, user-generated content, internet-based resources, and other pertinent and related technology (IACP, n.d.).

There are four major points as to why law enforcement agencies should have policies regarding social media sites: (1) embarrassment to the officer; (2) embarrassment to the agency; (3) embarrassment to the profession; and (4) legal ramifications to all involved. Each of these points has their own merits outright, but the overall value is very important to the officer, the agency, the local government, and the profession in general. It should be noted that departments are concentrating on the impact and severity of such impact when weighing in on the role that social media plays in the lives of their officers (both professionally and personally) and trying to recognize and avoid the dangers that accompany social media activity (Cellem, 2012; Hanson, 2011; Jacobs, 2012).

Unfortunately, there are many examples of the above points. Each of these examples could be discussed individually, but all the examples could be grouped together since they all involve embarrassment to the officer, agency, and profession. One such example is the case of *Cromer v. Lexington-Fayette Urban County Government* (2009), where Lexington, Kentucky police officer Cromer had arrested John Michael Montgomery (a popular country singer) for the misdemeanor charge of driving under the Influence. Shortly after the arrest, Cromer identified himself as an officer on his personal MySpace page and posted negative comments and images of homosexuals, inappropriate sexual statements, profane language, and an altered photographic image of him with Montgomery. The images and postings gave the impression that he was reckless and was ultimately terminated. Clearly, Cromer's actions caused discredit to himself, the agency, and the law enforcement profession.

The actions of Harris County, Texas Precinct 6 Constable Sergeant Takila James in 2011 also resulted in negativity to the law enforcement profession, agency, and co-workers when she posted videos and pictures on a web-based broadcast at her home in an inappropriate manner and supposedly while off-duty. When she posted these items on Twitter, Facebook, and other social media sites, the postings were time-stamped and those times were later brought into question after an investigative reporter for a local news station discovered that her official county timesheet showed that she was on-duty at the time. One posting stated that she was in the process of packing for a trip and was stamped at a time that her timesheet showed that she was at work. The ultimate question was either she was conducting personal business while on county time or was falsifying government documents (ABC13Undercover, 2011).

As for the last point, legal ramifications, there are several examples of where officer postings on social media sites have caused court cases to be affected by their actions. In the case of *The People v. Gary Waters* (2008), an officer arrested Gary Waters for felony gun possession. Waters claimed the officer had planted the gun and that he was innocent. The officer later posted on his personal MySpace page that his mood was “devious” and had indicated his status was “watching [the movie] Training Day in order to brush up on proper procedure”. The officer further stated “if you are going to hit a cuffed suspect, at least get your money’s worth”. Needless to say, these items were introduced in the trial proceedings and certainly played a major part in during the trial. Waters was acquitted of the charge. During the high profile murder case *State of Ohio v. Widmer* (2013), several social media postings by Officer Jeff Braley were damaging to the state’s case because of tarnished officer credibility and



agency reputation. Braley had posted a picture of a baseball cap that had a marijuana leaf image on the front, with the words “marijuana” written on the cap, along with a caption that said “my new hat from today’s warrant”. Braley also listed his favorite movie as *Training Day* and had posted other pictures and text that were deemed inappropriate for a police officer. Lastly, an incident that occurred in Albuquerque, New Mexico on February 8, 2011 and subsequent legal action were affected by Officer Trey Economidy’s social media postings. Officer Economidy responded to a disturbance call and fatally shot Jacob Mitschelen. Economidy’s postings on his Facebook page stated his profession was “human waste disposal” and also alleged there were numerous excessive use-of-force complaints against the department. Mitschelen’s family filed a wrongful death suit against Economidy and the department. Also sought was to have access to 57 officers’ Facebook pages to investigate any communication between the officers in reference to the fatal shooting. It should be noted that the police chief had just started to develop a social media policy at the time of the shooting (Hanson, 2011; Sharpe, 2011).

## **COUNTER POSITION**

The first counter position relates to an officer’s social media postings or activity and their respective agency’s ability to monitor or restrict the content of such postings. It has been argued that an officer has the same First Amendment rights as do non-sworn citizens, and therefore, should be allowed to post what they wish. In fact, posting on social media sites is not the only factor or limitation for the free speech argument. The rebuttal to this counterpoint would be that there needs to be a medium between the interest of the officer and the governmental agency’s interest in which he works.

Experts in the ongoing debate on this counterpoint cite the case of *The City of San Diego v. John Roe* (2004), where the Supreme Court said that unless a government agency employer can give a reason “far stronger than mere speculation” to justify their policy, an employee of that government agency can expect to have First Amendment protection for off-duty speech or expressions that are not related to their job. However, the Court ruled in favor of the police department because the actions of Officer John Roe selling videos of himself engaged in sex acts while in a police uniform and identifying himself as an officer on his eBay profile “demonstrated legitimate and substantial interests of the police department that were compromised”.

