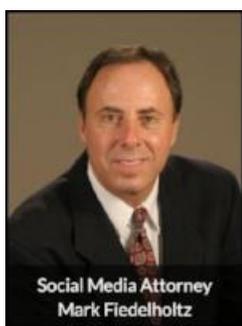




Instructor: Social Media Attorney Mark Fiedelholtz

Bio



Academic Credentials

- Member of the Florida Bar
- Juris Doctorate, St. Thomas Law School, Miami, FL
- Masters Public Administration, American University, D.C.
- Bachelor of Arts, Political Science, American University

Electronic Media Practical Experience

- Electronic Media Law Trainer For 30 Years;
- Television Anchor At Various Network Affiliates;
- Former White House Television Reporter.
- UPI Best Documentary Award
- Speaking Parts In Movies and Commercials

“The nature of a revolution in thought can be that, in its early stages, even its participants may be unaware of it. And when awareness comes, they still may be unable to know or foresee where its changes lead. Cf. D. Hawke, Benjamin Rush: Revolutionary Gadfly 341 (1971) (quoting Rush as observing: “The American war is over; but this is far from being the case with the American revolution. On the contrary, nothing but the first act of the great drama is closed”). So too here. While we now may be coming to the realization that the Cyber Age is a revolution of historic proportions, we cannot appreciate yet its full dimensions and vast potential to alter how we think, express ourselves, and define who we want to be. The forces and directions of the Internet are so new, and so far reaching that courts must be conscious that what they say today might be obsolete tomorrow.”

Source: Packingham v. North Carolina, 137 S. Ct. 1730 (2017)

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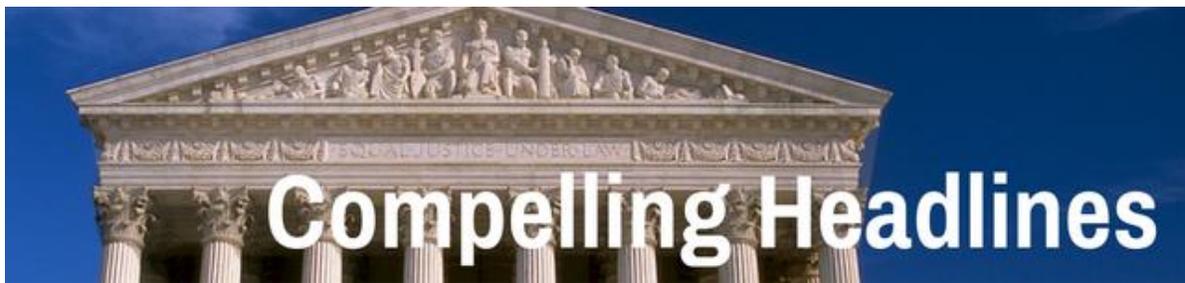
Section I

The Core Elements Of Social Media Law



“Social media and collaborative technologies have become critical components of emergency preparedness, response and recovery. From international response efforts after large-scale disasters to domestic response and recovery after events affecting the United States, many government officials now turn to social media technologies to share information and connect with citizens during all phases of a crisis. Implementing these new technologies, however, requires responding agencies adopt new communication strategies, policies and engagement methods.”

Source: Homeland Security, Countering False Information On Social Media In Disasters and Emergencies, 2018.



**It was meant to be funny,
says police officer fired
for racist Facebook post**

**Petersburg Admits Municipal
Liability, Settles 4.7 Million
Dollar Facebook Lawsuit**

**Cop Shares Racist Post,
Will Resign After Public
Outcry**

**‘It Was A Stupid
Mistake’: Cop’s
Snapchat Photo With
Racial Slur Costs Her
2 Jobs**

**NYPD Suspends Cop
Who Allegedly Posted
Snapchat Of Handcuffed
Family**

**Aurora Officer Fired
Amid Criminal
Proceedings In
Instagram Harassment
Case**

Talladega Police Officer Fired For Sharing Inflammatory Posts On Facebook

Over 3,000 criminal cases are being reviewed in probe of San Francisco cops who allegedly sent racist texts

■ MAXWELL TAN

MAY 8, 2015, 3:04 PM 118

[FACEBOOK](#) [LINKEDIN](#) [TWITTER](#) [EMAIL](#) [PRINT](#)

Over 3,000 criminal cases are being reviewed as part of an investigation into 14 police officers who allegedly sent racist and homophobic text messages, according to San Francisco District Attorney George Gascon.



Police Officer Fired After Controversial Facebook Post On Personal Page

Chicago Cop Faces Discipline For Insensitive Threatening Posts On Facebook

**Ohio Police Officer
Reportedly Fired Over
Racist Tweets Regarding
Baltimore Protests**

**Black Police Officer
Fired For Posting T-Shirt
On Instagram Files
Lawsuit**

**Police Department Fires
Recruit Over Facebook
Post From High School**

**Cop Shares Racist Post,
Will Resign After Public
Outcry**

**Pennsylvania Police
Officer Fired For
Racial Slur On
Social Media**

**Racist Video With
President Obama, KKK
Sparks More Trouble For
Florida Cops**

No More Educational and Financial Barriers To Becoming A Broadcaster and Publisher

Television



Print



Radio



Normal Credentials To Become A Broadcaster



Tribune Company Kansas City, MO

WDAF FOX4: News seeks a high energy news reporter hungry to find original content and own the big story. Ideal candidate thrives on reporting breaking news, aggressively pursues hard news stories, and turns a wide range of enterprise stories because of their meaningful contacts. Consumer or Investigative experience a plus. **QUALIFICATIONS: 2+ years of reporting experience and a Bachelor's Degree**

Columbia Daily Tribune, Boonville Daily News – Columbia, MO Reporter Position

QUALIFICATIONS: A degree in journalism, English, a related field or equivalent work experience is required. Preference will be given to qualified applicants in Missouri and the Mid-West.

St. Louis Public Radio

Louis Public Radio is looking for a reporter to join a five-person team of journalists tasked with telling stories that reflect the diversity of issues, people and perspectives important to the region and to the nation. Funded by a grant from the Corporation for Public Broadcasting, the reporter will be part of Sharing America, an initiative that grew out of the recognition that intentionally adding diversity to the public radio system will improve the integrity of our journalism. **QUALIFICATIONS: The ideal candidate should have at least three years of reporting experience and be open to working with an innovative, experimental and collaborative team. Radio experience is not necessary, but a passion for audio storytelling and the mission of public media is essential.** The ideal candidate should have a bachelor's degree in journalism, communications, or a related field; or equivalent combination of education, training, and experience that provides the requisite knowledge, skills and abilities for this job.

Independence, Missouri: Public Information Officer Job

Minimum Qualifications: Bachelor's degree or equivalent from an accredited four-year college or university in marketing, communications, journalism, public relations or a related field; five years of progressively responsible communications experience, preferable in city government, or an equivalent level of experience; or, any combination of education, training and experience which provides the required knowledge, skills, and abilities to perform the essential functions of the job. Must possess a valid driver's license. Must complete required NIMS level training within first six months of hire.

DEGREE REQUIREMENTS

Understanding the Undergraduate Curriculum

The Bachelor of journalism assures that the student receives a solid foundation in the liberal arts and sciences while achieving competency in an area of journalism or strategic communication. Students choose from an array of interest areas designed to build expertise in areas where graduates typically begin a career.

To complete the Bachelor of Journalism degree, 120 credits are required.

Pre-Interest Area: During the freshmen and sophomore years students complete a minimum of 60 credits.

- **Journalism Requirements (13 Credits).** Students earn a minimum of 13 credits in foundational journalism core requirements. These courses are essential in preparing students for success in the interest area curriculum.
- **General Education Requirements (47 credits).** All students must complete general education requirements. General education courses are the foundation upon which all University of Missouri degrees are built.

These courses must be completed prior to starting courses in the interest area.

Dual credit, advanced placement and international baccalaureate credit can apply to these requirements. Please see your adviser for details.

Interest Area: During the junior and senior years students complete a minimum of 60 additional credits.

- **Journalism Requirements (31-35 Credits).** Students earn a minimum of 25 credits in the interest area and 6 credits in journalism core requirements. Students may substitute up to 4 additional credits of journalism electives for upper level non-journalism requirements.
- **Upper Level Non-Journalism Requirements (26-29 Credits).** These courses are meant to expand upon the general education courses from the first two years of study. These courses can be used to meet double degree or minor requirements from other academic units. Students pursuing a [dual degree](#) must complete a minimum of 132 credit hours.

General Electives

Students with fewer than 120 credit hours upon completion of all specific course requirements will need general electives. The number of general electives varies for each student. These courses may be any level but must be acceptable toward the degree. Please visit [Course Exceptions](#) for additional information on course acceptance policies.

Normal Cost Of Broadcasting and Publishing

Platform	Cost	Potential Audience
Local Television Ad	\$200 to \$1500 for a 30 Second Commercial	Thousands Depends On Size Of Coverage Area
National Television Ad	\$123,000 For A 30 Second Commercial	Millions
National Cable Ad	\$13,100+ For A 30 Second Ad	Millions
Local Radio Ad	\$500 to \$8,000 per week	Thousands Depends On Size Of Coverage Area
National Radio Ad	A 30-second spot broadcast nationally averaged around \$123,000	Millions
Regional Newspaper Ad	\$693 to \$40,855 for ¼ page ad	Thousands Depends On Size Of Coverage Area
National Newspaper	\$28,000 for a half page of space in a major newspaper.	Millions

Source: Fitsmallbusiness.com, USA Today

Step Right Up, Free Social Media Circus Tickets



<i>Social network</i>	<i>Cost</i>	<i>Monthly Active Users</i>
Facebook	FREE	2,230,000,000
YouTube	FREE	1,900,000,000
Instagram	FREE	1,000,000,000
Qzone	FREE	563,000,000
Weibo	FREE	376,000,000
Twitter	FREE	336,000,000
Reddit	FREE	330,000,000
Pinterest	FREE	200,000,000
Ask.fm	FREE	160,000,000
Tumblr	FREE	115,000,000
Flickr	FREE	112,000,000
Google+	FREE	111,000,000
LinkedIn	FREE	106,000,000
VK	FREE	97,000,000
Odnoklassniki	FREE	71,000,000
Meetup	FREE	35,300,000

<i>Social Networking App</i>	<i>Cost</i>	<i>Monthly Active Users</i>
WhatsApp (owned by Facebook)	FREE	1,500,000,000
Messenger (owned by Facebook)	FREE	1,300,000,000
WeChat	FREE	989,000,000

Source: Dream Grow.com

Missing Pieces Of The Social Media Puzzle That Causes Liability Exposure

How To Increase Citizen Engagement and Transparency Without Violating The New Social Media Speech Laws



The Missing Piece For All Employees Social Media Liability Education



Simple NASCAR Race Car Analogy



“Social Media is like someone driving a NASCAR Race Car. Most people are trained and have experience driving a regular car. But, put an untrained person in a NASCAR Race Car that accelerates from 0 to 60 in 3 seconds will lead to a bad crash harming both the driver and anyone in the path of the car.

Today’s Social Media Broadcaster and Publisher

College Education in Journalism or Mass Media	No
Attorneys or Editors Reviewing Content	No
Specialized Education In New Social Media Laws	No
Personal Media Liability Insurance	No

No More Gatekeepers With Social Media

(No Editors or Attorneys To Monitor “Real Time” Comments)



No More Internal Editors

**MACRO
EDITING**

THE LEDE

WRITING

CONTENT

**FAIRNESS &
OBJECTIVITY**

LIBEL

The lead: Does it make sense, is it supported by the rest of the story, is it in the first paragraph or is it buried?

- The story: Is it thorough and complete? Are there any unanswered questions? Is it fair, balanced and objective?
- Libel: Are there any statements that might be considered libelous?
- Writing: is the story well-written? Is it clear and understandable?
- Accuracy: Did the reporter double-check all names, titles and places mentioned in this story? Did the reporter properly check all phone numbers or web addresses?
- Quotes: Are the quotes accurate and properly attributed?
- Relevance: Are the story’s background and context complete enough to tell readers why the story is relevant?

Source: thoughtco.com

No More In-House Attorneys To Review Content

College Education in Journalism or Mass Media	No
Attorneys or Editors Reviewing Content	No
Specialized Education In New Social Media Laws	No
Personal Media Liability Insurance	No

Supreme Court and Federal Courts Now Recognizes Social Media And Devices That Transmit Social Media As Powerful Broadcasting Platforms

“A fundamental First Amendment principle is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more. Today, one of the most important places to exchange views is cyberspace, particularly social media, which offers “relatively unlimited, low-cost capacity for communication of all inds,” Reno v. American Civil Liberties Union, 521 U. S. 844 to users engaged in a wide array of protected First Amendment activity on any number of diverse topics. The Internet’s forces and directions are so new, so protean, and so far reaching that courts must be conscious that what they say today may be obsolete tomorrow.” See Packingham v. North Carolina 137 S. Ct. 1730 (2017)



Riley v. California 134 S. Ct. 2473 (2014)

Finally, there is an element of pervasiveness that characterizes cell phones but not physical records. Prior to the digital age, people did not typically carry a cache of sensitive personal information with them as they went about their day. Now it is the person who is not carrying a cell phone, with all that it contains, who is the exception. According to one poll, nearly three-quarters of smart phone users report being within five feet of their phones most of the time, with 12% admitting that they even use their phones in the shower. Today, by contrast, it is no exaggeration to say that many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives — from the mundane to the intimate. Cell phones, which are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy. See *Riley v. California*, 134 S.Ct. 2473 (2014).

Elonis v. U.S. 135 S. Ct. 2001 (2015)

Facts: Anthony Elonis was arrested on December 8, 2010 and charged with five counts of violating a federal anti-threat statute, 18 U.S.C. § 875©. Specifically, he was charged with threatening his ex-wife, co-workers, a kindergarten class, the local police, and an FBI agent. Elonis had posted statements on his Facebook page that appeared to threaten his ex-wife and other people in his life. Prior to the postings, his wife and family had left him and he had lost his job at an amusement park. Shortly after this chain of events, Elonis posted several statements on his Facebook page that were interpreted as threats. At his trial, Elonis asked the court to dismiss the charges, stating that his Facebook comments were not true threats. He argued that he was an aspiring rap artist and that his comments were merely a form of artistic expression and a therapeutic release to help him deal with the events in his life. The trial court denied his motion to dismiss the case. He appealed to the U.S. Court of Appeals for the Third Circuit, which affirmed his conviction. The U.S Supreme Court, granted certiorari (agreed to hear the case). The court Reversed and remanded, 8-1, in an opinion by Chief Justice Roberts on June 1, 2015. Justice Alito filed an opinion concurring in part and dissenting in part. Justice Thomas filed a dissenting opinion.

Held: The law requires proof of defendant’s intent to threaten, not negligence or a reasonable listener test.

134 S.Ct. 2473 (2014)

David Leon RILEY, Petitioner,

v.

CALIFORNIA.

United States, Petitioner,

v.

Brima Wurie.

[Nos. 13-132, 13-212.](#)

Supreme Court of United States.

Argued April 29, 2014.

Decided June 25, 2014.

Stanford CA for Petitioner Riley



3 Biggest Myths

Myth #1: Courts are more lenient with social media speech.

Truth #1: Courts apply all civil and criminal speech standards to social media.

Myth #2: Social Media Networks Protect Your Free Speech

Truth #2: you can't protect rights you don't have. *See Chaplinsky v. New Hampshire 315 US 568 (1942)*

Myth #3: Content on my personal devices are protected.

Truth #3: In determining privacy, especially for public records and discovery in lawsuits, courts focus on relevant work-related content, not the device and where the message was sent or received.

Myth #4: We don't need to worry about social media law training because our Media Liability or Errors and Omission Policy will cover us.

Truth #4: Many insurance carriers are beginning to exclude social media mistakes from coverage by classifying the mistakes as "Intentional Conduct", not negligence or an accidental occurrence.



More Damaging Myths That Delay Specialized Training



Notes:

The In-House Attorney Myth

RULE 4-1.1: COMPETENCE (Missouri Bar Rules Of Professional Conduct)

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. (*Adopted Aug. 7, 1985, eff. Jan. 1, 1986. Amended March 1, 2007, eff. July 1, 2007; Sept. 26, 2017, eff. Sept. 26, 2017*)

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a field of law may be required in some circumstances.



IT'S FEDERAL LAW

**YOU MUST PROVE THAT YOUR EMPLOYEES
RECEIVED EXPERT TRAINING ON THE NEW
SOCIAL MEDIA AND TEXTING LAWS OR
STOP USING SOCIAL MEDIA AND TEXTS!**

COURTS REJECT THESE 5 DEFENSES THAT DELAY EXPERT TRAINING

- **Our Attorney and Association Keeps Us Updated**
- **We Have a Social Media Policy**
- **We Warned Our Employees**
- **We Are Small and Don't Use Social Media**
- **We Have Budget Cuts**





Analysis Of Whether Writing A Social Media Policy and Training Employees Constitutes The Unlicensed Practice Of Law

Legal Tip: Under the New Federal Social Media Laws, **even in-house attorneys writing social media policies are required to prove they possess specialized technical skills in social media law.** The case of *Liverman v. City of Petersburg* 844 F.3d 400 (2016) is an eye-opening example of what happens when an in-house attorney, who isn't a specialist in social media law, relies on a model social media policy instead of acquiring help from an experienced Social Media Attorney. It's important that you read this case.

