

## Chapter 42

# The Writing on My Wall: Freedom of Expression, First Amendment, and Social Media – New Faculty Rights Concerns

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### ABSTRACT

*College professors and students are increasingly relying on social networking sites to make connections. With this new technology, questions about the lines of what is private and what is public have become blurry and misunderstood. Faculty find themselves involved in situations that are less than desirable and pose First Amendment concerns. A review of literature was conducted using a basic framework for analyzing free speech rights of college professors. A sampling of recent administrative decisions where college professors were reprimanded for online postings considered inappropriate by university authorities was also discussed. A content analysis of information posted to 85 faculty members' Facebook walls was conducted. Results indicate that faculty members' posts were a combination of private and public concern. Implications of privacy rights for college professors on social networking sites and whether they fit within the purview of the freedom of speech First Amendment constitutional rights are considered.*

### INTRODUCTION

The study of faculty members' use of social media in higher education is becoming one of the most popular discourses in higher education today. Whether it is avoiding bars frequented by students or politely declining the occasional social invitation, professors often make an extra effort to establish boundaries with their students. But social networking sites, which are often more public than they may appear, are lifting the veil on the private lives of professors in ways they may not have expected.

DOI: 10.4018/978-1-5225-5631-2.ch042

Social networking sites are Internet communities that allow users to post profile information, such as a username, photograph, education background, and work history, and to communicate with other users by sending private or public online messages or sharing photos online. Social network sites, such as Facebook, Twitter, Google+, LinkedIn, and MySpace, bring online community members together that share common interests.

With the rise of social media, college administrators will inevitably learn more about the personal lives of their faculty and staff. What they do with that information, however, remains a contentious issue with far reaching professional, personal, and legal implications that are still being defined. At issue for many is whether colleges have an obligation to monitor what students and employees post online, and if in so doing they invite the seemingly impossible task of policing behaviors across cyberspace.

The protections of the First Amendment are some of the most basic and fundamental rights guaranteed to all Americans; however, these protections are not absolute. Although some surveys show that as many as 69% of Americans are aware of the First Amendment right of freedom of speech, it is doubtful whether as many Americans are aware of its inherent limitations. With the emergence of social networking Websites, a new problem has arisen as to how to balance a faculty member's free speech rights online with the university or college's interest in maintaining an educational learning environment.

Facebook has exponentially increased how universities impact and conduct business with students and faculty in cyberspace. "We are not obligated to react to every bit of faculty speech online," said Anne E. Bilder, senior legal counsel for the University of Wisconsin system (Stripling, 2011, para. 4). But even colleges without formal policies on social media are likely to face incidents that force difficult conversations about how to respond to online behavior. While universities have firm policies in place protecting faculty and students alike from sexual harassment, discrimination, physical intimidation, etc., few have worked out how those policies that might translate into virtual space.

A frequently referenced case in point was a highly publicized incident at East Stroudsburg University, where a sociology professor, Gloria Y. Gadsden, was escorted off campus for postings she made on Facebook. ESU decided to place her on administrative leave after a student complained about comments she had made on her Facebook page in which she joked about wanting to kill students (Miller, 2010).

Gadsden, who had only recently started her Facebook account, had 32 "friends," including friends, relatives and colleagues. She said she has no students among her Facebook friends. She was unsure how her messages wound up at ESU's provost's office. She said she had no record of violence, telling officials, "I understand you guys are sensitive but there's no way I'm a threat." Ten minutes after the meeting ended, the dean, accompanied by a security guard, put her on leave. Gadsden was reinstated after being cleared by a psychologist. She contends that the response to her Facebook post was retaliation for a racial-harassment complaint she filed the month before her suspension. Such a finding might be expected to alarm faculty advocates who have argued that the First Amendment clearly provides such protection.

The ubiquity of social networking has led some universities to develop social media policies governing how faculty members should use the technology, but the fact remains that most university administrators are still scratching their heads and asking themselves, "What's the difference between private speech versus public speech on Facebook or Twitter?" In other words, until more cases like Gadsden's emerge, universities and colleges will be painfully slow to create any concrete policies that might actually help faculty members protect themselves.

In the meantime, should educators completely shut down their social networking accounts? One might argue that such a suggestion is too draconian—after all, shouldn't common sense be the rule of thumb for anyone using social networking tools? If you want to keep your job, whether you're a university

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