

Facebook Not Always a First and Fourteenth Amendment Right for Law Enforcement Officers

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Introduction

Let's face it, electronic social networking sites such as: Facebook, Twitter, Myspace, and other forms of social networking media, are a very popular and acceptable form of communicating with friends and family. Further, because of their popularity, these social networking media forms are not going away. With this in mind it should be noted the current generation of newly hired officers not only grew up having access to and extensively using such social networking sites, but they may not see their use as potential problem for them and their departments.

However, many officers are learning the hard way their online conduct through such sites is causing problems for both them and their departments. Further, to the surprise of this newer generation of officers when their online comments and actions cause them to be in trouble with their departments it usually results in disciplinary action to include termination despite their claims of a violation of their first and fourteenth amendment rights. Therefore it is imperative for police administrations to have in place specific rules and regulations that set forth social media networking policies that clearly lay down the ground rules as to what is acceptable and unacceptable conduct / speech when using these sites as it relates to the effect of the public image and its trust in the department and its personnel.

Social Networking Sites Defined

Before I continue with this paper, I believe there needs to be a definition of social networking media, AKA: social networking websites needs to be defined. The following two

definitions were the best definitions I could find. The first is from a paper written by Kevin J.

Rupp in it he defined a social networking website as:

A social network website focuses on building online communities of people who share common interests and activities, or who are interested in exploring the interests and activities of others. Most social network sites provide a variety of ways for users to interact, such as e-mail and instant messaging services. Social networking has created new ways to communicate and share information. Social networking websites are being used regularly by millions of people, and it now seems that social networking will be an enduring part of everyday life for the foreseeable future.

Specifically, users on Facebook and MySpace can create profiles that list their interests in books, television, music, movies, and so forth, as well as posting pictures, music, and videos. These sites generally allow its members to control who can view their profile by making it public or private. Thus, if a member wishes to restrict public access to her profile, she may make it viewable to only those that she has accepted as friends, but information such as the member's photo and first name are still displayed for public view. These sites also generally have "group" pages where people of common interests can join and make postings. (Rupp 2010)

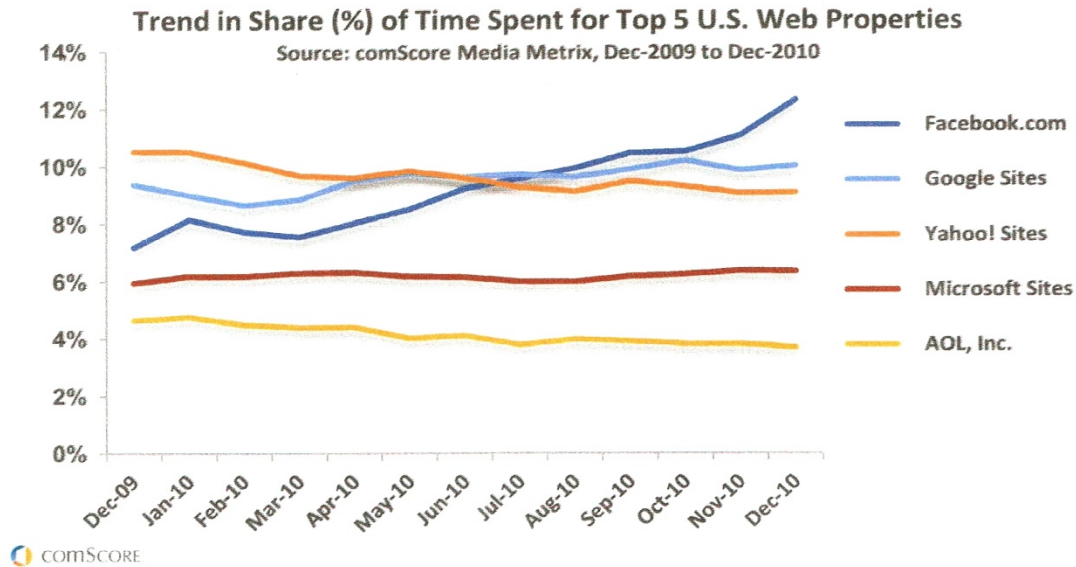
The second definition is:

