

# Social Media

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## Concepts and Issues Paper

September 2010

### I. INTRODUCTION

#### A. Purpose of Document

This paper<sup>1</sup> was designed to accompany the *Model Policy on Social Media* established by the IACP National Law Enforcement Policy Center. This paper provides essential background material and supporting documentation to impart greater understanding of the developmental philosophy and implementation requirements for the model policy. This material will be of value to law enforcement executives in their efforts to tailor the model policy to the requirements and the circumstances of their communities and their law enforcement agencies.

#### B. Background

Personal Internet access has grown exponentially over the last decade, facilitating the growth in popularity of the World Wide Web and, more recently, social media. For the purpose of this discussion paper, social media is defined as a category of Internet-based resources that integrate user-generated content and user participation. Social media tools have become synonymous with popular culture and new waves of personal communication. People of all ages and organizations of all types are using these tools like never before.

Social media has many uses for government agencies including law enforcement agencies. The characteristics of community collaboration and interactive communication that are at the core of social media, lend directly to the core of democratic culture, and allow for positive community interaction and effective delivery of services. Community policing, investigations, and other strategic initiatives can all be enhanced with the effective use of social media.

The increase in personal social media usage across demographics also means that more and more law enforcement personnel are engaging in these tools on a personal level. Misuse of social media can lead to harsh consequences for both the individual and his or her agency.

The IACP *Model Policy on Social Media* was established in order to assist law enforcement agencies in developing appropriate procedures and guidelines for both official department use of social media tools as well as personal use by agency employees. The purpose of this discussion paper is to educate law enforce-

ment managers and executives on the uses and abuses of social media. As the age of technology continues to expand, the use of social media should be supervised closely in order to ensure ethical, effective, and lawful police applications.

#### C. Policy Development

In response to the rise in use of social media, police departments should draft and implement policies that regulate social media use among employees, as well as determine proper and effective department use. The model social media policy was developed to establish an agency's position on the utility and management of social media tools as well as provide guidelines for personal usage of social media for agency personnel.

As noted above, many of the legal issues surrounding social media have not yet been settled in the court system. "In a time where the legal standards as to privacy issues are being interpreted at all levels, the need to ensure clear standards are in place is more important than ever."<sup>2</sup>

Before determining what needs to be accomplished in a social media policy, it is essential to bring together communications, legal, and other officials within the agency and municipal jurisdiction to perform a needs assessment. Agencies should also note, that many issues may be resolved by citing other policies that may already be in place such as Internet Use, Electronic Messaging, Code of Conduct, and Media Relations.

### II. OFFICIAL DEPARTMENT USE

Departments may find great value in the use of various social media tools. Social media tools can be used for numerous purposes and can be invaluable in many day-to-day law enforcement operations. It is integral that authorization and administration of any department-sanctioned sites are clearly articulated.

#### A. Uses

**Investigations.** Agencies may use social media as an investigative tool when seeking evidence or information about missing or wanted persons, gang participation, and web-based crimes such as cyberstalking or cyberbullying. For example, in Franklin, Indiana, prosecutors and attorneys use social network profiles as evidence in cases spanning from underage drinking to child custody.

*Prosecutors also tracked the Facebook profile of Will Slinger, who was convicted in 2007 of two counts of operating a vehicle while under the influence of a controlled substance.*

*Slinger had smoked marijuana the day he crashed into a van and killed a passenger inside. On his Facebook page, Slinger referenced his marijuana use and also posted photos of a bong...*<sup>3</sup>

This is just one of many instances across the country where police and prosecutors are using information found online and through social networks to put together the pieces of a case and enhance the evidence against an individual.

**Community outreach and information.** Departments can use social media tools to enhance community policing initiatives by “promoting better communications, providing greater access to information, fostering greater transparency, allowing for greater accountability, encouraging broader participation, and providing a vehicle for collaborative problem solving.”<sup>4</sup> For example, crime prevention tips may be posted through various online avenues, online reporting opportunities may be offered, crime maps and other data may be posted, or these tools may be used to distribute valuable community and alert information.

