**FREE SPEECH AND DISCIPLINE IN THE PUBLIC SECTOR**

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**Introduction**

“These are my First Amendment Rights we’re talking about here.” Lieut. Robert Prince sat in the human resources office pondering his fate after being charged with willful insubordination. Looking at a possible three day suspension without pay was not high on his list of things to bolster his career with the Eastern State University Police Department.

**The Incident**

The day after an active shooter incident at a sister campus, Lieut. Robert Prince was contacted by a member of the news media to elicit his comments on the previous day’s incident, where campus police officers were required to respond to the situation unarmed. Lieut. Prince was well known for his views on arming campus law enforcement officers and had, in fact, written a number of journalized research articles on the subject. Known for being one of the only researchers on the topic, it was a natural for the media to reach out to him for his comments and opinions.

He advised the news reporter that he was willing to speak to her, but since he was currently on duty, that he would not be able to meet with them for the face-to-face interview requested until after his tour of duty was completed. This was acceptable to the reporter and arrangements were made to meet with each other later in the day.

A few minutes later the Chief of Police arrived in the office and Lieut. Prince asked to speak with him. Lieut. Prince advised the Chief of the conversation with the reporter and that he planned to speak with her later. His Chief then stated his opinion that Lieut. Prince should not speak with the reporter because Eastern State University Police were undergoing a review to determine whether they should be armed and he felt that having Lieut. Prince conduct an interview with the news media would only “place more rhetoric” in the public’s view, as well as create more friction with the university’s administration. Stating “You do what you want, but I do not recommend it” the Chief advised Lieut. Prince that he was not in favor of his conducting the interview.

Later in the day, while still on duty, Lieut. Prince used the Internet to post three written comments on the web site of The Journal, a local newspaper, regarding the arming issue and the active shooter incident, in response to what he determined to be incorrect or erroneous information posted about the incident by others. The newspaper required that, in order to post comments, one had to login to his or her Facebook account which, for Lieut. Prince, identified him as a member of the Eastern State University Police Department.

Several days later, Lieut. Prince was confronted by both the Chief and Deputy Chief about the postings he had made and informed that there may be repercussions. Soon after this meeting, Lieut. Prince was advised in writing by the university’s human resource department that they intended to suspend him for three days for willfully and knowingly disobeying a direct order. He was advised that he would be expected to appear at a disciplinary hearing to answer to these charges and determine his fate.

**Lieut. Robert Prince**

Lieut. Prince is a twenty year veteran of ESUPD, with an additional 21 years of police service in another state prior to joining the department. He had in fact previously served as an undercover narcotics investigator, internal affairs detective, and chief of police prior to joining ESUPD, so was quite familiar with police protocol and procedures.

During his tenure with ESUPD, Lieut. Prince had never been disciplined for any infractions. Recently assigned as the shift supervisor for the day shift, he had spent the majority of his career at ESUPD on the midnight shift. He was well liked and respected by the officers under his control, and was frequently asked for information regarding the arming of campus police and other issues affecting their service as campus law enforcement officers.

His research articles, written in collaboration with his wife, a professor at another college, had been published in various criminal justice-related, peer-reviewed academic journals and were cited by other college and university police departments in their efforts to go from being unarmed police to armed. One of his articles had even been cited by the State Board of Education during their review of the arming issue just two years previously. In fact, the local newspaper had designated him as the only known researcher on this particular subject during a report on legislative efforts to change the status of Eastern State University police officers, a piece of legislation that he himself wrote. As the agency’s officer assigned to oversee the records system, he was also the author of their computer use policy, which in part covered the use of social media while on duty. Other members of the police department routinely use agency computers to “surf the web”, check personal email, and conduct other internet-based activities, and those practices have never been questioned.

**The Disciplinary Hearing**

The day finally arrived for the disciplinary hearing. Lieut. Prince attended with his union representative and both men were concerned that suspension was a foregone conclusion and he would not receive an objective hearing. Also present at the hearing were his supervisors and the head of the university’s Human Resources Department.

Lieut. Prince was advised that the direct order he had violated was that he was not to make any statements while on duty and that he was not to identify himself as a member of the police department. He was shown copies of the various postings he had made on the newspaper’s website which were time-stamped, showed his Facebook profile, and were offered as proof of his violation of the order.

Lieut. Prince stated that his Facebook profile had always identified him as a member of the police department, and that he knew of others in the campus community, including a favored department chair, whose profiles specifically identified them as campus members. He stated that it was not uncommon for members of the news media and others to contact him regarding questions and concerns about the arming of campus police officers and other issues, and that his research had, in fact, been used to support the recent arming of several campus police agencies in a neighboring state. He stated that everyone, because of his published research and previous comments where this issue was concerned, was fully aware of who he was, what he did, and where he was employed. Consequently it was nearly impossible to separate the two.

Lieut. Prince further explained that he did not believe telling him to “do what you want” constituted an order not to make statements, regardless of when or how they were made and that nothing was provided him in writing to support the concept of a direct order. He explained that, as a former police chief himself, he was well aware of the parameters needed to give a lawful order to a subordinate and he did not believe that what was actually said to him met that criteria.

As the head of the Human Resources Department stated that he was ready to issue his ruling, since it appeared to be a foregone conclusion, Lieut. Prince now considered what his next steps should be. How far was he willing to go to dispute what he felt would be an adverse decision?