Landmark Case

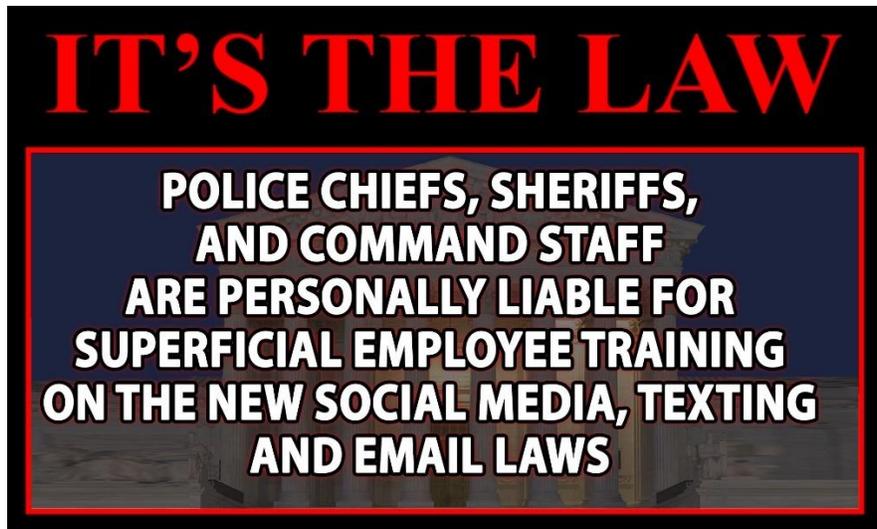
The U.S. Supreme Court case *Sperry v. Florida ex rel. Florida Bar* 373 US 379, 1963 is controlling law regarding the preparation of legal instruments that would constitute legal advice and therefore constitute the unlicensed practice of law. The case is significant to the discussion of a nonlawyer drafting a social media policy and training employees, because it identifies specific thresholds of when a nonlawyer is engaging in the unlicensed practice of law. In this case, there was a federal statute that allowed nonlawyers to obtain a federal license to prepare and prosecute patent applications before the Patent Office practice before the Patent Office. The Supreme Court ruled that due to the Supremacy Clause of the U.S. Constitution, federal law trumps state law. Therefore, the nonlawyer could perform the specific tasks authorized by the federal statute. However, this case also outlined where the thresholds where a nonlawyer could not perform certain legal acts:

- *Giving advice on the patentability of the invention based on the statute criteria.*
- *Giving advice on alternative avenues to protecting an invention under state law.*
- *Giving advice on the specification and claims of the patent application which is complex.*
- *Giving advice on developing arguments to establish the patentability of the claim under the law.*

How This Applies To Nonlawyers Writing A Social Media Policy or Training Employees

- Like the Sperry case, there is no federal statute that confers special powers for nonlawyers to write social media policies or train employees.
- The U.S. Supreme Court now recognizes social media as a high liability topic that has great impact on the First Amendment and other constitutional rights of people. Therefore, to draft a social media policy and train employees, you must be an attorney that possesses great skill in crafting policy language that doesn't violate the U.S. Constitution.
- When you choose specific social media platforms for your own sponsored pages or discuss specific social media platforms in your training, (i.e. Facebook, Twitter, YouTube, Snap Chat), you are expected to possess the sharp legal skills to make a risk assessment of why you choose those platforms. (i.e. legal analysis of the "terms of service" of one platform to another).
- In your training, inherent in teaching social media is the discussion of legal implications. Whether intentional or not, courts often find you are giving out some form of legal advice. Participants are relying on the accuracy of your information; if you only give out superficial warnings, participants will assume they received the definitive word on the extent of their liability. If they were giving inaccurate or incomplete information on the hidden liabilities of the existing or new social media laws, you will be exposed to negligent training and the unlicensed practice of law.

The Myth About Social Media Personal Liability Under 42 USCS 1983 and Tort Law



Most Popular Causes Of Action



42 USCS 1983
Defamation
Harassment
Discrimination
First Amendment Violation
Invasion of Privacy
Intentional Emotional Distress
Copyright Infringement

Clearing The Pathway Of Inaccurate Social Media Legal Information

- Principle I: Courts view employees as broadcasters with a higher duty of care.
- Principle II: Social media companies can't offer you immunity from civil and criminal liability.
- Principle III: Your duty of care at work is to build accurate public records, not relationships.
- Principle IV: Courts focus on content, not what media platforms you use to send messages.
- Principle V: Public record laws don't change because your records are created on social media.
- Principle VI: Social media companies can't offer you extraordinary speech rights.
- Principle VII: On-line libel is problematic in determining harm because you have an undefined audience.
- Principle VIII: The Internet providers have immunities under federal law that the user doesn't have.
- Principle IX: Your home is no longer your castle when it comes to protecting your home computer data;
- Principle X: In litigation, attorneys are under legal pressure to search for all relevant electronic data.

**THINK YOU
DON'T
NEED THIS
PROGRAM?**

TAKE THE TEST

<https://www.proprofs.com/quiz-school/story.php?title=sample-quiz-from-our-online-course>

You Are A Media Plaintiff and Defendant In A Social Media Lawsuit



Federal Court Viewpoint
Obsidian Finance Group, LLC v. Cox, 740 F.3d 1284 (9th Cir. 2014)

Brief Fact Summary

Cox (Defendant), a blogger, wrote several posts claiming that Obsidian Finance Group, LLC (Plaintiff) and its principal, Padrick (Plaintiff) acted fraudulently and corruptly when acting as bankruptcy trustees for Summit Accommodators, Inc. Plaintiffs successfully sued for defamation. Defendant appealed, arguing that Plaintiffs had to show negligence and actual damages in order to recover.

Synopsis of Rule of Law.

- 1) The negligence standard required for a private defamation suit in a matter of public concern does not turn on whether the defendant is a member of the institutional media. 2) A court-appointed bankruptcy trustee does not become a public official for purposes of determining defamation liability (i.e. proving actual malice standard)

Big Takeaway

*“The protections of the First Amendment do not turn on whether the defendant was a trained journalist, formally affiliated with traditional news entities, engaged in conflict-of-interest disclosure, went beyond just assembling others’ writings, or tried to get both sides of a story. As the Supreme Court has accurately warned, a **First Amendment distinction between the institutional press and other speakers is unworkable: “With the advent of the Internet and the decline of print and broadcast media . . . the line between the media and others who wish to comment on political and social issues becomes far more blurred.”**”*

Notes:

State of Missouri Viewpoint On Social Media Broadcasting



Title VIII PUBLIC OFFICERS AND EMPLOYEES, BONDS AND RECORDS

109.500. Records defined. — “**Records**”, as used in sections [109.500](#) and [109.510](#), means documents, books, papers, photographs, maps, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official business. Library museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in sections [109.500](#) and [109.510](#), and are hereinafter designated as “**nonrecord**” materials; and any record designated or treated as a record under state law.

Missouri’s Sunshine Law is the embodiment of Missouri’s commitment to openness in government. [Chapter 610 of the Revised Statutes of Missouri](#) is the foundation of what has become known as Missouri’s Sunshine Law.

610 .010 (5) “**Public meeting**”, any meeting of a public governmental body subject to sections 610.010 to 610.030 at which any public business is discussed, decided, or public policy formulated, whether such meeting is conducted in person or by means of communication equipment, including, but not limited to, conference call, video conference, internet chat, or internet message board. The term “public meeting” shall not include an informal gathering of members of a public governmental body for ministerial or social purposes when there is no intent to avoid the purposes of this chapter, but the term shall include a public vote of all or a majority of the members of a public governmental body, by electronic communication or any other means, conducted in lieu of holding a public meeting with the members of the public governmental body gathered at one location in order to conduct public business;

(6) “**Public record**”, any record, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared for the public governmental body by a consultant or other professional service paid for in whole or in part by public funds, including records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body; provided, however, that personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years. The term “public record” shall not include any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body, unless such records are retained by the public governmental body or presented at a public meeting. Any document or study prepared for a public governmental body by a consultant or other professional service as described in this subdivision shall be retained by the public governmental body in the same manner as any other public record; Pending legislation, SB 614, will add cyberbullying to the definition of bullying.

Mo. Rev. Stat. § 565.090- Harassment law that can be used to prosecute cyber bullies.
Mo. Rev. Stat. § 565.225- Stalking law that can be used to prosecute cyberbullying.
Mo. Rev. Stat. § 160.261- Any crime of harassment and stalking occurring on school property must be reported to the police. This includes communications occurring online.

Gov. Parson Says He Won't Block People on Social Media

JEFFERSON CITY, Mo. (AP) — [Missouri](#) Gov. Mike Parson will no longer block users on his social media accounts as he did when he served as lieutenant governor, according to the new governor's staff.

Parson and former Gov. Eric Greitens were the only Missouri statewide officials who regularly blocked critics and others on their social media accounts, drawing criticism from free speech advocates.

"Official social media pages, maintained by government employees, are a public forum," said Tony Rothert, legal director of the ACLU of Missouri. "Blocking or banning constituents because of their viewpoint would violate the First Amendment."

Trump's Blocking of Twitter Users Is Unconstitutional, Judge Says

Case 1:17-cv-05205-NRB Document 72 Filed 05/23/18 Page 1 of 75

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
KNIGHT FIRST AMENDMENT INSTITUTE AT
COLUMBIA UNIVERSITY, REBECCA BUCKWALTER,
PHILIP COHEN, HOLLY FIGUEROA, EUGENE GU,
BRANDON NEELY, JOSEPH PAPP, and
NICHOLAS PAPPAS,

Plaintiffs,

- against -

DONALD J. TRUMP, HOPE HICKS, SARAH
HUCKABEE SANDERS, and DANIEL SCAVINO,

Defendants.
-----X

MEMORANDUM AND ORDER

17 Civ. 5205 (NRB)

Judge Naomi Reice Buchwald, addressing a novel issue about how the Constitution applies to social media platforms and public officials, found that the president's Twitter feed is a public forum.

As a result, she ruled that when Mr. Trump or an aide blocked seven plaintiffs from viewing and replying to his posts, he violated the First Amendment.

- Mr. Trump and Dan Scavino, the White House social media director, "exert governmental control over certain aspects of the @realDonaldTrump account."
- The viewpoint-based exclusion of the individual plaintiffs from that designated public forum is proscribed by the First Amendment and cannot be justified by the president's personal First Amendment interests," she wrote. The ruling also rejected the government's claim that Mr. Trump operates the account merely in a personal capacity, concluding that he "uses the account to take actions that can be taken only by the president as president. In a March hearing, Judge Buchwald had suggested that Mr. Trump has the right to ignore whomever he pleases on Twitter, and that the "Mute" feature is a constitutional option for doing so. Using that feature would hide selected users' posts from Mr. Trump's view.

Mount Dora Ends Livestreaming Of Meetings For Now

By [Roxanne Brown](#)

Posted Aug 11, 2018 at 6:00 PM

MOUNT DORA — City officials are taking a step back from Facebook live until City Council members decide if they want to proceed with it in the future.

City spokeswoman Lisa McDonald said an expert attorney advised officials that the city needs to create a livestreaming policy. “We have a social media policy, but it does not address livestreaming,” McDonald said.

Social Media Attorney Mark Fiedelholtz, of Windermere, told the council the break should continue until the city has a broadcasting policy in place to cover livestreams and ensure they will stand up to federal court standards and questions of liability when it comes to sunshine and public record laws.

“Social media is tricky because on the one hand, it’s moving you to be more engaging, more transparent, more personal, but when you get into court, they don’t see it that way,” Fiedelholtz said. “You are all broadcasters and that is your duty of care now. You have a higher duty of care and when you do live streaming, you’re expected by our federal courts to know that.”

The discussion was initiated by at least one resident’s request that the city livestream City Council work sessions in addition to the regular City Council meetings that have been livestreamed since April 2017. In an email to the Daily Commercial, Mark Slaby, a former councilman, said that livestreaming of the council meetings for those who could not attend was sufficient until more and more discussions prior to votes were reserved for separate work sessions.

One example he gave was a discussion on the city’s Capital Improvement Program concerning millions of dollars and a decision on what projects to pursue for the next five years that took place at a work session.

He said he’s shared his concerns with city officials and staff.

“I (and others I spoke with) have become concerned the government is conducting important discussions about taxpayers’ money without the full transparency one would expect, especially about finances. Not everyone is available to attend a meeting at 9 a.m. that will last most of the day,” Slaby said. “While audio of the sessions are typically provided, they are not posted for a day to several days after meetings and audio lacks the value of both audio/visual of Facebook Live.”

Fiedelholtz said the thing to stay focused on are legal ramifications of livestreaming without proper protection on the city’s behalf. “You have to modify your livestream to your legal authority, not to what people want you to do,” Fiedelholtz said. “The legal authority is the U.S. Supreme Court saying you are all broadcasters and you are on high risk mediums now.”

Mayor Nick Girone said he is a believer of people attending meetings or work sessions in person, explaining that part of good communication and dialogue between officials and residents is face-to-face communication and interaction. “People like watching us on Facebook, but I like seeing people here at our meetings,” Girone said.

Fiedelholtz told the council that public records laws dictate consistency, so livestreaming all open meetings should be considered.” When we started livestreaming, we definitely put the cart before the horse a little bit,” Councilman Harmon Massey said. Vice Mayor Cathy Hoechst said the main thing is to protect the city. “I’m not so concerned about the transparency issue. I just want to make sure we’re protected from liability,” she said.

Social Media Policy Construction

Liverman v. City of Petersburg, VA 15-2207 (U.S. 4th Circuit 2016)



Demand: 4.7 Million Against The City of Petersburg, Virginia

Fact Summary: According to the original complaint filed on March 2014, the two plaintiffs, former Petersburg police officers Herbert E. Liverman and Vance R. Richards, argued that they were unjustly punished for posting comments on Facebook that criticized the department for promoting officers they considered too inexperienced.

The comments were reported to former Police Chief John I. Dixon III, and the two officers were found to have violated a policy that Dixon had instituted in April 2013. The policy prohibited department employees from giving out information “that would tend to discredit or reflect unfavorably upon the [department] or any other City of Petersburg department or its employees,” according to the appeals court opinion.

Liverman and Richards were reprimanded and placed on probation. Because they were on probation, they were barred from taking a test to qualify for promotion to sergeant. Source: The Progress Index News)

Court Holding: A three-judge panel of the U.S. Fourth Circuit Court of Appeals found that the police department’s social media policy, put in place in 2013, violated employees’ First Amendment free speech rights. More specifically, the court ruled the policy was too vague and overbroad. The court sent the case back to the lower court to decide whether the city government can be held liable for damages in the case.

Case Update: Recently, the City of Petersburg admitted liability for the damage caused by the social media policy and they settled for an undisclosed amount. The court rejected Police Chief Dixon’s request for “Qualified Immunity”, this opens the chief up to personal liability. Additionally, during a recent audit of my seminar evaluations, we were surprised to find that the attorney who updated the Petersburg police department’s social media policy **attended my class after the lawsuit was filed**. Although her evaluation of my class was very positive, I wish the city would have used my policy review services before they decided to update their social media policy back in 2013.

Lessons Learned:

- The overwhelmed in-house attorney wasn’t a specialist in social media law and relied on vague model policies and association conferences that seem to focus more on employment law warnings, not social media law (i.e. libel, libel by implication).
- The in-house attorney didn’t seek advice from an experienced social media attorney.
- There was no record of specialized employee training from a social media law expert.
- Social Media policymakers are personally liable for policy damages.



U.S. Supreme Court Operational Realities Rule

City of Ontario, Cal v. Quon 130 S. Ct. 2619 (2010)

O'Connor v. Ortega, 480 U.S. 709 (1987)

Case In Point

Liverman v. City of Petersburg, 844 F3d 400

In-House Attorney Affidavit (Filed 10/27/14, Page 2 of 41)

AFFIDAVIT OF IN-HOUSE POLICE ATTORNEY ON MODEL POLICY SOURCES

“In 2010, the International Association for Chiefs of Police (IACP) launched the website, Center for Social Media, a resource center for law enforcement. Following the IACP Training Conference, I drafted the Department’s first Social Networking Policy in December 2010. **In drafting the policy, I utilized many resources including those from the International Association of Police Chiefs (IACP), Americas for Effective Law Enforcement, Inc. (AELE) and other police agencies.** The policy was approved by Chief Dixon and numbered 100-1. The new policy was numbered 400-23 and signed as approved by Chief Dixon on April 15, 2013. The overall substance of the policy did not change.”

4 th U.S. CIRCUIT COURT OF APPEALS HOLDING ON MODEL POLICY LANGUAGE

“Weighing the competing interests on either side of the Pickering/NTEU balance, we begin by noting the astonishing breadth of the social networking policy’s language. The policy seeks to prohibit the dissemination of any information on social media “that would tend to discredit or reflect unfavorably upon the [Department].” J.A. 161. In particular, the Negative Comments Provision proscribes negative comments on the internal operations of the Bureau” — which could be just about anything — or on the “specific conduct of supervisors or peers” — which, again, could be just about anything. J.A. 162.

The interests of “present and future employees” and their “potential audiences” in such speech is manifestly significant. See NTEU, 513 U.S. at 468, 115 S.Ct. 1003. We do not, of course, discount the capacity of social media to amplify expressions of rancor and vitriol, with all its potential disruption of workplace relationships that Connick condemned. But social networking sites like Facebook have also emerged as a hub for sharing information and opinions with one’s larger community. And the speech prohibited by the policy might affect the public interest in any number of ways, including whether the Department is enforcing the law in an effective and diligent manner, or whether it is doing so in a way that is just and evenhanded to all concerned.

The Department’s law enforcement policies could well become a matter of constructive public debate and dialogue between law enforcement officers and those whose safety they are sworn to protect. After all, government employees are often in the best position to know what ails the agencies for which they work.” *Waters v. Churchill*, 511 U.S. 661, 674, 114 S.Ct. 1878, 128 L.Ed.2d 686 (1994) (plurality opinion). But this policy will cut short all of that. To repeat, it squashes speech on matters of public import at the very outset. Because the Department’s social networking policy unmistakably imposes a significant burden on expressive activity, we next consider whether the Department has adequately established “real, not merely conjectural” harms to its operations.

We hold that the Department’s social networking policy was unconstitutional and that the disciplinary measures taken against plaintiffs pursuant to that policy were likewise impermissible. The patent overbreadth of the policy negates Chief Dixon’s qualified immunity defense.”



Liverman v. City of Petersburg, 844 F3d 400
Police Chief Affidavit (Filed 10/27/14, Page 1 of 3)

Police Chief Believed Facebook Posts Violated Social Media Policy

Police Chief: “I believed the statements made by both Liverman and Richards on Facebook caused or had the potential to cause certain problems for the Department. These included: Operations Command would or had to devote special attention to support younger supervisors in acting sergeant positions because of the Facebook comments discrediting and demeaning them, especially saying that they would get officers killed. The Department was concerned with divisiveness among patrol officers.”

