

Rook E. Greenwood vs. Chief  
Billie Durden, in His/Her  
Individual Capacity as Chief of  
the Reillyville Police Department

*A Discussion of the Facts and Witnesses  
For the 2011 - 2012 Minnesota State Bar Association  
High School Mock Trial Program*

*Presented by Trina Alvero Iijima*

# Case Summary

This year's problem is a 42 USC § 1983 action brought by Detective Rook E. Greenwood against Chief Billie Durden of the Reillyville Police Department.

Greenwood claims that Durden violated his/her civil rights by terminating him/her based on a statement s/he made through a posting on a social networking site called "ReillyBook".

Chief Durden disputes that the statement in question had anything to do with Greenwood's firing, and instead claims to have terminated Greenwood "for good cause" due to citizen complaints.

# Facts of the Case

## Timeline

February 14, 2005	Rook E. Greenwood becomes a cop
2009	Pauly/Polly Schorr named Officer of the Year.
2010	Chief Durden gets a new car; police officers do not get new bullet proof vests
March 15, 2011	Lil' Nemesis T Shooting incident & dog incident.
April 4, 2011	Loudermouth campaign event.
April 5, 2011	Greenwood posts opinion to ReillyBook
April 9, 2011	Greenwood is fired.

# The ReillyBook Post



A screenshot of a Facebook post. The post is from a user named Rook E. Greenwood, whose profile picture is a black vest with the word "POLICE" written on it. The text of the post reads: "When word of the mayor's decision came down to the local division that our lives aren't on par with the Chief's brand new car it was met with unanimous derision. Fo shizzle." Below the text, there is a grey bar indicating "20 people like this." and another grey bar with a comment icon and the text "View all 12 comments". Below these are two comment entries. The first comment is from a user with a profile picture of a baby, and the second comment is from Marge Gunderson, with a profile picture of a dog. Marge's comment reads: "I can't believe they send you out in worn-out equipment like that..it is amazing nobody has died because of it." Below Marge's comment, it says "April 5 at 1:22 am" and "Like".

**Rook E. Greenwood** When word of the mayor's decision came down to the local division that our lives aren't on par with the Chief's brand new car it was met with unanimous derision. Fo shizzle.

20 people like this.

View all 12 comments

**Marge Gunderson** I can't believe they send you out in worn-out equipment like that..it is amazing nobody has died because of it.

April 5 at 1:22 am · Like

Exhibit 1, page 39

# Witnesses

## Plaintiff's Witnesses

- Detective Rook E. Greenwood
- Political Activist Leslie Loudermouth
- Sergeant London Goddard, Greenwood's supervisor

# Witnesses

## Defendant's Witnesses

- Chief Billie Durden
- Animal Activist Rin T. Tin
- Officer Pauly/Polly Shore

# Termination of Employment at Reillyville Police Department

Exhibit 2, page 41

## **222.20 Termination of Employees**

All temporary and probationary employees may be terminated at any time, with or without cause. All permanent employees may be terminated only for good cause.

## **222.30 Definition of Good Cause**

Good cause means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reasons.

Reillyville Police  
Internet and Social Networking Policy

Exhibit 5A

253.11 Policy The Internet, blogs, Twitter™, the worldwide web, social networking sites and any other medium of electronic communication shall not be used in a manner which is detrimental to the mission and function of this agency.

... Any publication, through any medium which is potentially adverse to the operation, morale, or efficiency of this agency will be deemed as violation of this policy.

# Greenwood's Signed Receipt for the City of Reillyville Police Department Handbook


Exhibit 10, page 55

Greenwood knew that the Department policies prohibited certain content in internet posts

Question: How are the Handbook Procedures for internet usage relevant if Greenwood engaged in protected speech?

Exhibit 10

**City of Reillyville Police Department Handbook**



**Receipt**

The undersigned hereby acknowledges receipt of the City of Reillyville Police Department Handbook (including all updates), and the undersigned further states that s/he is familiar with the contents found herein.

