

Unliking Social Media in the Dispatch Center

FRANK ROBERT FLASPOHLER



Topics to Cover

- ▶ An Overview of Free Speech Under the First Amendment
- ▶ Special Considerations for Public Employers
 - ▶ The *Pickering* test
- ▶ Free Speech in Social Media – Case Law
 - ▶ Criticizing the Boss
 - ▶ Criticizing the Policies
 - ▶ Damaging the District's Mission
 - ▶ No Harm, No Foul
- ▶ Analyzing a Dispatcher's Facebook Page
- ▶ Questions



In our current social-media age, there is one indisputable truth: nothing you say on the internet is private...

[Person 1]: **Still trying to figure out where all these protesters were When officer Shaw was killed in new ken.... not a peep tho!!!!**

[Employee]: **It's a joke. #backtheblue**

[Person 2]: **Honestly why don't they arrest them all or shut off their food stamp cards. this is seriously ridiculous. if he was innocent then why run**

[Employee]: **Thankkkk you!!! So innocent that he had an empty chamber on him && was doing community service hours for something he did prior! [thoughtful emoji]**



[Person 2]: So right! If his ass would've stayed planted nobody would've been blocking traffic or rioting and this wouldn't exist. this generation has a lot to learn about what's right and what's wrong. the entire country has everything twisted on how to look at things and honestly I'm tired of surrounding myself with such people [sad face emoji]

[Employee]: [100 emoji, 100 emoji, 100 emoji] couldn't agree anymore!

[Person 2]: The assistance they receive monthly will now pay what the city will be forced to pay from the loss because of rioting. cut their support and the rioting ends [smile face emoji]

- Posted on employee's private Facebook page
- Another person took a screenshot of the page, and shared it, tagging the dispatch center in the shared post.
- Employee identified themselves as a 911 employee

How do we analyze this?

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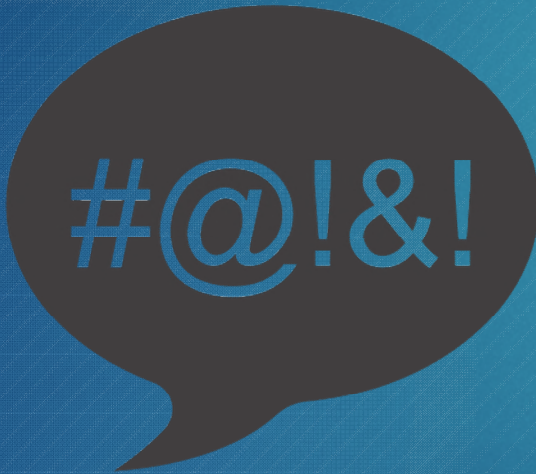
The First Amendment to the United States Constitution

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.



Credit: Christopher Penler/Shutterstock

Unprotected Speech



- ▶ Fighting Words
- ▶ Incitement to Violence
- ▶ Obscenity/Profanity
- ▶ Defamation
- ▶ Violation of Intellectual Property Rights

We want free speech...

carefully regulated.

- ▶ The First Amendment helps make our democracy function by ensuring that individuals have the ability to discuss and communicate about important ideals.
- ▶ As public employers, we are bound to respect the free speech of our employees, so long as it doesn't interfere with our mission and service to our communities.



The *Pickering* Test

Was the employee speaking pursuant to their job duties?

YES

The First Amendment does not protect employee's speech that is done on behalf of their employer.

NO

Was the employee speaking on a matter of public concern?

YES

The First Amendment does not protect speech that is only relevant to private matters.

NO

Balancing Test between the interests of the employee in exercising their free speech & the interests of the employer in regulating that speech...

So what interests are balanced?

- ▶ Every citizen has a fundamental right to freely express their opinion/beliefs without coercion by the government (or, in this case, their public employer)
- ▶ **The Public also has an interest in information about how government is functioning.**
- ▶ Employers have an interest in:
 - ▶ Promoting efficiency & discipline in the workplace
 - ▶ Promotion cohesion & good will
 - ▶ Achieving the department's mission
 - ▶ Enhancing relationships with other agencies



Criticizing the Boss...

Richerson v. Beckon (WA US Dist Ct, 2008)

- ▶ Ms. Richerson was a teacher coach at the Central Kitsap School District
- ▶ Blog Post:
 - Save us White Boy!**
 - ... I was on the interview committee for this job and this guy was my third choice... and a reluctant one at that... He has a reputation of crapping on secretaries and not being able to finish tasks on time...**
- ▶ Ms. Richerson was reassigned to a new position
- ▶ No teacher aware of the “White Boy” attack could possibly be expected to enter into a trusting relationship with Ms. Richerson
- ▶ Blog was a breach of confidentiality, as well as racist, sexist and bordered on vulgar...
- ▶ Ms. Richerson’s inability to control her rage and/or passion at the least justifies the reassignment of her duties...
- ▶ This is a mean-spirited, personal attack. It is not a matter of “public concern”

Criticizing the Policies...


Gresham v. City of Atlanta (11 Cir., 2013)

- ▶ Officer Gresham criticized another officer for interfering in an arrest
- ▶ Department Policy:
Criticism of a fellow officer may only be done through Department channels, to correct any deficiency... not to be used to the disadvantage of the reputation or operation of the Department or any employees.
- ▶ Officer Gresham was investigated, and during the investigation, was passed over for several promotions.
- ▶ Police departments are para-military organizations, and comments concerning performance and directly interfere with confidentiality, working spirit, and efficient operation.
- ▶ Agency has an interest in preventing workplace disruption before it begins.
- ▶ When **close working relationships are essential**... deference to the employer's judgment is appropriate.

