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

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Subject Areas  
Personnel/OB; Policy/Strategy; Ethics

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**Teaching Note**

*This teaching note was prepared by the authors and is intended to be used as a basis for class discussion. The views presented here are those of the authors based on their professional judgment and do not necessarily reflect the views of the Society for Case Research. The names of individuals, the institution, and its location have been disguised to preserve anonymity. Copyright © 2013 by the Society for Case Research and the authors. No part of this work may be reproduced or used in any form or by any means without the written permission of the Society for Case Research.*

**Critical Incident Overview**

This descriptive critical incident describes events which took place at Eastern State University resulting in the discipline of a campus police officer. This incident is primarily concerned with the actions an officer took in the conduct of his professional duties. The officer, a shift supervisor and known researcher on issues related to arming campus police, posted several comments regarding an active shooter incident on a local newspaper website during the course of his duty day. Students are asked to decide if any type of disciplinary action is warranted in this case, and what disciplinary action should be administered.

This incident can be used to illustrate a number of Organizational Behavior/Human Resource Management issues such as the use of social media in the workplace, employee free speech, employee disciplinary procedures, and proper issuance of directives.

**Research Methods**

This critical incident was written based on the direct observation of witnesses who were present when the incident occurred and also on interview information secured from the campus police officer involved in this incident. The names of the officer and institution involved have been disguised to preserve anonymity.

**Learning Objectives**

The learning objectives of this critical incident are for students to:

1. Analyze the relevance of the use of social media in the workplace.
2. Analyze the differences in employee free speech in the public and private sectors.
3. Apply organizational behavior and human resource management concepts and theories to the personal use of computers and the Internet in the workplace
4. Develop and recommend a sample policy statement regarding the use of social media sites by public employees.

**Courses this incident may be applied to**

This descriptive critical incident may be applied to classes in Organizational Behavior and Human Resource Management, as well as classes dealing with ethics, procedures, management, communications, and policy development, each of which may have a correlated use in OB/HR discussions.

**Questions**

The questions below are appropriate for students in Organizational Behavior and Human Resource Management classes. The Critical Incident answers provided below were written to allow the instructor maximum flexibility in the use of this assignment.

After providing the students with the background theory presented in the General Discussion section of this teaching note, the instructor should ask the students to respond to the questions below. The instructor can also increase student participation and involvement by asking them to take a stand by initially responding to question #4 and explaining their reasons for their response.

1. (LO-1) Discuss the impact of the use of social media in the workplace for personal use by public employees and the effect it may have on personnel performance and efficiency?
2. (LO-2) Investigate and discuss the differences in employee free speech in the public and private sectors.
3. (LO-4) Design and suggest a sample social media policy statement for use by the police department.
4. (LO-3) Investigate and evaluate Lieut. Prince’s actions in dealing with the media request. Do you feel that his actions were appropriate? Why or why not.
5. (LO-2) What might be the impact of this issue on the morale, service and performance of other members of ESUPD, and how should agency and institutional leadership address these problems?

**Answers to Questions**

1. Discuss the impact of the use of social media in the workplace for personal use by public employees and the effect it may have on personnel performance and efficiency?

With the evolution of the Internet, Facebook, MySpace, Twitter and other sources of computer-based interactions, the use of social media and associated web sites has become quite common in today’s society, whether it is by public sector employees or those in the private, corporate areas. Consequently, the use of social media in the workplace has been greatly expanded in the day-to-day activities of employees.

With evidence that enjoyment, number of peers, and usefulness are the greatest factors in continued use of social networking sites, and that gender differences produce different influences (Lin & Lu, 2011), the widespread use of this technology is undeniably an indispensable part of social interaction. Social media has completely transformed the life of numerous people as well as businesses, and has changed the way in which we communicate (Cavico, Mujtaba, Muffler, & Samuel, 2013).

Employers and employees alike, however, must balance the use of social media in the workplace, as too much time spent on personal use will undoubtedly cause work inefficiencies, decreases in worker effectiveness, with both short-term and long-term effects of undermining employer needs. Obviously, the extensive use of this media has serious moral, ethical and legal concerns. Employees should as well be cognizant that their online activities, where it is found to be detrimental to the mission and functions of their employer, even when considered by them as private expressions, may become fertile grounds for dismissal.