Departments across the country are using the various social media tools to reach out to their communities in new ways and foster valuable connections throughout their jurisdictions. The police department in Baltimore, Maryland, uses Twitter, Nixle, and Facebook to enhance relationships and increase knowledge and safety around the city. Baltimore police use social media “as an extension of the local news media because the media can’t cover everything that happens and involves the department”<sup>5</sup>

**Recruitment and employment.** To be competitive employers, law enforcement agencies must be creative in their outreach and open to using new tools. Social media provides law enforcement with the ability to attract, engage, and inform potential applicants on a whole new level. Departments such as the Houston, Texas, Police Department and the Vancouver, British Columbia, Police Department use social media tools such as blogs, social networks, and multimedia-sharing sites to give potential applicants and recruits a unique view of police work. Social media sites also allow departments to make a connection with the public and answer questions they may have about a future career in law enforcement.<sup>6</sup>

It is also vital for agencies to recognize the importance of integrating cybervetting procedures into the background investigation process for potential new hires. But, departments must balance due diligence with an individual’s privacy concerns to ensure fair and just hiring practices. The IACP and the Defense Personnel Security Research Center have developed guidelines for the assessment of a person’s suitability to hold a position in a law enforcement agency using information found on the Internet.

## **B. Authorization and Administration**

There should be an authorization process for employees wishing to create an account for the benefit of the agency, with the agency public information officer (PIO), or authorized press representative, as the authority overseeing and confirming decisions. In this role, the PIO, or an authorized representative, will evaluate all requests for use, verify staff being authorized to use social media tools, and confirm completion of training for social media. PIOs, or authorized representatives, should also be responsible for maintaining a list of all social media application domain names in use, the names of employee administrators of these accounts, as well as the associated user identifications and

passwords currently active within their respective agencies. Should the employee who administers the account be removed as administrator or no longer be employed by the agency, the PIO, or an authorized representative, should immediately change all passwords and account information.

Freedom of speech for police officers and other similarly situated public employees has been a difficult issue for many years. The courts have struggled to define the limits of this protected right, and the case law on this point has become complex and at times difficult to apply. U.S. courts have long recognized that while the First Amendment’s guarantee is a vital part of our freedoms, it is not unlimited and may be curtailed when its exercise causes harm to other important government interests. The problem for the courts—and for police departments—has been to determine where to draw the line and how to properly inform police officers of these legal limitations.<sup>7</sup>

The complexity of the issue is increased by the courts’ making distinctions between statements made in a public employee’s official capacity and those made as a private citizen. This distinction is sometimes complicated by the fact that police officers are widely considered to be on duty at all times, increasing the difficulty of determining into which category the officer’s speech falls.<sup>8</sup>

## **III. Legal Aspects of Social Media Usage**

### **A. The First Amendment and the Public Employee**

The First Amendment to the U.S. Constitution protects most speech. In this context, the term speech may refer to oral or written communications or other forms of conduct. In some instances, such communications or conduct may be deemed detrimental to a police department and the accomplishment of its mission. In these cases, discipline may be imposed in order to repair such damage, prevent future such incidents, or both. Employees often resist these personnel actions on the grounds that the communication or conduct was privileged under the First Amendment.

**Statements made in an official capacity.** The extent of a public employee’s First Amendment rights depends heavily upon whether the statements in question were or were not made in the employee’s official capacity. If the statements were made in an official capacity, the employee’s speech is generally not protected by the First Amendment.

As the U.S. Supreme Court has noted, for many years the rule has been that “a public employee had no right to object to conditions placed upon the terms of employment—including those which restricted the exercise of constitutional rights.”<sup>9</sup> As a recent decision states, “when a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom.”<sup>10</sup>

A very significant recent ruling regarding a public employee’s First Amendment rights when a statement is made in his or her official capacity is the 2006 U.S. Supreme Court decision in *Garcetti v. Ceballos*.<sup>11</sup> In that case, Ceballos, a deputy district attorney, was asked by defense counsel to review a case in which, the defense counsel claimed, the affidavit police used to obtain a search warrant was inaccurate. Concluding after the review that the affidavit contained misrepresentations, Ceballos relayed his findings to his supervisors, and thereafter wrote a memorandum recommending dismissal of the case.<sup>12</sup>

