

# Policy analysis: free speech and social media assignment



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During the last decade, the Internet and social media sites have brought about significant changes related to law enforcement officers and the limits of free speech. In case after case, law enforcement officers have argued the protections of the First Amendment to the Constitution while their employers strive to maintain harmonious workplaces and positive community relations. In this paper the model policy for social media use in law enforcement will be analyzed, along with examples of unprotected speech and the driving forces behind free speech arguments.

Free speech is guaranteed by the First Amendment to the Constitution. The founding fathers believed the freedom of the citizenry to question and publicly scorn the government to be of such importance, it was their first order of business. Such speech is not absent limits and some fail to understand what the First Amendment prohibits. The protections for individuals include the language; Congress shall make no law that abridges free speech.

Certainly case law has provided some examples of unprotected speech to include statements that would cause public terror such as yelling fire” in a theater, harassing statements, disturbance of another’s peace, and statements in the workplace that could create a hostile work environment (Van Broccoli, 201 1). Because the founding fathers left the First Amendment vague, the Congress, through legislation, and the courts through legal decisions have defined certain speech as unprotected. Important differences exist between the speech of a citizen and the speech of an employee.

Even more disparity exists between employees who work in private industry than employees of the government. Technology available through social media and the ability to communicate internationally in seconds has created a whole new arena for employees and employers (Van Broccoli, 2011 Private Employees versus Public Employees Substantial differences exist between private employers and governmental employees. Essentially, free speech protections do not extend to employees of private businesses.

Although free speech in the workplace is restricted, laws related to ‘ Websites blower” protections and certain protected classes of people persist. Furthermore, the National Labor Relations Act (ANAL) retests employees from an employer interfering with an employee’s fertilization regarding work conditions, supervisors, and the organization. These same protections do not apply to government jobs, such as municipal police departments. It is important to understand that these protections are not founded in the First Amendment, but in statutes, contracts, case law, and policies and procedures (Van Broccoli, 2011).

Public employees enjoy some protections related to the First Amendment, however these are limited. Case law has carved out a three prong test which s continually being applied to new cases before the courts. The three-prong test applies to oral and written communications, photographic depictions, videos, music, and performing arts. The following prongs of the test determine whether or not the officers speech is protected by the First Amendment: 1. The speech must touch on a matter of public concern 2. The speech must be made as a citizen, not as part of the officers official duties 3.

The speech must address an issue of public interest, and the officers interest must outweigh the agencies interest in promoting and maintaining efficient operations (Baker, 2011 Public Concern Typically, the public is not interested in the inner-workings of police agency. Issues surrounding promotions, advancements, or displeasure with the bosses is not a matter of public interest. For example, in *Iconic v. Myers* an assistant district attorney circulated a letter inquiring about employees morale and work conditions.

The assistant district attorney was fired for his communique and the Supreme Court upheld his termination. In *City Of San Diego v. Roe* a police officer was claiming to be expressing free speech by saturating on a website and selling police memorabilia. The officer was ordered to cease and desist, yet he maintained the web-site that had depicted San Diego Police Department uniforms. Again, the Supreme Court ruled that his speech was of no interest to the public at large (Van Broccoli, 2011).

**Official Capacity versus Private Citizen** This prong of the test is more difficult to apply. Often police officers believe they are acting as a citizen, when in fact, the opposite is true. Speech related to the officers official duties is not protected. In *Cigarette v Caballeros*, a deputy strict attorney reviewed an affidavit used by police to secure a search warrant. Deputy District Attorney Caballeros found misrepresentations that he brought to his supervisor. The supervisor removed the deputy from the case and the case went forward.

Caballeros testified for the defense and was reassigned to another division and denied a promotion. Caballeros claimed his speech was protected and sued. The Supreme Court ruled that although honorable, his speech was the

result of his professional responsibilities as a prosecutor and therefore not the speech of a private citizen (Van Broccoli, 01 1). Other cases have illustrated this nexus, including a sergeant in charge of a narcotics unit who brought to light wrong doings of his subordinates. Not only was he told to work harmoniously, he was threatened with transfer.

When he resigned and sued, the 7th Circuit Court of Appeals again reaffirmed his speech was not that of a private citizen, but the product of his employment (Van Broccoli, 2011). Notoriety, such as an officer who is regularly on the news may place that officer in an official capacity more than other officers (Baker, 201 1). Promoting and Maintaining Efficiency The Supreme Court has ruled that even if the officer's speech was related to an issue of public concern, and the officer was acting as a citizen, the interests of the officer will be weighed against the department's interests.

This prong was discussed in *Nixon v. City of Houston* (Van Broccoli, 2011). Nixon, a Houston Police Officer, authored opinion columns in local publications. Although he never identified himself as a Houston Police officer, he regularly mentioned that he was a police officer and wrote about Houston Police activities and policies as well as his activities. His columns contained offensive remarks about minorities, citizen groups, women and the homeless. Although off-duty and not claiming to be a Houston Police Officer, he was eventually terminated for this and other incidents.

Nixon claimed that his speech was protected, yet the Fifth Circuit Court of Appeals ruled that the Houston Police Departments interests in protecting their relationship with the community outweighed his interests (Van Broccoli,

2011) . The Policy Because Of issues previously discussed, criminal justice agencies have been forced to adopt new policies related to social media. These policies are rived from case law and legislative action and must comply with labor agreements.

Because freedom of speech is a Constitutional issue, individual cases will continue to be determined on their merit within the three-prong test. Police agencies should be encouraged to draft social media policies and educate employees in the nuances of free speech and the acceptable uses of social media. Currently the Washoe County Sheriff's Office does not have a social media policy, although a new policy update is being formulated to address the deficiency (Washoe County Sheriff, 2011 Conclusion The public has little sympathy for police officers who use their trusted role to violate policy.

On the other hand, the public has little interest in the daily politics off police organization. Where police officers fail, and expose their department to embarrassment, are cases in which they post inappropriate materiel for public view.