A social networking service is an online service, platform, or site that focuses on building and reflecting of social networks or social relations among people, e.g.,

who share interests and/or activities. A social network service essentially consists of a representation of each user (often a profile), his/her social links, and a variety of additional services. Most social network services are web based and provide means for users to interact over the internet, such as e-mail and instant messaging. Online community services are sometimes considered as a social network service, though in a broader sense, social network service usually means an individual-centered service whereas online community services are group-centered. Social networking sites allow users to share ideas, activities, events, and interests within their individual networks. (Wikipedia)

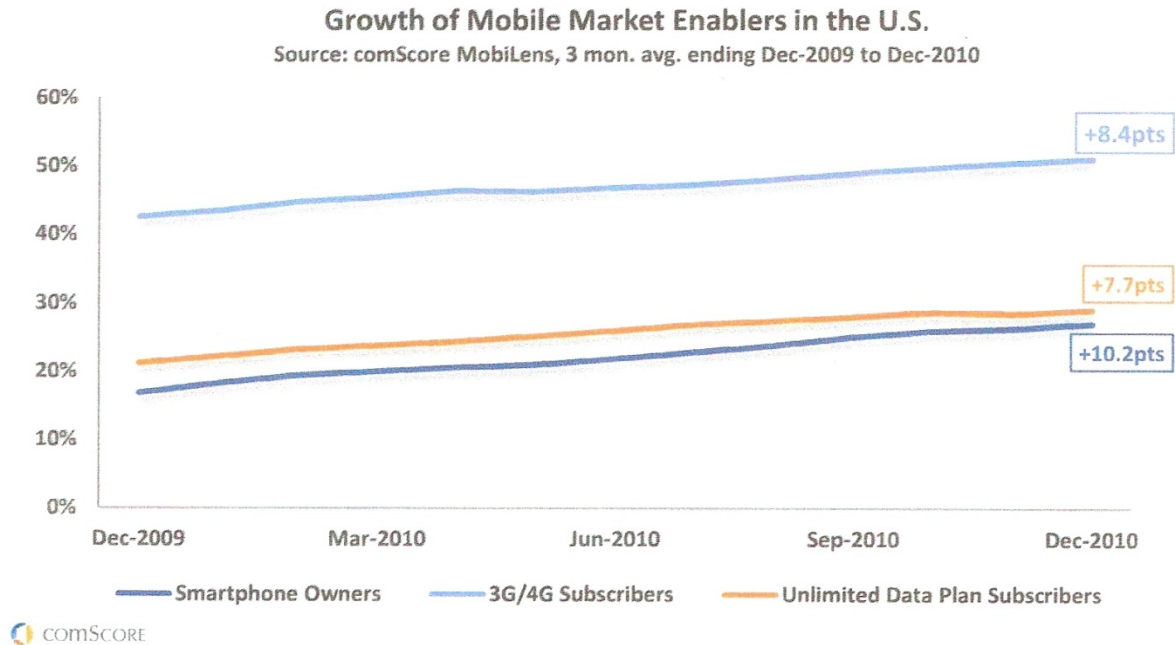
Statistics involving social networking sites

So how many Americans are signing up for and using social networking accounts on a regular basis? The best way to answer this question is to list some facts. According to the ComScore 2010 Digital Year in Review report, “Social networking continued to gain momentum throughout 2010, with 9 out of 10 U.S. Internet users now visiting a social networking site each month.” (pg 10) “Social Networking now ranks as the next most engaging activity at 14.4 percent of time spent online (up 3.8 percentage points).” (pg 8) This report goes on to indicate, “Facebook now accounts for 12.3 percent of time spent online in the U.S., up from 7.2 percent just a year ago.”(pg 25) The following chart from page 8 of the ComScore report helps put this into a visual perspective.



