



Social Media & the Law: What Every City Official Needs to Know

TALK IT UP THURSDAY

Expert tips without
leaving your office.



Some Basics

- The Law is always behind the times when it comes to technology
- People do dumb things when it comes to technology





Traditional Public Forum

- Places that have *a/ways* been open to public debate, assembly, and protest, like:
 - Public streets
 - Sidewalks
 - Parks
 - Courthouse steps

Designated Public Forum

- “Public property which the State has opened for use by the public as a place for expressive activity.”
- This includes:
 - Designated meeting halls

Limited Public Forum

- Restrictions have to be viewpoint-neutral and reasonable in light of the purpose served by the forum
- Is the forum limited to specific speakers or specific topics?
- Council/Board Meetings

Non-Public Forum

- Public property that is *not* made an area of expression through tradition or designation, and where speech can generally be restricted as long as it is reasonable and content-neutral.
- Examples include:
 - The inside of a courthouse
 - Internal office areas

Restrictions on Speech

Balancing the competing needs of a citizen's right to free speech and a government's interest in conducting its business without unnecessary interruptions or distractions

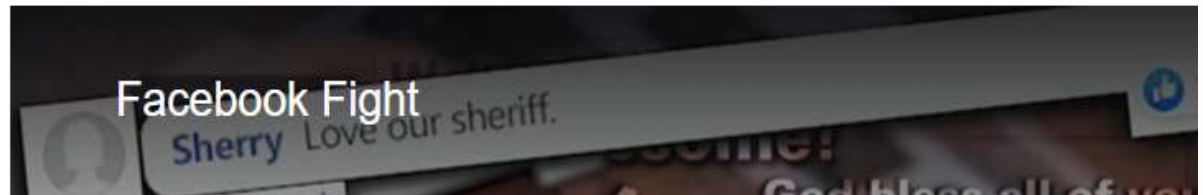
- In each type of forum, the government may impose content-neutral time, place, and manner restrictions.
- Such restrictions must be:
 - Justified without reference to the content of the regulated speech
 - Narrowly tailored to serve a significant or compelling governmental interest
 - Leave open ample alternative channels for communication.

Social Media and the First Amendment

Can we block people or delete their comments?

- Be Careful because you will likely get sued

Sheriff's office agrees to stop banning negative Facebook comments



First Amendment

Is the social media site maintained by the government itself?

If so, how is information posted to the site?

Are public comments allowed on the site?

- If so, then a designated public forum has likely been created!

How do we handle comments by elected officials? Public employees?

Social Media

- New technology and old law!
- Pickering v. Board of Education, the U.S. Supreme Court established the balancing test weighing the government employer's interest in promoting the efficiency of performing the public services with the First Amendment rights of the employee as a citizen

Social Media

- New technology and old law!
 - Public employees must show that the speech involved a matter of public concern rather than one of personal interest
 - If an employee is making statements related to their official duties, then they are not speaking as a private citizen, and their statements are not protected from potential discipline.

Social Media Case Law

The United States Supreme Court has recently discussed social media in Lindke v. Freed and O'Connor-Ratcliff v. Garnier.



In Lindke, the Court analyzed when a government official's decision to block and moderate persons from his personal social media implicated the First Amendment



In Garnier, the Court analyzed whether a public official engages in state action subject to the First Amendment by blocking an individual from the official's personal social media account, when the official uses the account to feature their job and communicate about job-related matters with the public, but does not do so pursuant to any governmental authority or duty.

Social Media Policy Suggestions



Develop a social media policy at the office, city, or county level



If concerned about a social media platform's community standards being violated, make a complaint to the platform rather than blocking a user



If an official page is limited to a specific purpose or topic, make sure that limitation is clearly communicated on the page- include the ability to correct mistakes

Social Media

- What about hiding public comments from view?
- What about banning comments that pose threats, profanity, or offensive and inappropriate comments?
- What can we do?

Social Media

- What are some possible results of a lawsuit?
- The government could be found to have unlawfully retaliated



Public Employees - Social Media



1. Contact the County or City Attorney



2. Can employees lose their jobs for things they post on personal social media pages?

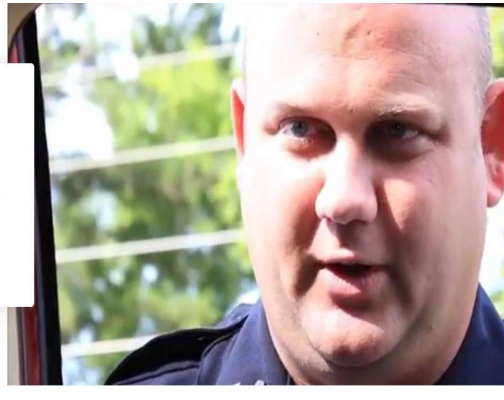


3. How is the social media site created and maintained?



4. Does the posting color or impact the person's ability to do their job?

Ga. deputy fired for racist Facebook posts, targeting black motorists



Social Media Records Retention Schedules

- How long must records be stored?
- What kinds of records are social media posts?
 - Does it matter who makes the post?
 - Should we regulate who can make posts?
 - How can some of this be accomplished?

