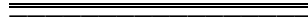


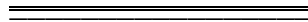
**The Bill Blackwood
Law Enforcement Management Institute of Texas**



Social Media Policy to Regulate Employee Usage



**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**



**By
Jason James**

**Bryan Police Department
Bryan, Texas
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ABSTRACT

Technology is advancing at an astonishing rate. Social media sites are at the fingertips of every individual with a computer or a smartphone. It is estimated that over three billion users are on social media on a daily basis (as cited by Williams, 2017). The general public is using social media sites to obtain all kinds of information. That information could be true or false and is not regulated by an authoritative agency. People can post anything on the internet, and it is distributed across the internet at a rapid rate. Law enforcement agencies are embracing the concept of utilizing social media to get their message out to the general public.

Using common sense while using social media sites is important on many different levels. Social media is not just used for staying in touch with friends and family members; it's used to spread information out to others. Information distributed by employees could be degrading to the department, used against the officer or be harmful to the partnerships in the community. Law enforcement agencies have a right to regulate what employees say on social media. Employees speaking for or about the agency cause misinformation to be shared. It is important that the information related to the agency or community is being distributed on the "one voice-one mission" philosophy.

Law enforcement administration cannot assume that their employees will use common sense while using social media. Law enforcement administrations should have a clear written policy outlining what is an acceptable usage of social media sites. It is vital to the law enforcement agency and to the community they serve to have boundaries set and followed by all employees.

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INTRODUCTION

In today's society, information is constant and at the fingertips of everyone with a computer or smart phone. Through all the social networking sites, people can stay up to date on the news, the status of their friends, or their favorite business websites. Social media has engulfed the everyday life of teenagers through adults. Social media is defined by the *Merriam-Webster Dictionary* (2011) as an electronic communication between individuals to share information, personal messages, or other content through online communities. Technology is advancing so fast that new social media sites are constantly being developed to facilitate the flow of information. Recent data compiled by Hootsuite and We Are Social has estimated that half the world's population, roughly three billion users, are logging into a social media account on a daily basis (as cited in Williams, 2017). With more and more users joining social media sites, information is shared at a rapid pace. Dolton-Cotton (2010) stated that "there is no doubt that people rely on social networking to receive news and information, to pass on information and to just plain socialize with each other" (p. 12). Law enforcement agencies have to address the issue of sharing information on social media with its employees.

There are many benefits of law enforcement agencies using social media. Law enforcement use of social media can build relationships with their followers and get their message out to the community. Technology has provided the individual, the government, business, and the community to have a voice from anywhere in the world (Burgess, 2011). Social media is an excellent example of a community oriented policing tool that can be used to communicate issues with members of the community. The agency has to have in place and practice a 'one voice-one mission' philosophy.

Maintaining the professional image of the police department is of upmost importance. If employees of the department are posting information on a personal social media site that might not be accurate or derogatory, it could have a negative outcome to the law enforcement agency. Employees must be provided with guidelines to follow regarding their personal social media sites to ensure they separate their private life and professional life. Freedom of speech that is guaranteed by the first amendment of the U.S. Constitution still places limitations on citizens. The first amendment protects the speech by public employees as long as they are speaking as a citizen and not as an employee (Schmidt, 2010). Shinder (2009) stated that “you can’t just give employees free rein and hope they’ll all exercise common sense” (para. 3). Having well written guidelines and expectations in place for employees to follow will ensure accurate and appropriate information will represent an agency on a daily basis.

The majority of law enforcement agencies’ employees, both sworn and non-sworn, will use common sense when posting to social media. The issue for many employers is not preventing employees from using social media or the internet, but educating the employees on the appropriate usage of it (Hadley & Chambers, 2011). Thus, it is imperative that law enforcement agencies should create a policy to regulate employees on usage of social media.

POSITION

Having a social media policy will prevent unwanted information from getting out to the public. Anytime something is posted on social media or the internet it becomes public information. Whether or not the information was intended to be private, it is still public and cannot be erased. Just because the content was deleted by both the sender

and receiver doesn't mean the information is gone. Rather, it is saved on a server forever (Albrecht, 2015). Negative posts by officers could be detrimental to the officer, to the agency, and to the judicial court proceedings. Schmidt (2010) stated that "Criminal defense attorneys have challenged the credibility of police officers, have exposed their biases, and have revealed an alleged propensity for violence because of statements or comments found on a social network website" (para. 6).