There should be no argument that computers and other devices with internet access are used by almost everyone in this country on a daily basis during times spent at work and away from work. Based on the information listed above it has to be assumed employees are using their social network accounts such as Facebook, Twitter, and MySpace, to name a few, while at work on the clock. The subject of just how pervasive an employee's use of social network accounts while on the clock was discussed in an on line article by Kerry Lavelle. According to the article, "Fifty-five percent of employees admit to periodically logging into their facebook accounts during work hours, and 24% of employees spend more than one hour on social networks during working time."(Kerry, 2010). This same article further reports, "As for the reason the employees stated for using Facebook during work hours, only 13% of employees had a business reason, (e.g., to promote a product or an event), while an astounding 87% of employees could not define a clear business reason for using Facebook during hours they should have been working."(Kerry 2010)

Now one may ask the question, what do these statistics have to do with a law enforcement agency since the largest division and therefore the greatest number of employees for a department is its patrol division which spends almost all of their time working on the streets taking calls for service, being proactive in the prevention of crime, and not in an office behind the desk at a computer. However, when one takes into account the use of mobile phones and their capabilities, the argument of patrol officers spending most of their working time on the streets away from computers with access to the internet is not as valid as it sounds. The ComScore 2010 report indicated, “The smartphone market continued to see strong growth in 2010 with an increasing number of smartphone devices introduced to the market, giving consumers a wide variety of options to choose from when purchasing a phone...smartphone ownership crossed the 25 percent threshold, marking a significant milestone in smartphone adoption in the U.S. By December 2010, smartphone penetration had reached 27 percent of the mobile market.”(pg. 26) This same report showed that almost 47 percent of mobile subscribers which included cell phones, smartphones, smartpads, and other devices used internet browser accessed applications or downloaded content (mobile media). (ComScore, 2010, pg 25) The report further indicated, “Major milestones in mobile were crossed during the year as smartphones reached 1 in 4 mobile Americans and 3G penetration crossed the 50 percent threshold, signaling the maturation of mobile industry” (ComScore, 2010, pg 25) A chart from page 25 of the ComScore report helps put this into a visual perspective.



Let's put all of this information into some numbers as it applies to my agency, Benton Police Department. Based on the department's most recent personnel roster the department has 64 full time employees. With the exception of the patrol division all personnel in the department work an 8 hour shift. The officers assigned to the patrol division work a 12 hour shift, and there are 4 shifts with 9 officers per shift. In a 24 hour period during a 5 day work week of Monday thru Friday, not taking into account such things as vacation, sick time, light duty, administrative matters, and training, a total of 46 employees should be at work. Based on the Lavelle article this means during the work day 25 of those employees will access a social networking account while at work. Of these 25 employees who will be accessing a social networking account, 22 of them will be using these social networking accounts for non work related reasons. Further, up to 5 of these 22 employees will be on their social networking accounts for an hour or more of non-work related activity while on the clock.

Let's look at these same statistics for a law enforcement agency in which all employees work on an 8 hour shift. Again we will use the Benton Police Department and show that the 36 officers assigned to the patrol division are divided into 3 shifts for a total of 12 officers per 8 hour shift. Assuming that on average 2 officers per shift will be off each day, a total of at least 30 patrol officers will be at work during a 24 hour day. This means in 24 hours the department will have a total of 58 employees working each day Monday thru Friday. Out of these 58 employees 32 will access a social network site while at work, 28 of these employees will be on these social networking sites for non work related reasons, and approximately 7 of these 28 employees who access these sites for non-work related reasons will be on them for at least one hour or more while on the clock. "Companies can reasonably estimate average loses of 1.5 % in employee productivity."(Lavelle, 2010) This same percentage of loss of employee productivity needs to be applied also to public sector employees since productivity is not always viewed in terms of profit.

What gives my agency the right to control my conduct / speech off duty?

The first and fourteenth amendments do not protect the speech or actions of employees in the private sector from actions taken against them by their employer since the employer is not the government. However, in the case of public sector employees one could argue this is not the case since actions taken against them by their employer, the government, in limiting their speech and actions are violations of their first and fourteenth amendment rights of protected free speech and due process of equal protection. Now if you believe this situation sounds too good to be true for public employees, such as police officers, you are correct.