\_\_\_\_\_/S/ Rook E. Greenwood  
Employee

14 February 2005 \_\_\_\_\_  
Date:

## Exhibit 5B

### Section 253

#### Internet and Social Networking Policy

##### 253.12 Procedure

- A. Employees of this agency are prohibited from using agency computers for any unauthorized purpose including surfing the Internet or participating in social networking sites.
- B. Employees of this agency are prohibited from posting, or in any other way broadcasting, without prior agency approval, information on the Internet, or other medium of communication, the business of this agency to include but not limited to:
1. Photographs/images relating to any investigation of this agency.
  2. Video or audio files related to any investigation of this agency.
  3. Video, audio, photographs, or any other images etc. which memorialize a law enforcement related action of this agency.
  4. Logos/Uniforms/Badges or other items which are symbols associated with this agency.
  5. Any other item or material which is identifiable to this agency.
- C. Employees of this agency who utilize social networking sites, blogs, Twitter™ or other mediums of electronic communication in their off-duty time shall maintain an appropriate level of professionalism and appropriate conduct so as not to broadcast in a manner which is detrimental to the mission and function of this agency.
1. Employees shall not use references in these social networking sites or other mediums of communication that in any way represent themselves as an employee of this agency without prior agency approval. This shall include but not be limited to:
    - a. Text which identifies this agency.
    - b. Photos that depict the logos, patches, badge or other identifying symbol of this agency.
    - c. Accounts of events which occur within this agency.
    - d. Any other material, text, audio, video, photograph, or image which would be identifiable to this agency.
  2. Employees shall not use a social networking site or other medium of Internet communication to post any materials of a sexually graphic nature.
  3. Employees shall not use a social networking site or other medium of communication to post any materials which promote violence or weaponry.
  4. Employees shall not use a social networking site or other medium of communication to post or broadcast any materials which would be detrimental to the mission and function of this agency.
- D. Employees of this agency are prohibited from using their title as well as any reference to this agency in any correspondence to include emails, postings, blogs, Twitter™, social network sites such as ReillyBook unless the communication is of an official nature and is serving the mission of this agency. This prohibition also includes signature lines in personal email accounts. An employee may seek agency approval for such use.
- E. New employees: All candidates seeking employment with this agency shall be required to complete an affidavit indicating their participation in any social networking sites. This affidavit shall include the name of the sites. The candidate shall provide the agency with access to their site as part of any background information.
- F. Administrative Investigations: Employees who are subject to administrative investigations may be ordered to provide the agency with access to the social networking site when the subject of the investigation is directly, narrowly, and specifically related to the employee's performance or ability to perform his or her function within the agency or when the subject of the investigation is potentially adverse to the operation, morale, or efficiency of the agency.

# Exhibit 5B

## Procedures for the Internet and Social Networking Policy

# Freedom of Speech vs. Governmental Order

If it is permissible to fire a police officer for “good cause” or even no reason at all - why should government be prohibited from firing a police officer because of a statement on a matter of public concern?

# The Complaint

On or about April 4, 2011, Rook E. Greenwood made public comments about matters of public concern in his/her capacity as a private citizen

On or about April 9, 2011, Defendant discharged plaintiff from the Reillyville City Police Department.

The actions of the Defendant in discharging Plaintiff was "under color" of the authority of the State.

The protected speech was a substantial or motivating factor in the Defendant's decision to discharge the Plaintiff from employment.

# Four-Step Analysis

From page 62: The Charge of the Court

In order to prevail on this claim, the Plaintiff must prove each of the following facts by a preponderance of the evidence: (Bryson v. City of Waycross)

First: That the actions of the Defendant were "under color" of the authority of the State;

Second: That the Plaintiff engaged in speech activity concerning a matter of public concern;

Third: That such speech activity was a substantial or motivating factor in the Defendant's decision to discharge the Plaintiff from employment; and

Fourth: That the Defendant's acts were the proximate or legal cause of damages sustained by the Plaintiff.

# “Under color” of the authority of the state

In U.S. law, the term color of denotes the “mere semblance of legal right”, the “pretense or appearance of” right; hence, an action done under color of law colors (adjusts) the law to the circumstance, yet said apparently legal action contravenes the law.

Color of law refers to an appearance of legal power to act but which may operate in violation of law. For example, though a police officer acts with the "color of law" authority to arrest someone, if such an arrest is made without probable cause the arrest may actually be in violation of law.

Color of office refers to an act usually committed by a public official under the appearance of authority, but which exceeds such authority.

# “Protected Speech”

NOT at issue in Greenwood vs. Durden

Court's instructions at page 62:

I instruct you that Plaintiff engaged in speech activity concerning officer safety and use of public funds. Therefore, you are instructed that the subject of such speech activity **was a matter of public concern**; and, as a public employee, the **Plaintiff could not legally be penalized because of the Plaintiff's exercise of First Amendment rights in discussing that subject of public concern.**

# “Substantial or Motivating Factor”

- Greenwood does not have to prove that the protected speech activities were the only reason the Defendant acted against the Plaintiff.
- It is sufficient if the Greenwood proves that the Plaintiff's protected speech activities were a determinative consideration that made a difference in the Defendant's adverse employment decision.
- However, the law does not require that a public employer extend any special or favorable treatment to public employees because of their exercise of protected First Amendment rights.