One well documented example is out of New York Police Department. Dwyer (2009) wrote about Officer Vaughan Ettienne of the New York Police Department and how his credibility was called into question from posts on his personal MySpace account. Officer Ettienne arrested the defendant, Gary Waters, for felon in possession of gun. Waters' defense attorney looked into Officer Ettienne's MySpace page and found information that was detrimental to the case. Officer Ettienne's made a comment that his mood was "devious" and the time of the arrest (Pettry, 2014). This called into question if the gun was planted on Waters or legitimately found. The word devious on a social media site brought Officer Ettienne's ethical and moral character into question. Officer Ettienne's MySpace also stated that he was watching *Training Day* to brush up on proper police procedures (Pettry, 2014). *Training Day* is a 2001 movie starring Denzel Washington that depicts officers as crooked and committing illegal crimes. The social media posts placed a reasonable doubt in the jury's mind, and Waters was acquitted of any wrong doing. This is reported as the first case where an officer's social media impacted the outcome of a judicial court proceeding (Pettry, 2014).

In another incident, the media accessed an officer's Facebook page after an on-duty shooting in Albuquerque, New Mexico. The officer's occupation list on Facebook

was listed as “human waste disposal” (Pettry, 2014, para. 9). This brought unwanted attention and negativity to the officer and the agency. The officer may not have had malicious intent, but the media’s perception is much different. Ultimately, law enforcement officers must realize that their comments on social media sites could negatively affect them personally, affect their agencies and affect their community (Pettry, 2014). Law enforcement agencies need to protect themselves and educate their employees on the boundaries that need to be followed on social media.

Law enforcement officers are scrutinized by the public more than any other profession (Roufa, 2017). For decades, law enforcement officers have been held at a higher standard than the general public. Roufa (2017) stated that “Every officer knows or at least should know by now that they live in a fishbowl” (para. 2). Ethically, officers cannot be upholding the law professionally and breaking the law privately. What officers do on duty and off duty is held to a higher ethical standard. Officers have a code of ethics that they are sworn to follow. The Law Enforcement *Code of Ethic* states that “I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency” (International Association of Chiefs of Police, n.d., para. 2).

Law enforcement officers are always considered ‘on-duty’ and the public expects officers to behave appropriately at all times. An officer, in his own eyes, could be making a humorous joke, but not everyone will understand the joke and some may find it offensive. Knowing what is appropriate is important to keeping a clean social media site. Information, data, and content that is posted is available to everyone, and it is guaranteed to come back and visit in the future (Burgess, 2011). Cold Spring Police

Department in Ohio wrote in their social media policy a set of guidelines to keep their officers professional in both on-duty and off-duty conduct (Scalf, 2015). Writing out a well written policies for employees to see to review is key to compliance of employee.

Another important issue that must be addressed is making sure sensitive information is not released through personal websites. The Texas Government Code Section 522.101 states that confidential information cannot be released to the public. Officers that post on social media sites could accidentally post or comment about information that is protected under Texas Government Code Section 522.101. Law enforcement agencies should already have in place policies that regulate the dissemination of sensitive information, the social media policy to reiterate the guidelines of releasing confidential information to the public (Shinder, 2009). Former Cold Spring Police Chief Edward Burk stated in an article by Scalf (2015) that “the social media policy defines what they can share on social media without infringing on their constitutional rights” (para. 7). For many, social media sites are an informal networking communication and employees might not realize the information being shared is on a public server (Shinder, 2009). Educating the employees would be another benefit to safeguard the employee and the agency from violating state law.

COUNTER ARGUMENTS

If law enforcement agencies place policies and restrictions on employees about their usage of social media, there is certainly an argument that social media cannot be regulated because of the under the guarantees of the first amendment of the United States Constitution. The first amendment states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or

abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” (U.S. Const. amend. I). This argument seems justified on its surface. Freedom of speech is something that is brought up in schools and in our society on a regular basis. A deeper look into the first amendment and how it relates to governmental employers and employees show a different understanding of it.

The United States Supreme Court has looked into free speech and how it affects governmental agencies long before social media was invented and became an issue. The main reason the court system started reviewing the issues of free speech of public employees is to determine if the speech was made as a private citizen or in the employee’s official capacity (Pettry, 2014). Television speech and newspaper print began to question the boundaries of what free speech actually meant. In the decision of the 1968 Supreme Court decision in *Pickering v. Board of Education*, it was shown that employees cannot be reprimanded for speech of public concern. In *Pickering v Board of Education (1968)*, Pickering was a school teacher that wrote a letter to the local newspaper that was degrading to the current school board and the decisions they were making; the board subsequently fired Pickering (*Pickering v Board of Education, 1968*). The Supreme Court overturned the decision to fire Pickering because the letter Pickering wrote to the newspaper was of public concern. The *Pickering v Board of Education 1968* court’s ruling established boundaries for what employees can or cannot say about the public agency in which the employee works for.

