



Kissinger & Fellman P.C.

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# Legal Implications of Social Media

**NATOA ANNUAL CONFERENCE**

San Diego, California

September 10, 2015

# Who Thinks Ten Years was ...

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?



# Back in my day...

## The Dawn of Social Media

Facebook becomes available in the UK, Ireland, Canada, Australia, and New Zealand; and in US high schools

Birds were still the only creatures tweeting (Twitter started in 2006!)

YouTube is launched

Hurricane Katrina hits the Gulf Coast

Maj. Leader Tom DeLay indicted and resigns from the House

Million Dollar Baby wins Best Picture

Star Wars Episode III – Revenge of the Sith is released

# 2005

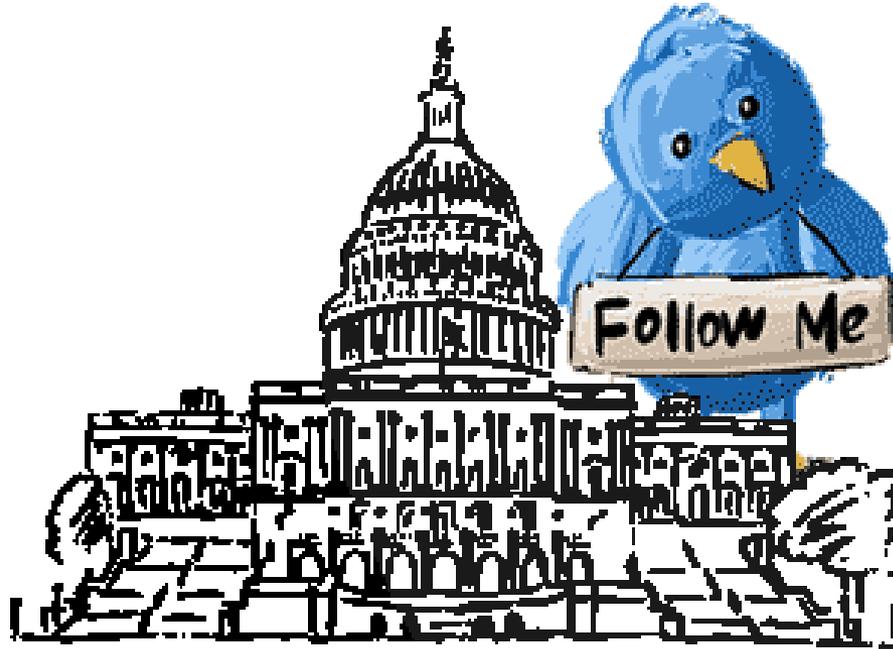
World Series: White Sox sweep Astros

Microsoft releases the Xbox 360



# Why do we (local governments) use social media?

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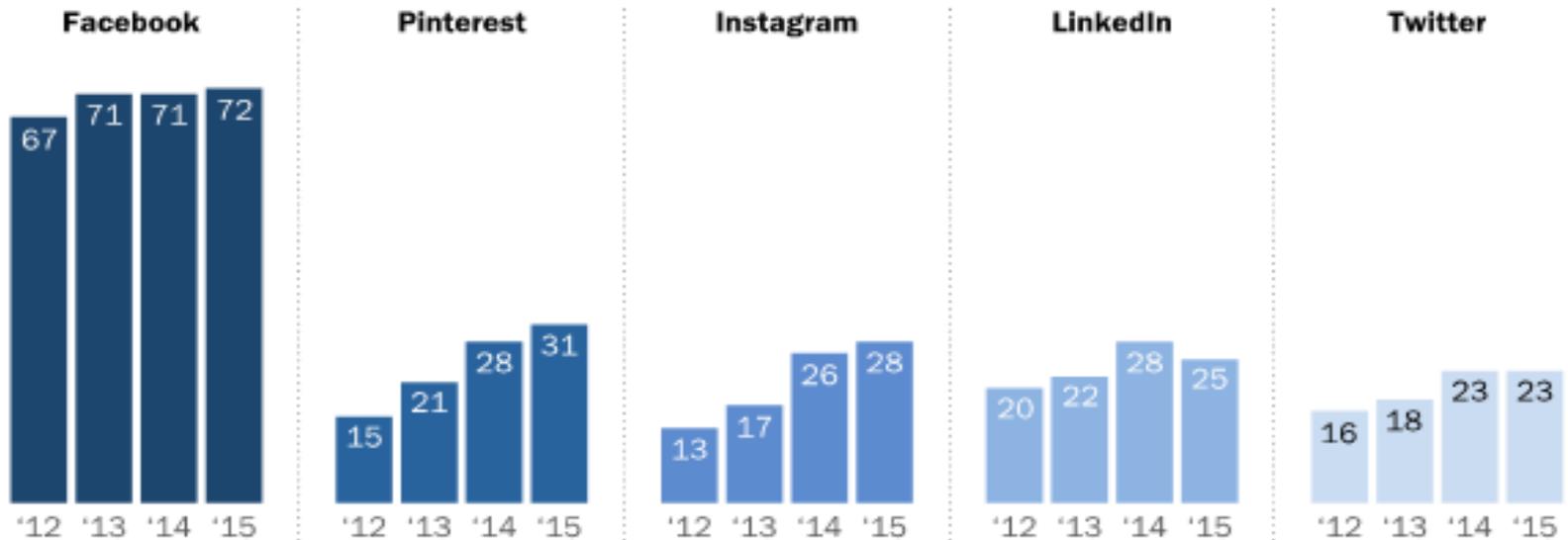
The question is now shifting to  
“Are you using the social media sites your constituents, young employees, and interested parties are using?”  
(aka “Are you staying current with social media?”)



