

# Teacher Speech in the Age of Social Networking

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# Social Networking Explosion

- Social networking is more popular than email in terms of internet usage
- 1 of every 11 minutes spent online is attributable to social networking

*Nielsen Survey, March 2009*



# Social Networking Explosion

- Millennial generation is entering the workforce
- Tend to merge personal and work-related content on social networking sites
- Fertile ground for 1st Amendment clash



# The Clash

- Teacher's right to free speech – *in the virtual realm*

VS.



- School board's right to set expectations of employees and control curricula

# Overview

1. The “mighty” school board
2. Teacher speech and the 1<sup>st</sup> Amend. (court’s traditional approach)
  - *Pickering* and *Hazelwood* standards
3. Teacher speech in cyberspace
  - Contemporary cases involving teacher speech - *in the virtual realm*
4. Quiz

# The Mighty School Board

Wide latitude to control curricula

➤ Meyer v. Nebraska (1923): Court struck down a state law prohibiting schools from teaching foreign languages

➤ Epperson v. Arkansas (1968): Law prohibiting teaching of evolution in state schools declared unconstitutional



# The Mighty School Board

## ➤ May inculcate students with community values

- Board of Education v. Pico (1982): S. Ct. found that school board's removal of certain books from a school library likely violated students' 1<sup>st</sup> Amendment rights because it was done in a "narrowly partisan and political" manner.
  - Court affirmed the right of school boards to "inculcate" students with community values.
  - Restraint must be viewpoint neutral

# Teacher Speech & the 1st Amendment

➤ Court's traditional approach: "*A tale of two cases*"

- Pickering v. Bd. of Education, 391 U.S. 563 (1968)
  - (Followed by the 9<sup>th</sup> Circuit)
- Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260 (1988)

# *The Pickering Test*

- High school teacher was fired after sending a letter to a newspaper criticizing school board's handling of revenue proposals. He argued his firing was in violation of 1<sup>st</sup> Amendment right
  - Court crafted a two-part test
    1. Does the speech involve a matter of “**public concern**”?
    2. If so, the interest of teacher as a citizen must be “**balanced**” against the interest of the school district in promoting the efficiency of services provided through its employees
  - Held: Teacher's speech 1) touched on “public concern” and 2) did not affect teacher's performance, or interfere with school operations.

# *Pickering*

## Public v. Private Concern

- Kirkland v. Northside Independent Sch. Dist (5<sup>th</sup> Cir. 1989):  
Texas high school teacher fired after using substitute reading list.  
Teacher claimed school district infringed on his free speech/expression rights
  - Held: No 1<sup>st</sup> Amendment violation. Teacher's use of substitute reading materials did not involve public concern. He never spoke publicly about the issue. *"Issues do not rise to level of public concern by virtue of speaker's interest in the subject matter."*

# *Pickering*

## Public v. Private Concern

- Connick v. Myers (S. Ct. 1983): New Orleans assistant district attorney was assigned new job duties. She was fired after circulating an interdepartmental survey regarding employee job satisfaction.
  - Held: Speech was the outgrowth of a private dispute. No 1<sup>st</sup> Amendment violation.

# *Pickering*

## Public v. Private Concern

- Cockrel v. Shelby County Sch. Dist. (6<sup>th</sup> Cir. 2001): KY elem. teacher fired after allowing actor Woody Harrelson to discuss the legalization of industrial hemp.
  - Held: Issue of public concern. Hemp is a “hot issue” in KY. Teacher’s interest outweighed school district’s because speech did not disrupt educational process, particularly since school officials had initially agreed to the presentation.

# *Pickering*

## Public v. Private Concern: “official duty”

- Garcetti v. Ceballos (S. Ct. 2006): LA prosecutor claimed he was subjected to retaliation after exposing misconduct by sheriff involving search warrant.
  - Held: Speech arising from an employee’s “official duties” is not protected, even if it touches on a public concern.  
(Arguably eradicates protection for any “classroom” speech)

- *Potential dark horse*



# *Pickering*

## Public v. Private Concern: “official duty”

- Mayer v. Monroe County Community Sch. Corp. (7<sup>th</sup> Cir. 2007):  
Elementary teacher was fired after holding classroom discussion on Iraq war.
  - The court, applying Garcetti, held that because teacher’s comments were made in the classroom, they were made in the context of her “official duties.” No 1<sup>st</sup> Amendment violation.

# Pickering

## “Balancing Test”

- Courts consider whether the speech:
  - Impairs discipline or control by supervisors
  - Disrupts co-worker relations
  - Erodes working relationships premised on loyalty and confidentiality
  - Interferes with teacher’s performance
  - Obstructs routine office operations?

Hyland v. Wonder (9<sup>th</sup> Cir. 1992)

# The *Hazelwood* Test (legitimate pedagogical concern)

- Principal deleted articles (concerning teen pregnancy and divorce) from high school newspaper. Students argued this violated their 1<sup>st</sup> Amendment rights
  - Test:
    1. Where school district has not intentionally converted school into public forum for indiscriminate comment,
    2. It may restrict speech to advance a legitimate pedagogical concern.
  - Held: No 1<sup>st</sup> Amendment violation. School did not intend to convert newspaper into public forum. Restraint was reasonably related to “legitimate pedagogical concerns –potential disruption to school environment stemming from poorly written articles.