Ultimately, the use of social media in the workplace is a tool like any other, whose effectiveness has yet to be fully determined.

1. Investigate and discuss the differences in employee free speech in the public and private sectors.

The Supreme Court’s ruling in Garcetti v. Ceballos (Garcetti v. Ceballos, 2006) appears to be the defining rule on the question of free speech of government employees. The question bides on whether the employee is making statements pursuant to their official duties. If so, then they are not speaking as “citizens” but rather making statements that may be attributed to their employer’s interests. The matter or issue that is commented upon must fall outside the realm of the employee’s job duties in order to be attributed as free speech.

The test to determine whether a government employee’s speech is protected under the First Amendment is normally balanced against the Court’s decision in Pickering v. Board of Education (Pickering, 1968), where it was determined that an employee’s statements on issues of public importance did not justify his dismissal from public employment.

For most in the private sector, they must contend with the employment-at-will doctrine under which an employee may not have recourse unless they are able to show a linkage between their social media use and another legal doctrine (Cavico, et al, 2013).

The true test for both, however, may likely reside in the contents of the employer’s social media policy. If it is too broad, employers may be held liable under Section 8(a)(1) of the National Labor Relations Board standards. Consequently, it is important to both the employee and employer to have sound, legally-compliant policies which define the nature of social media as it pertains to the particular workplace, under what parameters employees may use it, and consequences of failures to comply with the policy.

Public employees are allowed to speak on issues that have a significant level of public interest, so long as they do not purport themselves to be speaking on behalf of their employer. In the context of this critical incident, the arming of campus police officers and their unarmed response to an active shooter episode would seem to be well-founded as issues of relevant public interest.

Ultimately, if it can be shown that there was a significant level of public interest in the statements made by the employee, any action taken against him or her by the employer may be a violation of his or her First Amendment rights.

1. Design and suggest a sample social media policy statement for use by the police department.

Agencies increasingly seek to leverage social media to improve quality of service and enable greater citizen and customer engagement. The development of a clearly defined social media policy can serve as a key to effectively using this tool. Yet many organizations struggle with what such policies should encompass.

Social media policies in the workplace, regardless of whether it is for a public or private employer, should be comprised of, at the very least, components which describe employee access to work-related computers, network account management, acceptable use, employee conduct, content, system security, and legal issues to include the parameters of disciplinary procedures for non-compliance with the policy. These policies should also define and differentiate between employee use for organizational interests, use for professional interests, and use for personal interests, as each is not mutually exclusive, and the fragile lines between them are often rather fluid.

Agencies that do not have these policies in effect also run the risk of litigation for the acts of their employees, both on and off duty. As an example, the Philadelphia Police Department settled a federal civil rights suit and was required to implement a social media policy and train personnel on the appropriate use of social media (Guardian Civic League-v-Philadelphia Police Department, 2009), where it was claimed that department personnel utilized department computers to post racist and inflammatory comments to a website while on duty. Or the Auburn, AL police officer who alleges he was terminated for speaking out about the use of a quota system within his department.

Finally, dissemination of the policy to all employees, regardless of their level, is paramount. Each must be aware that the policy exists, what it entails, their obligations, responsibilities and rights under the policy. By assuring that all employees are provided a copy of the policy, and acknowledge their receipt of it, the organization places itself on solid grounds.

1. Investigate and evaluate Lieut. Prince’s actions in dealing with the media request. Do you feel that his actions were appropriate? Why or why not.

As a recognized researcher on issues related to the arming of campus police, as well as from his long years of experience, Lieut. Prince would have been extremely familiar with both correct and appropriate information that should be displayed regarding the involvement of officers during the active shooter incident. Therefore, his attention would have been immediately drawn to any posted information by others that was incorrect, ill-informed, or inflammatory when reviewing the articles online. Consequently, he may have felt justified in posting corrected information as a means of more appropriately educating the public, as well as the original poster, on the issue. It should be fairly obvious that the arming of campus law enforcement officers and the presence of acute violence on college campuses is a matter of public concern, and that verifiable information on these subjects is needed by all.

His notification to the news reporter would also appear to be correct, as it was noted that the reporter wanted to conduct a face-on interview, rather than one conducted over the phone, thus the agreed upon meeting later in the day.