Court Disagrees, Holds Chief Personally Liable For Vague Policy (No Qualified Immunity)

The U.S. 4th Circuit Court Of Appeals: “We agree that officials are not liable for bad guesses in gray areas, and do not expect (police chiefs) to be judges and to have the training to sort through every intricacy of case law.” But this case does not involve gray areas: the right against such a sweeping prior restraint on speech was clearly established and then some. Indeed, it is axiomatic that the government may not ban speech on the ground that it expresses an objecting viewpoint. Accordingly, there can be no doubt that prohibiting any “negative comments on the internal operations of the Bureau, or specific conduct of supervisors or peers” even of great public concern-violates the First Amendment. We appreciate the need for order and discipline in the ranks (recognizing that greater latitude is afforded to police departments officials in dealing with dissension”). At the same time, we cannot countenance an arm of government with such enormous powers being removed to this extent from public scrutiny. This is not an all-or-nothing matter; there is a balance to be struck. But, the Department’s social networking policy, and the disciplinary actions taken to enforce it, lean too far to one side. We therefore hold Chief Dixon is not entitled to qualified immunity.”

Avoid These 7 Type Of Model Social Media Policies

- Trade Association Model Policies
- General Policy Services
- All Online Model Policies
- Policies From Corporations
- Policies From Non-Profits
- Policies From PR Firms
- Policies From General Attorneys

You Aren't Saving Taxpayers' Money Using Boilerplate Social Media Policies and Training, You Will Lose \$500,000+ Legal Damages.



[Why Model Policies Are So Risky](#)
[Eye-Opening Social Media Policy Survey](#)

*\$500,000+ Lawsuits
Personal Liability
(No Qualified Immunity)
Destroyed Careers
Loss Of The Public Trust
Higher Insurance Premiums*

IT'S THE LAW

**YOUR SOCIAL MEDIA
POLICY DEVELOPER
MUST BE AN EXPERIENCED
SOCIAL MEDIA ATTORNEY**

**State of Missouri Office of the Secretary of State Division of Records Management and Local
Records Division Guidelines for Creating an Agency Social Media Policy
(Update From 2018)**

Purpose: Built on the idea of collaboration and interaction, social media has come to impact how government employees interact with one another and the citizens of Missouri. Government agencies must not only look at social media platforms outside of their organization, but also at internal social media including wikis and other collaborative software. Depending on content, all, some or none of the information in these tools, may be construed as public records under Chapters 109 or 610 RSMo. If the content used in these tools constitutes a record, it is the responsibility of the agency that owns the media account, not the vendor, to maintain that record for its retention period.

Scope The following guidelines are designed to provide assistance to state and local agencies when creating a social media policy for their offices and are intended to address records as defined by 109 RSMo on official and personal social media accounts. Employee's personal records and information which do not fall under the definition of a record per 109.210(5) RSMo. are outside the scope of these guidelines. Throughout these guidelines, reference may be made to internal or external elements of social media. Whether a platform is used internally or for public consumption, many of the same concerns apply. Agencies are encouraged to determine if an external concern also applies to an internal system and vice versa.

What is Social Media? Social media, also known as Web 2.0 is a catch-all term for a variety of interactive communication forums. Social media also describes internal collaborative business tools such as Google Docs, wikis, SharePoint and GoToMeeting. New social media products appear regularly, and it is difficult to predict what may come next, but the basic definition will remain: Social media is a web/network-based means of creating communities for the purpose of sharing information.

Creating a Policy: The Office of the Secretary of State, Records Management and Local Records Divisions encourages government agencies to create an internal policy to govern how their social media accounts are created and managed. As these tools are designed to be used by anyone, and they can reach a worldwide audience, agencies must take great care in who they allow to create records and communicate on their behalf. A policy will inform staff of the type of content that may be communicated to the audience, how that content is approved, and who has the authority to enter into agreements. Finally, a policy needs to state how the social media tool is to be managed; this includes the retention of records.

An email is an example of a format or "physical form" per 109.210 RSMo. The physical form of the record is irrelevant, rather, it is the content of the email, or any other record that determines how long it must be retained. The length of time a state record is to be retained can be found on the Missouri General Retention Schedule or an Agency Records Disposition Schedule that has been approved by the State Records Commission per 109.250(2). The length of time a local record is to be retained can be found on Records Retention Schedules that have been approved by the Local Records Board per 109.255 RSMo. The location of the record also does not matter. Records stored within an agency, in a warehouse or on a third-party server must be maintained for their full retention period. If an agency is unsure if information qualifies as a record, they should review the Division of Records Management's What Is A Record? web page located at: <http://www.sos.mo.gov/records/recmgmt/whatisarecord.asp>.

Institutional Authority: Agencies must decide who has the authority to open a social media account on its behalf. In most cases, agencies must agree to some type of Terms of Use agreement in order to open a social media account. Agencies should approach Terms of Use, Terms of Service, etc. for what they are: legal agreements between the company that operates the social media tool and the agency.

While many social media tools are free, there are costs, often in the form of granting the social media company a non-exclusive license to use the content posted, uploaded or used on the site. Agencies should discuss these issues with their general counsel and the individual in their office who handles software licenses.

Once tools have been selected, agencies must decide who will be responsible for its content; this may be a specific individual or a team. However, it must be clear who is accountable for specific actions such as posting content, responding to users or retaining records. Lines of authority are of special importance when using social media tools as some will only allow an account to have one username and password. If this information is shared it may be difficult, if not impossible, to identify who posted information or changed settings on the account. A policy should state what the ramifications are if someone responsible for the social media account fails in their responsibilities, or if an account is created or altered without the proper authority.

Ownership: A policy must identify the owner of the social media account and to whom its contents belong. Agencies should not automatically assume that an account is owned by them. The agency should retain documentation or agreements on ownership.

Access and Security: Usernames and passwords should only be known by staff authorized to access the social media account. Passwords should comply with your agency's Information Technology policy. Passwords should be updated before anyone who has access to the site leaves the agency or no longer needs access.

Communication: Social media tools, at their most basic level, facilitate communication. Depending upon the tool used, communication may only be one-way or can foster a dialogue internally or between the agency and the public. Agencies should include in their policy what types of communication need to be vetted before they may be made available. This may vary from tool to tool. For internal social media tools, staff may be encouraged to post their ideas freely. On accounts where content is made available to the public, clearance through a supervisor or communications office may be necessary.

Agencies should keep in mind that acknowledging or forwarding messages on any service may be perceived as supporting a specific cause or topic. What may seem to be a small action may have a large effect on an agency. The policy should indicate whether this type of action will be allowed, and if so, who will be allowed to do so. Agencies should also have procedures in place if an action has caused confusion, becomes controversial or is otherwise escalated.

Confidentiality: Agencies should outline what information is considered confidential. Confidential information pertaining to an agency or individual should always be kept private. Statements on confidentiality should be reviewed by general counsel to ensure they follow Section 7 of the National Labor Relations Act as well as any other applicable state and federal laws.

Disclaimers and Disclosures: Transparency is key to trust. Staff members who manage or contribute to social media sites should never represent themselves in a false or misleading way. Communications on social media sites should always designate who is making a comment, which agency they work for, and provide context to images, audio, and video if necessary. If agencies allow personal opinions to be posted to social media sites, they should have a disclaimer so that the public knows they are not the official position of the agency. Also, if internal conversations, reports or other documents are to be made available through social media agencies should first ensure that the proper approval has been given.

Management: Some social media tools allow various settings to be changed. In some cases, a comments feature may be turned off or on. Other features could include the ability to filter comments for 7 language, or have a comment be approved before it is viewable on a site. Agencies need to include in any social media policy their rationale for regulating such speech and follow it diligently. Such regulations should also be reviewed by the agency's general counsel.

Records Retention and Sunshine Requests Agencies should not rely on social media sites to retain their documents, as that responsibility lies with the agency. Posts, comments, polls, photographs and other content may be considered records. Agencies should identify staff whose responsibility it is to ensure these records are exported from the social media site or captured in some other way. Content on social media sites is also subject to 610 RSMo., more commonly known as the Sunshine Law. Government records on a non-government owned server are subject to a Sunshine request, and legal discovery. Social media companies, however, are not obligated to respond to agency requests - only to what is agreed upon in the Terms of Use or Terms of Service. For this reason, it is important to monitor social media activity and capture all records. Retention periods for records can vary from one day to permanent/transfer to the Missouri State Archives. The retention time will depend on the content of the record. If an agency is unsure how long a record needs to be retained state agencies should refer to the Missouri General Retention Schedule, their Agency Records Disposition Schedule or contact the Division of Records Management. Local agencies should refer to their Records Retention Schedules or contact the Local Records Division. Some social media sites give users the ability to export their information, while others require the use of third-party tools. The responsibility to maintain the records resides with the agency, not the social media company. If the site shuts down, crashes, or the vendor arbitrarily changes the Terms of Use, those potential records could be at risk, and without adequate preparation, there is nothing the agency can do to protect itself. Agencies must have a plan and process in place for how records will be saved.

Training; Do not assume that staff understands what social media is, or how it should be used. Social media is an umbrella term that covers many different types of tools. Staff should be trained on what is, and is not, considered appropriate. Remember that social media is a communication tool, one that can reach millions of people. Training should be mandatory for all employees who work with social media and its content.

Personal Accounts: It is strongly recommended that agencies advise their personnel to not use their personal accounts to conduct state or local business. Using a personal account does not nullify state records law. If public records are generated, they must be maintained per their retention times, are subject to Missouri's Sunshine Law, and are considered discoverable information in case of litigation. The ramifications for violating this should be clear in the social media policy.

Auditing Social Media: Agencies should periodically audit their social media policy to ensure that it is being followed and to make any necessary updates.

Social Media Capture: There are methods provided within social media to capture and download account data. The data can then be retained by the Agencies through its retention period. This method is adequate for preserving any records from social media. The examples provided below are the steps taken for the most prominent social media platforms currently used by Agencies: Facebook, Twitter and Instagram. The procedures outlined are current as of September 2018, should the user interface change, it is possible that the steps will change. Information on the changes should be available through the "Help" sections of the accounts. How to Download a Facebook Account 1. Go to the account's settings in the upper right corner of the news feed. Select "Your Facebook Information" and then "Download your information." 2. Select either "Entire Backup" or select a date range. Select the format as HTML and the media quality as HIGH. 3. Leave everything in the "Your Information" portion checked. 4. Select "Create File". It will take a few minutes for the content to download. Facebook will notify you when the file is ready to download. Save the file with an appropriate naming convention.

Survey Of 150 Government Social Media Policies Survey Criteria:

The social media policies were reviewed by Social Media Attorney Mark Fiedelholz. Based on recent U.S. Supreme Court, federal, and state court rulings regarding social media policy drafting standards, the policies were evaluated based on the proper incorporation of new U.S. Supreme Court and federal social media policy standards. Additionally, the policies were examined to determine if core policy and drafting strategies were incorporated into the policy structure. The survey consists of 13 core policy elements that must be included in the policy to the best possible chance of surviving judicial review in a social media related lawsuit.

Below is a table that includes a policy element and whether that specific element would be accepted in court as a well-reasoned and well written social media policy or is a defective legal instrument that would be rejected in court.

Core Policy Elements	Policy Accepted In Court	Policy Rejected In Court
Policy Structure	0	150
Proper Issue Identification	0	150
Issue Prioritization	0	150
Policy Language Vagueness	0	150
Policy Language Overbreadth	0	150
Codification Of Laws	0	150
First Amendment Language	0	150
New Federal Social Media Laws	0	150
New Federal Privacy Laws	0	150
Legal Impact Of Platforms	0	150
Legal Impact of Platforms	0	150
Explanation of Copyright Laws	0	150
Hidden Liability Issues	0	150

Summary of Findings: Using the *Liverman v. City of Petersburg*, 844 F.3d 400 (2016) policy construction standards, none of the 150 social media policies reviewed would have survived judicial review in a lawsuit. The policies lacked structure and failed in the identification and prioritization of critical social media legal issues that must be incorporated in the policy. Further, effective drafting strategies to strengthen and position the policy as a well-reasoned legal instrument that is rooted in case law and statutes was not achieved; this is known as the process of codification. More problematic, is that the policy language was vague, overbroad, and sweeping, especially on crucial issues such as workplace First Amendment issues, social media privacy boundaries, copyright infringement, and other core mass media laws. All 150 social media policies must be immediately updated by a Social Media Attorney to properly protect their organization in a legal claim.

Notes:

WARNING!



SIGNS OF INADEQUATE POLICIES!

Tactical Questions In A Negligent Policy Drafting Lawsuit

Plaintiff Attorney: Is your attorney a specialist in social media and digital media law? If so, how many years' experience does your attorney have in digital media law and how many hours a day does he or she spend researching and writing policies?

Defendant (Decisionmaker): No, our attorney is not a specialist in social media law. Our attorney is very busy and doesn't have time to exclusively focus on social media law. I never claimed our attorney was a social media law expert. My goal was to save money by not hiring an outside attorney that specializes in social media law. I did the best I could, Our attorney attended a social media policy conference from a reputable association and used their model policy language from other agencies and our policy service.

Plaintiff Attorney: So, you knew that your attorney wasn't a specialist in social media law?

Defendant (Decisionmaker) Yes, but again our attorney is very competent in handling all our legal issues.

Plaintiff Attorney: Let me state an analogy. If you had a heart problem, would you go to an experienced cardiologist for help or a general practitioner who attended a few conferences and relied on model policies?

Defendant (Decisionmaker) A cardiologist of course.

Plaintiff Attorney: So, you would trust the experience of a specialist over a generalist?

Defendant Decisionmaker): Yes, that's a reasonable conclusion.

Plaintiff Attorney: If that's the case, why did you rely on a risky boilerplate language from a model policy as opposed to a nationally recognized attorney that specializes in social media law?

Defendant (Decisionmaker): I just figured an attorney can handle all our legal issues.

Plaintiff Attorney: What is your academic background and practical experience?

Defendant (Decisionmaker): I have a BA and Master's in Organizational development, and I have been a professional in this area for 25 years.

Plaintiff Attorney: Do you think it's reasonable that a person with a BA and Master's in Organizational Development, but no practical experience in Organizational Development could attend a few conferences and possess the same skill level as you?

Defendant (Decisionmaker): Of course not.

Plaintiff Attorney: So, if you believe a specialist would have more practical knowledge than a generalist in a field, why did you think your in-house attorney would have the same skill level as a 30-year electronic media attorney to update your social media policy; especially regarding First Amendment language and nuances in the New Federal Social Media Laws?

Defendant (Decisionmaker): I was under the assumption that if you're an attorney, you can handle all legal matters.

Plaintiff Attorney: Wouldn't it have tipped you off that if your attorney had to rely on risky boilerplate model policy language, he or she probably didn't have the specialized skills needed to make sure your policy complies with the new federal social media laws?

Defendant (In-House Attorney): Again, all I can tell you is that I tried to save the organization money and felt our attorney could handle all legal matters.

Plaintiff Attorney: Your social media policy language is very broad and didn't address the new federal social media laws. How did that happen?

Defendant (In-House): Our attorney relied on information from an association conference and used model policies from other agencies and our policy service that we pay for.

Plaintiff Attorney: When your attorney was writing your social media policy, did you know this person wasn't familiar with U.S. Supreme Court rulings that electronic policies must reflect the "operational realities" of your organization, not another organization?

Defendant (In-House Attorney): I don't know, you would have to ask our attorney that question. I do know this, our attorney relied on model policies from reputable organizations.

Plaintiff Attorney: This is my last question. How much would it have cost for a Social Media Attorney to help you update your policy to comply with the new federal social media laws?

Defendant (In-House Attorney): One quote we received from a nationally respected Social Media Attorney was around \$1200 to update the policy.

Plaintiff Attorney: So, let me understand this. You are now engaged in a 4.5 Million Dollar negligent policy drafting lawsuit that could cost taxpayers millions and increase your insurance premiums. And, for \$1200 you could have had a nationally recognized expert update your policy. is that correct?

Defendant (In-House Attorney): Look, we wanted to save money, budgets are tight. We felt our attorney could handle this task.

Plaintiff Attorney: Thank you for your time.

7 Questions That Expose You To Negligence For Using A Model Social Media Policy



1. Why did your in-house attorney or PR staff use a model social media policy?
2. What was your source for the model social media policy you used?
3. Was the model social media policy written by a Social Media Attorney?
4. Did you have a Social Media Attorney review the model social media policy for gaps?
5. Does the model policy contain boilerplate language or reflect your “operational realities”?
6. How did you verify the model social media policy complied with the New Federal Standards?
7. How did you verify that the model “First Amendment” language meet Federal Standards?

----- Social Media Policy Checklist -----

Checklist #1: Policy Structure

Position social media policy as a broadcasting and publishing document.	√
Shift the drafting focus of your policy from employment law to media law.	√
Properly apply the Supreme Court balancing tests to First Amendment issues	√
Prioritize social media legal issues to create a tightly structured policy.	√
Use specialized policy language that reflects current state/federal speech laws.	√
Codify each paragraph with proper legal citation and references.	√
Make sure you have a separate smartphone and social media marketing policy.	√
Have experienced media lawyer train employees to enforce the policy.	√

Checklist #2: Policy Content

Redesign the Policy Purpose section to reflect new First Amendment rulings.	√
Expand the Applicability Section to properly cover all employees, third parties.	√
Include the 22 most important social media policy definitions.	√
In the General Section properly detail SCOTUS "operational realities" rule	√
Insert critical 3-part SCOTUS speech test in the first paragraph.	√
Identify the 2 most important privacy issues in paragraphs 2 thru 6.	√
Draft precise policy language on public record requests from personal devices.	√
Use recent federal rulings to draft policies on data safety and ownership.	√
Cite the 18 core areas that specifically define the scope of prohibited speech.	√
Design policy language clarifying the new standard of care on personal blogs.	√
Avoid 7 worst words that expose your policy to vagueness or overbreadth claims.	√
Make sure you include the new rulings on social media copyright infringement.	√
Use very precise language on your Policy Affirmation Section.	√

Inadequate Training Under 42 USCS 1983 (Failed To Properly Enforce The Policy)



The 4 Steps Of Winning A Social Media Inadequate Training Lawsuit

Step I: Employees disciplined for online mistakes hire aggressive attorneys that blame their client's mistakes on inadequate training of the new speech laws (42 U.S.C.S. 1983) and negligent policy drafting. Through the wide-scope of discovery, plaintiff attorneys scrutinize the instructor's credentials, class workbooks, and question employees on their knowledge of the new speech laws.