Subsequently, Ceballos claimed that his employers had retali-

ated against him for his memo in violation of the First and Fourteenth Amendments, and he filed suit under 42 U.S.C. §1983. The district court rejected Ceballos's claim, ruling that the memo was not protected speech because Ceballos wrote it pursuant to his employment duties. The Ninth Circuit reversed on the grounds that the memo's allegations were protected under the First Amendment. Upon appeal to the U.S. Supreme Court, however, the Ninth Circuit was reversed, holding that when public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the U.S. Constitution therefore does not insulate their communications from employer discipline.<sup>13</sup> The Court said:

*Our holding ... is supported by the emphasis of our precedents on affording government employers sufficient discretion to manage their operations. Employers have heightened interests in controlling speech made by an employee in his or her professional capacity. Official communications have official consequences, creating a need for substantive consistency and clarity. Supervisors must ensure that their employees' official communications are accurate, demonstrate sound judgment, and promote the employer's mission. ...*

*We reject ... the notion that the First Amendment shields from discipline the expressions employees make pursuant to their professional duties. Our precedents do not support the existence of a constitutional cause of action behind every statement a public employee makes in the course of doing his or her job.<sup>14</sup>*

Since police officers are public employees, it appears that the First Amendment will not prohibit a law enforcement agency from taking disciplinary action against an officer whose official statements are deemed to warrant it. But, what constitutes an official statement is often at issue. Of particular interest to criminal justice personnel are the cases in which a departmental employee has reported to superiors about perceived misconduct or other problems within the department. Such criticisms have frequently been held to be official statements and, therefore, not subject to First Amendment protection—even though they are about matters that are not within areas of the speaker's own immediate responsibility.<sup>15</sup>

However, the courts have pointed out that although First Amendment protection does not apply, the employee may be shielded from disciplinary action by other protections. As the U.S. Supreme Court observed in *Garcetti*,

*Exposing governmental inefficiency and misconduct is a matter of considerable significance. As the Court noted in Connick [Connick v. Myers, 461 U.S. 138 (1983)] public employers should, "as a matter of good judgment," be "receptive to constructive criticism offered by their employees." The dictates of sound judgment are reinforced by the powerful network of legislative enactments—such as whistle-blower protection laws and labor codes—available to those who seek to expose wrongdoing... These imperatives, as well as obligations arising from any other applicable constitutional provisions and mandates of the criminal and civil laws, protect employees and provide checks on supervisors who would order unlawful or otherwise inappropriate actions.<sup>16</sup>*

**Statements by public employees not made in an official capacity.** While official statements are not, under *Garcetti*, protected by the First Amendment, the situation is quite different if the public employee is not speaking in an official capacity, but instead in his or her capacity as a private citizen. Whether or not

the employee is speaking as a private citizen may sometimes be at issue, but where the communication in question is not about an official matter, this determination is usually not too difficult.

If the public employee was speaking only in the role of a private citizen, the employee's speech may be protected by the First Amendment if the communication touches upon a matter of public concern.<sup>17</sup> However, determining what is or is not a matter of public concern can be very difficult, and the courts have recognized this. In several cases, the U.S. Supreme Court has attempted to clarify the concept. For example, in *City of San Diego v. Roe*,<sup>18</sup> the Court said that "public concern is something that is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public at the time of publication."<sup>19</sup> The same Court further described matters of public concern as being "typically matters concerning government policies that are of interest to the public at large..."<sup>20</sup>

If the matter is indeed one of public concern, the courts give the officer considerable latitude to speak out or to engage in conduct which the courts consider constitutionally protected speech. Thus, one of the first inquiries that a court will make in such cases is whether or not the speech engaged in by the officer falls within the area of matters of public concern.<sup>21</sup>

Even if some forms of speech relate to a matter that falls within an area of public concern, the First Amendment may not necessarily preclude the department from taking steps to discipline the officer for it. Even when speaking as a private citizen about matters of public concern, employees may be subject to "speech restrictions that are necessary for their employers to operate efficiently and effectively."<sup>22</sup>

Thus, if an officer's speech (including conduct) has been significantly harmful to the department and its mission, the department may take action to prevent further damage. In *Roe*, the Court restates the balancing test, adopted by the *Pickering* Court to be used

*To reconcile the employee's right to engage in speech and the government employer's right to protect its own legitimate interests in performing its mission the Pickering Court adopted a balancing test. It requires a court evaluating restraints on a public employee's speech to balance "the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees."<sup>23</sup>*

Note that this *Pickering* balancing test is applicable only if the matter that is the subject of the officer's speech or conduct is found to be one of public concern.