He likely, as well, felt that since the comments of his Chief, although non-affirming, appeared to be consistent with what he believed to be within his First Amendment right to free speech, he would be allowed to use personal time to make the postings. The CI does not provide any information regarding whether there were any existing regulations which would prohibit him from making the comments while on duty, however as the author of the agency’s policy on computer use Lieut. Prince would have been aware of any specific restrictions that existed within the framework of that policy.

1. What might be the impact of this issue on the morale, service and performance of other members of ESUPD, and how should agency and institutional leadership address these problems?

One obvious impact may be the apprehension of others to use social media or other methods of public communication to speak out regarding issues that affect their working conditions. If employees fear retaliation or disciplinary action for speaking in public forums, there will exist a decaying of the productive labor-management relationship which must exist for the benefit of both.

This decay in the relationship will consequently affect the overall morale of agency personnel, and thus affect the level and quality of their performance of duties.

As in any such situation, agency and institutional leadership must address these issues both firmly and fairly. A great place to start will be to have group meetings with all personnel, explain pertinent policies, why they are important, and how they are being implemented.

**General Discussion**

Prior to assigning this case, students should be required to conduct research on the use of social media, free speech by public employees in the workplace and employee disciplinary procedures in order to effectively respond to the discussion questions. While suggested responses are provided, student learning will be enhanced through first-hand investigation of these processes.

This descriptive critical incident deals with the disciplinary action proposed against a campus police officer in response to several social media comments he made on a local news web site. The incident points to several issues including employee free speech, use of social media sites while working, order compliance, and the importance of organizational rules, policies and procedures that guide and govern behavior within the organization. The incident is not just a question of whether or not discipline is necessary, but also the levels that should be considered based on the actions of the employee, their employment history, and the underlying political and organizational structures and stressors which sometimes drive disciplinary procedures.

The use of social media appears to have permeated society in a major way. What makes this medium so unique is not that people are able to connect with strangers but that they are openly communicating with others, exchanging views, learning new concepts, and making their social connections visible to others. It is an excellent communications tool which also provides the opportunity to inform and educate others. Businesses and government bodies are now beginning to use this medium as a means of mining a broad spectrum of data on potential customers, current and prospective employees, and other information, all of which has both benefits and consequences.

When employees utilize social media, however, and particularly when done in the workplace, a plethora of policy and legal issues are presented. This is especially true for public sector employees, who must be ever vigilant regarding the types of statements they make and the context in which they are made.

The development of organizational policies covering the use of social media is essential, as they provide both specific and general guidelines to employees regarding its use. When are they allowed to use social media networks while working? Are there specific web sites that may be proscribed? Are there specific times or locations within the workplace, or types of work environments, where the use of social media networks is not allowed? These are all issues that must be detailed for employees through written procedures, not word-of-mouth.

Organizational policies as well provide the agency with important guidance and can address concerns about violating employee rights. The officer in this case is apparently a seasoned veteran with a wide breadth of experience and knowledge, and no apparent record of previous disciplinary action taken against him. Consequently, the disciplinary process that should be applied is one which, while punitive, is progressive in nature, takes into consideration past offenses, all of the facts of the current situation, as well as the likelihood of recurrence.

While not specifically stated in the context of the CI, it may be assumed that the officer did not purport his statements to be representative of the attitudes, beliefs or policies of his employer. He was, in fact, contacted by the news media for comment specifically due to his research and professional knowledge of the issues surrounding the arming of campus officers and how the active shooter incident was affected by the response of unarmed officers.

Discipline is designed to force a change in behavior, performance or attitude when an employee transgresses or goes against an established policy. It is meant to both punish the employee for his or her aberrant behavior and educate them on the proper standards so that there will be no recurrence of the violation, as well as provide an example to others of the consequences of misconduct (Euben & Lee, 2006).

To be effective, discipline should be progressive in nature. It should be designed to be both fair and equitable, taking into consideration such factors as the seriousness of the offense, the employee’s work background, and previous disciplinary issues. It is unlikely that, due to Lieut. Prince’s work history of no previous disciplinary action, that a three-day suspension without pay would sufficiently take these concerns into consideration.

A more appropriate course of disciplinary action might be to provide counseling on any existing social media policy, and the perceived impact of having a Facebook profile which identified him as a department member.