The case which clearly established a law enforcement agency's right to regulate its employees conduct and speech, both on duty and off duty, in a manner that some would believe to be a violation of the employee's first and fourteenth amendment rights, is *Kelley v. Suffolk County Police Department*. In this case, the police commissioner of the police department made the rule that an officer must maintain their hair according to set hair regulations which he established for the department's officers. The president of the Suffolk County Patrolmen's Benevolent Association filed suit stating the regulation was a violation of an officer's first and fourteenth Amendment rights in that the regulation violated the officer's right to free speech and liberty. However the U.S. Supreme Court did not agree with this point of view. The court stated, "The overwhelming majority of state and local police of the present day are uniformed. This fact itself testifies to the recognition by those who direct those operations, and by the people of the States and localities who directly or indirectly choose such persons, that similarity in appearance of police officers is desirable. This choice may be based on a desire to make police officers readily recognizable to the members of the public, or a desire for the *esprit de corps* which such similarity is felt to inculcate within the police force itself. Either one is a sufficiently rational justification for regulations so as to defeat respondent's claim based on the liberty guarantee of the Fourteenth Amendment." (Justia)

Another case which established a public employer's right to regulate its employee's actions off duty and submit to actions that some would view as an invasion of privacy was established in *Evangelista v. City of Rochester* from the United States District Court, W.D. New York. The facts of the case are that the city of Rochester had a problem with housing in the city due in part to some property owners maintaining their properties below standard set forth by city

code. Because of its problem the city sent out a questionnaire to all city employees requiring them to list all property located within the city in which the employee has some financial interest. The only property that was excluded was the employee's single family personal residence. The city's justification was if sub-standard housing is owned by its employees, a conflict of interest is created since they would be in violation of city code and additionally, the employee also would be in violation of the City's Code of Ethics. The employees were told if they did not comply with providing the information requested they would be disciplined.

President of the Rochester Police Locust Club filed suit stating that by asking employees of the city to give a list of all property they own in the city was a violation of the Fourteenth Amendment of the United States Constitution and therefore an unconstitutional invasion of privacy by the government. The court did not agree and the judge stated, "Accordingly, I hold that the city's use of the questionnaire to compel disclosure of rental property ownership within the city by its employees is not an unconstitutional invasion of privacy and therefore the plaintiff's complaint is dismissed." (Google Scholar)

The two above court cases clearly allow law enforcement agencies the justification to dictate to their employees what conduct is acceptable and unacceptable both on and off duty, to include an employee's first amendment right of free speech in certain matters that have a direct impact on the image of the department and the trust entrusted to that department by the public.

However, the *U.S. Supreme Court case Pickering V. Board of Education* did decide a public employee's speech is protected as a first amendment right when it is on issues of public importance. This case therefore is used as the balancing test by the courts when determining other cases in which the speech of a public employee is or is not a protected first amendment

right. In this case a teacher wrote and published in a local paper a letter that was critical of the allocation of funds by the school board for the school district in the area of education and athletics. Further the letter was critical of how the school board and the school superintendent form of informing the tax payers of the district of the real reasons why additional tax revenue was being sought for the school district. As a result of the letter the teacher was fired on the grounds by the school board in that it found all of the facts in the letter to be false and was detrimental to the efficient operation and administration of the schools of the district. Further the school district stated because of the effect of the teacher's letter had on the school district it was in best interests of the school district and that they were required to fire the teacher under the applicable statute for the state of Illinois. In its decision the U.S. Supreme Court stated, "In sum, we hold that, in a case such as this, absent proof of false statements knowingly or recklessly made by him, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment." (bc)

However in 2006 the U.S. Supreme Court in *Garcetti v. Ceballos* rejected the Pickering balancing test in considering if the speech of a public employee was a matter of public interest when the public employee's speech was made during the course of their duties.

Why would an agency want to monitor an officer's online comments / activity?