# “Proximate or Legal Cause”

- If you find in the Plaintiff's favor with respect to each of the facts that the Plaintiff must prove, you must then decide whether the Defendant has shown by a **preponderance of the evidence** that the Plaintiff would have been dismissed for other reasons even in the absence of the protected speech activity.
- If you find that the Plaintiff would have been dismissed for reasons apart from the speech activity, then your verdict should be for the Defendant.

# “Preponderance of the Evidence”

- The standard is met if the proposition is more likely to be true than not true.
- Effectively, the standard is satisfied if there is greater than 50 percent chance that the proposition is true.
- “More probable than not.”
- Contrast: “Clear and convincing evidence” from State of Minnesota vs. Caldwell

# Greenwood v. Durden

- Was Durden properly acting within his/her authority as Chief of Police?
- Was Greenwood's ReillyBook post a "substantial and motivating factor" in Durden's decision to terminate him/her?
- Has Durden shown that he/she would have fired Greenwood even if Greenwood hadn't posted his/her criticisms of the police department?

# Was Greenwood fired for good cause?

The Complaint Letter

Exhibit 3, page 42

Exhibit 3

 People Against  Discrimination f Animals   
Route 21  
Reillyville, MN 55102

Rin T. Tin  
*FOUNDER & CO-ORGANIZER*

April 2, 2011

Chief Billie Durden  
Reillyville Police Station  
Reillyville, MN 55102

**DELIVERED BY HAND**


My Dear Chief,

I cannot TELL you how upset I am!!

I have just returned from the 2<sup>nd</sup> Precinct house, having discovered the most AWFUL betrayal (again) by one of your police officers... YES, it was Rook E. Greenwood, just as before, taking threats against the helpless, animals of this, our community as though they were merely TRIVIAL!

# Rin T. Tin's March 15 Dog Incident

**Exhibit 6**



**City of Reillyville Police Department—Incident Report**

CASE NUMBER: 010-16001664		DATE OF REPORT - TIME: 03/15/11 22:05	<input checked="" type="checkbox"/> ORIGINAL REPORT <input type="checkbox"/> SUPPLEMENTAL REPORT
DATE OF OCCURRENCE: 3/15/11	TIME OF OCCURRENCE: 19:55	DOW: [ ] 1 Sun [x] 2 Mon [ ] 3 Tues [ ] 4 Wed [ ] 5 Thur [ ] 6 Fri [ ] 7 Sat [ ] 8 Unk	
INCIDENT LOCATION: Route 21, Reillyville, MN 55102			
COMMON/BUSINESS NAME:	BEAT:	MAPR:	
DISTRICT:	ALCOHOL: [ ] YES [x] NO [ ] UNK	DRUG: [ ] YES [x] NO [ ] UNK	
LOCATION TYPE: Residential	DEPT. CLASSIFICATION:		
CASE STATUS: [ ] 1 cleared by arrest [ ] 2 exceptionally cleared [ ] 3 unfounded [ ] 4 inactive		DATE: 03/15/10	
[ ] 5 pending arrest [ ] 6 pending inv. results [ ] 7 info. Only [x] 8 admin. cleared		UCR STATE CLASSIFICATION: (STATUTE NUMBER AND TEXT)	
UCR CLASSIFICATION: (TABLE #8)		UCR CLASSIFICATION: (TABLE #8)	
ATTEMPTED/COMMITTED: [ ] 1 Committed [ ] 2 Accessory After [ ] 3 Accessory Before [ ] 4 Aid/Abet [ ] 5 Assault To Victim [ ] 6 Attempt to [ ] 7 Conspiracy To [ ] 8 Facilitation Of [ ] 9 Solicitation To [ ] 10 Threat To [ ] 11 Unfounded			
ATTACK REASON: [ ] 1 Assault [ ] 2 Theft [ ] 3 Menace [ ] 4 Concerned Citizen [ ] 5 Mental		WEAPON TYPE: [ ] 1 Firearm [ ] 2 Knife/Cutting Instrument [ ] 3 Hands/Fists/Feet, etc. [ ] 4 Other Weapon	

Exhibit 6, page 49

At approximately 19:00, a call came in from Rin T. Tin, and I was dispatched. Upon arrival, I found the civilian in a state of distress, kneeling on the clay shoulder of Route 21.

\*\*\*

By my cruiser's headlights, I saw that the civilian, Rin T. Tin, was attending a medium-large canine of unknown or mixed breed.

\*\*\*

There was no sign of blood or external injury, but the canine was obviously near death: eyes unfocused and dry tongue hanging from its mouth. Tin protested ("cruelty") as I secured the dog's muzzle with a length of string (all immediately available) to prevent being bitten, and I had to order the civilian back while I attempted first aid. These attempts proved unsuccessful.