Further, the disciplinary action in this situation appears to be predetermined since the incident states that the police officer was told that he would receive a three-day suspension before the disciplinary hearing was held. Therefore, the disciplinary outcome of this incident would likely have an impact on other officers actions in the performance of their job responsibilities, and may in fact have been a civil rights violation, considering that the length and type of disciplinary action appears to have been predetermined. Because of the appearance of a predetermined decision regarding discipline, there may have been violations under the 4th and 6th Amendments of the Constitution, the due process clause of the 14th Amendment, National Labor Relations standards, as well as any appropriate state statutory violations. These are issues which, no doubt, will be considered during any appeals process.

This incident is best utilized with junior or senior level students in Organizational Behavior and Human Resource Management classes. It is best used later in the course as an illustration of both micro and macro OB/HRM topics. Therefore, students should have a foundation in individual behavior, team effectiveness, organizational culture, and employee discipline in organizations. At a secondary level, it can be used to discuss the issue of free speech, the impact of social media on corporate culture,

This incident can be taught in two hours of class time and requires a minimum of four to six hours of outside preparation by the students. The outside preparation of this incident should focus on organizational policy structures, constitutional and legal issues related to free speech, to assure that students have the required background to analyze this incident. The instructor should assign the incident and the background research as homework prior to the in class discussion of the incident. The instructor may find it necessary to assign the topic and have students share their research in small groups or large class discussions.

**Additional Pedagogical Materials**

Specific articles related to social media and free speech issues that may be of interest or use could include:

Bair, M.A., (2010). Garcetti v. Ceballos: Swapping the First Amendment rights of public employees for greater government control. *Rutgers Law Record*, 37, 44-55

Jacobson, W.S., & Tufts, S.H., (2012). To post or not to post: Employee rights and social media. *Review of Public Personnel Administration, 33(1)*, 84-107

Stoll, M.L., (2005). Corporate rights to free speech? *Journal of Business Ethics, 58(1/3)*, 261-269

Although the incident is short, it provides the students an opportunity to analyze OB/HRM and law enforcement issues in a real world context. Often, undergraduate management students regard issues of perception, attitudes, organizational culture, socialization and discipline as abstract. Undergraduate students are often quick to take a harsh action against an employee without considering organizational and legal factors which should influence the type of action taken against an employee.

**Epilogue**

The head of Human Resources at Eastern State University ruled that Lieut. Prince should receive a one-day suspension without pay for his actions in knowingly and willfully violating what was described as a direct verbal order given to him by the Chief of Police. Lieut. Prince began his suspension several days following the disciplinary hearing and the employee union filed an appeal on his behalf. During the appeal process the suspension was reduced to a written reprimand, retroactive to the date of the original suspension. The written reprimand will be removed from his personnel record after a one-year period.

**References**

Cavico, F.J., Mujtaba, B.G., Muffler, S.C., & Samuel, M., (2013). Social media and employment-at-will: Tort law and practical considerations for employees, managers and organizations. *New Media and Mass Communication, 11*, 25-41

Euben, D.R. & Lee, B.A., (2006). Faculty discipline: legal and policy issues in dealing with faculty misconduct. *Journal of College and University Law*, 32(2), 241-308

Garcetti v. Ceballos, 547 U.S. 410, 413 (2006)

Guardian Civic League v. Philadelphia Police Department, 2:09-cv-03148-CMR

Lin, K-Y, Lu, H-P, (2011). Why people use social networking sites: An empirical study integrating network externalities and motivation theory. *Computers in Human Behavior, 27(3*), 1152-1161

Pickering v. Board of Education, 391 U.S. 563, 568 (1968)

**APPENDIX: Sample Social Media Policy**

(Neither Eastern State University or Eastern State University Police Department currently have a policy in place governing the use of social media. The following has been developed by the authors as a sample of the minimum elements of a social media policy statement and may be referred to by instructors and students in the development of a policy statement in conjunction with Question 3 above.)

**Introduction**

**Eastern State University** encourages the appropriate use of social media as a method for communicating ideas and information, and as part of the educational mission of the College.

This policy governs employees of Eastern State University. This policy governs behavior of individuals as they utilize a variety of Social Media technologies and is not limited to any specific media format. Employees may face disciplinary procedures for violations of this policy.

**Definitions**

**Social Media Defined:**

For the purpose of this policy, Social Media is defined as Internet or Mobile digital tools and systems used to share and/or receive information or conversation.