The Supreme Court has posited a two-part analysis to determine protected speech in the employment of government: the speech must be of public concern and the government interest should be weighed against what is being said by the government employee. In other words, an employee’s expression and interest against the interest of the government must be taken into consideration and balance achieved by the court (Scarry, 2006). Further, the Seventh Circuit and Supreme Court have indicated seven factors they examine when balancing the government’s interest in service efficiency to the First Amendment rights of the officer; these include (1) if the statement would affect peace, create discontent, or generate disciplinary issues among coworkers; (2) if confidence and loyalty between the employer and the employee is necessary; (3) if the daily duties and tasks of the employee were impeded by the speech; (4) the manner of the speech, as well as the date, time, and place it was delivered; (5) the underlying issue(s) that were initiated by the speech [context]; (6) if a debate on the speech was necessary and vital to affect decision-making; and (7) could

the speaker be considered part of the general public (*Delgado v. Jones*, 2002; *Connick v. Myers*, 1983; Scarry, 2006).

The next counter position would be aligned with the hindrance to law enforcement agencies attempting to manage or control the off-duty actions or behaviors relating to social media postings of officers in their employ. The argument for this counter position includes critics stating that it is impossible for agencies to enact policies that completely control the activities of an officer while they are off-duty; in other words, the officer is entitled to a personal, private life like any other American citizen. The rebuttal to this counter position would be the fact the officer is a representative of the law enforcement agency and is a public official outright is enough justification for the agency to implement policies that govern behavior, whether relating to social media or not.

There are many reasons why having policies prohibiting certain acts or behaviors are beneficial to the agency and the officer; these might include officer safety, integrity of undercover agents or assets, protecting credentials (such as vehicle graphics, patches, ID cards, etc.), case integrity, professional competency, and prohibit intelligence-gathering of criminals. According to Knoxville Police Chief David Rausch “you can have all the opinions you want, just don’t represent that as the police department” (Jacobs, 2012, p. 2). Rausch also said that attorneys examining officer’s social media pages, looking for ways to possibly impeach testimony or cause doubt on the officer’s credibility. Further, any postings of family, friends, structures (such as homes, apartments, etc.), and property owned by the officer might be discovered, thus allowing criminals the ability of tracking down where the officer and his family live.

Prohibiting law enforcement officers from identifying themselves on social media sites is a key component of the IACP's model policy on the same.

## **RECOMMENDATION**

Through the research presented and the related examples given, law enforcement agencies should implement policies concerning the use (and abuse) of social media sites has been proven. The position points concerning social media sites include embarrassment to the officer, the department, and the profession, as well as having legal ramifications. There are a myriad of examples where officers have discredited themselves, other officers, the agency, and the profession through inappropriate postings of pictures, videos, texts, objects, and speech. This unprofessional and unethical behavior has caused disciplinary action to be levied, terminations, criminal court cases being dismissed, declared mistrials, or contributed to acquittals, and even civil suits being brought against all. The counter-positions of having policies infringing on officer's First Amendment rights and having impediments to law enforcement administrators enacting policies related to the off-duty actions and behaviors of officers have been successfully rebutted through various case laws, model social media policies, labor law opinions, and the opinions of law enforcement executives.

Command-ranking officers and criminal justice managers will have to compose and maintain policies for the individual officer and the agency itself to protect against misconduct or that would discredit the agency. This is accomplished concurrently by harnessing the power to communicate with political constituents, concerned citizens, the traditional media, and the general public in almost real-time through computers, tablets,

and mobile devices. There are nine steps that agencies can use relating to social media sites which include strategy and forward-thinking as a must and developing an agency social media policy. Other steps include assigning ranking officers to manage the work; content is what matters the most, but technology is nice; embrace change and abandon fear; maintain the program and evaluate it regularly; anonymity should be avoided; remember that Twitter is based upon and most effective with two-way communication, and if help is needed, ask for it (Stevens, 2011).

Through research and the model social media policy, effective guidelines can be generated and established that will help find a balance between the government agency's interest and those of the officer. It is possible for the officer to have a private, personal life and protecting the credibility and integrity of the agency at the same time. It should also be noted that common sense should play a role regarding social media; obviously posting anything that gives any information to offenders, impedes investigations, hinders prosecutorial efforts, and endangers friends and relatives are examples of bad decision making. Finally, a regular review of information posted on social media sites by officers should be conducted by administrative personnel to ensure that policies are being adhered to in an attempt to reduce liability to the officer and the agency.

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