Social networking sites are growing in popularity every year and are being used not just by the employees, but also by the employers to get the news out to an audience about their company and its product in a way that is far faster than methods used in the past. The same is true with law enforcement agencies that have jumped on the social networking bandwagon and

set up Facebook, My Space, and Twitter accounts for the department in order to get out to the public in rapid manner information critical to the solving and prevention of crime. Some example may be giving out a description of a suspect vehicle used in a bank robbery that took place within the past few hours. Another example is the description of a missing child that is posted in the early stages of the investigation in the hope of developing a lead to the child's location. The list of positive uses of social networking sites by employers both private and public is only limited by ones imagination.

Now let's look at the negative aspects which have an impact on the employer whether they are a private or public. An employee's use of a social networking site have resulted in vital company trade secrets or crucial operations to be revealed, harassment of other employees, release of personal protected information about employee's personnel records or a patient's records, and finally damage to the employers reputation or public image. What is sad in most cases the employee who caused the problem did not do so intentionally and probably was unaware of the implications that their posting on the social networking site had for their employer. Thus as stated in the introduction the importance emphasis is that an employer must have in place a social networking policy which clearly addresses the issue and lays down the dos and don'ts when it comes to employee use of social networking sites / media.

The following are some examples from the private sector to further show just how damaging an employee's use of social networking sites can be to an employer.

Blakey v. Continental Airlines, 751 A. 2d 538 - NJ: Supreme Court 2000: a female pilot sued Continental Airlines for derogatory comments made about her on an internet bulletin board, a blog site, that Continental Airlines set up for the use by its employees. This internet bulletin

board site was provided and maintained by an outside vendor. The female employee informed Continental Airlines about the derogatory comments yet apparently the company did nothing about the issue and the derogatory comments continued to be posted on the internet bulletin board. Continental Airlines argument was that since the harassment did not actually occur in the workplace that was under its direct control it is not liable. However, the New Jersey Supreme Court did not agree with Continental Airlines and sided with the plaintiff. The court stated, “Although the electronic bulletin board may not have a physical location within a terminal, hangar, or aircraft, it may nonetheless have been so closely related to the workplace environment and beneficial to Continental that a continuation of harassment on the forum should be regarded as part of the workplace. As applied to this hostile environment workplace claim, we find that if the employer had notice that co-employees were engaged on such a work-related forum in a pattern of retaliatory harassment directed at a co-employee, the employer would have a duty to remedy that harassment...Finally, we would hope that an employer who cherishes its reputation for caring for its customers would use its good offices to resolve this long simmering disagreement among its key employees, whose harmony would appear crucial not only to efficient flight operations but to general public safety as well.”(Google scholar)

The above cited case is only one of several court cases which clearly establishes an employer is responsible for addressing issues of harassment outside the workplace between its employees if that relationship was formed as a result of employment with the employer. To further make this point hit home for law enforcement administrations consider the following scenario:

Supervisor John Doe with the law enforcement agency Anywhere, USA has set up a personal Facebook account and only accesses this account while off duty and his settings are on private. This same supervisor has befriended everyone on his shift and a large portion of the department. Recently one of the officers in the department got married and the night prior to the wedding the groom had a bachelor party. It was a bachelor party in the traditional sense of the word and female entertainers were hired. Supervisor Doe was at the party and took pictures of the entertainment and posted them on his Facebook page. Now one of the officers on his shift is a female who viewed her supervisor's Facebook page and took offense to the photos and found them degrading to her sex. This female officer tells Supervisor Doe her feelings about the photos. Of course Supervisor Doe informs her that his personal Facebook account is not work related activity and he is not going to remove the photos, but to accommodate her he would remove her from his friends list and does so. Unfortunately the other members of the shift still have access to Supervisor Doe's Facebook account and this female officer on several occasions have caught other members of her shift accessing these photos via their personal smartphones while on duty. As a result the female officer goes to Supervisor Doe's immediate supervisor and complains to him about the photos and the fact she no longer feels comfortable being on Supervisor Doe's shift. The question that needs to be asked is what does the administration for the department do about the matter. If you think there is nothing that can be done then get your checkbook out because the next step is a hostile work environment law suit based on sexual harassment.