Step II: Plaintiff attorneys representing disciplined employees, or third parties harmed by an employee's behavior, prove through discovery that policymakers were indifferent to the recent rulings handed down by the U.S. Supreme Court and federal courts on online speech; employees are now classified as high-risk broadcasters using powerful social media, texting, and email platforms. This new classification puts employers on notice that due to the high risk of an employee violating the constitutional rights of a person, they must provide more in-depth training by an outside social media/digital media law expert. Courts reject general warnings, vague policies, and sharing boilerplate information from an association conference as a substitute for expert training.

Step III: Despite knowing that their in-house attorney or a non-lawyer trainer isn't a specialist in social media/digital media law and couldn't possibly give employees the same expert training as an experienced social media/digital media attorney, the employer refused to hire an outside expert. The absence of an expert instructor resulted in a training session that consisted mostly of general warnings and handing out vague policies. This type of superficial training and failure to discuss the hidden liabilities of the new speech laws left the employees more vulnerable to making online mistakes that violate a person's constitutional right.

Step IV: Plaintiff attorneys prove deliberate indifference by presenting the evidence below. See "deliberate indifference" defined in *City of Canton Ohio v. Harris* 489 U.S. 378 (1989):

- Employers knew with moral certainty that via smartphones and personal devices, most employees use social media, texts, and to communicate with co-workers and citizens. Therefore, any reasonable policymaker would foresee that without the proper expert training, employees would be susceptible to posting or tweeting content that violates a person's constitutional rights.
- Based on screaming news headlines (i.e. 2016 Presidential Election), recent U.S. Supreme Court and federal court decisions, policymakers knew or should have known the inherent risks of an untrained employee sending messages on powerful social media, texting, and email platforms that could permanently destroy a person's reputation.

- Policymakers knew or should have known that without the proper training on the new speech laws regarding libel, libel by implication, unprotected jokes, opinions, First Amendment workplace speech, privacy invasion, copyright infringement, and other media law issues, employees would be left with an information vacuum. Policymakers knew or should have known this information vacuum would be filled with guesswork as to what posts or tweets constituted protected or unprotected speech under the First Amendment.

Common Court Holding

The plaintiff satisfies the elements of inadequate training as defined by the U.S. Supreme Court case of *Canton Ohio v. Harris* 489 U.S. 378 (1989). It is proved with moral certainty that the employer knows that employees use social media, texting, and email in their everyday internal and external operations. This conclusion is reinforced by the fact that the employer has written policies on employee usage of these powerful platforms.

Employers were also put on notice of the power of social media, texting, and email platforms by the daily news headlines and recent U.S. Supreme Court and federal decisions. These news stories and court cases act as widely publicized proof that misuse of these powerful platforms can directly cause a violation of the constitutional rights of co-workers, citizens, and other third parties.

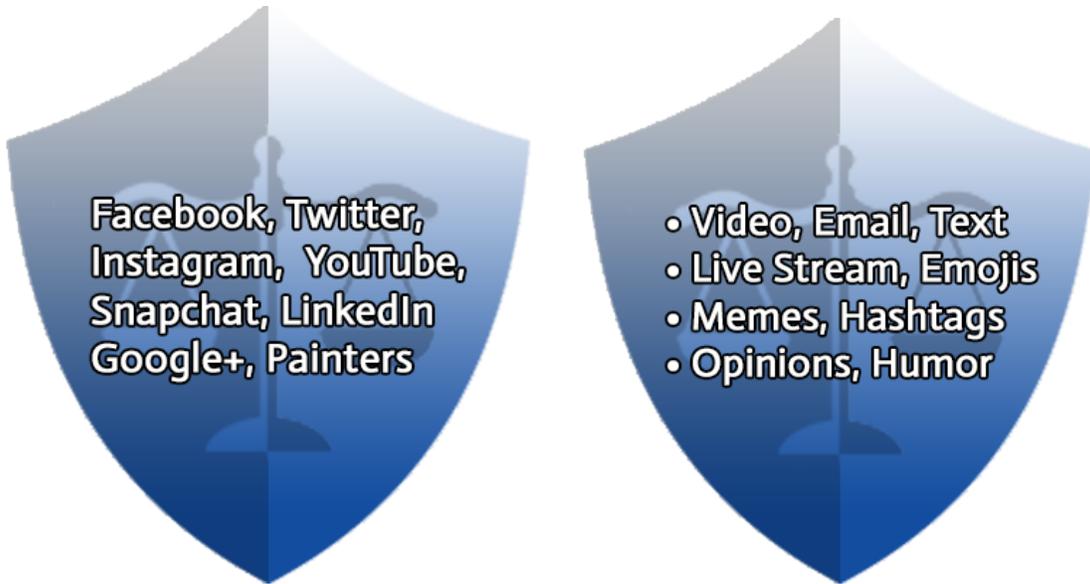
Further, not knowing the new speech laws greatly heightens the risk of an employee making a wrong choice on what online content constitutes protected speech under the First Amendment and other communication laws. Even a single incident would put the employer on notice that the need for more or different training (i.e. specialized training by an experienced social media attorney) would mitigate the chance of an employee making a mistake that violates another person's constitutional rights. Based on these legal conclusions, the evidence clearly shows that employers showed a deliberate indifference to the obvious need for an attorney that specializes in social media law/digital media laws.

Therefore, we hold today that the employer is liable for inadequate training under statute 42 USCS 1983. Additionally, any reasonable policymaker would have known that their in-house attorney or other staff member couldn't possibly deliver the same type of specialized social media/digital media law training as an expert. Proffering the defense that the organization is under tight budget constraints and couldn't afford an outside expert is soundly rejected by this court. The cost of specialized social media/digital media law training is a fraction of what a lawsuit would cost.

We find liability falls squarely on the shoulders of the government employer. Additionally, we hold policymakers liable individually (No Qualified Immunity) for gambling the taxpayers' money on not being sued for online mistakes and showing a deliberate indifference towards hiring an expert to properly train employees on the new speech laws.

Notes:

4 Step Shield System



Filter out the bad social media content and learn to protect yourself.



Notes:



Missouri Defamation Law

Elements of Defamation

The elements of defamation in Missouri are:

1. publication
2. of a [defamatory](#) statement
3. that identifies the [plaintiff](#)
4. that is false
5. that is published with the requisite degree of fault, and
6. damages the plaintiff's reputation

[Overcast v. Billings Mut. Ins. Co.](#), 11 S.W.3d 62, 70 (Mo. 2000) (en banc).

The publication requirement is simply the communication of defamatory matter to a third person. An exception to the publication requirement exists for slander actions in Missouri where a person who utters defamatory matters intends, or has reason to suppose, that in the ordinary course of events the matter will come to knowledge of some third person. [Mauzy v. Mex. Sch. Dist.](#), 878 F. Supp. 153, 157 (E.D. Mo. 1995), citing [Neighbors v. Kirksville College](#), 694 S.W.2d 822, 824 (Mo. Ct. App. 1985). One who republishes defamatory facts is liable for that publication. [Mortiz v. Kan. City Star Co.](#), 258 S.W.2d 583 (Mo. 1953). There also is an important provision under section 230 of the Communications Decency Act that may protect you if a third party - not you or your employee or someone acting under your direction - posts something on your blog or website that is defamatory.

Defamation Per Se/Per Quod

The Missouri Supreme Court case of [Nazeri v. Missouri Valley College](#), 860 S.W.2d 303 (Mo. 1993) (en banc) eliminates the [defamation per se/per quod](#) distinction. In that case, the court abandoned the classifications of defamation per se and per quod, holding that "plaintiffs need not concern themselves with whether the defamation was per se or per quod, nor with whether special damages exist, but must prove actual damages in all cases." Id. at 313.

Defamatory Meaning

By statute, it is actionable to publish falsely and maliciously, in any manner whatsoever, that any person has been guilty of fornication or adultery. [Mo. Rev. Stat. § 537.110 \(2011\)](#).

In 1993, a false allegation of homosexuality was held to be defamatory. [Nazeri](#) at 312. It is not clear whether this would still be actionable now.

In order to find that a publication is defamatory, it must "be unequivocally so" and the words "should be construed in their most innocent sense." *Walker v. Kan. City Star Co.*, 406 S.W. 44, 51 (Mo. 1966). In [Ampleman v. Schweppe](#), 972 S.W.2d 329 (Mo. Ct. App. 1998), the court stated that "if a statement is capable of two meanings (one defamatory and one nondefamatory), and can reasonably be construed in an innocent sense, the court must hold the statement nonactionable as a matter of law." *Id.* at 333.

Of and Concerning the Plaintiff

Even if the plaintiff is readily identifiable in a particular publication, the plaintiff cannot sue for defamation unless the libelous portion of the publication is directed at him. [May v. Greater Kansas City Dental](#), 863 S.W.2d 941, 945 (Mo. Ct. App. 1993).

Actual Malice



In order to recover for defamation, a [public official/figure](#) is required to show that the defendant acted with actual malice. Actual malice requires a showing that the libelous statements were published with actual knowledge of falsity or in reckless disregard as to whether the statement as true or not. The Missouri Supreme Court has equated recklessness with disregard of the truth with subjective awareness of probable falsity. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. [Glover v. Herald Co.](#) 549 S.W.2d 858, 862 (Mo. 1977) (en banc).

Application of the actual malice standard in defamation cases in Missouri is not limited to statements regarding public officials' performance of official acts. A public figure's private conduct is, in some cases, a matter of public concern. [Westhouse v. Biondo](#), 990 S.W.2d 68 (Mo. Ct. App. 1999).

Missouri cases have applied constitutional fault principles to statements made by non-media defendants, as well as those made by media defendants. [Ramacciotti v. Zinn](#), 550 S.W.2d 217, 224 (Mo. Ct. App. 1987); [McQuoid v. Springfield Newspapers, Inc.](#), 502 F. Supp 1050, 1054 n.3 (W.D. Mo. 1980).

See the general page on [actual malice and negligence](#) for details on the standards and terminology mentioned in this subsection.

Private Figure Standard

In Missouri, a private figure must show libelous statements were published by a defendant "at fault." The Missouri Supreme Court has interpreted the U.S. Supreme Court's ruling in [Gertz v. Robert Welch, Inc.](#), as stating that the requisite degree of fault in a private figure defamation case is negligence. *Overcast v. Billings Mut. Ins. Co.*, 11 S.W. 3d 62, 70 (Mo. 2000) (en banc).

Damages

In a ruling rejecting the distinction between defamation per se and per quod (see above), the Missouri Supreme Court seems to have abandoned the doctrine of presumed damages. *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 313 (Mo. 1993) (en banc). "By allowing presumed damages for certain words but precluding actual damages for other words without the additional proof of special damages, we believe this rule of the past creates unjustifiable inequities for plaintiffs and defendants alike.

We hold that in defamation cases the old rules of per se and per quod do not apply and plaintiff need only to plead and prove the unified defamation elements set out in MAI [i.e., the "Missouri Approved Instructions," the standard jury instructions used in Missouri courts] 23.01(1) and 23.01(2)." Nazeri at 313. See also [Kenney v. Wal-Mart Stores, Inc.](#), 100 S.W.3d 809, 814 (Mo. 2003); [Bauer v. Ribaud](#), 975 S.W.2d 180, 182-83 (Mo. Ct. App. 1997).

Recent Missouri legislation says that punitive damages in any tort case may not exceed \$500,000 or five times the net amount of any judgement awarded to the plaintiff against the defendant, whichever is greater. [Mo. Rev. Stat. § 510.265](#) (2011).

The Missouri Supreme Court has held that a defamation plaintiff must prove impairment to reputation in order to recover any damages for defamation and that emotional distress alone will not suffice. [Kenney v. Walmart Stores, Inc.](#), 100 S.W.3d 809, 814 (Mo. 2003).

Other Issues

Missouri has no criminal libel statute.

Privileges and Defenses

Missouri courts recognize a number of privileges and defenses in the context of defamation cases, including [substantial truth](#), the [wire service defense](#), the [fair reportage privilege](#), and [opinion and fair comment privileges](#).

Missouri has not adopted the [neutral reportage doctrine](#) officially, although some cases show some recognition of a more limited privilege. [Englezos v. Newspress & Gazette Co.](#) 981 S.W.2d 25, 32 (Mo. Ct. App. 1998). The Eighth Circuit has suggested adherence to the neutral reportage doctrine. [Price v. Viking Penguin Inc.](#), 881 F.2d 1426, 1434, 1444 (8th Cir. 1989).



Substantial Truth

At common law, truth was considered a complete defense to libel (i.e., the defendant would have the burden to prove truth). [Mortiz v. Kan. City Star Co.](#), 258 S.W.2d 583 (Mo. 1953); [Bartulica v. Pasculdo](#), 411 F. Supp 392, 397 (W.D. Mo. 1976).

Now falsity must be proven by the plaintiff, at least in cases where the defendant is a member of the media. [Philadelphia Newspapers, Inc. v. Hepps](#), 475 U.S. 767 (1986). "Under the controlling constitutional standards, public officials, public figures and private persons using media defendants [for libel] must establish that the defendant published a false statement of fact." [Anton v. St. Louis Suburban Newspapers, Inc.](#), 598 S.W.2d 493, 498 (Mo. Ct. App. 1980).

Slight inaccuracies of expression are immaterial if the defamatory charge is true in substance. [Brown v. Biggs](#), 569 S.W.2d 760, 762 (Mo. Ct. App. 1978).

Wire Service Defense

Missouri recognizes that a newspaper has the right to reply upon and to republish information obtained from "reputable and properly-regarded-as reliable news services" where (1) the matters republished are of public significance and occur many miles away and (2) the reporter did not act with actual malice. [Walker v. Pulitzer Publ'g Co.](#), 271 F.Supp. 364 (E.D. Mo. 1967), *aff'd*, 394 F.2d 800 (8th Cir. 1968).

Fair Reportage Privilege

Missouri has adopted this privilege in the exact language provided in the Restatement of Torts (Second) § 611: The publication of defamatory matter concerning another in a report or an official action or proceeding or of a meeting open to the public that deals with a matter of public concern is privileged if the report is accurate and complete or a fair abridgement of the occurrence reported. "Actual malice" is irrelevant under the Section 611 privilege. The privilege fails only when the report is not a fair and accurate account of the proceedings. [Williams v. Pulitzer Broad. Co.](#), 706 S.W.2d 508, 511 (Mo. Ct. App. 1986).

Opinion

The Missouri Supreme Court, considering the U.S. Supreme Court's holding in [Milkovich v. Lorain Journal Co.](#), 497 U.S. 1 (1990), rejected a blanket defense for protected opinion and established instead the following test: "The test to be applied to ostensible 'opinion' is whether a reasonable factfinder could conclude that the statement implies an assertion of objective fact. ...The issue of falsity relates to the defamatory facts implied by a statement -- in other words, whether the underlying statement about the plaintiff is demonstrably false... But neither 'imaginative expression' nor 'rhetorical hyperbole' is actionable as defamation."

Nazeri at 314 (citations omitted). Nevertheless, a Missouri appellate court has since held that generally any statement preceded by a phrase such as "it is my position" or "it is my belief" or other cautionary phrases are, as a matter of law, opinion. [Pape v. Reither](#), 918 S.W.2d 376, 380 (Mo. Ct. App. 1996). "Put plainly, it is impossible to interpret statements preceded by such cautionary language as positing a verifiable proposition, and verifiability is the crux of the fact/opinion distinction in defamation law." Pape at 380-81. The Pape court also held that "[a] statement must be verifiable at the time it is issued in order to be one of fact." Id. at 381.

In [State ex. rel. Diehl v. Kintz](#), 162 S.W.3d 152 (Mo. Ct. App. 2005), the Missouri Court of Appeals, while recognizing that the U.S. Supreme Court "has rejected the notion that there is a wholesale defamation exception for anything that might be labeled opinion" as a matter of federal constitutional law, held that "a statement may only suggest to the ordinary reader that the defendant disagrees with the plaintiff's conduct and used pejorative statements or vituperative language to express this disapproval. ... 'Courts should also examine the statements themselves to determine whether they are too imprecise.'" Id. at 155, quoting [Henry v. Halliburton](#), 690 S.W.2d 775, 789 (Mo. 1985) (en banc).

Other Privileges

Missouri follows the "witness immunity" rule that witness statements made in litigation are absolutely privileged from defamation actions. [Mershon v. Beasley](#), 994 F.2d 449, 454 (8th Cir. 1993). There is also an "intra-corporate immunity" rule in Missouri where "communications between officers or employees of a corporation in the regular course of business, or between different offices of the same corporation" are not publications for defamation purposes. [Hellesen v. Knaus Truck Lines, Inc.](#), 370 S.W.2d 341, 344 (Mo. 1963); see also [Perez v. Boatmen's Nat'l Bank of St. Louis](#), 788 S.W.2d 296, 300 (Mo. Ct. App. 1990). Communication by a corporation's officers or supervisors to non-supervisory employees constitute a publication for purposes of a defamation. [Snodgrass v. Headco Indus. Inc.](#), 640 S.W.2d 147 (Mo. Ct. App. 1982). However the intra-corporate immunity rule does not appear to be applicable to communications outside of the corporate context, for example partnerships. Statute of Limitations for Defamation: an action for libel or slander that is first published in Missouri must be commenced within two years, [Mo. Rev. State § 516.140 \(2011\)](#).. Source: *Digital Media Law Project*

How To Identify Social Media Defamation

Example I



“One thing about young attorney Bob Jones, he loves to drink his favorite beverage.”

Example II

“IT Director Tim Dorn is proud of his Southern roots.”



Example III



“THE GREAT THING ABOUT CABER RESTAURANT IS THAT THEY HAVE ANTACID TABLETS AVAILABLE AND THEY ARE NEXT-DOOR TO A HOSPITAL.”

Example IV



“MY BOSS JOHN BASS IS A CREEPY CLOWN
STAY AWAY FROM HIS REAL ESTATE BUSINESS.”

Example V



“TEACHER JANE MEADOWS HAS A NEW SECOND JOB
THAT PAYS MORE AND BRINGS HER MORE PLEASURE.”

Notes:



“AT JOE’S TIRE STORE ON 40 BROAD STREET IN CARMA, INDIANA, HIS TIRES BLOW, BUT STAFF INFLATE THEIR EGOS WITH CRUDE RACIAL AND RELIGIOUS JOKES.”