# Why do we (local governments) use social media?

## Pinterest and Instagram Usage Doubles Since 2012, Growth on Other Platforms is Slower

*% of online adults who say they use the following social media platform, by year*



Pew Research Center Survey, March 17-April 12, 2015.

PEW RESEARCH CENTER



# Legal Issues related to Social Media Use

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- ▶ Free speech
- ▶ Employee passwords / privacy
- ▶ Open meetings laws
- ▶ Open records laws
- ▶ Records retention
- ▶ Intellectual Property
- ▶ Litigation holds and discovery
- ▶ Privacy



Artwork courtesy of Sprial16



# U.S. Supreme Court

- ▶ *Elonis v. United States*
  - ▶ First Amendment “True Threat” Case
  - ▶ Court’s first case on social media
- ▶ PA man convicted of Facebook threats directed toward his estranged wife, a kindergarten class, FBI agent
  - ▶ Issue was whether he could be prosecuted for his comments; whether his comments were “true threats”
- ▶ Both sides of case asked Court to consider the unique qualities of speech on social media
- ▶ Decision was eagerly anticipated to see how Court would treat social media aspect



# U.S. Supreme Court

- ▶ Opinion issued June 1, 2015 – first paragraph clearly establishes that social media speech not at issue
- ▶ Specific language and intent behind the speech is the issue, regardless of the method the speech is conveyed
- ▶ “[A]ny communication [in interstate commerce] containing any threat . . .” is a crime under 18 U.S.C. § 875(c)
- ▶ Conviction overturned on other grounds – the Third Circuit’s instruction, requiring only negligence with respect to the communication of a threat, is not sufficient to support a conviction under 18 U.S.C. § 875(c)
- ▶ That Elonis’s statements were made on Facebook had nothing to do with the decision.



# Free Speech

- ▶ Citizens
  - ▶ Designate the Forum
    - ▶ Public Forums
      - Traditional forums and
      - Limited or designated forums
    - ▶ Private Forums
  - ▶ Carefully design restrictions
    - ▶ Time
    - ▶ Manner
    - ▶ Access limitations
    - ▶ Restricted to citizens
    - ▶ Prohibition on advertisers

*Restrictions must be tied to the site's purpose.*

- ▶ Elected Officials/Volunteers
  - ▶ Code of Conduct
    - ▶ May only require slight modification from current versions.



# Local Govt. Free Speech Headlines

**Sex-toy tweet highlights Hillsboro School District's struggle to implement staff social-media policy**

**35**  
comments

Police board chair's Facebook post 'unacceptable,' Toronto mayor says

**ANN HUI**

The Globe and Mail

**Mayor's Facebook post about the city's 20th homicide sparks controversy online**

Posted: Oct 29, 2014 4:59 PM MDT  
Updated: Oct 30, 2014 7:19 AM MDT

By Tesia Reed [CONNECT](#)

**Rochester mayor's Ferguson Facebook post stirs controversy**

[Tweet](#)

**Anger continues as St. Louis Co. PD deletes its 'Kids will be Kids' Tamir Rice tweet. Bonus: Vox explains (badly)**

Posted at 12:16 pm on December 4, 2014 by Twitchy Staff | [View Comments](#)



**Joe Fitzgibbon**  
[@joefitzgibbon](#)



**Following**

Losing a football game sucks. Losing to a desert racist wasteland sucks a lot.

**ACLU Sues South Bend Over Common Council Social Media Ordinance**

[Kyle W. Bell](#) | December 22, 2014  
Categories: [South Bend](#) | [Comments](#)



# Free Speech Cases

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Very few **cases** involving municipal or county government restriction of free speech on social media (not including employment cases), but many cases (and headlines) involving school districts.