How about this public image nightmare which has been written about in articles posted on the internet. A Burger King employee films another employee taking a bath in a dish sink at

the restaurant. This video is promptly uploaded to a MySpace account and viewed by untold number of MySpace users. One viewer made the local health department aware of the video. Of course neither the health department nor Burger King Corporation thought the video to be funny like the two employees did. According to one of these articles Burger King issued the following statement concerning the issue, “We have sanitized the sink and have disposed of all other kitchen tools and utensils that were used during the incident. We have also taken appropriate corrective action on the employees that were involved in this video. Additionally, the remaining staff at this restaurant is being retrained in health and sanitation procedures.”(Darden and Harvey, 2010) Despite the best efforts of Burger King the damage to their image was done.

What damage can be done?

The next stories should make the point very clear since they involved law enforcement officers who have been terminated or disciplined for what was posted on a social networking site and caused their department embarrassment.

February 16, 2011 KOAT television news station in Albuquerque, New Mexico reported the story of Officer Trey Economidy a member of Albuquerque’s gang unit had killed a suspect during the prior week. After the shooting it was discovered the officer had posted on Facebook that his occupation was “human waste disposal.” (KOAT, 2/16/2011) The result of this comment by Officer Economidy caused the department to create a social network policy which requires all officers to get approval from the Chief prior to posting any pictures that are related to the department. Also the new policy indicated that, “vulgar posts or posts that detail investigations may result in verbal reprimands or terminations.”(KOAT, 3/17/2011) Now one

would think this is the end of the story but it's not. In another story presented by KOAT on April 8, 2011 they reported, "Facebook, Twitter and MySpace accounts of Albuquerque police officers will now be policed by one of their own. The Albuquerque Police Department now has someone whose job entails making sure the department's officers are behaving on social media websites."(KOAT, April 8, 2011) And finally, to make matters worse an attorney who is suing the city for wrongful death, has filed court documents demanding the police department release username and passwords of the Facebook accounts of 57 of the department's officers. He wants to know if other officers had made similar "banter and behavior" in their posts. His claim of course was the shooting was not justified as the police ruled, but that excessive force was used. (KOAT, 3/3/2011)



Photo taken from Indiana State Trooper Pestow's Facebook page showing another officer holding a .357 pistol to his head

The above picture is of Indianapolis Metro Police Officer Andrew Deddish holding a gun to the head of Indiana Trooper Chris Pestow. The picture was posted by Pestow on his Facebook page. Besides the disturbing photo, it was also learned while on duty Pestow was making posts to his Facebook page instead of working, and bragged about his heavy drinking. Further, Pestow on his Facebook page described his job as being a "garbage man" and stated, "I pick up trash for a living." (Segall, 2009). The result of the above photo was that Deddish was suspended and

Pestow resigned as a result of the photo and his Facebook comments. According to WTHR television report on the incident Pestow was aware that his punishment was probably going to be his termination. In their interview with Indiana State Police Major Carlos Pettiford, he was quoted as saying, “He had a pretty good idea, yes, I believe the superintendent was going to give a pretty stiff discipline. Officer Pestow chose to resign instead of withstanding that particular discipline.”(Segall, 2009)



Four photos of bikini clad women washing a Moncks Corner Patrol Car during a charity car wash. Photos retrieved from <http://www2.wspa.com/news/2010/sep/22/7/police-officer-fired-over-stripper-car-wash-ar-863734/> Photographer unknown