Lawsuit: John and Mary Jones v. Ideal Police Department

Exhibit #1: Text Message exchange between Sgt. Bob Price and Captain Delaney Wise regarding Chief John Billings and his wife Mary Billings. December 1, 2017 at

Chief Billings and his wife are total scumbags, they can't be trusted.

😄 I agree, I can't stand them.

In my opinion, Chief Billings and his wife will steal you blind. The Chief is a not a man of his word. What a total loser.

If Chief Billings got hit by a car today, I would take my wife out for dinner at the best restaurant in town to celebrate. 😞

I know for a fact; Chief Billings is a thief and will steal you blind.

Yea, I heard this moron was in some legal trouble in his former job. 😞

Which email messages are potentially defamatory in Missouri?

1. Bob and Susan West are total scumbags, they are all talk and no action.
2. Bob and Susan West are total scumbags and will steal you blind.
3. In my opinion Bob and Susan West are con artists and suck.
4. In my humble opinion Bob and Susan West are gangsters you can't trust.
5. Bob and Susan West smoke pot and drink a lot.
6. The restaurant that Bob and Susan West own, serves horrible food.
7. Bob and Susan West restaurant serves food that will get you seriously sick.
8. In my opinion, Bob and Susan West are the real-life version of dumb and dumber.
9. Bob and Susan West are bad apples, don't associate with them.
10. I heard Bob and Susan West were running some real estate con game.

Review

- Defamation is an umbrella term that could cover libel or slander.
- Libel is written, slander is oral.
- With libel you need publication, false statement of fact, of and concerning, harm to reputation.
 - ✓ Verbal rumors spread in a local community.
 - ✓ False written and video statements made online (social media, forums, articles, etc.).
 - ✓ False statements delivered on air (radio and television).
 - ✓ False statements published in print (newspapers, magazines, books, etc.).
 - ✓ False statements recorded in permanent records (personnel files, incident reports, etc.).
- Truth is an absolute libel defense, there are other defenses.
- A pure protected opinion is a statement that can't be proved true or false.
- Words can be literally true but impute a defamatory meaning (libel by implication)
- A public official or figure must prove actual malice.
- Courts do require damage proof in defamation cases.
- A defamation case could take anywhere from 2 to 7 years to litigate.
- Every state has different defamation laws.
- If the defamation occurred on the Internet, attorneys will tend to forum shop for the best state.
- Internet defamation yields large damages because of the large audience potential.
- Check your state laws to see if your state follows the single publication rule.
- The statute of limitation triggers when the defamatory statement was first made.
- Follow the statute's guideline on specificity in stating a defamation claim in your complaint

FILTERING FIRST AMENDMENT PROTECTED V. UNPROTECTED SPEECH

Passed by Congress September 25, 1789.
Ratified December 15, 1791.

“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.”

LEGAL ALERT!

“Social Media Amplifies Your Communication, But It Doesn’t Expand Or Create Any Special Rights or Exclusions Outside Existing First Amendment Court Rulings”

What Does Free Speech Really Mean?

Chaplinsky v. New Hampshire 315 U. S. 568 (1942)

Miller v. California, 413 U.S. 15, 27 (1973)

Throughout America’s History There Has Never Been Totally “Free Speech

Obscenity	Defamation	True Threats
Fighting Words	Child Pornography	Workplace Speech

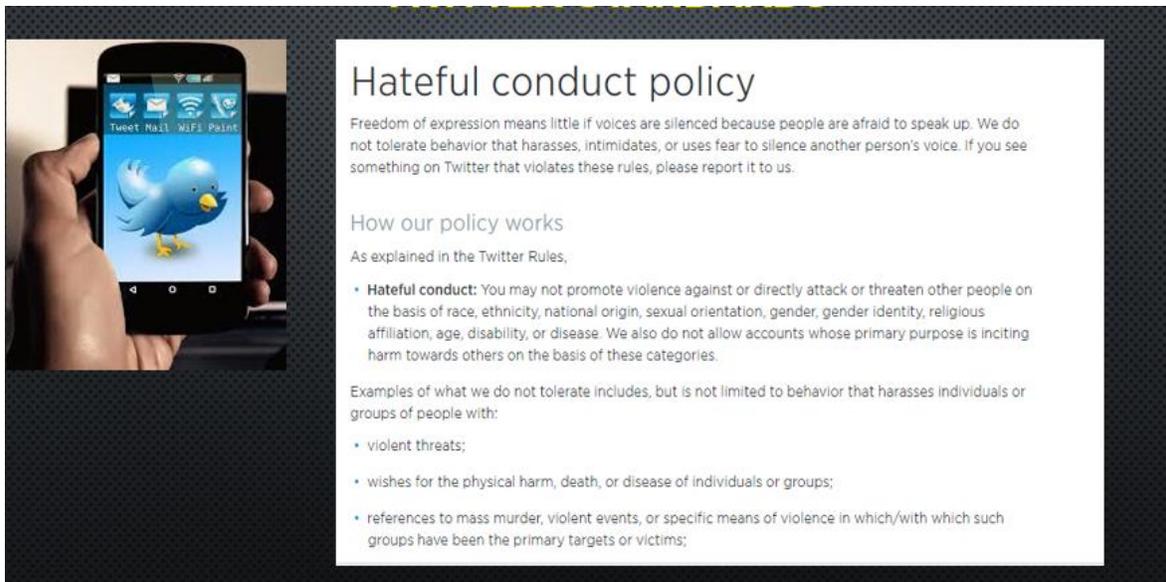
Sorry, No Free Ride on Social Media

Example: Facebook Community Standards



The screenshot shows the Facebook Community Standards page for Hate Speech. The title is "Encouraging respectful behavior" with a "Back to top" link. A blue speech bubble icon contains the symbols "!", "@", and "#". The main heading is "Hate Speech". The text states: "Facebook removes hate speech, which includes content that directly attacks people based on their:". A bulleted list follows: Race, Ethnicity, National origin, Religious affiliation, Sexual orientation, Sex, gender, or gender identity, or Serious disabilities or diseases. On the right, a navigation menu lists: Overview, Adult Nudity & Sexual Activity, Hate Speech, and Violence and Graphic Content.

No Free Ride On Twitter Either



The screenshot shows a hand holding a smartphone displaying the Twitter app. To the right is the "Hateful conduct policy" page. The title is "Hateful conduct policy". The text reads: "Freedom of expression means little if voices are silenced because people are afraid to speak up. We do not tolerate behavior that harasses, intimidates, or uses fear to silence another person's voice. If you see something on Twitter that violates these rules, please report it to us." The section "How our policy works" states: "As explained in the Twitter Rules,". A bulleted list defines "Hateful conduct": "You may not promote violence against or directly attack or threaten other people on the basis of race, ethnicity, national origin, sexual orientation, gender, gender identity, religious affiliation, age, disability, or disease. We also do not allow accounts whose primary purpose is inciting harm towards others on the basis of these categories." Examples of what is not tolerated include: "violent threats"; "wishes for the physical harm, death, or disease of individuals or groups"; and "references to mass murder, violent events, or specific means of violence in which/with which such groups have been the primary targets or victims".

Notes:

Categories Of Workplace Speech Not Protected And Not Protected By The First Amendment

The Big Test: Pickering v. Board of Ed 391 U. S. 563, (1968)



Facts of the case

Marvin Pickering, a school teacher, wrote a letter to the editor at the Lockport Herald complaining about a recently defeated school board proposal to increase school taxes. The letter complained about the board's handling of past proposals and allocation of funds favoring athletics over academics. The school board felt the letter was "detrimental to the efficient operation and administration of the schools" and opted to terminate Pickering's employment. Pickering sued in the Circuit Court of Will County alleging his letter was speech protected under the First Amendment. The court ruled in favor of the school board and the Supreme Court of Illinois affirmed.

Question

Was Pickering's letter constitutionally-protected free speech?

Conclusion

Justice Thurgood Marshall wrote the 8-1 majority opinion holding that Pickering's dismissal violated his First Amendment right to free speech. The Supreme Court noted that similar speech is not protected if it contains false statements knowingly or recklessly made. There was no evidence that Pickering's statements were knowingly false or reckless.

Justice William O. Douglas concurred, but took an even broader view of protected free speech. Justice Hugo L. Black joined in the concurrence. Justice Byron R. White wrote a dissent, agreeing that the letter may be protected speech, but preferring to remand the case for further proceedings to decide whether the statements in the letter were knowingly or recklessly false.

Notes:

Garcetti v. Ceballos



BACKGROUND: Los Angeles County Deputy District Attorney Richard Ceballos was concerned that a sheriff's deputy had lied in a search warrant affidavit. When his supervisors told him to keep quiet, he said he was legally obliged to tell the other side, and he testified for them in court. Consequently, he was demoted. He sued, arguing that his employer, the government, unfairly retaliated against him and violated his free speech rights.

Facts—Richard Ceballos, a deputy district attorney for Los Angeles County who served as a calendar deputy, concluded that an affidavit contained serious misrepresentations, and recommended dismissing the case. His superiors continued with the case, and Ceballos claims that his employers subsequently retaliated against him for expressing his opinion in a speech (and testifying on behalf of the individual being prosecuted). A U.S. district court concluded that Ceballos was not entitled to First Amendment protection for a memorandum he wrote in connection with his job, and that, even if he were, his employer had immunity. The U.S. Ninth Circuit Court reversed and held that Ceballos's speech was protected by the First Amendment.

Question—Is Ceballos's workplace speech protected from retaliation by the First Amendment?

Decision—No, protection of speech in the workplace is more limited than that of private citizens.

Reasons—*J. Kennedy (5-4)*. The Court has qualified earlier rulings prohibiting employees from objections to conditions placed on employment, including speech. In *Pickering v. Board of Education* (1968), the Court focused on whether an “employee spoke as a citizen on a matter of public concern” and, if so, whether the “government entity had an adequate justification for treating the employee differently from any other member of the general public.” **Public employees are subject to conditions that members of the general public are not. Ceballos expressed his opinions “pursuant to his duties as a calendar deputy,” and “when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”** The Court is not in a position to displace “managerial discretion by judicial supervision,” and it does not decide what the ramifications are in the context of “scholarship or teaching”. Whistleblower laws and labor codes are available to protect employees from abusing their supervisory discretion.

Notes:

Rants Against Your Boss (Internal Speech)

Graziosi v. Greenville, Mississippi et al. 5th Circuit United States Court of Appeals, No. 13-60900



Susan Graziosi ▶ **Vote for Greenville: Elect Chuck Jordan Mayor**
May 7, 2012 at 7:41pm · 🌐

I just found out that Greenville Police Department did not send a representative to the funeral of Pearl Police Officer Mike Walter, who was killed in the line of duty on May 1, 2012. This is totally unacceptable. I don't want to hear about the price of gas—officers would have gladly paid for and driven their own vehicles had we known the city was in such dire straights as to not to be able to afford a trip to Pearl, Ms., which, by the way, is where our police academy is located. The last I heard was the chief was telling the assistant chief about getting a group of officers to go to the funeral. Dear Mayor, can we please get a leader that understands that a department sends officers of the funeral of an officer killed in the line of duty? Thank you. Susan Graziosi

Like · Comment

👍 Ray Ruble likes this.

Cop's 'Rant' on Mayor's Facebook Page Was Disruptive, Justified Firing, 5th Cir. Says

The city of Greenville, Miss., justifiably terminated a police officer for posting statements criticizing the police chief on the mayor's public Facebook page because she caused disruption, and the city's interest in maintaining discipline and good working relationships in its police department outweighed her free speech interests, a federal appellate court held Jan. 9.

Writing for the U.S. Court of Appeals for the Fifth Circuit, Judge Carl E. Stewart affirmed summary judgment to Greenville and Chief Freddie Cannon on Susan Graziosi's claim alleging a violation of her free speech rights under the Civil Rights Act of 1871, 42 U.S.C. § 1983. The court said although Graziosi's comments were made as a citizen, they didn't address a matter of public concern and, in any case, her interests in making her grievance public didn't outweigh the city's interest in maintaining discipline. Source; Hassan Kanu, BNA

Notes:



In *Grutzmacher v. Howard County*, the plaintiff was a battalion chief for the fire department and had leadership and supervisory responsibilities over other firefighters. In 2012, the department adopted social media and conduct policies that prohibited employees from engaging in communications that (1) involved discriminatory or harassing behavior; or (2) undermined the views of the department or county. While on-duty, the plaintiff posted the following comment to his personal Facebook page after watching a gun control debate: “Think of the satisfaction of beating a liberal to death with another liberal.” A few minutes later, another firefighter responded: “Gotta pick a fat one, those are the ‘high capacity’ ones. Oh...pick a black one, those are more ‘scary’.” The plaintiff in turn “liked” this response. After receiving complaints from other firefighters, the department directed the plaintiff to remove the post. He did so, but posted additional complaints about being required to do so.

After an initial suspension and investigation, the department terminated the plaintiff for violation of its policies, based on his approval of the racist overtones expressed in the dialog, insubordination and inconsistency with his leadership position. He sued under Section 1983, claiming violation of his First Amendment rights to free speech. The district court dismissed the suit, and the Fourth Circuit affirmed this dismissal. The court accepted the department’s arguments that it did not violate the plaintiff’s First Amendment rights. While some of his comments may have reflected matters of public concern (gun control), they were inconsistent with his position within the department. While public employees do not relinquish their free speech rights, the employer has a countervailing interest in controlling the operations of its workplaces. **In this case, the plaintiff’s social medial comments interfered with and impaired department operations based on the racial nature of the comments, as evidenced by complaints from black firefighters. The plaintiff’s leadership position within the department meant that his comments called into question his ability to fairly deal with black subordinates and members of the public.** The Fourth Circuit also noted the fact that the comments were made on-duty, and that the plaintiff continued his defiant behavior after being counseled about the consequences of his actions. Paramilitary organizations such as fire departments have an increased interest in maintaining discipline and the chain of command. The county subsequently amended its social media policy to remove the broad language about comments inconsistent with its interests. However, this decision demonstrates that with more narrowly drawn policies, public employers maintain the ability to discipline employees for social media behavior that proves truly disruptive to their operations. *Source: Parker Poe Law Firm*

Notes

What Is A Protected Social Media Opinion

“A pure opinion is fully covered by the first amendment because it’s a statement that can’t be verified true or false.”

Pure opinions are protected speech. But, what is a pure opinion? To qualify as a pure opinion, the statement must not contain words that can be proven true or false. Only statements that can’t be verified are classified as a pure opinion. Below are some examples, the correct answer is bolded:

- 1) John James is a child molester. **Fact** or Pure Opinion
(This is a fact; I can verify this statement with police and agency records.)
- John James is a terrible President. Fact or **Pure Opinion**
(There is no way to verify or quantify this statement.)
- 3) The “Sea Oyster” restaurant is horrible. Fact or **Pure Opinion**
(There is no way to verify or quantify this statement.)
- 4) The “Sea Oyster” restaurant gives you food poison. **Fact** or Pure Opinion
(The local health department or customers can verify this statement.)
- 5) John Smith is a born liar and thief. **Fact** or Pure Opinion
(This is a statement that speaks to the core of his character.)

Milkovich v. Lorain Journal Co., 497 U.S. 1 (1990) (1990) This case essentially put publications on notice that just because someone is expressing an opinion, that doesn't mean they're words are libel-proof. In this case a wrestling coach's team was involved in a fight during a match that became the subject of a criminal investigation. A columnist for the News-Herald in Ohio stated in an opinion piece that the coach was a liar -- which the Court determined implied that he had committed the act of perjury. The Court ruled that Milkovich had a right to sue under Ohio's libel laws and he settled out of court. This is the reason why columnists use hyperbole, nuance and figures of speech -- those writing conventions are less libel-prone.

Notes:



Facts: The case involved six employees who worked for Sheriff B.J. Roberts in Hampton, Virginia, but supported his opponent in the upcoming election. In 2009, Roberts was running for reelection and one of the six employees— Daniel Ray Carter — hit the like button for Robert’s opponent on Facebook. After the election, the Sheriff fired Carter and the other employees.

Ruling: The employees brought the case to court, but the judge threw out the case, ruling that clicking one “like” button wasn’t protected by the First Amendment. This lower court decision was eventually overturned by the United States Court Of Appeals For The Fourth Circuit,

Discussion Points

- Don’t be fooled into thinking social media is a special place to offer opinions;
- Opinions must be a pure opinion, not a fact that can be proved true or false;
- Social media is more dangerous because it lures people into elevated social speech;
- Courts are struggling with arriving at a balance between protected and unprotected speech;
- Courts view social media as a powerful communication tool, not just a repository for trash talk.

Opinions or Facts?

Example I



OPINION: “JOHN’S FISH HOUSE IS TERRIBLE.”

FACT: “JOHN’S FISH HOUSE IS A HAVEN FOR FOOD POISON”

Notes:

Example II



OPINION: "MARLA JONES IS NOT HONEST."

FACT: "MARLA JONES IS A THIEF AND BELONGS IN JAIL"

Example III



OPINION: "MY BOSS SHOULD RETURN TO HIS HOMELAND."

FACT: "MY BOSS IS AN ILLEGAL IMMIGRANT."

Notes:

Example IV



OPINION: "MY BOSS SHOULD GO WORK AT A STRIP BAR."
FACT: "MY BOSS IS A NOTORIOUS STRIPPER."

Review

- Social Media Amplifies Speech, But Doesn't Completely Change U.S. Supreme Court First Amendment Rulings
- Internal Speech Is Not Protected Under The First Amendment
- Speech Must Be Of Public Concern
- A Pure Opinion Is Protected Speech Under The First Amendment
- False Facts Aren't Protected Under The First Amendment

The Truth About Social Media Privacy



The U. S. Constitution contains no express right to privacy. But, the right to privacy is alluded to in the Fourth Amendment (Search and Seizure), Fifth Amendment (Against Self-Incrimination) and Ninth Amendment (certain rights shall not be construed to deny or disparage other rights retained by the people)

Notes:

Isn't Social Media Privacy Wonderful?