## **B. Personal Uses of Social Networking Detrimental to the Department**

Law enforcement personnel, like many citizens today, engage in social networking, participate in blogging, or otherwise use the Internet for individual purposes.<sup>24</sup> While much of this activity is perfectly proper, in some instances what is said or done by employees on the Internet could be considered detrimental to the department and its mission in a number of ways.

**Revelation of sensitive information.** Blogs or other communications may, inadvertently or otherwise, reveal sensitive information about the department's activities. For example, the communication may include facts potentially damaging to an ongoing investigation, disclose departmental plans for raids or traffic checkpoints, or compromise the identities of officers engaged in undercover work.

**Sexually explicit communications.** Several major court cases have dealt with litigation over personnel actions based upon an employee's use of social media to communicate sexually explicit statements, pictures, videos, or other such material.<sup>25</sup> Where the person posting such material identifies himself or herself as a police officer, or can be identified as one, the potential for damage to the department's reputation and hence its effectiveness may be considerable. [See, most recently, *Ontario v. Quon*, 560 U.S. \_\_\_\_ (2010), decided June 17, 2010.]

**Defamatory material.** Posting defamatory material by an employee not only is an embarrassment to the department, but also creates an obvious risk of lawsuits against the department, the officer, and even supervisors who may have failed to prevent or remedy the impropriety.

**Communications derogatory of, or offensive to, protected classes of individuals.** Posting racial comments or other material offensive to persons of a particular race, gender, religion, ethnic background, or other protected class, can be potentially damaging to the department in several ways. It may strain community relations, inhibit recruiting, and generate litigation under various federal and state laws. It may also interfere with the successful prosecution of some present or future court case when officers of the department post such material, as noted below.

**Social media communications and impeachment of police witnesses.** Almost any statement or conduct by a police officer that calls into question the officer's credibility as a witness may be used at a trial either to impeach that officer's testimony or to cause him or her to be excluded from testifying. The implications for the officer's career and for law enforcement in general are obvious.

Further, statements or conduct of an officer that would affect his or her credibility fall under the requirements of *Brady v. Maryland*.<sup>26</sup> In 1972, in *Giglio v. United States*,<sup>27</sup> the U.S. Supreme Court extended the Brady rule to require that the prosecution disclose to the defense any information relevant to the credibility of the government's witnesses. The disclosure requirement applies to both prosecution and police and imposes a duty upon police not only to disclose known information but also to learn of such information.<sup>28</sup> This learn-and-disclose requirement may extend to communications made by officers—even in their private lives—via social media.

In light of the above, some attorneys, particularly defense counsel in criminal cases, search for material posted by police officers on websites with the hope of finding incriminating statements that can be used at trial. Such findings have been used to impeach officers in a number of criminal cases. When an officer's postings indicate bias or a propensity toward violence, in particular, they become of great value to defense lawyers seeking to impeach an officer's testimony and may seriously affect the outcome of the case.<sup>29</sup>

This potential for impeachment may extend beyond one particular case. Criminal defense lawyers are known to engage in networking with their colleagues to identify officers whose speech or conduct may call into question their credibility in any future case in which the officer testifies. In some instances this may reduce the officer's usefulness to the department to the point that the officer must be placed on desk duty or terminated.<sup>30</sup>

### C. Employee Discipline for Inappropriate Use of Social Media

When an employee uses social media as a means of communicating matters that give rise to one or more of the foregoing problems, a department may seek to impose discipline upon the

employee. Such discipline may lawfully be imposed only under the rules discussed previously. Since in most cases the conduct in question will fall into the category of unofficial, personal communications, discipline is possible only when (1) the situation is not a matter of public interest, or (2) though a matter of public interest, the Pickering balancing test finds that the departmental interests outweigh the First Amendment interests of the officer.