**Personal Use of Social Media on Personal Time**

Personal use of Social Media on personal time is not governed by this policy, however individuals may not make statements or take actions at any time on Social Media that violate applicable law or ESU policy.  Employees’ personal use should not be attributable to the college or employee’s job function at the college. Violating actions or statements over Social Media with a nexus to State employment may be governed by ESU policy.

**Personal Use of Social Media on College Time**

Personal use of Social Media on College time is governed by the State Public Officers Law and other Federal, State and Local laws; the Eastern State University Acceptable Use Policy as issued by the Office of Administrative Systems; and ESU Human Resources policies. This includes personal use of social media while at work by an employee (e.g. logging onto Facebook and providing personal updates to a Facebook page or Twitter account during work hours using their own or their agency’s information technology resources, when such activity is outside of the employee’s official job function). Excessive personal use of social media during work hours is prohibited.

**Social Media Identity**

A social media identity is a user identity or account that has been registered on a third party social media site.

**Social Media or Networking**

The terms social media and social networking are used interchangeably.  Social media is a set of technologies and channels targeted at forming and enabling a potentially massive community of participants to productively collaborate. Social media includes: blogs, wikis, microblogging sites, such as Twitter™; social networking sites, such as Facebook™ and LinkedIn™; video sharing sites, such as YouTube™; and bookmarking sites such as Del.icio.us™.

**Social Media Sites**

Social media sites refer to websites that facilitate user participation, networking and collaboration through the submission of user generated content.

**Official Use of Social Media**

Unless specifically authorized by Campus Communications, no ESU employee may create an “official” ESU presence on any form of Social Media, now in existence, or created in the future, or represent themselves as a spokesperson or authorized representative of Eastern State University.

Some employees may be required to use Social Media as part of their employment responsibilities. If so, such status will be clearly stated in an employee’s work responsibilities, and will be approved in advance by Campus Communications**.**

 Campus Communicationsmay utilize Social Media to present information and content to the public and receive feedback from the public and the College community. Content and information released on Social Media is equivalent to content and information released to the press and the public in any other format, including press release, letter to the media, open letter to the public, etc. Care must be taken that content and information released to the public over Social Media is accurate, does not violate applicable laws (including, but not limited to, copyright, trademark and defamation law) or ESU policy.

 Official ESU Social Media may allow members of the public to comment or react to posted content and information. Individuals, including employees of Eastern State University acting in their personal capacity, may post or comment anonymously or identifiably.

 In general, the College invites discussion of important ideas and issues through Social Media. However, Eastern State University reserves the right to remove posts or comments that are obscene, defamatory, offensive, contain threats of violence, abusive, spam or advertising, or unrelated to the content or information. ESU also reserves the right to remove posts or comments that violate applicable laws including, but not limited to, copyright and trademark, or those that violate the use policies promulgated by the applicable Social Media provider.

 In addition to this policy, social media content must be in compliance with all state and college policies. This includes policies on harassment and discrimination, confidentiality, ethics, and workplace violence, along with any applicable codes of conduct.

**BIOGRAPHIES**

**Lieutenant Charles P. Wilson** currently serves with the Rhode Island College, Providence, RI Campus Police Department as a patrol shift supervisor. With a professional career dating from 1971, his previous law enforcement experience has included service as a Detective/Patrolman with the Woodmere Village, Ohio Police Department, where he also served as its first African American Chief of Police from 1988 to mid-1990. He earned his Bachelor of Arts Degree with an emphasis in Justice Studies from the Rhode Island College in Providence, Rhode Island, and is a three-term National Chairman of the National Association of Black Law Enforcement Officers, Inc.

**Dr. Shirley A. Wilson, Ph.D.** currently serves as a Professor of Management at Bryant University in Smithfield, Rhode Island where her specific area of instruction is in Organizational Behavior and Global Diversity. Her previous experiences have included service as the Coordinator for School/Community Relations with the Cleveland Heights-University Heights, Ohio Board of Education, and Personnel Analyst with the Cleveland Electric Illuminating Company. Her specific area of research is in the field of Mentoring, with emphasis on Black Female Professionals. She earned her Doctorate from the Weatherhead School of Management, Case Western Reserve University in Cleveland, Ohio.