Note: School must articulate its “legitimate pedagogical concern”

# *Hazelwood*

## “Legitimate Pedagogical Concern”

- Lacks v. Ferguson Reorganized Sch. Dist. (8<sup>th</sup> Cir. 1998): High school teacher in St. Louis was fired after allowing students to use profanity in a “creative” writing assignment.
  - Held: No 1<sup>st</sup> Amendment violation. School officials had legitimate pedagogical interest in prohibiting profanity

# Circuit Split

## › *Pickering*

- Third, Fourth, Fifth, Sixth, Seventh and Ninth Circuits

## › *Hazelwood*

- First, Second, Eighth, Tenth, and Eleventh Circuits

# Teacher Speech in Cyberspace

- ▶ Spanierman v. Hughes (D. Conn. 2008): High School teacher invited students to be his “friend” on MySpace page. School officials became concerned over inappropriate content:

Spanierman: “Repko and Ashley sittin in a tree. K I S S I N G. 1st comes love then comes marriage. HAHA HA HA HA HA HA!!!!!! LOL”

Student: “dont be jealous cuase [sic] you cant get any lol :)”

Spanierman: “What makes you think I want any? I’m not jealous. I just like to have fun and goof on you guys. If you don’t like it. Kiss my brass! LMAO”

# Teacher Speech in Cyberspace

## › Spanierman v. Hughes

- Held: Unprotected speech involving matters of “private concern”

# Teacher Speech in Cyberspace

➤ Snyder v. Millersville Univ., (E.D. Pa. Dec. 3, 2008): University denied 25 year-old student (Stacy Snyder) her educational credentials due to her performance as a student teacher, e.g., inappropriate conduct relating to MySpace site:

- Inviting students to join as “friends”
- Discussing personal issues with students
- Making disparaging comments about cooperating teacher
- Posting picture of herself consuming alcohol

# Teacher Speech in Cyberspace

## ➤ Snyder v. Millersville Univ.

Snyder claimed university's actions were an infringement upon her 1<sup>st</sup> Amendment rights

- Held: Unprotected speech involving matters of private concern.

# Teacher Speech in Cyberspace

- Richerson v. Beckon (9<sup>th</sup> Cir. 2009): Teacher responsible for mentoring new teachers was demoted after making personal comments on her blog about co-workers:

*"Save us White Boy! I met with the new me today: the person who will take my summer work and make it a full-time year-round position ... He comes across as a smug know-it-all creep... And he's white. And male ... Mighty White Boy looks like he's going to crash and burn."*

# Teacher Speech in Cyberspace

➤ Richerson v. Beckon (9<sup>th</sup> Cir. 2009) Court applied “balancing test”

Did the speech:

- Impair discipline or control by supervisors
- Disrupt co-worker relations
- Erode working relationships premised on loyalty and confidentiality
- Interfere with teacher’s performance
- Obstruct routine office operations

# Teacher Speech in Cyberspace

## ➤ Richerson v. Beckon (9<sup>th</sup> Cir. 2009)

- Held: District's interest outweighed employee's pursuant to *Pickering* balancing test. No constitutional violation.

(Court declined to consider whether the speech touched on matters of public concern)

## Quiz (*Pickering* Standard)

1. High school drama teacher directs a school play depicting a supposedly dysfunctional family where the mother is divorced, one daughter is a lesbian, and the other is pregnant. School administrators transfer teacher to another school citing her failure to follow the “no controversial materials” policy.

Improper 1st Amendment restraint? \_\_\_\_\_

## Quiz (*Pickering* Standard)

- Decision: Speech was outgrowth of an employment dispute and therefore a matter of private concern. No 1<sup>st</sup> Amendment violation.

Boring v. Buncombe Bd. of Educ., 136 F.3d 364 (4<sup>th</sup> Cir. 1998)

## Quiz (*Pickering* Standard)

2. High school teacher Flash McAllister voices support for an unpopular school board candidate over his blog. Flash never discusses his support for the “fringe” candidate in class or during school hours. Yet, the superintendent gets word and elects not to renew Flash’s contract for the ensuing year.

Improper 1<sup>st</sup> Amendment restraint? \_\_\_\_\_

## Quiz (*Pickering* Standard)

- Galaxy Elementary teacher Jan Curmudgeon was disciplined by school officials after posting the following on her Facebook page:  
*"I teach at the most ghetto school in America ... the kids are hopelessly dysfunctional ... I hate my job"*

Improper 1<sup>st</sup> Amendment restraint? \_\_\_\_\_

## Quiz (*Pickering* Standard)

4. School officials fire African American high school teacher after learning that he frequently uses the “n-word” with his African American students via his Facebook communications. The district has policies prohibiting “racially derogatory” language.

Improper 1<sup>st</sup> Amendment restraint? \_\_\_\_\_

Thoughts?