Another Supreme Court case that addresses employee’s speech on social media sites is *City of San Diego v Roe (2004)*. In this case, an officer, in an off duty capacity,

used internet sites to sell sexually explicit videos of himself in his City of San Diego police uniform. The San Diego Police Department accidentally found the sexually explicit material and conducted an investigation into Roe's behavior. Roe was subsequently terminated from his employment at the San Diego Police Department. Roe appealed his termination through the court system. The Court of Appeals ruled that Roe's behavior took place off duty and not related to his employment (San Diego v. Roe, 2004). The ruling by the Court of Appeals set up a Supreme Court hearing that looked into the freedom of speech protected under the First Amendment. After hearing the facts of the case, the Supreme Court reversed the lower court's decision and ruled that the material posted on the internet was in fact detrimental to the mission of the employer (San Diego v. Roe, 2004). Since Roe's behavior was in part due to his employment at the San Diego Police Department, the police department had an investment in the posts. The inappropriate posts were detrimental to the image of the San Diego Police Department.

Another argument about employees using social media while on duty is whether they are being productive or distracted while at work. Some organizations believe that employees are potential branding ambassadors for their business when using social media, blogs or discussion forums while at work (Hadley & Chambers, 2011). In this case, employees are believed to be more productive when wasting time on Facebook and other social media sites (Qualman, 2009). Siegel (2014) stated that "activity on social media may over time, enhance certain skills that contribute to better performance in the workplace" (para. 8). Certainly, the younger generation want to feel that staying connected to the internet at all times is beneficial to work.

For law enforcement agencies it simply cannot be beneficial nor productive for officers to use social media during work hours. Businesses actually lose billions of dollars each year to wasted productivity (“I can’t get...,” 2011). The manpower hours that are spent on social media could be detrimental to the safety of the community that law enforcement officers are sworn to protect. The article goes on to point out that 57% of workers stated that they are interrupted by social tools, such as email, text messages and social media (“I can’t get...,” 2011). With today’s technology, employees are challenged to get a full day’s work in without be constantly interrupted and these interruption can result in lack of attention to detail in everyday work duties.

Along with being unproductive, being distracted is a safety reason why law enforcement officers should stay away from social media while on duty. Officers cannot be alert to their surroundings while being distracted by technology. Many officers spend the majority of their day in a patrol vehicle while patrolling the streets of their city. Ashton (2010) stated in an article written for *Police Chief Magazine* that distracted driving is “focusing on anything other than driving, while driving” (p.116). In the recent years, distraction driving is becoming a hot topic in the public due to the advancement of technology. Law enforcement officers are distracted enough by monitoring the in-car computer and looking for violations or suspects. Add using cell phone devices to keep up with friends, family and social media can be a recipe for disaster. Law enforcement agencies must recognize the potential problem and address it. Having a social media policy in place so that law enforcement officers know their boundaries when using technology will reduce risk to officers and civilians.

RECOMMENDATION

Social media is here, and it is not going anywhere; it is only getting bigger.

Social media is a powerful tool. Stan Lee (1962) wrote in *Spiderman, Amazing Fantasy* #15, "With great power there must also come - great responsibility" (p. 13). Usage of social media can be positive or negative and users must be alert at all times of how they are using it. Social media is a helpful tool law enforcement agencies use in many ways, especially because of the partnership it can build with the public. Social media is beneficial if people use good judgement and common sense (Davenport, 2016). Unfortunately, social media can be harmful to law enforcement when not used properly. Mark Marshall, a former chief of police in Smithfield, Virginia, stated that "This is something that all police chiefs around the country, if you're not dealing with it, you better deal with it" (Pettry, 2014, para. 2).

Law enforcement officers are not considered an average person by the public. The public holds law enforcement officers to a higher standard. Officers' credibility is in question when social media posts are inappropriate or vague and taken out of context. Any post by officers can have the potential to be broadly disseminated and fall into the hands of criminals, defense attorneys or the media (International Association of Chiefs of Police, n.d.). Many officers have been embarrassed or disciplined for posting on social media sites comments that are inappropriate (Schmidt, 2010). Officers do not have an expectation of privacy when information is shared on a public server. It is not the goal of law enforcement agencies to prevent employees from using social media, but how to educate the employees of the appropriate usage of social media (Hadley & Chambers, 2011).

While we cherish First Amendment rights, we have to have reasonable limitations placed on them (Pettry, 2014). Agencies should have established guidelines of who speaks for the agency and what information is released. It should define who the public information officer is and what can be released on behalf of the agency. Policies should already be in place on the release of confidential information, but a social media policy should establish rules and regulations on what an employee, sworn or civilian, on duty or off duty, can post, comment or share on social media networking sites (Shinder, 2009). Supreme Court case law has established that governmental agencies can regulate employee's speech when it comes to whether the speech has a negative effect on the interest of the government agency (Pettry, 2014). Through a social media policy, agencies can hold employees accountable for who they represent themselves and the agency (Donlon-Cotton, 2010). Unfortunately, individuals and some businesses have discovered that privacy pitfalls of social media, and they were forced to conduct themselves in a more respectable manner (Qualman, 2009). The goal of the policy is for employees to use common sense when on social networking sites. The officer shouldn't write it, send it, or download it if they don't want it seen in the paper or the court room (Albrecht, 2015)

Younger employees will consider the usage of social media sites and the internet as benefit or a perk to working for an employer (Hadley & Chambers, 2011). In reality, it is not productive in getting work down and it is extremely dangerous in law enforcement profession. Officers must be alert of their surroundings and prepared for anything at all times.