What we can learn:

- ▶ Have a plan to address offensive remarks.
- ▶ Be very careful of the images you use, and pay attention to privacy settings.
- ▶ Forcing anyone to give you a password to gain access is always a bad idea.
- ▶ Involve interested groups when designing / modifying policy

New Jersey student disciplined for vulgar off-campus tweet about principal sues district

Student sues school district for \$2 million over Facebook bikini photo

School district pays student \$70K to settle Facebook lawsuit

Posted: Mar 28, 2014 9:47 PM MDT

CA High School Students Kill A First Amendment-Violating 'Social Media Contract'

# Public Employee Free Speech Headlines

## Fired investigator says city retaliated against her

 **Recommend** 147 people recommend this. Be the first of your friends.

By Steve Harrison  
sharrison@charlotteobserver.com

Posted: Tuesday, Nov. 25, 2014

A former Charlotte fire investigator said the city fired her after she acted as a whistleblower, and she believes that someone associated with the fire department created a fake persona and email account in an effort to discredit her.

## Matagorda County Sheriff's Office employee fired for Facebook rant about Ferguson

2014, BY FDPRODUCER

## Police Officer's Facebook Post Criticizing Her Boss Isn't Protected Speech—Graziosi v. Greenville

December 14, 2013 · by Venkat Balasubramani · in Content

## Medic's social media lawsuit against Pa. mayor dismissed

## Albany coach Naylor fired over racial social media post

By Alysia Santo  
Updated 8:52 pm, Tuesday, April 29, 2014



# Free Speech – Public Employees

- ▶ Speech related to an employee's job duties is not protected under the 1<sup>st</sup> Amendment. *Garcetti vs. Ceballos* (US 2004)
- ▶ Result: employee speech may be restricted by the governmental entity



Employee makes a comment on social media site

Is the speech related to the employee's job duties?

- No? Keep going
- Yes? Then okay to take disciplinary action

Is the speech a matter of public concern?

- Yes? Keep going
- No? Then okay to take disciplinary action

Is the speech disruptive to the entity's operations?

- Yes? Can consider disciplinary action
- No? Speech may be protected



# *Bland v. Roberts* (4th Cir. Va.) Sept. 2013

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- ▶ A Facebook “like” is speech.
- ▶ Sheriff, recently reelected, terminated 6 employees because of their support for his opponent, shown by
  - ▶ “likes” on the opponent’s Facebook page,
  - ▶ attendance at the opponent’s campaign events (as shown by Facebook pictures), and
  - ▶ displaying the opponent’s bumper sticker.
- ▶ Court said
  - ▶ actions at issue were speech, as well as symbolic expression
  - ▶ the speech was on a matter were of public concern.
- ▶ The case was remanded to determine whether the speech was a motivating factor for the terminations



# Free Speech: Does it relate to the Employee's Job Duties?

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- ▶ This one probably does ...

Denver math teacher tweets about her hot students and how she likes to smoke weed.

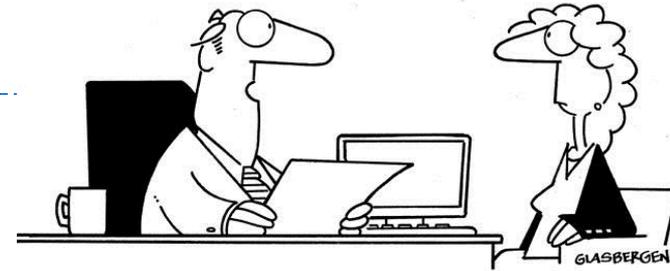


Carly "@CarlyCrunkBear" McKinney, a tenth-grade math teacher, had a very controversial Twitter account that the school she worked for discovered. Her employers were not happy and placed her on administrative leave. Her students thought her racy photos and tweets about marijuana and club music were pretty cool, though, and protested online to get her back. She was fired in the end.



# Employee Management

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"I need your Facebook password before I can hire you.  
If you're not on Facebook, I need you to join and post a  
bunch of personal stuff you don't want me to know about."

- ▶ Access to Employee's Social Media Accounts
  - ▶ Many states have social media password protection laws
    - ▶ Laws enacted: NV, NJ, OR, AR, CA, CO, IL, LA, ME (*authorizes study*), MD, MI, NH, NM, OK, RI, TN, UT, VT, WA, WI
      - [www.ncls.org](http://www.ncls.org)
  - ▶ Stored Communications Act
    - ▶ Posting may be private if: (a) it is on a password protected site, or (b) the poster has high security settings preventing outsiders from viewing site
      - *Ehling v. Monmouth-Ocean Hospital Servs. Corp.* D.N.J. Aug. 20, 2013



# Employee Management

Passwords:

Here's what can happen when you don't manage passwords appropriately:

**HMV staff hijack company Twitter account to live-tweet the sacking of 60 employees**



# Open Meetings Laws

## ▶ Examples of Meeting Definitions

### ▶ Washington:

"Meeting" means meetings at which action is taken.