These principles have been applied in numerous court cases involving social networking and other uses of electronic social media by police officers. Many of these cases have resulted in a finding that the officer's use of social media was not a matter of public interest and that the officer was therefore not shielded from disciplinary action by the First Amendment.

One of the best-known Court decisions of this type is that of *City of San Diego v. Roe*.<sup>31</sup> The case provides an instructive example of how the Court applies the rules applicable to employee speech and may be instructive to officers who use social media.

In *Roe*, the Court considered a First Amendment case involving sexually explicit behavior by a police officer.<sup>32</sup> According to the Court, *Roe*, a San Diego police officer, was terminated for having

*made a video of himself stripping off a police uniform and masturbating. He sold the video on the adults-only section of eBay, the popular online auction site. ... Roe also sold custom videos, as well as police equipment, including official uniforms of the San Diego Police Department (SDPD), and various other items such as men's underwear. Roe's eBay user profile identified him as employed in the field of law enforcement.*

*When this conduct came to the attention of Roe's department, an investigation was initiated. ... Thereafter, the department ... began proceedings which resulted in Roe's dismissal from the force. Roe then brought suit alleging that the termination violated his rights of freedom of speech.*<sup>33</sup>

The Court found in favor of the City of San Diego, holding that the officer's conduct did not relate to a matter of public concern for First Amendment purposes and, therefore, did not preclude disciplinary action against the officer. The Court said:

*Although Roe's activities took place outside the workplace and purported to be about subjects not related to his employment, the SDPD demonstrated legitimate and substantial interests of its own that were compromised by his [Roe's] speech. Far from confining his activities to speech unrelated to his employment, Roe took deliberate steps to link his videos and other wares to his police work, all in a way injurious to his employer. The use of the uniform, the law enforcement reference in the Web site, the listing of the speaker as "in the field of law enforcement," and the debased parody of an officer performing indecent acts while in the course of official duties brought the mission of the employer and the professionalism of its officers into serious disrepute. ...*

*[T]here is no difficulty in concluding that Roe's expression does not qualify as a matter of public concern under any view of the public concern test. ...*

*The speech in question was detrimental to the mission and functions of the employer. There is no basis for finding that it was of concern to the community as the Court's cases have understood that term in the context of restrictions by governmental entities on the speech of their employees.*<sup>34</sup>

On this rationale, the Court upheld the City's action in terminating *Roe*.<sup>35</sup>

Thus a law enforcement agency may discipline or terminate an employee for improper use of social media, provided that the court finds that the speech in question did not touch upon a matter of public concern, or that, if it did, the department's interests outweigh the First Amendment interests of the officer in the case.<sup>36</sup>

Note, however, that whether or not the matter is one of public concern is not always clear, and often will be hotly contested in any litigation arising out of the department's disciplinary actions.

#### D. Freedom of Information and Records Retention

While federal law enforcement agencies must abide by the United States Freedom of Information Act, state and local agencies are responsible for adhering to state and local guidelines on open record availability and archiving. Each state has unique caveats to their laws and agencies must be aware of these and the distinct challenges they present for social media content.

### IV. Personal Use

With millions of individuals engaging in the use of social media, it is obvious that law enforcement personnel will be among the users. Content posted by law enforcement officials on social media sites has the potential to be disseminated broadly, even if posted under strict privacy settings. Any improper postings can ultimately affect the employee's employment and the agency as a whole.

Even if content is posted while personnel are off duty, it can still have detrimental effects. Social media site content is now frequently used by defense attorneys to impugn a person's reputation or show bias, as discussed earlier. Further, the safety and security of personnel and their families is a paramount concern. Department employees must be made aware of the fact that, regardless of privacy settings, the pictures, the videos, and the text they post online could be made available to individuals for whom it was not intended.

It is also important to recognize that social media is increasingly accessed via mobile devices as opposed to computer work stations. The use of cellular telephones, both personal and department issued, while on duty can be subject to department oversight as well as discovery in court.