Facebook Terms Of Service



Specifically, when you share, post, or upload content that is covered by intellectual property rights (like photos or videos) on or in connection with our Products, **you grant us a non-exclusive, transferable, sub-licensable, royalty-free, and worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of your content (consistent with our privacy and applications).** This means, for example, that if you share a photo on Facebook, you give us permission to store, copy, and share it with others (again, consistent with your settings) such as service providers that support our service or other Facebook Products you use. You can end this license any time by deleting your content or account. You should know that, for technical reasons, content you delete may persist for a limited period of time in backup copies (though it will not be visible to other users). In addition, content you delete may continue to appear if you have shared it with others and they have not deleted it.

Twitter Terms Of Service



By submitting, posting or displaying Content on or through the Services, **you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute** such Content in any and all media or distribution methods (now known or later developed). This license authorizes us to make your Content available to the rest of the world and to let others do the same. You agree that this license includes the right for Twitter to provide, promote, and improve the Services and to make Content submitted to or through the Services available to other companies, organizations or individuals for the syndication, broadcast, distribution, promotion or publication of such Content on other media and services, subject to our terms and conditions for such Content use. Such additional uses by Twitter, or other companies, organizations or individuals, may be made with no compensation paid to you with respect to the Content that you submit, post, transmit or otherwise make available through the Services.

Instagram Terms Of Use



By displaying or publishing ("posting") any Content on or through the Instagram Services, **you hereby grant to Instagram a non-exclusive, fully paid and royalty-free, worldwide, limited license to use, modify, delete from, add to, publicly perform, publicly display, reproduce and translate such content,** including without limitation distributing part or all of the Site in any media formats through any media channels, except Content not shared publicly ("private") will not be distributed outside the Instagram Services.

ROOTS OF SOCIAL MEDIA INSECURITY SOCIAL MEDIA RIDES ON THE BACKBONE OF THE INTERNET



- 6 Million Instagram Accounts Hacked
- Football Player Laremy Tunsil Twitter Pot Video Goes Viral
- Comedian Kathy Griffin's Social Media Accounts Are Hacked

ASSUMPTION OF RISK USING SOCIAL MEDIA



- CONTENT CAN GO VIRAL IN SECONDS
- CONTENT IS PERMANENT
- CONTENT IS EASILY HACKED
- LAWYERS CAN GET TO PERSONAL ACCOUNTS

Notes:

Can Employers Monitor or Retrieve Your Social Media Data? Electronic Communications Privacy Act 1986 (18 U.S.C. §2511)

- Business purpose exception: Permits employers to monitor oral and electronic communications as long as the company can show a legitimate business purpose for doing so. *City of Ontario v. Quon* 560 U.S. 746 (2010)
- Consent exception: The consent exception is not limited to business communications, and, therefore, a company arguably can monitor personal electronic communications if it can show employee consent.
- The ECPA contains a loophole that may limit employer liability for certain methods of monitoring. The act's definition of "electronic communications" expressly applies to the transmission of such communications and does not include the electronic storage of such communications. Therefore, courts have distinguished between monitoring electronic communications such as e-mail messages while they are being transmitted versus viewing e-mails while they are in storage. Viewing stored e-mail is similar to searching through an employee's papers and files. Several courts confronting this issue have found that monitoring electronic communications after transmission does not run afoul of the ECPA. *Source: SHRM*



Missouri Privacy Laws Applied To Social Media

Sullivan v. Pulitzer Broadcasting Co., 709 S.W.2d 475 (Mo. 1986)



Missouri allows individuals to sue for invasion of privacy (*Sullivan v. Pulitzer Broadcasting Co.*, 709 S.W.2d 475 (Mo. 1986)). Courts in Missouri have discussed the following four potential types of invasion of privacy:

- Intrusion on one's seclusion or private affairs;
- Public disclosure of embarrassing private facts;
- Publicly placing one in a false light; *and*
- Appropriation of one's name or likeness.



It is illegal for employers to have personal identification microchip technology implanted into an employee for any reason (*MO Rev. Stat. Sec. 285.035*). "Personal identification microchip technology" refers to a subcutaneous or surgically implanted microchip technology device or product that contains or is designed to contain a unique identification number and personal information that can be retrieved or transmitted with an external scanning device. A state appeals court allowed an employee to proceed to trial on a "false light" claim when he alleged that the company listed him as the registrant on a

controversial new website after he had left employment there (*Meyerkord v. Zipatoni Co.*, 276 S.W.3d 319 (Mo. Ct. App. 2008)).

A person commits identity theft when he or she knowingly and with the intent to deceive or defraud obtains, possesses, transfers, uses, or attempts to obtain, transfer, or use, one or more means of identification not lawfully issued for his or her use. Effective January 1, 2017, a "means of identification" is anything a person uses as a means of uniquely identifying himself or herself (*MO Rev. Stat. Sec. 570.010, 570.223*). Missouri law restricts the use of SSNs by employers (*MO Rev. Stat. Sec. 407.1355*). Employers may only use ...

Missouri's wiretapping law is a "[one-party consent](#)" law. Missouri makes it a crime to intercept or record any "wire, oral, or electronic communication" unless one party to the conversation consents. See [Mo. Rev. Stat. § 542.402.2](#). Therefore, if you operate in Missouri, you may record a conversation or phone call if you are a party to the conversation or you get prior consent from one party to the conversation, unless you are doing so to commit a criminal or tortious act. Nevertheless, if you intend to record conversations involving people located in Missouri and another state, you should play it safe and abide by the recording law of the most restrictive state involved.



Missouri's law criminalizes recording and attempting to record any wire or oral communications. See [Mo. Rev. Stat. § 542.402.1](#). The statute defines "wire communications" as those made "in whole or in part through the use of "wire, cable, or other like connection between the point of origin and the point of reception." See [Mo. Rev. Stat. § 542.400\(12\)](#). If at least one party in a conversation is using a wired device, this statute is applicable; however, communications entirely between cordless phones receiving radio signals are not protected by Missouri's wiretapping law. See [State v. Martinelli](#), 972 S.W.2d 424 (Mo.App. E.D.1998); [State v. King](#), 873 S.W.2d 905 (Mo.App. S.D.1994). Missouri also prohibits the disclosure or use of the contents of any wire communication obtained in violation of this section. See [Mo. Rev. Stat. § 542.402.1](#).

This law only extends to oral communications which are "uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation." See [Mo. Rev. Stat. § 542.400\(8\)](#). Therefore, you may be able to record in-person conversations occurring in a public place where there is no reasonable expectation of privacy without consent.

Violation of the Missouri law is a class D felony, punishable by imprisonment and fine. See [Mo. Rev. Stat. § 542.402.1](#). In addition to subjecting you to criminal prosecution, violating the Missouri wiretapping law can expose you to a civil lawsuit for damages by an injured party. See [Mo. Rev. Stat. § 542.418](#).

Missouri Governor Signs Law Repealing Teacher Social Media Restrictions

Bill is an attempt to reconcile a controversial element of the Amy Hestir Student Protection Act.

A portion of a controversial Missouri law that restricted the ability of teachers to interact with students on social media and websites has been repealed.

Gov. Jeremiah W. (Jay) Nixon signed Senate Bill (SB) 1 last week, eliminating Section 162.069 of SB 54 — the Amy Hestir Student Protection Act — which prevented teachers from using a work-related website or social media platform to communicate with students unless parents and administrators also had access.

The provision in SB 54 was also applicable to educators’ non-work, private website and social network use. In his signing [message](#) regarding SB 1, Nixon said the law was an improvement “primarily through subtraction” and while not perfect, having teachers “conform to the unreasonable restrictions” of SB 54 was a “far worse result.” Source: govtech.com

Missouri Passes Constitutional Amendment to Protect Electronic Privacy

Missouri became the first state in the nation to offer explicit constitutional protections of electronic communications and data from warrantless search and seizure by law enforcement. The amendment to the state’s constitution places communications such as emails, text messages, and cloud storage under the same Fourth Amendment protection from unreasonable searches and seizures as “persons, homes, papers and effect” and will require police to have a warrant to gain access to phones, laptops, and electronic communications. It passed with 75% support in a statewide ballot effort. Source: Time.com

Missouri Statutory Guide To Privacy and Data Breach Laws (Statutes Relevant To Social Media Are Bolded)

Statute	Topic	Description
Sunshine Act Provisions		
610.032.1 RSMo	Sunshine Law	Executive agency’s records closed by law cannot disclose information that would allow identification of individuals or entities
610.024. 1 RSMo	Sunshine Law	Public governmental body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying
610.035 RSMo	Social Security Numbers	State entity not to disclose Social Security number, exceptions
610.100 to 610.150 RSMo	Arrest records and 911 reports	Records required--public access--court ordered access--violations--sex offense victims, disclosure of identity--911 reports inaccessible, exceptions
State Privacy Topics		
General		

Chapter 115 RSMo	Election	Election Authorities and Conduct of Elections
Chapter 313 RSMo	Gambling and biometrics	Licensed Gaming Activities - patrons shall not be required to provide fingerprints, retinal scans, biometric forms of identification, any type of patron-tracking cards, or other types of identification prior to being permitted to enter the area where gambling is being conducted
362.422 RSMo	Financial Records	Disclosure of nonpublic personal information; nonaffiliated third parties (State law parallel to federal Gramm-Leach-Bliley Financial Modernization Act of 1999, "GLBA")
407.1355 RSMo	Social Security Numbers	Social Security numbers, prohibited actions
407.1382	Credit freezes with credit reporting agencies	Consumers can request a credit freeze. Fees may be charged.
408.675 to 408.700 RSMo	Missouri Right to Financial Privacy	There are provisions throughout the Code and in federal law pertaining to credit information, credit rating information, and credit reporting
491.060 RSMo	Privileges	Persons incompetent to testify--exceptions, children in certain cases (child testimony; privileges for attorney, minister, physician communication)
565.084 RSMo	Tampering with a judicial officer, penalty	Transferred to 575.095 effective 1-1-17
565.225 RSMo	Crime of stalking	
565.252 and 565.253 RSMo	Crime of invasion of privacy	Photography/film
569.095 to 569.099 RSMo	Tampering with computer	
	Employment	There are statutes throughout the Missouri Code protecting records pertaining to educators, public employees, as well as military members and their families
595.232	Law enforcement to accept identity theft incident reports	Victims of identity theft have the right to contact the local law enforcement agency where the victim is domiciled and request that an incident report about the identity theft be prepared and filed. The victim may also request from the local law enforcement agency to receive a copy of the incident report.
Communication		
407.1070 to 407.1110 RSMo	Telephone	Telemarketing Practices (phone solicitation)

407.1135 to 407.1141 RSMo	Unsolicited E-mail	Unsolicited Commercial E-Mail prohibited
542.400 to 542.422 RSMo	Wiretaps	Wiretaps (common carrier switching station communications)
Credit Cards		
407.430 to 407.436 RSMo	Credit cards	Confidential and secure handling of credit card information
Health		
167.183 RSMo	Health	Immunization records, disclosure, to whom--disclosure for unauthorized purpose, liability
Chapter 188 RSMo	Regulation of Abortions	Breach of Confidentiality prohibited
191.656 to 191.703 RSMo	AIDS (Acquired Immunodeficiency Syndrome)	Confidentiality of HIV records
191.918 RSMo	Breast-feeding	Breast-feeding in public permitted
375.1300 to 375.1312 RSMo	Genetic Information and Domestic Violence	Genetic information cannot be used by employers or insurers to discriminate against individuals
	Medical and Pharmaceutical	There are provisions throughout the Code and in federal law pertaining to medical and pharmaceutical information. For examples of medical records protections, see the web page for the Office of Civil Rights of Health and Human Services. ("HIPAA" and "HITECH") For information pertaining to the safety of records pertaining to the Affordable Care Act, see the web page for the Federal Trade Commission
Identity		
570.223 RSMo	Identity Theft	Crime if he or she knowingly and with the intent to deceive or defraud obtains, possesses, transfers, uses, or attempts to obtain, transfer or use, one or more means of identification not lawfully issued for his or her use
570.224 RSMo	Trafficking in stolen identities	Crime if manufactures, sells, transfers, purchases, or possesses, with intent to sell or transfer means of identification...for the purpose of committing identity theft
570.380 RSMo	Fake Identification	Manufacture or possession of fictitious or forged means of identification, intent to distribute, violation

Records		
43.542 RSMo	Criminal Records	Approval of National Crime Prevention and Privacy Compact--execution of compact (criminal history records)
182.815 and 182.817 RSMo	Library Records	Disclosure of library records not required--exceptions
Chapters 210 and 211 RSMo	Child and Juvenile Records	Department of Social Services and Juvenile Courts (privacy protections throughout Chapters)
161.096 RSMo	Education Records	Education records are protected by federal statute and standards are followed in Missouri
407.1150 RSMo	Criminal Record Publication	Prohibits soliciting or accepting payment to remove or correct published booking information
453.120 RSMo	Adoption Records	Limits disclosure
194.600 RSMo	Health Care Directives Registry	Directory to electronically store advance health care directives
302.170, RSMo 32.091 RSMo	Driver License	Options for obtaining REAL ID Act compliant license, confidentiality of driver license information

Notes:

YOU HAVE NO PRIVACY: GET OVER IT

READ THE ZIMMERMAN V. WEIS MARKETS INC. CASE



- OLDER CASE BUT VERY INSTRUCTIVE
- GOOD LESSON ON COURTS VIEW OF PRIVATE SOCIAL MEDIA ACCOUNTS
- LAWYERS WILL SEEK EVIDENCE FROM YOUR PERSONAL SOCIAL MEDIA ACCOUNTS

Review

- The U.S. Constitution contains no express right to privacy.
- Facebook, Twitter, Instagram and other platforms can modify, edit, and distribute your data.
- Courts look to the 4th, 5th, 9th Amendment for privacy rights.
- Insecure internet = insecure social media
- You assume the risks of an insecure social media network
- Employers can monitor and retrieve data under the legitimate business purpose of the Electronic Communications Privacy Act, 1986, 18 U.S.C. §2511
- Missouri has numerous statutes protecting multiple areas of privacy (i.e. health, financial)

Notes:

Copyright Laws You Need To Know



Article I Section 8. Clause 8 – Patent and Copyright Clause of the Constitution. The Congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.



Copyright Act of 1976. The Copyright Act of 1976 is a United States copyright law and remains the primary basis of copyright law in the United States, as amended by several later enacted copyright provisions. ... It became Public Law number 94-553 on October 19, 1976 and went into effect on January 1, 1978.

A form of intellectual property law that protects original works of authorship including:

- literary, movies, graphic art works
- dramatic, poetry, novels, pictures
- musical, songs, sound recordings
- computer software, and architecture

Although an author's copyright arises automatically upon creation and fixation of the work in some "tangible medium of expression," registration of the copyright provides numerous benefits. Copyright registration must be done at the federal level through the U.S. Copyright Office. The Copyright Act of 1976 (as amended) provides that the term of a federal registration for any work created in or after 1978 is the lifetime of the author, plus seventy (70) years. For anonymous works, pseudo anonymous works, commissioned works or the like, the term is ninety-five (95) years from publication, or one hundred twenty (120) years from creation, whichever is shorter. A proper copyright notice, also no longer required, should be placed on the work prior to publication, and each copy distributed must bear the proper copyright notice, which properly comprises the symbol "©," the word "copyright" or the abbreviation "copr." as well as the year of first publication of the work and the name of the copyright claimant. *Source: Virginia State Bar*



Notes:



8. Rights you license

8.1 When you upload or post Content to YouTube, you grant:

- A. **To YouTube, a worldwide, non-exclusive, royalty-free, transferable license (with right to sub-license) to use, reproduce, distribute, prepare derivative works of, display, and perform** that Content in connection with the provision of the Service and otherwise in connection with the provision of the Service and YouTube's business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels;
- B. to each user of the Service, a worldwide, non-exclusive, royalty-free license to access your Content through the Service, and to use, reproduce, distribute, prepare derivative works of, display and perform such Content to the extent permitted by the functionality of the Service and under these Terms.

8.2 The above licenses granted by you in Content terminate when you remove or delete your Content from the Website. The above licenses granted by you in textual comments you submit as Content are perpetual and irrevocable, but are otherwise without prejudice to your ownership's rights, which are retained by you as set out in paragraph 7.2 above.

But When It Comes To You Tube's Copyrights...



5. General restrictions on use

5.1 YouTube hereby grants you permission to access and use the Service, subject to the following express conditions, and you agree that your failure to adhere to any of these conditions shall constitute a breach of these Terms on your part:

- A. **you agree not to distribute** any part of or parts of the Website or the Service, including but not limited to any Content, in any medium without YouTube's prior written authorization, unless YouTube makes available the means for such distribution through functionality offered by the Service (such as the YouTube Player);
- B. **you agree not to alter or modify** any part of the Website or any of the Service (including but not limited to the YouTube Player and its related technologies);
- C. you agree not to access Content through any technology or means other than the video playback pages of the Website itself, the YouTube Player, or such other means as YouTube may explicitly designate for this purpose;
- D. you agree not to (or attempt to) circumvent, disable or otherwise interfere with any security related features of the Service or features that (i) prevent or restrict use or copying of Content or (ii) enforce limitations on use of the Service or the content accessible via the Service;
- E. you agree not to use the Service (including the YouTube Player) for any of the following commercial uses unless you obtain YouTube's prior written approval:

Copyright Infringement Lawsuits Are Costly

Spotify Settles \$43 Million Class Action Copyright Lawsuit

Inglewood, CA Sues YouTube Critic For Copyright Infringement

New York City Sues Police and Fire Merchandiser For City Logos



Copyright Infringement Penalties

- Infringer pays the actual dollar amount of damages and profits.
- **\$200 to \$150,000** fine for each work infringed.
- Infringer pays for all attorney's fees and court costs.
- The Court can issue an injunction to stop the infringing acts.

Frequently Asked Questions



How Do I Know A Work Is Copyrighted?

You will know the work has been copyrighted because you will see a “c” in a circle or the word copyright followed by the date of first publication and the name of the copyright owner.

What Are More Clues A Work Is Copyrighted?

- Look at the date (Your safe if published before 1923)
- Consider the type of work
- Look for the "CC0" Public Domain mark
- Determine whether a work is unpublished
- Be wary of "orphan works" (Can't find owner)
- Refer to websites that store only public domain
- The work is published before 1923
- Copyright was never renewed
- Search records at the U.S. Copyright Office
- Search Smithsonian Institute of Public Domain Images
- New York Times Public Domain Address
- Project Guttenberg, LibriVox, Public Domain Audio Books, Prelinger Archives

What Works Aren't Copyrightable?