Social Media Records Retention Schedules

- Typically, social media posts are classified as “Correspondence”:
 - Administrative Correspondence must be kept permanently
 - General Correspondence must be kept for five years
 - Transitory Correspondence must be kept for the useful life

The Intersection of Public and Private Pages



- When does a personal social media page become a public social media page?
- Litigation involving President Trump may be the guide
- 2nd Circuit held that his Twitter page had become a public forum and that he was acting in a governmental capacity when he blocked people



The Intersection of Public and Private Pages

- Lessons:
 - Just because you created the social media page as a private citizen does not mean it will remain a private page
 - Keep your private and professional lives separate

Social Media Best Practices

- If concerned about a social media platform's community standards being violated, make a complaint to the platform rather than blocking a user
- Develop social media policy at the office, city, or county level
- If an official page is limited to a specific purpose or topic, make sure that limitation is clearly communicated on the page

Official Social Media Accounts Best Practices

For official social media accounts:

- Consult with the County or City Attorney before...
- Blocking users in response to comments or posts
- Removing comments posted by users
- Limiting users' access to any interactive features

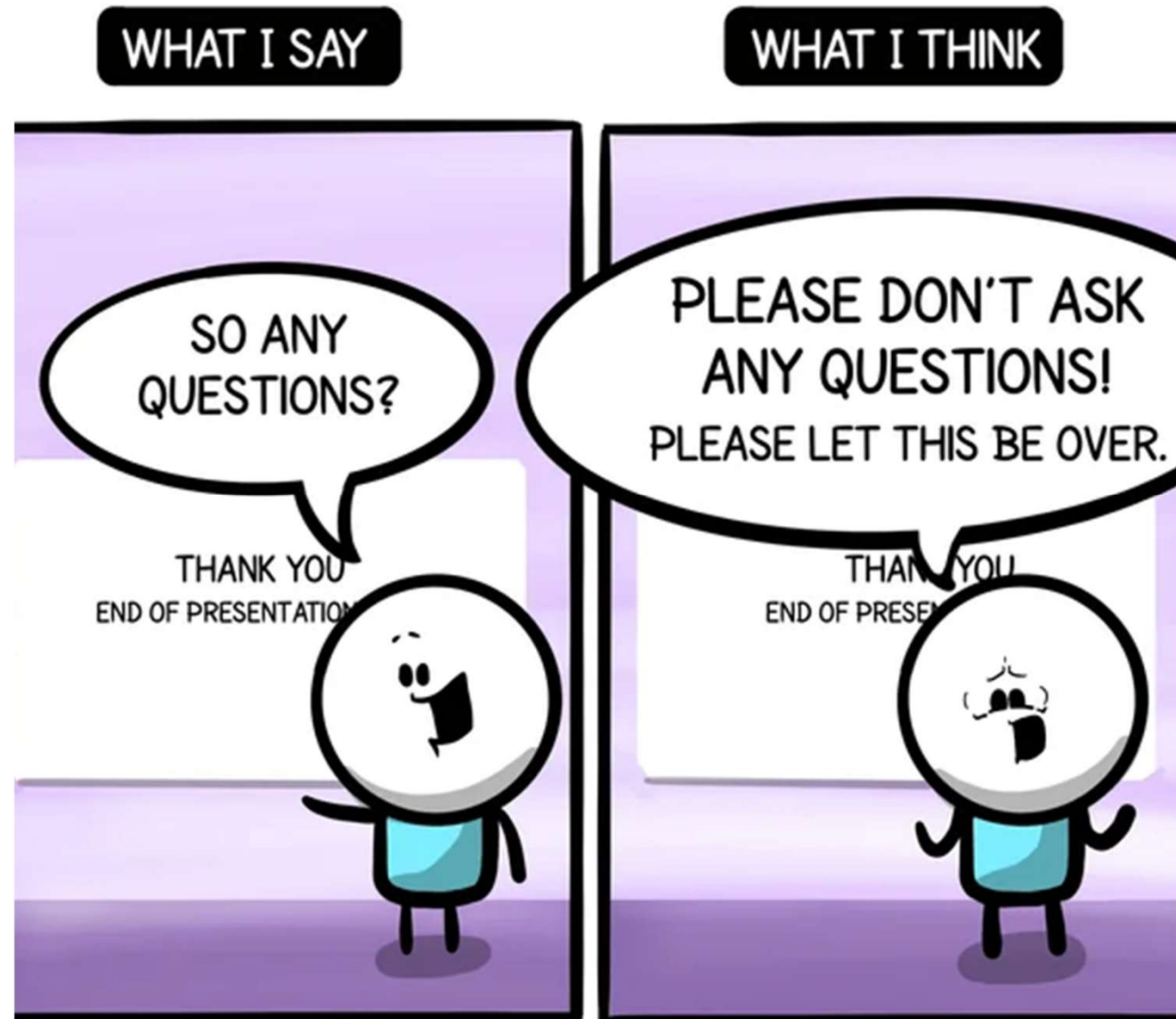
The Intersection of Public and Private Social Media

What to Tell the Elected Officials

Keep Private Social Media entirely separate from Public-

- Do not associate official title, government address, or government email with the account.
- Do not encourage constituents or the public to use the account as a means to contact the official.
- Do not link the account to any official social media accounts -- either the owner's or their public office's.
- Do not refer to or re-post comments from the personal account on official social media accounts.
- Avoid including photos taken in an official setting or engaged in official business
- Limit posts related to official activities or events, and address any such posts explicitly to friends and family
- Set the account to be private rather than public

Q&A





THANK YOU!

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