*For any who may question a police department's authority to monitor personal cell phone use in this manner, it should be made clear that the actions and activities of police officers while on duty are germane to the efficiency and effectiveness of the police department and, as such, subject to administrative management.*<sup>37</sup>

This correlation between mobile device usage and social media engagement should not be overlooked by department personnel.

It is essential that agencies educate both new and seasoned personnel on the proper and improper use of social media tools and set out processes for dealing with violations. Proper training mechanisms should be in place to ensure that all agency personnel are aware of the potential repercussions of their online behaviors. Responsible social media use should be emphasized.

### V. CONCLUSION

Police executives and employees should be aware of the benefits of social media for agency operations as well as the issues

that may arise from the misuse of social media by individuals. The model policy addresses both the use of these tools on behalf of the department as well as the regulation of personal use by employees. This duality is central to not only the policy adapted by an agency but also the overall social media strategy of an agency, which should be integrated with its overarching communications and outreach plan.

The use of social media should be managed according to the guidelines presented in the model policy and in line with the agency's strategy. Organizations must recognize the value social media has when used purposefully to meet agency goals such as community outreach, service development, officer and volunteer recruitment, and criminal investigations. This recognition, however, must be coupled with an assessment of the challenges that may be faced. Further, agencies have a duty to educate and inform officers

### Endnotes

<sup>1</sup> A large portion of this paper has been adapted from *Training Key #641*, "Social Networking and Freedom of Speech," written by Charles Friend.

<sup>2</sup> Daigle, Eric P., "Social Networking Policies: Just Another Policy?" *The Police Chief* 77, no. 5 (May 2010): 13.

<sup>3</sup> Sarah Michalos, "Social Media to Solve Crimes," *The Journal Gazette*, June 20, 2010, <http://www.journalgazette.net/article/20100620/NEWS07/306209898/0/FRONTPAGE> (accessed August 30, 2010).

<sup>4</sup> Mary Lou Leary and Mary Rappaport, *Beyond the Beat: Ethical Considerations for Community Policing in the Digital Age* (Washington, D.C.: National Centers for Victims of Crime, November 2008), 9, <http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspxnz?DocumentID=45708> (accessed August 27, 2010).

<sup>5</sup> "Social Networking for Law Enforcement," *NLECTC Tech Beat* (Winter 2010): 6 (quoting Anthony Guglielmi, director of public affairs for the Baltimore, Maryland, Police Department, <http://www.justnet.org/TechBeat%20Files/508Techbeat%20Winter%202010.pdf> (accessed August 27, 2010)).

<sup>6</sup> For more information on recruitment, please visit the IACP Discover Policing website at [www.discoverpolicing.org](http://www.discoverpolicing.org).

<sup>7</sup> "Freedom of Speech and the Patrol Officer," *Training Key #612* (Alexandria, Va.: International Association of Chiefs of Police, 2007).

<sup>8</sup> "Social Networking and Freedom of Speech," *Training Key #641* (Alexandria, Va.: International Association of Chiefs of Police, 2010).

<sup>9</sup> *Connick v. Myers*, 461 U.S. 138, 143 (1983) citing *McAuliffe v. Mayor of New Bedford*, 155 Mass. 216, 220, 29 N.E. 517, 517 (1892) and *Adler v. Board of Education*, 342 U.S. 485 (1952); *Garner v. Los Angeles Bd. of Public Works*, 341 U.S. 716 (1951); *Public Workers v. Mitchell*, 330 U.S. 75 (1947); *United States v. Wurzbach*, 280 U.S. 396 (1930); *Ex parte Curtis*, 106 U.S. 371 (1882).

<sup>10</sup> *Garcetti v. Ceballos*, 547 U.S. 410, 418, 126 S. Ct. 1951, 1958 (2006), citing *Waters v. Churchill*, 511 U.S. 661, 671 (1994).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 422–426, four Justices filed dissenting opinions in the case.

<sup>15</sup> See, e.g., *Vose v. Kliment*, 506 F.3d 565, 572 (7th Cir. 2007) (narcotics sergeant voiced concerns to management regarding another unit; court held that "Vose's speech, albeit an honorable attempt to correct alleged wrongdoing, was not protected by the First Amendment").