The above pictures were posted on the Rockstar Tattoo Studio's Facebook page and other Facebook pages. The photos resulted in an officer losing his job and a deputy nearly losing her job. According to news story posted originally posted in The Charleston Post and Courier a car wash was being held by Rockstar Tattoo Studio in which women in bikinis were washing the cars. The proceeds from the car wash were given to various charities. An officer with Moncks Corner Police Department took his privately owned vehicle to the car wash and then took his take home police car to the car wash. According to the article Moncks Corner Police Chief, Chad Caldwell, believed the officer was not attempting to do anything wrong and just used poor judgment. (MacDougall and Paras, 2010). Apparently the news of the photos got out when someone recognized one of the bikini clad women washing the patrol car to be a Berkeley County sheriff's deputy and made an anonymous complaint to the sheriff's office. This apparently led to the Chief of Police for Moncks Corner being informed of the photos. The end result is one officer loses his job and another was investigated to see if she was involved in any wrong doing or violations of policies for her department. In a related article the female deputy was not disciplined and her department released the following statement, "She was involved in the event as a private citizen and did not violate the law, BCSO or county's policies." This same article went on to state that the officer lost his job according to Chief Caldwell because, "Moncks Corner officers are provided with take-home cruisers, but the department has policies governing their use. Allowing bikini-clad women to be photographed next to a take-home cruiser is a violation of those policies" He was further quoted in the article as saying, "It reflects badly not only on the police department. It reflects badly on the town." (MacDougall and Paras, 2010)

Now one would think if their Facebook page is set to private and only certain subjects whom you gave permission to could access and view your Facebook page then you should be safe. But as pointed out in the scenario I wrote about earlier involving Supervisor Doe this is not the case. In January 2009, Washington State Patrol Cadet Math Blahut learned this lesson the hard way. Blahut was in the final phases of his training to be a state trooper and was apparently excited about being a trooper. On his Facebook page Blahut posted photos of him in his uniform next to his patrol car. However, the page also contained photos of Blahut drinking beer out of a pitcher and of him waiting for a ride after a night of partying. Despite the fact Blahut had his Facebook settings on private this did not prevent a father from complaining to the Washington State Police about Blahut's Facebook page after he caught his daughter looking at Blahut's Facebook page. The incident was reported by the Tri-City Herald and the reporter interviewed the concerned father and quoted him as saying, ""My concerns are not just for me, but for the youth ... who are logging onto that page," the father told the Herald."They're seeing a guy who's been hired by the state patrol that's supposed to have pretty high standards and pretty high ethics" . ."He's saying he's drunk. It shows him in uniform. ... Law enforcement's supposed to set an example for these kids," the father said."(Horton, 2009) According to the article apparently the Washington State Police felt the same way and upon completion of their investigation gave Blahut the option to resign or be fired.

This same article also mentioned the story of Kennewick police Officer Matthew Winckler who was fired while attending the police academy due to comments he made on his Facebook page. What happened was Winckler made some unfavorable comments concerning the maturity of some of his classmates attending the police academy with him. The article

quoted Kennewick Chief of Police Ken Hohenberg as saying, "They can do anything a private citizen can do, but they are expected to be role models and there is a higher expectation of them because of the authority they have ... One of the key things law enforcement agencies look for in a candidate is their judgment. If somebody's doing something that brings disrespect to the profession, it also tells you you're dealing with a candidate where there's maturity issues or poor judgment issues." (Horton, 2009)

Here is another example of an officer who does not get it when it comes to posting comments on Facebook. Sergeant Orlando J. Concepcion with the Sandy Springs, Georgia police department was fired from the department in 2009 due to comments he made on his Facebook account. What drew Concepcion's attention to his department was an anti-backstabbing cartoon that wound up being viewed by the wrong person.

This incident was reported by both the WSBTV in Atlanta, Georgia and The Atlanta Journal-Constitution. According to both news agencies Concepcion's argument as to why he should not be fired is, "My Facebook is set on private and the public cannot read it." (Winne, 2009). However, as discussed earlier in this paper you are not protected for comments you post on a social network site just because your page settings are on private. Remember those whom you allow to view your Facebook Page, or any other social media network site you have, are able to forward your unfavorable, questionable, or inappropriate comments on to others whom you never intended or wanted to be able to view. It should be noted that WSBTV, news reporter Mark Winne asked Concepcion how many friends were allowed to view his Facebook profile. According to the report Concepcion stated around 300 friends.