"Action" means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. "Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

### ▶ Colorado:

A "meeting" means "[a]ny kind of gathering, convened to discuss public business, in person, by phone, electronically, or by other means or communication."

## ▶ Meetings on social media can work.

DAY/DATE/TIME	HOSTED BY
Tuesday, August 12 6:00 pm	Councilmembers Jerry Allen and Sheffie Kadane
Monday, August 18 6:30 pm	Councilmember Dwaine R. Caraway
Tuesday, August 19 6:30 p.m.	Councilmember Lee Kleinman
Wednesday, August 20 6:30 pm	Councilmember Dwaine R. Caraway
Monday, August 25 6:00 pm	Mayor Pro Tem Tennell Atkins
Tuesday, August 26 6:00 pm	Councilmembers Jennifer Gates and Philip T. Kingston
Thursday, August 28 6:30 pm	Councilmember Rick Callahan

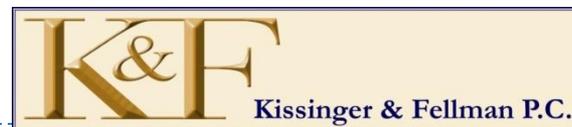
To participate in one of the [virtual](#) meetings via the web visit [DallasCityHall.com](#) or [DallasCityNewsroom.com](#)

To participate via phone: English 1-888-400-1932 Spanish Translation 1-888-400-9342

**City of Wichita** @CityofWichita · 21h  
The first social media town hall budget meeting is about to start! Get ready to give us your feedback on important community issues!  
Expand    Reply    Retweet    Favorite    More

**Dan Dickgrafe**™ @Whaddaguy · 21h  
@CityofWichita how do we participate?  
Expand    Reply    Retweet    Favorite    More

**City of Wichita** @CityofWichita · 21h  
@Whaddaguy We will post questions and reply with your input  
Hide conversation    Reply    Retweet    Favorite    More



# State Open Records Laws

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- ▶ Most state statutes define open or public record to include any writing containing information relating to the conduct of government regardless of physical form or characteristics
- ▶ Most statutory definitions of "Writing" include every means of recording any form of communication including, all digitally stored data, and existing data compilations from which information may be obtained or translated



# State Open Records Laws



- ▶ Be prepared to treat each comment, post, picture, and list of individuals connected to the social networking site as an open record
- ▶ Why?
  - ▶ Because (this is an example from Washington law) they “...relate to the conduct of government or the performance of any governmental ... function prepared, owned, used, or retained by any ... local agency regardless of physical form or characteristics.”
  - ▶ Your jurisdiction’s social media policies should reference compliance with state open records laws
- ▶ Also consider legal conclusions:
  - ▶ Florida - Information placed on a city’s Facebook page relating to official business is a public record and the city must follow the retention schedules established by law.  
Op.Att’y Gen. Fla. 09-19 (2009)



# State Open Records Laws



Where the truth will be revealed...

Cover Photo

Doug Tisdale  
(Douglas Michael Tisdale)

Timeline About Photos Friends 2 Mutual More

Do you know Doug?

To see what he shares with friends, send him a friend request.

5 Mutual Friends

About

- Mayor at Cherry Hills Village, Colorado and President and CEO at Tisdale & Associates LLC
- Studied at University of Michigan Law School
- Lives in Cherry Hills Village, Colorado
- From Allen Park, Michigan

Photos 271

Friends 2 Mutual

Recent

2015  
2014  
2013  
2012  
2011  
2010  
2009  
2008  
2007  
Sum

Doug Tisdale shared Cherry Hills Village, Colorado - Municipal Government's status  
2 hours ago · 18

Here's a news bulletin that impacts Villagers and Englewooders:

Englewood Police Department will be hosting a large scale training exercise to include several local Law Enforcement agencies, Fire Departments and hospitals/medical personnel. Several streets will be closed during this time to include E. Mansfield Ave. from S. Logan St. to S. Clarkson St, the 3900 blocks of South Washington, Pearl, and Pennsylvania will also be closed. There will be no road closures in the City of Cherry Hills Village during this exercise.  
Date: November 9, 2013  
Location: Englewood High School, 3900 S Logan St, Englewood Colorado 80113  
Times: 7:00am to 2:30pm  
For questions or more information please contact the Cherry Hills Village Police Department at 303-761-8711.