<sup>16</sup> *Garcetti*, 547 U.S. at 425–426, citing 5 U.S.C. 2302(b)(8) and other protections.

<sup>17</sup> *Connick*, 461 U.S. 138; *Pickering v. Board of Education*, 391 U.S. 563 (1968).

<sup>18</sup> *City of San Diego v. Roe*, 543 U.S. 77 (2004).

<sup>19</sup> *Id.* at 78.

<sup>20</sup> *Id.* at 80, citing *Connick*, 461 U.S. 138, and *Pickering*, 391 U.S. 563.

<sup>21</sup> See *Pickering*, 391 U.S. 563 (1968), cited in *Garcetti*, 547 U.S. 410.

<sup>22</sup> *Garcetti*, 547 U.S. at 421.

<sup>23</sup> *Roe*, 543 U.S. at 82, citing *Pickering*, 391 U.S. at 568; for an excellent discussion of the rules applicable to employee speech, see Baker, "Speech and the Public Employee," *FBI Law Enforcement Bulletin* 77, no. 8 (August 2008): 23–32.

<sup>24</sup> The *AELE Monthly Law Journal* reports that "More than half of all adult Americans ages 25–35 have personal networking places on media websites..." in "Online Networking, Texting, and Blogging by Peace Officers," 2010 (4) *AELE Mo. L. J.* 201 (April 2010): 201, <http://www.aele.org/law/2010all04/2010-04MLJ201.pdf> (accessed September 7, 2010).

<sup>25</sup> See, e.g., *Roe*, 543 U.S. 77 (2004), discussed further in the Employee Discipline for Inappropriate Use of Social Media section of this paper

<sup>26</sup> *Brady v. Maryland*, 373 U.S. 83 (1963); see, e.g., Jeff Noble, "Police Officer Truthfulness and the Brady Decision," *The Police Chief* 70, no. 10 (October 2003): 92–101 [http://policechief-magazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=118&issue\\_id=102003](http://policechief-magazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=118&issue_id=102003) (accessed September 6, 2010).

<sup>27</sup> *Giglio v. United States*, 405 U.S. 150 (1972) (prosecution's promise of leniency to the witness was not disclosed to the defense).

<sup>28</sup> The subject of *Brady* and the disclosure requirement for matters affecting officer credibility is discussed in the IACP survey paper, *Brady v. Maryland and Officer Credibility* (2008).

<sup>29</sup> See "Online Networking, Texting, and Blogging by Peace Officers;" for example, it has been reported that in a recent New York case an acquittal resulted after the defense brought to light at the trial information about an NYPD officer's website postings, apparently because the website postings created a reasonable doubt as to the guilt of the defendant; see *Los Angeles County Sheriff's Department Newsletter* 9, no. 7 (2009).

<sup>30</sup> See IACP survey paper, *Brady v. Maryland and Officer Credibility*.

<sup>31</sup> *City of San Diego v. Roe*, 543 U.S. 77 (2004).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 81–85.

<sup>35</sup> *City of San Diego v. Roe*, 543 U.S. 77 (2004); for another case involving social media publication of sexual material resulting in dismissal of an employee, see *Dible v. City of Chandler*, 502 F.3d 1040 (9th Cir. 2007) (officer published sexual material on website, dismissal upheld).

<sup>36</sup> In *Dible*, 502 F.3d at 1048 (9th Cir. 2007) (officer published sexual material on website, dismissal upheld), the 9th Circuit observed "It would not seem to require an astute moral philosopher or a brilliant social scientist to discern the fact that Ronald Dible's activities, when known to the public, would be 'detrimental to the mission and functions of the employer.' ... And although the government's justification cannot be mere speculation, it is entitled to rely on 'reasonable predictions of disruption.'" (citing and quoting *Waters v. Churchill*, 511 U.S. 161 (1994); again, departments should keep in mind that not all cases will be seen by the courts as being so clear.

<sup>37</sup> *Cellular Telephones, Concepts and Issues Paper* (Alexandria, Va.: International Association of Chiefs of Police, April 2004),

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Every effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this model policy incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "model" policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities among other factors.

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