Ultimately, it is beneficial to both the law enforcement officer and the agency to have a social media policy. Now that social media is a part of everyone's lives, it is necessary to educate employees on the usage of social media. Agencies have to discuss the guidelines, share expectations and outline the expected level of tolerance clearly to the employees (Burgess, 2011). Everyone has a different understanding of a common sense approach to the use of social media and it is imperative that agencies outline what is expected and accepted involving social media usage.

REFERENCES

- Albrecht, S. (2015, July). The hazards of social media. *Law & Order*, 63(7), 8.
- Ashton, R. (2010). Distracted driving: Law enforcement's Achilles' heel. *The Police Chief*, 77(12), 116- 118.
- Burgess, C. (2011, May 25). A common-sense approach to social media. *Huffington Post*. Retrieved from https://www.huffingtonpost.com/christopher-burgess/a-common-sense-approach-t_b_391963.html
- City of San Diego v. Roe, 543 U.S. 77 (2004)
- Connick v. Myers, 461 U.S. 138 (1983)
- Davenport, B. (2016, February 29). *Social media, common sense and keeping informed*. Retrieved from <http://www.andrewsdavis.com/social-media-common-sense-and-keeping-informed>.
- Donlon-Cotton, C. (2010, May). Social network policies: Maintaining public trust. *Law and Order*, 58(5), 12-14.
- Dwyer, J (2009, March 11). The offer who posted too much on MySpace. *The New York Times*, p. A24.
- Hadley, C., & Chambers, K. (2011 May). Networking vs. networking: How can you make sure social networking in the workplace does not lead to lost productivity? *Charter*, 82(4), 24-25.
- I can't get my work done! How collaboration & social tools drain productivity*. (2001, May 18). Retrieved from <https://harmon.ie/news/i-cant-get-my-work-done-how-collaboration-social-tools-drain-productivity>

- International Association of Chiefs of Police, Center for Social Media. (n.d.) *Policy development*. Retrieved from <http://www.iacpsocialmedia.org/getting-started/policy-development/>
- International Association of Chiefs of Police, Code of Ethics. (n.d.) *Law Enforcement Code of Ethics*. Retrieved from <http://www.theiacp.org/codeofethics>
- Lee, S. (1962, August 10). Amazing fantasy #15 [Cartoon]. *Marvel Comics*.
- Petry, M. T. (2014, December 9). Social Media: Legal Challenges and Pitfalls for Law Enforcement Agencies. *FBI Law Enforcement Bulletin*. Retrieved from <https://leb.fbi.gov/articles/legal-digest/legal-digest-social-media-legal-challenges-and-pitfalls-for-law-enforcement-agencies>
- Pickering v. Board of Education, 391 U.S. 563 (1968)
- Qualman, E. (2009). *Socialnomics: How social media transforms the way we live and do business*. Hoboken, NJ: John Wiley & Sons.
- Roufa, T. (2017, November 18). *Ethics in law enforcement and policing*. Retrieved from <https://www.thebalance.com/ethics-in-law-enforcement-and-policing-974542>
- Scalf, A. (2015, February 4). City adopts new social media policy. *Cincinnati*. Retrieved from <https://www.cincinnati.com/story/news/local/campbellcounty/2015/02/04/city-adopts-new-social-media-policy/22899885/>
- Schmidt, W. W. (2010, April). Online networking, texting and blogging by peace officers: Part one - impeachment, policy & first amendment issues. *AELE Monthly Law Journal*, 201-209.

Shinder, D. L. (2009, July 14). *10 things you should cover in your social networking policy*. Retrieved from <https://www.techrepublic.com/blog/10-things/10-things-you-should-cover-in-your-social-networking-policy/>

Siegel, B. (2014, March 28). *Social Media in the workplace: Does impact productivity*. Retrieved from <http://www.lakeforestmba.edu/blog/social-media-workplace-impact-productivity/>

Social media. (2018, January 14). In *Merriam-Webster's Online Dictionary*. Retrieved from <https://www.merriam-webster.com/dictionary/social%20media>

Tex. Gov. Code 522.101 (1993)

U.S. Const. amend. I.

Williams, B. (2017, August 7), There are now over 3 billion social media users in the world - About 40 percent of the human population. Retrieved from https://mashable.com/2017/08/07/3-billion-global-social-media-users/#YiyyFci_ZaqP