

# **Time, Place & Manner: Regulating Non-Traditional Speech**

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# First Amendment

- Traditional Forum
- Designated/Limited Forum
- Government Speech
- Non-Public Forum

# Outline

- Traditional Speech
  - Parks (Occupy Chicago – park curfew upheld)
- Non-Traditional Speech
  - Bulletin Boards, Kiosks, and Signs
  - Holiday Displays
  - Park Board Meetings
  - Cyber Speech/Social Media
- Restricting Employee Speech

# Bulletin Boards, Kiosks & Signs

With respect to public forums, the government has the right to establish regulations on the time, place and manner of protected speech. In order to impose restrictions on speech in a public forum, the restrictions must be “justified without reference to the content of the regulated speech ... narrowly tailored to serve a significant governmental interest, and ... leave open ample alternative channels for communication of the information.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

# Holiday Displays

- Government speech? Restrictions ok
- Public forum? Time, place & manner analysis

# Park Board Meetings

- Open Meetings Act requires some opportunity for public comment at meetings
- Permissible Rules
  - Time limits? ok
  - Content restrictions? careful!

# Cyber Speech

- Government Use of Social Media
- Negative Social Media Speech Against Government
- Regulating Employee Use of Social Media
- Social Media and Anonymous Speech

# Government Use of Social Media





# *Page v. Lexington County Sch. District*

“Had a linked website somehow transformed the School District’s website into a type of “chat room” or “bulletin board” in which private viewers could express opinions or post information, the issue would, of course, be different. But nothing on the School District’s website as it existed invited or allowed private persons to public information or their positions there so as to create a limited public forum.”

# Negative Social Media Speech Against Government

- **Restrictions on Comments on Facebook**
  - Town bans negative or critical speech - First Amendment violation?
- **Fake Websites/Profiles**
  - A Twitter account is established in the name of @peoriamayor using Peoria Mayor Jim Ardis's photograph as the account "avatar." The account's biography read "I am honored to serve the citizens of our great city." Is this fake account protected by the First Amendment?

# *Hawaii Defense Foundation v. City of Honolulu*



# *Wynar v. Douglas County Sch. Dist.*



# Employee Social Media Use



# ***Bland v. Roberts***



# “Lifeguard Style”





# Seasonal Employees

- Moore: I'm goin' to be a activity leader I'm not doing the t.c. let them figure it out and they start loosin' kids I ain't help'n HAHA.
- Callaghan: ....Let them do the numbers, and we'll take advantage, play music loud, get artists to come in and teach kids how to graffiti up the walls and make it look cool, get some good food. I don't feel like being their bitch and making it all happy-friendly middle school campy. Let's do some cool sh\*t, and let them figure out the money. No more Sean. Let's f\*\*k it up. I would hate to be the person taking your old job.



# *In the Matter of Tenure of O'Brien*

- “I’m not a teacher—I’m a warden for future criminals!”
- “They had a scared straight program in school—why couldn’t [I] bring [first] graders?”

# *Mattingly v. Milligan*



# Employee Usage

## **Employers can discipline for:**

- Excessive use of social media at work
- Disclosure of confidential information
- Making false statements about employer

## **Protected vs. not protected activities:**

- Protected concerted activities among co-workers – protected
- Protected speech (political, religious) - protected
- Individual gripes & personal attacks – not protected

# Social Media & Anonymous Speech



# Schulman v. Google

**have u had a bad experience with  
frederick schulman and  
associates?click here!**

Wednesday, July 31, 2013

## check it out!

have u been illegally targeted by Frederick Schulman and associates?Join the rest of us.

Posted by stopcrookedlawyersnow!!! at 10:08 PM No comments:

 Recommend this on Google

## check it out.

**harassed by fschulmanlaw?stop it now**

Posted by stopcrookedlawyersnow!!! at 10:07 PM No comments:

 Recommend this on Google

Monday, July 29, 2013

## who are you?

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  - October (2)
  - September (1)
  - August (4)
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  - check it out!
  - check it out.
  - who are you?
  - LOL
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About Me



 stopcrookedlawyersnow!!!

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# Social Media Policy

## Purpose

- The purpose of the policy is to obtain or convey information that is useful to, or will further the goals of, the government.

## Approval and Administration

- An administrator should oversee and supervise the government's social media sites, who is trained on the policy and his or her responsibilities.

## Comment Policy

- Identify the type of content that is not permitted on the site and that is subject to removal.

## Compliance with Laws

- Compliance with applicable federal, state, and local laws and policies, including FOIA, OMA and records retention

# Social Media Policy - Employees

1. Establish clear guidelines for employee social media activities
2. Specify whether social media use at work will be banned or allowed within reasonable time frames.
3. Caution employees they have no expectation of privacy on employer equipment and their activities are subject to monitoring by their employer.
4. Require disclaimers on personal social media sites if the individual identifies themselves as an employee.
5. Prohibit use of government trademarks without consent.
6. Prohibit posting of patron photos on private social media accounts
7. Protect confidential and sensitive government information.
8. Require a signed acknowledgment of the policy.
9. Provide for training of employees.

# Questions

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