

The Role of Social Media in Court

The effects of social media are not something that most people think about on a day to day basis, but when something someone said on [Facebook gets them fired](#) or perhaps even [leads police to their doorstep](#), people start rethinking what they should and [should not post](#) on social media. Depending on which study you read, between 56-58% of all Americans are on at least one form of social media. A [Pew study](#) in 2014 showed that of adults who use the internet, 74% of them use social networking, making this number even more dramatic.

A New Cog in Legal System

There are over 845 million Facebook users out there who upload an average of 70 pieces of content each month. With that many people out there expressing their loves and hates, showcasing their entire days, and spouting off about race or religion or politics, it's bound to get someone in trouble sooner or later. So, if it can get you fired or arrested, can it be used in court? What exactly is admissible? What about text messages? The short answer is "yes, social media posts and/or texts can be used in court". We will examine this more below.

Courtrooms across the country are starting to see posts from social networking sites popping up in the evidence files for criminal trials or divorce proceedings. Because it is everywhere and so many people



use it, social media is a goldmine when it comes to evidence sources. It's already been used in personal-injury cases (how can a victim be *that* injured if they are seen dancing at a club?) and in family law (perhaps a parent not living up to their end of the child-custody settlement) as well as in criminal case.

A study conducted by lawyer John Patzakis collected data in appeals cases during a two year period. Nationwide, he was able to find about 700 cases where social media played

a role in the disagreement of case outcomes. Patzakis believes this only represents social media's prevalence in a small percentage of appellate cases, since relatively few of the decisions at this juncture in the legal processes are published on-line. He thinks that across the nation there could be tens of thousands of cases in which social media has a part.

If you are in need of legal help, contact Brian Mincher and Ryan Rogers of Godsey Martin, P.C. today.

How Social Media Has Been Used in Court

A person's social media account can reveal their state of mind at any given time, as well as provide evidence of communication, location and actions. Here are some cases where it has been used successfully in court.

Case 1:

In a case where an 18-year-old [Lance Tiernan was accused of murder](#), the prosecution displayed photos of him wearing a T-shirt with a graphic of brass knuckles as well as a “like” of the movie Fight Club on his page as evidence he enjoyed violence. Tiernan’s lawyer believes that if his client hadn’t taken the stand, where he didn’t deny the page was his, the photos probably wouldn’t have been admissible. But then again, if he *had* denied it, the jurors would have been able to see he was lying and therefore not a credible witness in his own trial.

Case 2:

[Anthony Blake](#) was accused of the execution-style murdering of Terron Morton at a New Year’s Eve party. There were many text messages sent back and forth “between him and his fellow gang members”, including conversations about hiding witnesses, persuading people not to testify, and getting rid of incriminating evidence. The attorneys compiled the text messages and the people required to back them up as proof.

Case 3:

A principal in Miami brought an age discrimination suit against the school he worked at when they chose not to renew his contract. They settled for \$150,000 with a stipulation that \$80,000 would be revoked if he or his wife broke confidentiality. The pair let their daughter know they have settled and are happy. She posts on Facebook that the school ““is now officially paying for my vacation to Europe this summer. SUCK IT.” [When school officials found out](#), they stated confidentiality was breached because they daughter had been told about it. They used the post as evidence.

Case 4:

In a carjacking and first-degree murder case, Facebook messages sent to another person by the defendant were admitted, as well as messages that were sent to him.

Case 5:

A woman trying to seek lifetime support from her ex-husband claimed that an accident that happened while she was married rendered her disabled. Evidence pulled from Facebook and MySpace showed pictures of her love of belly dancing as a hobby. She was denied alimony.

Case 6:

A high-profile divorce case ordered both husband and wife to turn over their passwords to their Facebook and online dating profiles when the husband saw something on their shared computer that left him to believe incriminating evidence might be found there.

Case 7:

A woman driving drunk got into an accident and killed a passenger in her car. She was sentenced to two years in jail (though she could have gotten no jail time) because photos of her drinking were found on her MySpace account.

Case 8:

A woman was receiving monthly insurance payments for depression that rendered her unable to work. When her insurance company found pictures of her partying at Chippendales on her birthday, they stopped payments.