- Titles, names, slogans, numbers
- Ideas, facts, familiar symbols
- Processes and systems
- Government works and documents

When Do People Waive Their Copyrights?

Some works waive their copyright interests and place their works in the public domain through the website "creative commons". When searching online look for small print under the image that says,

"copyright and related rights waived via cco"

How Do I Find Out About Unpublished Works?

- Was it intended for public distribution (i.e. only a few copies)?
- Is the author deceased?
- A copyright expires 70 years after author's death.
- If author unknown or corporation copyright expires 120 years after the work was created.

Can You Give Me More Information On Orphan Works?

Many works were created after 1923 but the author can't be found but here's a guarantee... "as soon as you have spent an incredible amount of money and time integrating works you thought weren't copyrighted into your project, the owner will file a lawsuit against you."

Any Website You Can Recommend That Has Pictures Without Copyright Issues?

You can use a site know as Creative Commons:

- Free
- Easy To Use
- Share Your Work
- Minimum Attribution Requirements

Can You Give Me More Specifics On Where I Can Locate A Copyright Mark?

- In a book, look for a copyright page. It is typically found on the back side of the title page.
- If the work is a film or television, the copyright is usually at the end of the credits. The most prudent approach is to call the television station or film producer and find out your copyright limitations. Get it in writing.
- If the work is digital music, especially on an app or website, there should be a clear and distinct copyright disclaimer. Do not assume or buy into the sales pitch that you can download music for Free. Someone created that music and that someone may file a copyright infringement lawsuit against you at the most inopportune time.

What Does The Fair Use Concept Mean In Copyright Law?

This is a doctrine created under *17 U.S. Code Section 107* whereby brief excerpts of copyright material may, under certain circumstances, be quoted verbatim for purposes such as criticism, news reporting, teaching, and research, without the need for permission from or payment to the copyright holder. *Source: Merriam-Webster*

What Is The Fair Use Test?

- Purpose and character of the use
- Profit or nonprofit educational use
- Nature of the copyrighted work (level of creativity)
- Amount of work used compared to the entire material
- Effect of use on the marketplace

Any Landmark Cases On Fair Use?

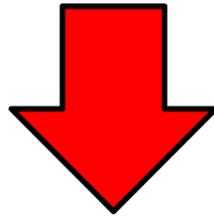
Harper & Row v. Nation Enterprises, 471 U.S. 539 (1985)-- “The promise of copyright would be an empty one if it could be avoided merely by dubbing the infringement a fair use 'news report' of the book.”

Review

- Copyright is a constitution right under article 1, section 8, clause 8
- Copyright protects original works of authorship
- Copyright lawsuits can run in the hundreds of thousands of dollars
- It's copyrighted once the work is in a tangible form of expression
- You can tell it's copyrighted if it has a © mark
- Works published before 1923 are in the public domain
- Look for a cco public domain mark
- Be wary of “orphan works”
- Look for websites that store only public domain works
- Don't automatically say it's fair use
- Apply the fair use legal test
- Purpose and character of the use is an important of the Fair Use Test
- Was it for profit or non-profit educational use
- Was it a very creative work
- Amount of work you copied
- Effect of use on the marketplace

Section II

The Good, The Bad, and The Ugly Of Social Media



The Good

IT'S NATURAL, PEOPLE CAN'T SHUT UP

There's something that just causes us to speak out or reveal what we consider to be our personal wins. To use street language, we love to talk smack.

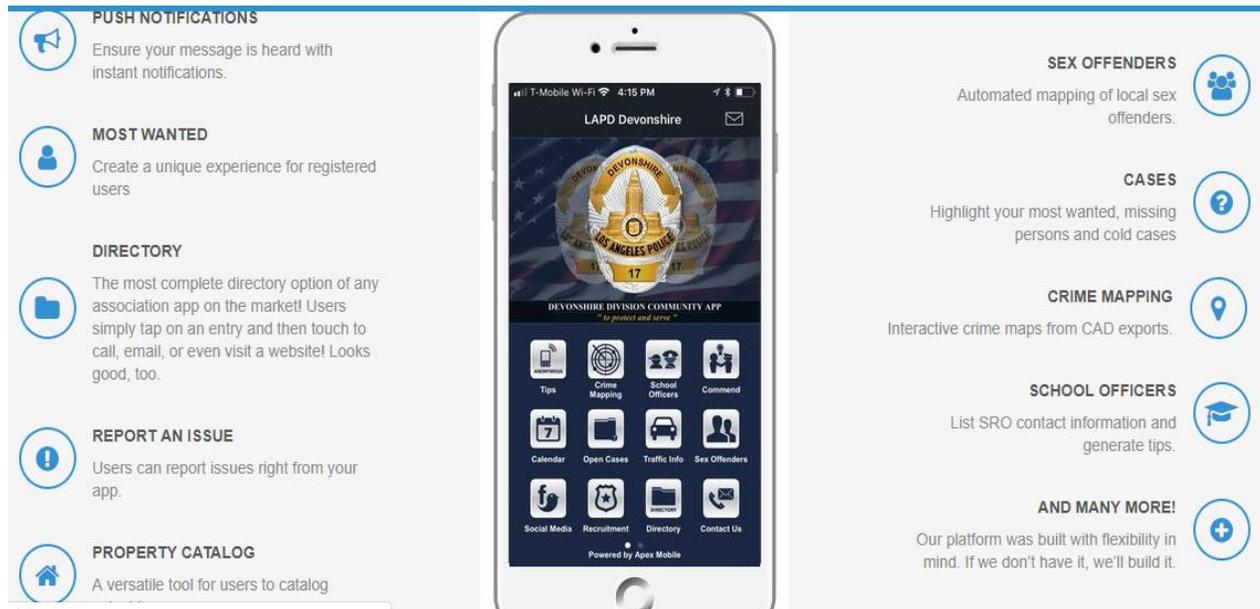
When you add in the ominous ability to be somewhat anonymous on social media, certain bravado takes place in what people post. This also leads to the taunting of superiors, authority or law enforcement.

When individuals do this, they complete a great majority of the investigation for law enforcement. Although the title of this article is "How police use social media to catch criminals," maybe it should be "How criminals turn themselves in on social media." Source: PoliceOne.com

- **Perry County, Missouri Sheriff Gary Schaaf says posting mugshots to their Jail Division Facebook page is a quick way to get information on wanted suspects and make their arrests public.** "One of the guys we had warrants for his whole neck was tattooed," the sheriff said. "Somebody happened to see him riding a moped in Perryville. They called and said 'This is the guy you're looking for. I recognized him by the tattoo that was on Facebook.' They gave us directions and we ended up catching him." With more than 12,000 followers on Facebook alone, the Perry County Sheriff's Jail Division has been posting criminal mugshots for four years and over that time Schaaf says the effort has led to hundreds of arrests.
- **Fighting for the narrative: St. Louis area police now use social media as a key protest-response tool: When protests erupted in Ferguson in 2014, St. Louis area law enforcement struggled to keep pace with what quickly became one of the biggest political social media movements of the decade. According to Twitter, #Ferguson was the most used social activism hashtag within the first 10 years of the platform with more than 27 million tweets. But while activists spread their message and mastered tools such as live-streaming video and sharing photos that characterized protests and the issue of police brutality, local police departments often let the narratives go unanswered on the platforms where they were shared. Not anymore. As St. Louis sees a new protest movement after the acquittal of former St. Louis police Officer Jason Stockley in the killing of Anthony Lamar Smith, the departments are deploying a proactive social media strategy designed to quash rumors, give constant updates and spread the police viewpoint directly into thousands of social media feeds. Source: *St. Louis Dispatch***
- Nick Hedges was scrolling through his Facebook feed when he recognized his friend. Police had posted his picture taken while robbing a gas station. Delray Beach, FL Police tracked his friend down and made an arrest.
- Spokane, WA police arrested Michelle McGlynn Bell in connection with five home burglaries. It happened because neighbors saw suspicious behavior and posted pictures of the suspect's car online. "*When that picture came out it didn't show her face, but it did show part of her car and that gave us that in that we were looking for, we had a beginning point,*" said Spokane Police Captain Dave Richards to *KREM-TV*. Source: Medium.com

The Good (Cont.) Emerging Technology

You Can Build Own Local Apps



Source: Apexmobile

Missouri police department launches smartphone app

POSTED 5:59 PM, OCTOBER 29, 2017, BY [ASSOCIATED PRESS](#), UPDATED AT 05:57PM, OCTOBER 29, 2017

COLUMBIA, Mo. (AP) _ A Missouri police department has released a smartphone application that residents can use to report local crimes and receive updates on police activities.

The Columbia Daily Tribune reports that the Columbia Police Department's free mobile app, ColumbiaPD, is available on both Android and Apple operating systems.

Here are some of the top police apps for communication:

- **StashCat:** StashCat offers efficient and secure communications for police officers and other professionals. They position themselves as a police messenger app that has similar features to [WhatsApp](#) and [Dropbox](#). In terms of features, this means that all communication is encrypted and data is stored [in the cloud](#) so that it can be accessed by any internet-connected device.
- **BLUE the App:** BLUE is another highly secure police app for communication. It uses military-grade encryption, access keys, PIN codes, and other forms of protection to keep your sensitive data safe. You can send messages, add pictures and forms, and easily share all of this data with other police agencies.

Using Social Media For Community Policing

Twitter, Facebook, YouTube, Pinterest: For police departments social media is as valuable, if not more valuable, a resource than it is for traditional brands and businesses. It helps humanize the force by allowing departments to connect and converse with the general public, but more importantly, it provides a platform for police officers to share information quickly and respond to tips from civilians (who are often more forthcoming over social media than they'd be in person).

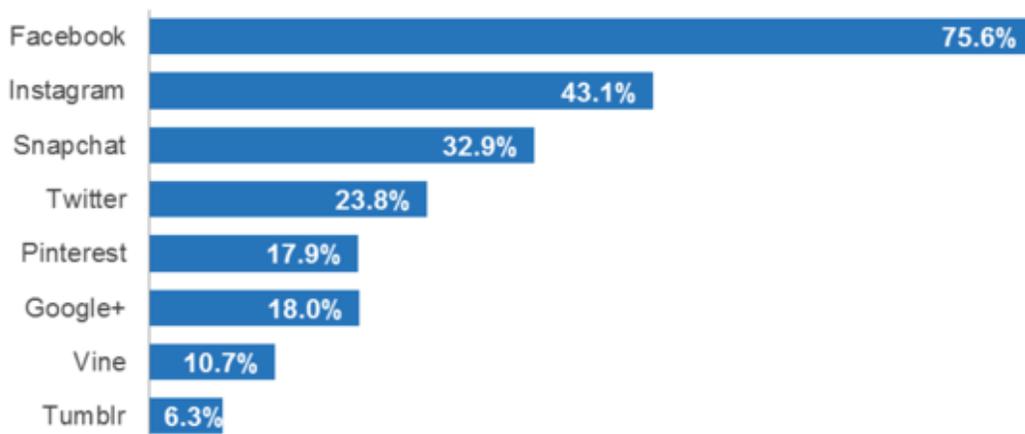
Police apps that focus on community engagement are a great resource in connecting, sharing information with, and hearing what your community has to say.

- **MyPD – My Police Department App:** The MyPD police app is for both civilians and officers. Members of the community can search for their local police department and view contacts, receive notifications, submit anonymous tips, and connect with members of that department. It is a direct channel for both communication and resource-sharing between the community and the police department.
- **Nextdoor:** This is a private social network for neighborhoods. Neighbors create groups where they can post information about events, outages, construction, crimes and suspicious activity.
- **Ring App** Provides Florida Law Enforcement a New Crime Prevention Tool: *The Manatee County Sheriff's Office has signed on to use an information-sharing app created by the smart doorbell maker Ring.*

Age is an important demographic for crime prevention—about half of all crime is committed by young people under age 25. Although representing 6 percent of the U.S. population, teenagers account for 30 percent of criminal arrests, predominately “street crime” like theft, burglary and vandalism. Understanding and participating in the digital tools this group uses will allow officers to better anticipate and respond to crimes, as well as instill safe habits and decision-making skills in youth. Source: Entrepreneur.com

Leading Social Media Apps Among 18-34 Year Olds by Smartphone Penetration

Source: comScore Mobile Metrix, U.S., Jun 2014



Top Social Media Sites For Community Policing



The Group Think Application

Nextdoor is a website and smartphone application that allows users to communicate and share information with other residents by designated zones. The department's website went live this week.



Building Communities

The ideology behind community policing as a philosophy is to engage and involve local community residents with law enforcement to fight crime in one's own neighborhood. Facebook helps to build and renew community trust and enhance community participation.



Twitter is the new police scanner

Although police officers are typically wary of social media, engaging these networks can generate leads, expand witness pools and help residents prepare for potential emergencies. Especially smaller police departments can use the medium to personalize their service, humanizing the police force and bridge gaps.



A photo-based app that lets the user upload a photo, or even short videos, Instagram has 300 million users who share about 70 million photos per day. Instagram can help your law enforcement agency manage its image and enhance the brand of your city. Much like Twitter, Instagram allows for #hashtag and "tagging" other users. So if, you are having an event, you could create a specific #yourpoliceevent hashtag that others can also use to link their photos of the event.



The Snapchat app lets users upload photos and videos up to 10 seconds long, which can be accompanied with short comments. The photos or videos, known as "snaps," are arranged into a chronological "story" and will stay on the user's account for 24 hours, then be automatically deleted by the app itself. Snapchat is hugely popular with the under-30 demographic, especially college students and teens. With Snapchat, the officer is like a reporter giving his or her "story".

SOCIAL MEDIA HEADLINES

Instagram equals Insta-bust for police in Miami-Dade | Miami Herald

From PR to Police Work, Twitter Has Changed Law Enforcement

A Rising Number Of Criminals Are Using Facebook Live To Film Their Acts

17 Times Social Media Helped Track Down Thieves, Murderers, Gangs

The Bad

- Criminals using small mobile devices can create havoc
- Misinformation by criminals or the public
- Sending out viruses and accessing protected sites
- Sending false IDs
- Easy to get rid of electronic evidence
- Retaining social media records
- An officer who posts photos from a GPS-enabled smartphone can unknowingly reveal the location of his or her home or office to a criminal with the right software.
- Doxxing—the spreading of personal information such as name, employer, address, and other contact information. Doxxing can pose significant risks to its victims by sharing their location
- Once information has been released on the Internet, it is impossible to fully remove.

Jurisdictional Problems

Another problem is that even though a criminal may be using Twitter or Facebook in a police department's jurisdiction, the company operating the platform may be based in another city or even a different country. In the past, a police officer investigating a crime could go to the phone company's local office or the local bank branch to obtain records. "But if I'm using voice over IP to communicate, there may be no physical presence in a local jurisdiction, or even in the United States," Cohen said. "Skype for example, is incorporated in Luxembourg. And if somebody is communicating via Facebook, that means, as an Indiana police officer, I need to serve a search warrant on a California company — with no storefront or physical location where I can go."

Eroding Trust

"One person interviewed says she trusts friends' personal stories more than official investigations and statistics. She says she has never called police to ask for further details behind stories shared online. "If you go to the police with a stalker story, it will be just a report of being followed, it's not going to go public. If you take it to Facebook to warn friends, you have a chance of warning people and getting the word out,". Source: *The Examiner, MO*

Police fear 'YouTube effect' affecting work, contributing to rise in violent crime



SAN ANTONIO, Texas — Law enforcement officers from around the country say they are increasingly concerned that video recordings of their interactions with the public are being used to show them in a negative light, creating a "YouTube effect" that is affecting how they do their jobs and, according to the FBI's director, could be behind a recent rise in violent crime. Source: Washington Times, Andrea Noble

The Ugly

Using Social Media To Weaponize Civilian Populations To Recruit And Promote Radicalization of Civilian Populations

“Disinformation campaigns rooted in large scale propaganda campaigns have been around for a long time. However, social media weaponization had its genesis in the Arab Spring of 2010. Ignited, at least in part, by Facebook and Twitter groups. disaffected and underemployed youths lashed out against oppressors in numerous countries in North Africa and the Middle East. [In the end](#), the governments Tunisia, Egypt, Bahrain, Libya, Syria and Yemen were either toppled or destabilized with large swaths of Libya, Syria and Yemen being largely embroiled in an open conflict.

Social Media: Built For Radicalization Of Civilian Populations

- ✓ Facebook’s news feed, for instance, runs on an algorithm that promotes whatever content wins the most engagement. Studies find that negative, primal emotions — fear, anger — draw the most engagement. So posts that provoke those emotions rise in ranking naturally.
- ✓ Tribalism — a universal human tendency — also draws heavy engagement. Posts that affirm your group identity by attacking another group tend to perform well.
- ✓ Social media platforms use color and sound to reward engagement, which humans naturally seek out. Comments and likes are presented like a set of diamonds clicking into place on a slot machine. That delivers a little dopamine boost, training you to repeat whatever behavior wins the most engagement.
- ✓ Social Media provides a path to attention, praise and a sense of importance.



Instead, the fundamental design of social media sometimes exacerbates the problem. It rewards loyalty to one’s own group, providing a dopamine rush of engagement that fuels platforms like Facebook and YouTube, as well as more obscure sites like Gab or Voat. The algorithms that underpin these networks also promote engaging content, in a feedback loop that, link by link, guides new audiences to toxic ideas. Source: NY Times

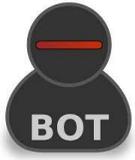
Example: Alt-Right Movement

- First gained prominence among young people — mostly men — on sites like Facebook and Reddit, which is also driven by an algorithm meant to surface the most engaging content.
- Algorithm-driven platforms, she wrote, “amplify and systematically move white supremacist talking points into the mainstream.”
- Studies have found that people tend to shut out ideas when they believe society has deemed them extreme. But they become much more open to ideas that they believe are considered mainstream.
- Traditionally, someone hearing an extremist idea for the first time might have encountered it through friends or relatives, who might also convey that the idea is outside the mainstream. Ideas are now delivered through news feeds governed by raw, engagement-driven popular will.

It's All About Algorithms, Bots, and Trends



Algorithm are distinctive and used to automatically rank, filter and reorganize posts that come through on your feed. Some algorithms simply organize by chronological order, likes, comments, and sponsored posts. Each platform is different.