Share

Debbie Leo Tilton · Doug Tisdale  
17 hours ago · 18

Doug, What is the Village doing about Coyotes? My dog just got attacked in our yard of which we have a 6ft fence. He is in critical care in the hospital. This is getting ridiculous.

Doug Tisdale Debbie, I am so very sorry to hear about your terrifying incident. I left you a detailed message on your home phone. Please call me on my mobile to discuss the Village's Urban Coyote Management/Fox Restoration Program, which was revised and enhanced by me as of last February. We WILL address this situation! Thank you for bringing it to my attention, and best wishes for your dog's recovery.  
3 hours ago via mobile · 1

Doug Tisdale changed his cover photo.  
November 2 · 18

Where the truth will be revealed...

5280  
SERV. DR. MICHAEL SWANSON  
Marilyn Clinic Colorado -  
Dial. Treatment High  
Business Police Dept. 303-754-0243  
Candler Ferguson Vets. Vets.  
LAWACK UTILITIES™  
Don't be a Victim of Identity Theft. Learn More

▶ Do not use your personal social media accounts for government business

▶ Is this a public record?

Debbie Leo Tilton · Doug Tisdale  
17 hours ago · 18

Doug, What is the Village doing about Coyotes? My dog just got attacked in our yard of which we have a 6ft fence. He is in critical care in the hospital. This is getting ridiculous.

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3 hours ago via mobile · 1

# Records Retention

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@SeattlePD want the archives of  
Tweets available from Twitter for each  
beat: <https://t.co/QAZsosYfen> @jseattle  
Consider this a PRA req, plz  
  
— lee.c (@sleepylemur) April 29, 2014

- ▶ State archiving policies
  - ▶ Some states specifically requires retention of “electronic,” “Internet,” or “web-based” content
- ▶ Your Social Media Handbook or Policies
  - ▶ Note that content published on social media pages that relates to the conduct of government actions will be retained and managed by departments in compliance with your local government records retention and state statutory or regulatory recordkeeping requirements.
  - ▶ Records Retention
    - Do not assume 3<sup>rd</sup> party platforms such as Facebook, Twitter, and WordPress will keep accurate records of your content; they are under no obligation to do so



# Intellectual Property

## ▶ Key IP Concerns

### ▶ Trademark

- ▶ Federal trademark law prohibits registering the insignia of a governmental entity. 15 U.S.C. § 1502.
- ▶ BUT Section 1502(b) excludes only the official seals and flags that serve as emblems of authority
  - Local government can register a mark that does not include its official seal or flag

### ▶ Copyright infringement

- ▶ Copyright law protects original works of authorship fixed in a tangible form of expression (17 U.S.C. 102)
  - Check state law for application to local government work
- ▶ Existence on the Internet does not mean that the image/photograph/video/etc. is in the “public domain”
  - Use on a local govt site could infringe on the copyright of the owner
- ▶ Photos and video should be produced by the organization or individual who posts the media
  - Alternatively, the local government should obtain a license to use the copyrighted material

### ▶ License grants to the social media site via the Terms of Service:



C. For clarity, you retain all of your ownership rights in your Content. However, by submitting Content to YouTube, you hereby grant YouTube a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the Content in connection with the Service and YouTube's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels. You also hereby grant each user of the Service a non-exclusive license to access your Content through the Service, and to use, reproduce, distribute, display and perform such Content as permitted through the functionality of the Service and



You retain your rights to any Content you submit, post or display on or through the Services. By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed).

**Tip** This license is you authorizing us to make your Tweets available to the rest of the world and to let others do the same.



1. For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your privacy and application settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.

# Intellectual Property

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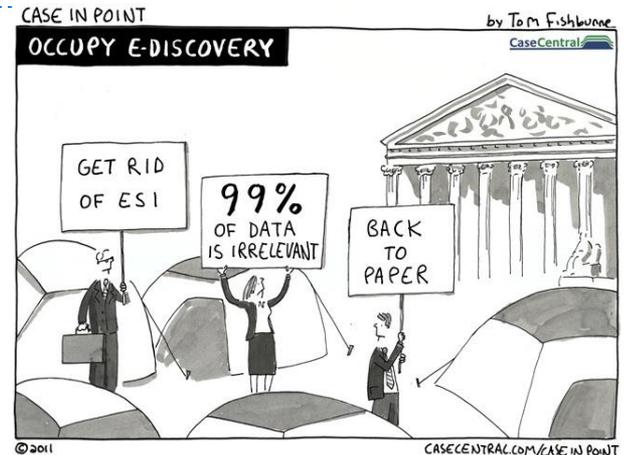


