Legal Issues in Higher Education: Social Media, a Blessing and a Curse

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Agenda

Introduction  Colleges & Universities  University Employees  Students  Conclusion
“We don’t have a choice on whether we **DO** social media, the question is how well we **DO** it.”

– Erik Qualman
Transparency may be the most disruptive and far-reaching innovation to come out of social media.

-The New Influencers by Paul Gillin
Introduction: Social Media and the State of the Law
Social media: Why does it matter?

- What is social media?
- How many people use social media?
- From a legal perspective, why should I care about social media?
State of the Law: Part 1

- Application of the First Amendment to public employers in higher education
- Regulation of speech v. academic freedom
- Social media’s position on the spectrum
State of the Law: Part 2

- The Supreme Court’s take
  - *Pickering*: Public employees speaking on matters of public concern?
  - *Connick*: Public employees speaking on matters of private concern?
  - *San Diego v. Roe*: Off-duty, non-work related speech?
  - *Garcetti*: Public employees speaking in the performance of official work duties?
Perspective #1: Colleges and Universities
Social Media and the University

- Why use social media?
- Traditional mass media v. social media
- Accessibility, interactivity, and connectivity
- The evolution of colleges and universities utilizing social media
Legal Issues for Colleges and Universities

- Determinative question:
  - How is the social media forum legally classified?
  - What kind of social media policy is in place?
  - What is the university’s actual practice in regulating its social media spaces?
Legal Issues for Colleges and Universities

• What if the school does *not* permit user comments?
  • Wide zone of authority to control one-way communications
• What if the school does permit user comments?
  • Legal “forum” is determinative
Creating a Social Media Forum

- Designated Public Forum
  - Open Forum
  - Large amount of scrutiny
  - Can’t close or restrict based on content
- Limited Forum
  - Less scrutiny
  - Can restrict speech to limited topics

- Non-Public Forum
  - Looks a lot like a limited forum
  - Case-by-case basis
Articulate a well-thought-out social media policy
Act overtly and visibly to establish a practice of proactive enforcement
Perspective #2: University Employees
Case Study #1: Professor David Guth at KU

- Background
- KU’s response
- Social Media Policy
Case Study #2: Steven Salaita and the University of Illinois

• Background
• Illinois’s response
• Political backlash
Perspective #3: The Students
### College Students and Social Media

260 College Students Surveyed

<table>
<thead>
<tr>
<th>Platform</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Facebook</td>
<td>95%</td>
</tr>
<tr>
<td>Twitter</td>
<td>80%</td>
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<tr>
<td>Instagram</td>
<td>73%</td>
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<tr>
<td>Pinterest</td>
<td>48%</td>
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<tr>
<td>LinkedIn</td>
<td>40%</td>
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<tr>
<td>Viber</td>
<td>40%</td>
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<tr>
<td>Google+</td>
<td>29%</td>
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<tr>
<td>Tumblr</td>
<td>29%</td>
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<tr>
<td>Trello</td>
<td>14%</td>
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<tr>
<td>Slack</td>
<td>7%</td>
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</tbody>
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When Students Spend Most of Their Time on Social Media

- **Immediately after waking up**: 14%
- **During the afternoon**: 33%
- **Late at Night**: 24%
- **Check Facebook 6+ times a day**: 40%
- **Check Twitter at least once a day**: 63%

75% Use their smartphone to access social media
Case Studies: Yoder and Tatro

- Yoder v. University of Louisville
- Tatro v. University of Minnesota
- Key takeaways