Social Media and Due Diligence

Even if lawyers don't expect to use social media in their case, it's a good idea to research it anyway. For some attorneys, one of their first steps is to comb through their client and the opposition's social media accounts for evidence they can use, or that can be used against them. They look through the accounts belonging to victims, the witnesses and the accused. Lawyers must do their due diligence to make sure they aren't blindsided with potentially damning evidence in court. Cases have been lost when a client or witness loses their credibility because they are presented with something directly in contrast to what they had posted on a social media site in the past.

The Obstacles to Getting Social Media Admitted

There are several criteria social media, as well as any other would-be evidence, must meet before it is allowed in court.

1. Is it relevant to one side or the other (or both)? Does it make a fact more or less probable?
2. Can it be authenticated? As with typical phone records, everything must be authenticated. The trouble with social media is that if a person says "I didn't write that post" or "That's not me in the photo", specialists have to be brought in, whether they are experts authenticating a photo or Facebook providing user data for authentication. Questions that must be answered are: what was collected, how, where and when was it collected, who collected it? We will look at this further below.
3. Are there any issues concerning unfair prejudice and probative value? Is it only being used to portray bad character? Is the value worth more than the cost and fairness of it?
4. Hearsay must be addressed; an exception is needed if it cannot be proven to be non-hearsay.
5. Does it meet the guidelines of the best evidence rule, which states that to prove the content the original must be brought forth? Is it a screenshot, printout or backup from the hard drive?

Proving Authenticity

When it comes to social media, there is a difference between a written post and a picture and the methods taken to get both admitted into a court's evidence. Both are considered electronically stored information (ESI) and would need to be guided through their creation step by step to prove authenticity.

Pictures: A picture is pretty cut and dry, or self-authenticating. If a photo shows the defendant holding an automatic weapon, the defendant was holding an automatic weapon, unless the photo was electronically modified. Experts would have to attest to it being un-doctored.

Written post: These would have to undergo verification studies to prove it was the person in question that posted it. Did someone else pick up his/her phone and post it? Was it a family member or friend with access? Lawyers must prove or disprove the true owner of a written post.

Technical Aspects to Getting Social Media Admitted

If an attorney hopes to bring social media evidence to court, there are some steps that can be taken to make it more of a possibility. A lawyer should:

1. Write a preservation-of-evidence letter. If lawyers think their opponent's social media account might prove to be needed, they need to get a preservation-of-evidence letter into opposing counsel's hands as soon as possible to instruct them nothing is to be changed or deleted.

2. Instruct their client not to edit or delete anything. It can prove a financial and logistical mess to try and recover if it is ordered by the other side or otherwise needed. It can make an innocent person look guilty.
3. Decide if social media is really needed. Can an aspect of the case be proved otherwise with another piece of evidence? If so, lawyers should be targeted in the request. Don't ask for anything every posted; set a scope.
4. Consider using a program that electronically captures social media info. This is better than relying on print outs that won't be able to be authenticated later if the original online post is deleted. Facebook even offers a way to download and preserve a person's account.
5. Get it authenticated. It will never get into evidence without it. Will you use GPS location tracking, bring a witness involved in an online post or call in an expert on writing style?

Navigating Uncharted Territory

The ever-present nature of social media means it can provide a wealth of information, if used properly. Courts are just beginning to learn how to accommodate social media and new technology in their courtrooms. Laws need to be established to give decisiveness to what can and cannot be allowed into evidence and *how* this evidence can be proved authentic, whether it means determining whether a photo was doctored or a fake social media account was made. Until then, it is up to the courts to decide what gets admitted and what doesn't.

Fighting for Your Rights

When it comes to fighting for your rights, you need an attorney who is familiar with the law and willing to go the extra miles to ensure that you receive the justice you're due. There are plenty of attorneys out there, but only a handful that truly have the courtroom experience necessary to win your case.



If you need an attorney, call Brian Mincher and Ryan Rogers at Godsey Martin, P.C. They will build a strong case designed to bring you're the best compensation possible as well as the justice you are due. The sooner you call or submit a form online, the quicker they can begin work on your case, so contact Mincher and Rogers or Godsey Martin, P.C. at 1-888-IGOTHIT today.