- ▶ Right of publicity violations
  - ▶ Defined as right to control and license the use of a person's image, likeness or name – varies by state
  - ▶ Prevent others from *commercially* exploiting his or her identity without permission
- ▶ Avoiding liability for others' posts
  - ▶ Photos, videos, audio and other files uploaded by users
  - ▶ Policy should state that content will be removed if it violates a copyright or trademark
- ▶ Local govt, as an owner of a trademark and/or copyright, should be vigilant in policing to stop unauthorized usage of its rights



# Litigation Holds and Discovery

- ▶ One survey of published case law from 2010 and 2011 identified 689 cases involving social media evidence
  - ▶ eDiscovery Law and Tech Blog
- ▶ Similar to records retention
  - ▶ Processes and policies should be put in place to address litigation holds and/or the local government's own litigation discovery needs
  - ▶ A lack of policies or inconsistent retention/deletion policies can subject a local government to sanctions in litigation



October 06, 2014

City's Faulty Preservation Practices Lead to Sanctions

April 26, 2013

Adverse Inference Sanction Issued in N.J. Case Involving Spoliation of Facebook Data Is a Lesson on Social Media Disposition

An opinion from March in a personal injury case involving the deletion of a Facebook account is a good lesson for e-discovery professionals about the vulnerability of social media to irretrievable loss. U.S. Magistrate Steven Mannion ordered an adverse inference instruction to the jury after the plaintiff in *Gatto v. United Air Lines* was determined [...] ... [continue reading](#)

*\*an email, not social media case*



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[www.kandf.com](http://www.kandf.com)

# Privacy

- ▶ [Federal CIO Council Privacy Best Practices for Social Media white paper \(July 2013\)](#)
- ▶ Privacy laws that could be violated by a post, tweet
  - ▶ Health Privacy Laws (HIPAA)
  - ▶ Financial Privacy Laws (Gramm-Leach-Bliley Act, FTC regulations, Sarbanes-Oxley Act)
  - ▶ Education Privacy Laws (FERPA)
  - ▶ Children's Online Privacy Protection Act (COPPA)
  - ▶ State Privacy Laws
    - ▶ WA Const. Article I, Sec. 7: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."
- ▶ King County's Privacy Policy
  - ▶ "King County, as a government entity, conducts public business and its records are generally available for public review. Nevertheless, King County is committed, to the extent allowable by law, to protect and secure your personal information contained in King County records."
  - ▶ County Privacy Policy
    - ▶ <http://kingcounty.gov/about/website/privacy.aspx>



# A Successful Social Media Handbook

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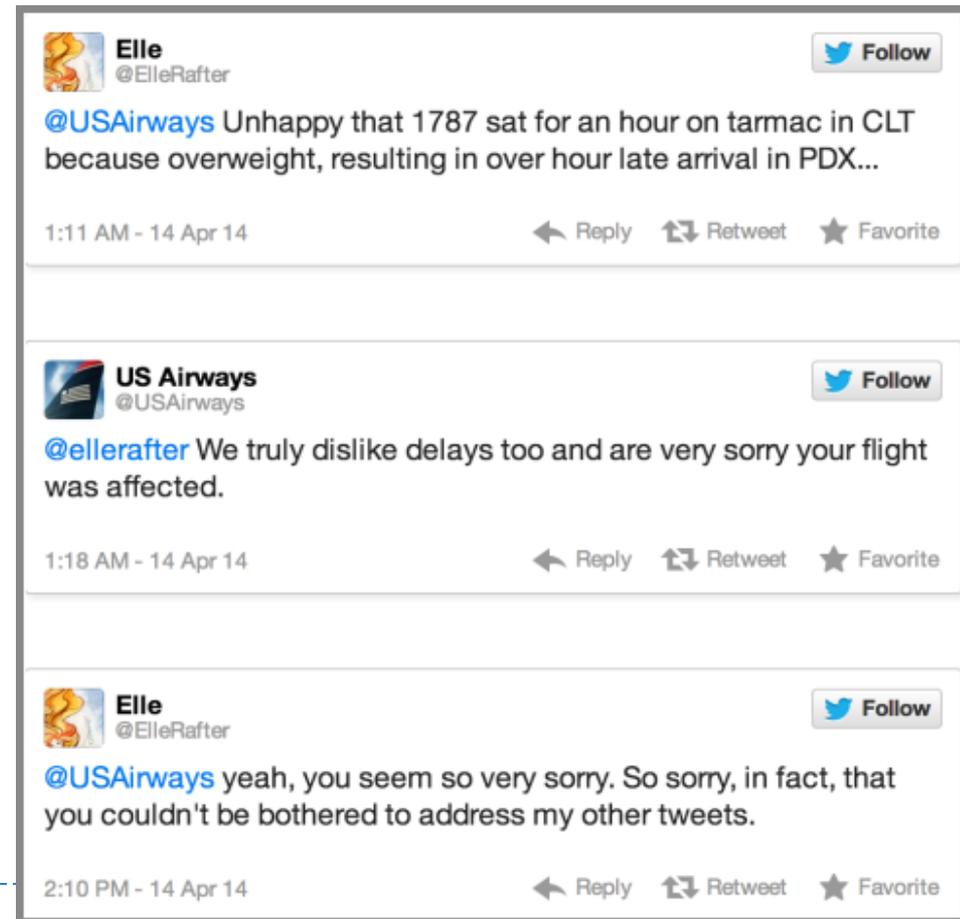
- ▶ **Step One: The Policy**
  - ▶ Like every policy – strive for being clear, easy to understand, and comprehensive
- ▶ **Step Two:**
  - ▶ Review often (annually)
  - ▶ Revise when necessary
  - ▶ Train periodically
  - ▶ Ensure department policies are consistent
- ▶ All are important in maximizing chances for success, minimizing risk and avoiding liability
- ▶ Just for fun, let's look at how some employers have gotten into trouble, when “bad stuff” happened involving these issues