\*\*\*

Judging that discretion, not arrest, was the best case management technique for the distressed Tin, I allowed the civilian to assist in loading the animal into my cruiser for what Tin believed to be a forensic examination. I then transported the corpse to the crematorium. After a brief call to my superior, Sgt. Goddard, reporting the location and circumstances of the casualty, I released the body to them for disposal rather than transfer for necropsy.

Exhibit 3

City of Reillyville Police Department



INTERNAL REPORT FORM

DATE: April 5, 2011

- Citizen Complaint
- Fellow Officer Complaint
- Administrative complaint- Supervisory
- Administrative Complaint-Prosecutor/Court
- City hall/Political

# Exhibit 3 (continued)

Officer Schorr Reports on Tin's complaint

City of Reillyville Police Department

Exhibit 4



TERMINATION NOTICE

Employee name: Rook E. Greenwood

Position: Detective

Reason for termination (attach additional pages if necessary):

Conduct unbecoming an officer, to wit: insensitive and unprofessional handling of citizen report

The Termination Notice

Exhibit 4

Page 45

Did Greenwood show a  
pattern of misconduct? Is the timing of  
the termination relevant?


Rin T. Tin's February 6  
"Prowler Incident"

Exhibit 7, page 51

"Insensitive and  
Unprofessional handling"

Exhibit 8

**City of Reillyville Police Department—Incident Report**



CASE NUMBER: 010-16001664	DATE OF REPORT - TIME: 03/16/11 11:23	<input type="checkbox"/> ORIGINAL REPORT <input checked="" type="checkbox"/> SUPPLEMENTAL REPORT
DATE OF OCCURRENCE: 3/16/11	TIME OF OCCURRENCE: 11:04	DOW: <input type="checkbox"/> 1 Sun <input type="checkbox"/> 2 Mon <input checked="" type="checkbox"/> 3 Tues <input type="checkbox"/> 4 Wed <input type="checkbox"/> 5 Thur <input type="checkbox"/> 6 Fri <input type="checkbox"/> 7 Sat <input type="checkbox"/> 98 Unk
INCIDENT LOCATION: 2 <sup>nd</sup> Precinct, Reillyville, MN 55102	BEAT:	MAPR:
COMMON/BUSINESS NAME:	ALCOHOL: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK	DRUG: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK
DISTRICT:	DEPT. CLASSIFICATION:	DATE: 03/16/11
LOCATION TYPE: Commercial	<input type="checkbox"/> 2 exceptionally cleared <input type="checkbox"/> 4 inactive	
CASE STATUS: <input type="checkbox"/> 1 cleared by arrest <input checked="" type="checkbox"/> 3 unfounded <input type="checkbox"/> 15 pending arrest	<input type="checkbox"/> 1A pending inv. results	

# The Citizen's Report

## Exhibit 8

Schorr's Report on Tin's  
Return to the Station

# Life in the Small Pond of Reillyville

Where everybody knows everybody else,  
and everybody has an opinion

Exhibit 9, page 54

Leslie Loudermouth's Version of the Facts on the Smith Child Deprivation Case

**Exhibit 9**

**Leslie Loudermouth  
1060 W. Addison St  
Reillyville, MN**

RE: Jeanette Smith, Case No. 101102

Dear Director:

At your request, I am memorializing my involvement in the Jeanette Smith case beyond previously written reports and testimony. I do want to note that this request is highly unorthodox, and I feel as if my authority is being undermined because of a verbal complaint made by the Chief of Police.

# Expert Witnesses

Why Do We Need Experts?

Generally, expert testimony is required to introduce evidence regarding matters requiring “scientific, technical or specialized knowledge.”

Lay witness testimony cannot be used to present evidence on matters beyond the ordinary layman’s knowledge or experience.

**Rule 702. (Page 97 – 98) Testimony by Experts** If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise.

# Expert Witness Qualification

Consider:

Are expert witnesses more credible than lay witnesses?

Is either Leslie Loudermouth or Rin T. Tin an “expert?”

If so, what expert testimony can they introduce?

What are the benefits of qualifying someone as an expert?

What objections might you face in trying to qualify your expert?

# Exhibits 11 and 12

What does the interview with Leslie Loudermouth tell us about this witness's background?

Is a political activist particularly qualified to testify on any relevant issues to this case?

In contrast, what does Rin T. Tin's blog tell us about this witness's background?

Is an animal rights activist particularly qualified to testify on any relevant issues?

What other credibility issues do these witnesses have?

Does expert status "distance" them from the appearance of bias?

# Greenwood v. Durden

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- Was Greenwood's ReillyBook post a "substantial and motivating factor" in Durden's decision to terminate him/her?
- Has Durden shown that he/she would have fired Greenwood even if Greenwood hadn't posted his/her criticisms of the police department?