Internet bot, also known as **web robot**, **www robot** or simply **bot**, is a software application that runs automated tasks (scripts) over the Internet. Typically, bots perform tasks that are both simple and structurally repetitive, at a much higher rate than would be possible for a human alone.



A **trending topic** is a subject that experiences a surge in popularity on one or more social media platforms for a limited duration of time. For instance, a trend on Twitter refers to a hashtag-driven **topic** that is immediately popular at a time. It presents activity based on real-time hashtag use and not **topics** that have been popular for a while.

3 Easy Steps To Weaponize Civilian Populations

Step I: Social media sites like Twitter and Facebook employ an algorithm to analyze words, phrases, or hashtags to create a list of topics sorted in order of popularity. For users, the trend list is a quick way to review the most discussed topics at a given time.

Step II: And according to a recent Cornell University study on social media, a trending topic “will capture the attention of a large audience for a short period.” The trend list thus “contributes to agenda setting mechanisms.

Step III: Utilizing existing online networks in conjunction with automatic “bot” accounts, foreign agents can insert propaganda into a social media platform, create a trend, and rapidly disseminate the message faster and cheaper than through any other medium in history. Source: The Command Of The Trend: Social Media As A Weapon In The Information Age by Jarred Prier.

Root Weaponization Causes



“To the algorithm, the content or truthfulness of an idea is irrelevant. Whether it’s extremist or mainstream doesn’t matter; only its ability to draw engagement counts.” A new study from the Pew Research Center shows that over two thirds of U.S. adults (68%) get their news on social media, even if rarely. Out of that population, just under half say that they get their news from Facebook. Over half (57%) expect the news they find on social media to be inaccurate. Facebook News Feed algorithm rewards popularity and paid content. The algorithm doesn’t function as an editor that filters out “real news” from “fake news”. Facebook claims it operates as a technology company, not a media company.

FRONTLINE

PBS Frontline Transcript: The Facebook Dilemma

Aired October 29th, 30th, 2018

WOMAN:

We have a video from Davida from Napoli.

DAVIDA:

[subtitles] Hi. I have a question about the role of Facebook in the media. Do you see it as an editor? Thank you very much.

MARK ZUCKERBERG:

No. You know, we're a technology company. We're not a media company.

CRAIG SILVERMAN, BuzzFeed:

The fact that so many big, well-known news brands really pushed into Facebook pretty aggressively legitimized it as a place to get kind of information. And I think that also strangely created the opportunity for people who weren't legitimate as well, because if the legitimate players are there and you're not legitimate, all you need to do is set up a website and then share links to it, and your stuff on Facebook is going to look similar enough that you've just gotten a huge leg up.

ALEXIS MADRIGAL, The Atlantic:

The responsibilities that they should have taken on are what used to be called editing. And editors had certain responsibilities for what was going to show up on the first page versus the last page, the relative importance of things, that don't relate purely to money and don't relate purely to popularity. So, they took over the role of editing without ever taking on the responsibilities of editing.

NARRATOR:

Instead, Facebook's editor was its algorithm, designed to feed users whatever was most engaging to them. Inside Facebook, they didn't see that as a problem.

ROGER MCNAMEE, Early Facebook investor:

I am an analyst by training and profession and so my job is to watch and interpret. At this point, I have a series of different examples that suggest to me that there is something wrong systemically with the Facebook algorithms and business model. In effect, polarization was the key to the model - this idea of appealing to people's lower-level emotions; things like fear and anger to create greater engagement and, in the context of Facebook, more time on site, more sharing, and therefore, more advertising value. I found that incredibly disturbing.

NARRATOR:

Ten days before the election, McNamee wrote Zuckerberg and Sandberg about his concerns.

ROGER MCNAMEE:

I mean, what I was really trying to do was to help Mark and Sheryl get this thing right. And their responses were more or less what I expected, which is to say that what I had seen were isolated problems and that they had addressed each and every one of them. I thought Facebook could stand up and say: We're going to reassess our priorities. We're going to reassess the metrics on which we run the company to try to take into account the fact that our impact is so much greater now than it used to be. And that as Facebook, as a company with, you know, billions of users, we have influence on how the whole social fabric works that no one's had before.

Societal factors + Individual risk factors + algorithm drive social media platforms = Radicalization

Societal factors that are typically associated with a higher risk of radicalization:

- ✓ The presence of a large minority population that is socially, politically, and economically marginalized
- ✓ Treatment of certain groups as "suspect communities" that are subjected to invasive and overbearing counterterrorism efforts
- ✓ A cultural or political hostility toward religion in general or Islam in particular
- ✓ Unpopular foreign policies, such as support for repressive regimes or involvement in a military campaign, especially in a predominantly Muslim country (or several of them)

Individual risk factors typically associated with a higher risk of radicalization:

- Personal ties to an already radicalized individual
- A sense of personal failure, often tied with a yearning to do something important and meaningful
- A desire for adventure, rebellion, and life experience
- The need to belong
- Feelings of compassion and concern for the suffering of others with whom one feels a personal connection, such as one's co-religionists
- And, of course, good old-fashioned teenage angst (Source: Vox.com)

Social Media Platforms provide a powerful engagement tool:

Two forces radicalize opinions in group discussion. One is informational: people learn new arguments to support the opinions they already hold. The second radicalizing force in group discussion is social: people admire and want to emulate those expressing the most extreme opinions.

- ✓ **Informational Component:** Social media discussions carry both informational and social aspects of group polarization. In news-related Twitter threads, tweets that offer new arguments supporting a particular attitude (useful facts, catchy metaphors, moral judgments) get more “likes” and retweets. Twitter users learn relevant arguments to reinforce their own opinions. Users with more radical opinions get larger followings, precisely because their tweets use expletives and polarizing rhetoric. More radical individuals have more social influence.
- ✓ Social media are more radicalizing than face-to-face groups because they are larger collectives (more sources of information), and because in these large collectives there is more likelihood of encountering radical individuals.
- ✓ There is a third reason social media groups are more radicalizing. In a face-to face group, dissenters can be ignored or expelled—but only with some unpleasantness. On a social media platform, selection has no downside; just press the mute button or the block button.

Recent Examples: Arab Spring, Ukrainian Revolution of 2014, Armenian Revolution of 2018, Russia use of Facebook and Twitter to post radicalizing posts. (Source: Psychology Today)

Case In Point

In 2014 and 2015, for instance, critical masses of users on Reddit promoted hate against feminists and against people they deemed overweight. Such ideas can naturally proliferate on social media algorithms, by indulging anger against vulnerable targets and us-versus-them tribalism.

Once those ideas had popped to the top of the user-driven algorithm a few times, they quickly became perceived as mainstream and were adopted — and even angrily defended — by much of the site, which is one of the most widely used on the internet. Many users pushed that extremism into the real world, harassing their targets on and offline. (Source: New York Times)

The problem arises when negative, tribal emotions begin to permeate social media, which increasingly dominates users’ lives and therefore shapes their perceptions of the world offline.

Social Media Solutions For Law Enforcement

New digital platforms have unleashed innovative journalistic practices that enable novel forms of communication and greater global reach than at any point in human history. But on the other hand, disinformation and hoaxes that are popularly referred to as “fake news” are accelerating and affecting the way individuals interpret daily developments. Driven by foreign actors, citizen journalism, and the proliferation of talk radio and cable news, many information systems have become more polarized and contentious, and there has been a precipitous decline in public trust in traditional journalism.

- ✓ Encourage parents, students, not to post anything that isn't factual," Moore said. "If they do have something that may be related to a crime, or that needs quick attention, contact law enforcement -- don't spread it on social media.”
- ✓ Law enforcement needs to partner with technology companies that develop tools that identify fake news, reduce financial incentives for those who profit from disinformation, and improve online accountability.
- ✓ All law enforcement academies should design specialized training taught by social media legal and platform experts on how to identify and eliminate fake news.
- ✓ Organic uses of Social Media Platforms that yield positive results:
 - 1) Get tips from suspects' "friends" after the suspect inevitably brags about his deviant behavior on the social networking site.
 - 2) Detectives can gather evidence from pictures or video posted on sites like MySpace and YouTube.
 - 3) Gain insight into a suspect's mentality, simply by monitoring their posts. Because there is no reasonable expectation of privacy when you willingly post online.
 - 4) What people post on their sites can often provide helpful insight into their state of mind and their intentions.
 - 5) Social Media can also be used to ask followers for tips on crimes or provide important warnings or alerts regarding missing children or suspected criminals who may be on the loose.
 - 6) Law enforcement agencies have long conducted extensive and thorough background investigations on their job applicants. Sites like Facebook have allowed background investigators to gain new and valuable insight into the character of their law enforcement candidates.
 - 7) Social media outlets take community-oriented policing to a new level by providing quick, cheap and easy ways to get important information out to followers and concerned citizens. Social media also provides an avenue to help humanize police departments and show that law enforcement officers are also members of the community they serve.

Social Media Technology That Enhances Effective Law Enforcement

(Source: thebalancecareers.com)

- **Unmanned Drones**

Real-time information to [police dispatchers](#) and crime analysts so that officers can get vital information about crimes in progress and dangerous situations, as they unfold. It can help them better plan responses and save lives. In addition, drones can capture video and images of crimes as they occur, providing crucial evidence in future court proceedings. Imagine a bank robbery in progress; a surveillance drone could be quickly dispatched to the area and follow a fleeing suspect to his home or hideout without his knowledge, avoiding a potential hostage situation or unnecessary injuries.

- **Google Glasses**

Imagine an officer on foot patrol. As he walks down the street, his special glasses are recording and analyzing everything he sees. A built-in screen provides information about the businesses, homes, and vehicles he looks at, while facial recognition software provides real-time information about the people he passes, letting him know if anyone matches BOLO descriptions or if someone he is near has an outstanding warrant. Simple smartphone apps like Around Me can already provide an augmented reality experience using the phone's camera.

- **Biometrics**

The use of [biometrics](#) – using unique biological traits such as fingerprints, retina scans, and DNA to identify individuals – is rapidly increasing among law enforcement circles. As technology becomes cheaper, smaller, more portable and readily available, officers can use handheld scanners to instantly identify individuals with criminal pasts. Scanners built into laptop computers provide added security to ensure no unauthorized person can gain access to sensitive intelligence and personal information. DNA databases and software continue to improve, reducing the time and the backlog that once served as major impediments to solving crimes.

- **Enhanced Smartphones**

From handheld translation services that help officers communicate with non-English speakers to handheld electronic ticket-writing devices, tablets and smartphones now give officers the ability to access, record and disseminate important information no matter where they are.

- **Automatic Tag Readers Paired With Social Media Databases**

Mounted to the exterior of patrol cars, electronic tag readers are becoming more prevalent among larger departments and traffic-oriented agencies. Using cameras connected to vehicle information databases, electronic tag readers instantly analyze license plates on every vehicle that comes within their range of view.

- **GPS**

Using GPS technology, police can pinpoint the location of a call and determine the fastest and safest route to it, getting people the help they need more efficiently and timely. Officers can record the location of their traffic stops and crash investigations, and that information can be exported to maps to determine how enforcement efforts can be better focused on decreasing the occurrences of traffic crashes. GPS technology can also be used by crime analysts to help identify emerging trends in crime locations and help better plan for shift staffing and patrol assignments.

How Social Media Is Used To Prevent and Respond To Active Shooters

Prevention

GeoFencing: Companies typically employ a method called “geofencing” to sweep up posts within a given geographic area and use keywords to narrow the pool. Because only a small fraction of social media users share their locations, the companies use additional clues, like a user’s hometown, to determine whose content is worth flagging.

Human Intelligence: Real threats, administrators said, are more often flagged by vigilant users, as was the case with the Parkland gunman, whose troubling comments on YouTube were reported to the F.B.I.

Social Media Monitoring Programs: The A.C.L.U. called out Media Sonar, an Ontario firm that recommended that its police clients monitor hashtags like #BlackLivesMatter, #DontShoot and #ImUnarmed. In late 2015, around the one-year anniversary of the death of Michael Brown in an encounter with the police in Ferguson, Mo., Media Sonar briefly contracted with the Ferguson-Florissant School District, which asked for alerts on the terms “protest” and “walkout.”

Social Media Response



Twitter is one of the best platforms to share basic facts that will not change and issue any calls for action. Tweet information like: “We are responding to the report of a shooter at Brown Library at First and Main Streets.” A call for action could be to the public at large such as “Please stay away from anywhere near First and Main Streets.” A call for action could also be directed to those inside a building in which someone is shooting such as, “If you are inside Brown Library, shelter in place.” Guidance from your SWAT or Emergency Response Team may help with these instructions to avoid further casualties. Indicate whether there is a threat to the public. If so, urge people to stay indoors, away from doors and windows, or whatever guidance you want to give. Continue to use social media to inform the public until the incident is over. This includes what you are telling the media. Don’t rely on the media alone to tell your story. When the incident is over, ensure you share that the suspect is in custody, the building or location has been cleared, and any other pertinent details.

Top Tip

When the media shares law enforcement’s message during a crisis, your story gets spread exponentially. As Twitter is the platform most journalists use both for breaking news and to gather news in times of calm, it is beneficial for law enforcement to have a Twitter presence.

Source: Policeone.com

Social media can be helpful to law enforcement when they are going into an active shooter situation because the posts tell them what has happened and where the shooter may be. Another benefit of using social media in active shooter situations is that the posts can provide evidence for law enforcement, and in a tragic case where someone may not survive, it allows them to share their story.

Stopping The Rumor Mill On Social Media



One of the biggest challenges' public safety agencies and organizations face is how to reduce or eliminate the spread of false information, especially as public demands for a response from these authorities increases. Social media can distribute news faster and to a wider audience than traditional news sources. However, that also means the potential for misinformation, false information and rumors to spread and go viral is high.^{16,17} A factor that may impede first responders' ability to mitigate and minimize the spread of misinformation, rumors and false information is the decreasing public trust in government, media and nongovernmental organizations (NGOs). Source: Homeland Security Agency

Moreover, when information from official channels is irregular or lacks new information, uncertainty and information-seeking behavior are likely sustained. As a result, people may also turn to unofficial channels, such as social media, to mitigate their discomfort. The challenge with social media as a resource for updates, however, is the lack of mechanisms for vetting the accuracy of the information being shared among users. once rumors begin to spread on social media, they are very difficult to undermine with updates or corrections. Source: *Distress and rumor exposure on social media during a campus lockdown* Nickolas M. Jonesa , Rebecca R. Thompsona , Christine Dunkel Schetterb , and Roxane Cohen Silver

- This means that a larger portion of information comes from complete strangers rather than from known or trusted sources. “With the massive growth of text-based communication, the potential for people to deceive through computer-mediated communication has also grown and such deception can have disastrous results”
- Creating false beliefs in the social media consumers' minds can be achieved though disseminating outright lies, fake news, rumors or hoaxes, especially when the message appears to come from “a friend” or another in-group member. Spam and phishing attacks in e-mail messages are more recognizable now that most users have experience receiving and filtering them, while the issue of information manipulation via social media is still poorly understood and rarely atop of users' minds. Malevolent intentions manifest themselves in interpersonal deception and can be damaging in person-to-person communication.
- Considering that younger users tend to rely on social media to inform themselves on breaking news, political issues, local and international events, the potential for harm from being intentionally misinformed over the internet is evident.

Realistic Examples

- The 2016 Louisiana floods: The Red Cross published and shared a blog to counter rumors and misinformation about food distribution and shelter policies.
- The 2014 South Napa earthquake: Tweets were filtered by geolocation to eliminate posts from trolls.
- The 2014 South Napa earthquake: Tweets were filtered by geolocation to eliminate posts from trolls.
- The 2017 Oroville Dam evacuation: An accidentally misleading tweet suggested the evacuation area included all of Sacramento County. Local agencies used traditional and social media to provide correct information. Examples of best practices include:

Best Practices To Control Social Media Rumors For Active Shooters

- ✓ Improve the quality of communication through double-verification of information;
- ✓ Use the Joint Information System (JIS) to coordinate public information efforts among jurisdictions and agencies, and for standing up a Joint Information Center (in-person or virtual) to facilitate the operation of the JIS.
- ✓ Prepare pre-scripted messages and choose or create a hashtag specific to place, disaster, agency, Be consistent and provide useful and actionable information.
- ✓ Prepare draft visuals, including graphics, photos and videos, for potential disaster scenarios. Archive these in such a way that they are rapidly accessible and can be quickly modified to meet the needs of a situation. As an example, a tornado warning graphic might include simple instructions on what to do.
- ✓ Actively tweet or post to correct misinformation, rumors or false information. Use hashtags such as #mythbuster, #RUMOR or #IncidentNameFact in posts and redirect back to official sources. Use checkmark emojis or big red Xs on images. “Share back” some of the misinformation (labeled as such) with the general public while the events are still relevant to directly address inaccurate tweets or posts.
- ✓ Ensure older information is appropriately labeled and not re-circulated as new: For critical information, continue updating a single Facebook post or existing news story, rather than starting a new one. Remove ambiguity and uncertainty caused by misinformation, and false rumors.
- ✓ Reduce alert fatigue and the risk of “cry wolf” scenarios;
- ✓ Seek ground truth as opposed to assumptions; Be swift with releasing accurate information or acknowledging the situation to help the agency work with a network of truth amplifiers and establish credibility early on;
- ✓ Determine relevance of various social media information;
- ✓ Use Virtual Operation Support Teams (VOSTs) or other digital volunteers to monitor social media, identify rumors and report back to officials so they can work to correct it.

- ✓ Create social media partnerships through mutual aid agreements with FEMA, Red Cross, or other agencies and organizations that have the necessary skills, personnel and systems to identify rumors and misinformation on various social media platforms.
- ✓ Identify and leverage trusted crowd sources or influencers, such as on-ground/on-scene users and emerging influencers to propagate critical ‘good’ information perceived by the crowd and engage them to disseminate rumor correction information. For example, the National Voluntary Organizations Active in Disasters network is on-the-ground and can be trusted to provide key information because the organizations work closely with the government.
- ✓ Train and exercise first responders and digital volunteers to spot misinformation, rumors and false information, and when and how to respond to bad information. Develop rules of engagement or a concept of operations document for when or when not to respond.