# Social Media Handbook and Policies

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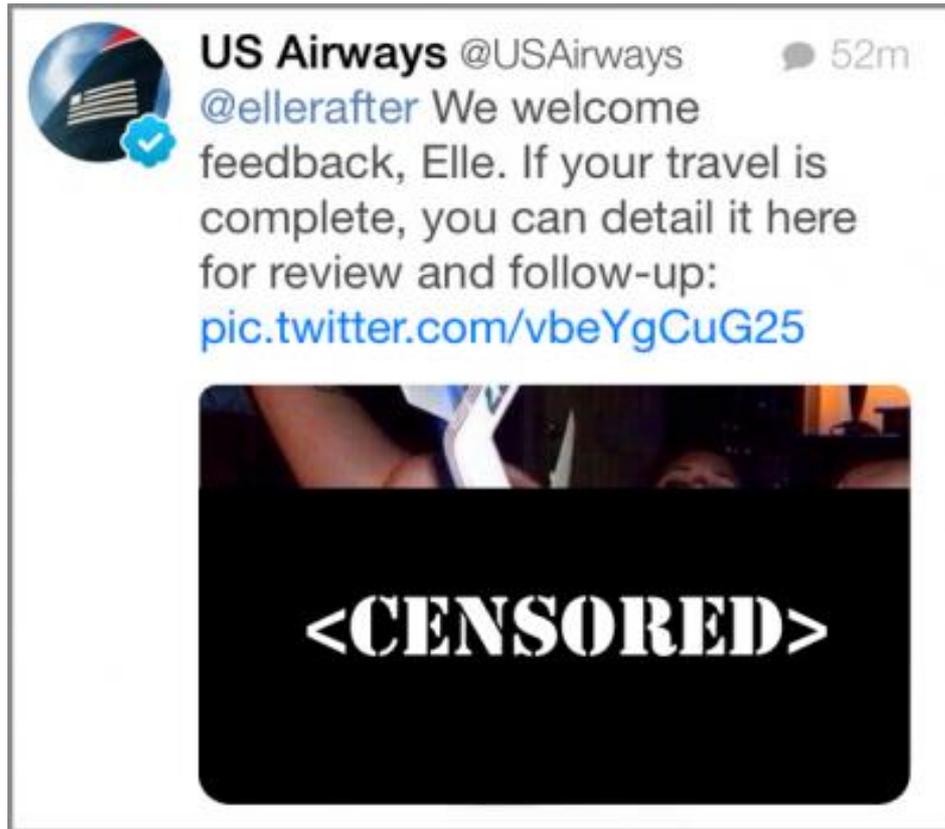
- ▶ Example of a very good provision: inappropriate use of social media can be grounds for corrective action
- ▶ Terrible interaction with the public... it could happen to you
- ▶ Here's one of the worst examples:
- ▶ And what happened next?



# Social Media Handbook and Policies

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## ▶ Engaging With The Public (the wrong way)



# How Not to Engage with the Public

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- ▶ Cleveland Community Relations Board
- ▶ “The Board is responsible for forming and maintaining positive relationships between residents, businesses, organizations and faith-based institutions. ...The Board improves relationships by working through cross-cultural struggles and promoting multicultural harmony. Relationships are promoted through education and outreach to build understanding between different languages and cultures.”