Failing to Support the Mission...

Hernandez v. City of Phoenix (9 Cir., 2022)

Juan Johnny Hernandez shared a photo.
September 30, 2013 · 🌐



THE MOST COMMON NAME FOR A CONVICTED GANG RAPIST IN ENGLAND IS...

Muhammad

Note to the British media - these gangs are not comprised of "Asians"; they are Muslims

Ban Sharia Law in Your State-U.S.
September 30, 2013 · 🌐

Like Page

Share

Juan Johnny Hernandez shared a photo.
December 24, 2013 · 🌐



RECENT CONTRIBUTIONS TO SCIENCE BY ISLAM

GYNAECOLOGY

Sheikh Salah al-Juhaidan, Saudi "psychologist"

"Women who drive cars suffer from ovarian problems and "rolled up pelvises" giving rise to congenitally defective babies"

FORENSIC SCIENCE

Maulana Mohammad Khan Sherani, Head of Council for Islamic Ideology

"DNA test should not be used as evidence in rape cases"

GEOLOGY

Shaik Abdul Aziz Ibn Baz, Supreme authority of Islam in Saudi, "walking Quran"

"If the earth is rotating as they claim, the countries, the trees, the rivers, and the oceans will have no bottom and the people will see the eastern countries move to the west and the western countries move to the east. The earth is flat, and anyone claiming it is round is an atheist deserving punishment" (1992)

SIESMOLOGY

Hajatossalem Kazem Sedighi, Iranian Islamic scholar

"Many women who do not dress modestly, lead young men astray, corrupt their chastity and spread adultery in the society, which INCREASES EARTHQUAKES"

ConservativeGuy
December 23, 2013 · 🌐

Like Page

7th century religion breeds 7th century 'science' lol

Share

Hernandez v. City of Phoenix

... continued ...

- ▶ District Policy since 2013, but posts were not discovered until 2017 when reported by an outside agency
- ▶ Bureau Investigation findings:
 - ... **potentially reduced or contributed to the erosion of public trust...**
 - ... **do not align with essential functions and required knowledge for a police sergeant.**
- ▶ Officer Hernandez subject to discipline, up to 40 hrs suspension or termination.
- ▶ Matters touching on highly publicized incidents and cultural assimilation indicate public concern.
- ▶ Publically posting on Facebook suggests an intent to engage in public debate.
- ▶ Even hateful speech may be public concern (even if it has low value)
- ▶ **Speech by police officers suggesting racial bias can undermine the department's ability to carry out its mission.**

No harm, no foul...

Moser v. Las Vegas PD (9 Cir., 2021)

- ▶ Officer Moser was a sniper for Las Vegas PD, off-duty & using Facebook at home.
- ▶ Facebook Post:
Thanks to a Former Action Guy and his team we caught that asshole... It's a shame he didn't have a few holes in him.
- ▶ After investigation, Officer Moser was transferred from sniper unit and suffered a pay decrease.
- ▶ Restrictions imposed by agency must be directed at speech that has some effect on operations.
- ▶ Government cannot rely on mere speculation that speech will disrupt the workplace.
- ▶ **We live in a time when a careless comment can ruin reputations and crater careers that have been built over a lifetime because of the demand for swift justice, especially on social media.**
- ▶ Here, there was insufficient evidence of harm to the agency.

Going a little too far...

Liverman v. City of Petersburg (4 Cir., 2016)

- ▶ Officer disciplined for comment on Facebook regarding qualifications for instructors.

- ▶ Agency Policy:

... that would tend to discredit or reflect unfavorably upon the Department or any other City agency or its employees..

No evidence of harm to the agency presented in this case.

- ▶ **Department's policy is too broad!**
- ▶ Government employees are often in the best position to know what ails the agencies for which they work.
- ▶ Personal complaints and grievances are not matters of public concern, but...
- ▶ **Complaints about inadequate training are matters of public concern.**
- ▶ Because district should have known better, no qualified immunity...

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Vallecorsa v. Allegheny Co.

US West. Dist Ct. of Pennsylvania, Nov. 15, 2022

- ▶ Ms. Vallecorsa identified herself as a 911 dispatcher on Facebook.
- ▶ Within a few hours of the post being tagged to the center, Deputy Director received multiple emails from coworkers expressing anxiety at working with Ms. Vallecorsa.
- ▶ A caller instructed Director to expect a protest of the 911 center, although it never occurred.
- ▶ Several callers were concerned they would not receive ambulatory relief if calling 911 due to bias of employees.
- ▶ **County's interest in efficiency in rendering emergency services outweighs her interest in commenting on matters of public concern.**
- ▶ Speech wasn't made in a traditional public form, and was made on a private Facebook post, and thus, not a highly protected.
- ▶ **Wide latitude given to police agencies extends to 911 centers.**

Questions?

EMS Legal Services has a model social media policy available to share.

Please email us to obtain a copy of these slides and/or the model policy.



Frank Robert Flaspohler, Attorney

112 East Morrison Street

Fayette, Missouri 65248

frank@emslegalservices.com

(660) 537-9031