Just how detrimental were some of Concepcion's Facebook posts viewed to be by his department? I will let you be the judge. "Orlando J. Concepcion is working with the FBI this week...I smell a million dollar drug seizure coming our way soon."(Winne, 2009) In another entry he indicated that authorities would be conducting a raid in a location between two specific streets. (Winne, 2009) In the news video posted by the television station the video apparently showed the questionable posting and in it the two streets were named. In the article by Alexis Stevens with The Atlanta Journal-Constitution, Concepcion was reported to have posted the following statement, "I'm going to be working in plain clothes tonight,"(Stevens, 2009). Concepcion was terminated for releasing sensitive operational information to the public according to the report by WSBTV.

Finally an officer's online posts and comments can turn what would have been a good arrest into a night mare for the arresting officer and prosecutors, such as in the arrest of Gary Waters. According to an article by Sean Gardiner in The Village Voice News, Gary Waters an ex-con was arrested by Officer Vaughan Ettienne because he was weaving in and out of traffic on a motorcycle that was reported stolen. A traffic stop was made and during the stop Waters attempted to flee on the motorcycle but was unable to because it stalled. Waters took off running on foot with Officer Ettienne and his partner giving chase. As Waters was attempting to climb a fence to get away Officer Ettienne pulled him off the fence and a physical fight took place between Waters and the two officers. During the fight Waters attempted several times to get into his fanny pack. After Waters was cuffed it was discovered the fanny pack contained a gun, handcuffs, a loaded pistol magazine, and extra ammo. (Sean, 2008). In a related article written by Jim Dwyer for The New York Times Mr. Waters' defense attorney was going to focus on the

fact that Officer Ettienne had been suspended in the recent past for steroid use and that Mr. Waters did not resist arrest but was beaten up by Officer Ettienne and his partner and that they then planted the gun on him. The defense attorney was going to claim that Officer Ettienne was in an irrational rage due to his steroid use when he arrested his client. (Dwyer, 2009) Unfortunately for Officer Ettienne and the prosecutors as the case proceeded through the courts the defense attorney learned of some online comments Officer Ettienne made about some video clips of arrests which led the defense attorney to investigate further Officer Ettienne and discovered other questionable online comments by Officer Ettienne.

According to a story by Billy Parker writing for the Gothamist the comment Officer Ettienne made about the arrest videos was, "If he wanted to tune him up some, he should have delayed cuffing him... If you were going to hit a cuffed suspect, at least get your money's worth 'cause now he's going to get disciplined for a faggot-ass love tap." (Parker, 2009) According to the New York Times article as the trial neared he indicated on his MySpace account that his mood was "Devious" (Dwyer, 2009) The same article quoted a post that Officer Ettienne posted on his Facebook page, "Vaughan is watching 'Training Day' to brush up on proper police procedure." (Dwyer, 2009)

Needless to say Officer Ettienne's online comments played into the defense attorney's argument Officer Ettienne uses excessive force and that excessive force was used in the arrest of Waters and the officer was attempting to cover up his use of excessive force. As farfetched as this argument might seem the jury believed it and found Waters not guilty of the weapon charge

that would have sent him back to prison since at the time of his arrest he was on parole for burglary.

Conclusion

It is a fact social networking media sites like Facebook, MySpace, Twitter, and numerous others are here to stay. Further, with the current generation of newly hired officers who grew up using social networking media and most likely still use them, their use could pose a problem for both the officer and the officer's law enforcement agency. These potential problems may be compounded by the rapid growth in the use of smart phones which can allow an officer to instantly post comments and photos to their social networking sites shortly after finishing a call or while still at a crime scene. Because of the potential damage an officer's postings to social networking sites can be to court cases, ongoing investigations, the officer's integrity, the image of the department, and the public's trust placed in the department, it is imperative for police administrations to educate their officers that what they post on such sites is not protected under the First and Fourteenth Amendments. The best way a law enforcement agency can educate its officers about the dangers posed by their online postings is to have in place specific rules and regulations that set forth social media networking policies that clearly lay down the ground rules as to what is acceptable and unacceptable conduct / speech when using these sites.

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