# How Not to Engage with the Public

## ▶ Cleveland Community Relations Board

The screenshot shows a Twitter thread from the account @CRBcleveland. At the top, there are three numbers: 35 (underlined), 173, and 102. Below these are two tabs: 'Tweets' (selected) and 'Tweets & replies'. The thread contains three tweets:

- Tweet 1:** Posted 1 hour ago. Text: "Have heart! Don't hide in the shadows! Should [#ourcle](#) be burned down? Speak up." It has 1 star and 0 replies.
- Tweet 2:** Posted 1 hour ago. Text: "Should Cleveland be burned down like [#bmore](#) [#Ferguson](#) [#hough](#) [#central](#) ?" It has 1 reply and 1 star.
- Tweet 3:** Posted 2 hours ago. Text: "No PR campaign at [#ourcle](#) we just want to hear how everyone feels @CRBcleveland" It has 0 replies and 1 star.

# How Not to Engage with the Public

- ▶ Initial response from Chrysler
  - ▶ Lie – claim account was hacked
  - ▶ Then, a limp apology



- ▶ Employee who made the post – fired



# Social Media Handbook and Policies

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## ▶ Inappropriate Personal Use of Social Media



# Social Media Handbook and Policies

## ▶ Inappropriate Personal Use of Social Media



# How Not to Engage with the Public – Elected Officials



Sid Miller shared The Patriots IV Drip 2's photo.

16 hrs · 🌐



The Patriots IV Drip 2 with Jeffery Rightmire and Pat Cowan

#noislamknowpeace #COMETAKE

<https://www.facebook.com/THEPATRIOTSIVDRIPII>



Julie Williams shared a link.

April 15 at 5:39am · 🌐



Parent Alert: Keep your kids home April 17

US1.CAMPAIGN-ARCHIVE1.COM

Share

👍 Anni Berry, Teresa Rose Reed, Mary Rinaker Clark and 6 others like this.

↪ 2 shares



Cathy Sutherland Swartwood Nothing else will make these people understand that parents mean business.

April 15 at 7:26am · 👍 1



Kim Frodine [http://barbwire.com/.../0640-10-reasons-why-christians...](http://barbwire.com/.../0640-10-reasons-why-christians.../)

April 15 at 7:34am · 👍 1



10 Reasons Why Christians Should Boycott the 'Day of Silence' - BarbWire.com

A broad coalition of pro-family groups recommends...

BARBWIRE.COM

April 15 at 7:34am · 👍 1



Cathy Sutherland Swartwood What next?

April 15 at 7:41am · 👍 1



Chris Tucker This is the most ridiculous thing I've ever heard

April 15 at 9:26am



Regan Benson I don't know- how about walk out and stay out- THEN we can really start talking.

April 15 at 9:48am · 👍 1



Bill Easter Is this happening in Jefferson County Schools?

April 15 at 12:28pm

# Social Media Handbook

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## ▶ Engaging With The Public

- ▶ Do you have provisions that allow removal of comments/posts that are “objectionable or offensive,” “hateful or mean-spirited comments,” and “personal attacks, insults or threatening language”?
- ▶ Each of these has a component that may run afoul of the First Amendment
- ▶ We don’t know that for sure, but content-based restrictions on speech are presumptively unconstitutional and require a compelling state interest

**THE FIRST AMENDMENT**  
CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.  
**PROTECT THE FIRST AMENDMENT, SUPPORT THE GBLDF**



# Social Media Handbook

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## ▶ Engaging With The Public

- ▶ That being said, many social media policies retain this kind of restriction and, at least in the short history of local government social media use, there have been few cases about the removal of a post

- ▶ Let's look at one of them ...

<https://youtu.be/rLKdYXyQa90>

**Facebook 'em, Danno: Federal Court May Decide Whether Citizens Have First Amendment Right to Use Social Media to Publicly Criticize the Hawaii 5-0**

By **Jessica Kaufman** on January 8th, 2013



# What Can Happen When You Delete a Post

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- ▶ Honolulu PD uses Facebook for crime reports, public parking info, etc. Public can comment on HPD posts.



- ▶ Hawaii Defense Foundation, a non-profit dedicated to training citizens to use handguns and informing Hawaiians of their rights regarding firearms, posted critical comments, articles and photos on the HPD wall.



# What Can Happen When You Delete a Post

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- ▶ HPD FB administrators delete the offensive posts, and block the posters.
- ▶ The Foundation sued – probably the first suit over blocking FB posts from citizens
- ▶ Case settled.
- ▶ HPD, with input from HDF and ACLU developed new policy and no longer blocks posts from citizens.
- ▶ Parties could not agree on attorneys fees.
  - ▶ Motion for Attorneys' Fees followed, in which Plaintiffs sought an award of \$64,690.29 – HPD objects
  - ▶ June 2014 – Court orders payment of \$31,000





# Questions?

Ken Fellman  
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Denver, Colorado  
303-320-6100  
[kfellman@kandf.com](mailto:kfellman@kandf.com)