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How Facebook Could Ruin Your Case

December 14, 2011 By Keith Ecker



Like the perpetually feuding families the Hatfields and the Mccoys, [attorney Mitch Jackson's](#) client and his neighbors were involved in [an ongoing dispute](#) since September 2007. The neighbors had dumped trash into the client's yard on a number of occasions and verbally harassed them while crossing paths within the community.

The last straw was when the abusive neighbors injured the client's dog, resulting in some hefty vet bills. Jackson's clients decided to sue.

To win the case, Jackson, who is a senior partner at the [Jackson and Wilson law firm](#) in Orange County, would need to show the jury that the neighbors had a history of harassing his client with vulgar threats. But when the defendant took the stand, he testified that it was not in his character to use such crude and profane language. That's when Jackson pulled up the defendant's Facebook page.

"We had photocopied his Facebook wall, where he had posted general derogatory comments," Jackson says. "When we did that, he tried to explain how that could not constitute the type of language we had attributed to him earlier."

- **Attorneys can mine your Facebook and Twitter accounts for evidence.**
- **Deleting your social media accounts during trial can result in penalties.**
- **Your lawyer should counsel you on how to use social media while your case is ongoing.**

The jury ended up awarding Jackson's plaintiff more than \$430,000 in damages. Speaking to the jury after the trial, Jackson discovered the Facebook wall postings were a key factor in diminishing the defendant's credibility.

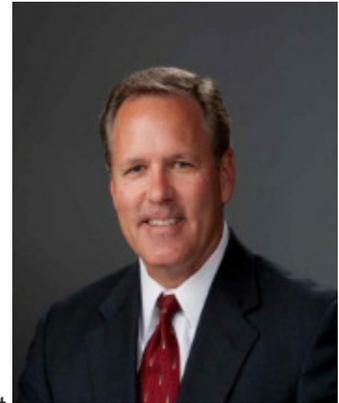
Jackson's case illustrates how social media, like [Facebook](#) and [Twitter](#), are changing the legal landscape for defendants and plaintiffs alike. With so much personal information voluntarily being made public, it's no surprise things like wall posts and Tweets are showing up as [evidence in court](#). And Jackson says this is something that all lawyers and consumers need to be cognizant of.

Be Careful What You Post

Over the last few years, [social media sites](#) have blown up in a big way. According to Facebook, there are more than 800 million active users on the site's network, with more than half of these users logging into the site each day. On average, more than 250 million photos are uploaded to the site each day, while the average user is connected to more than 80 community pages, groups and events. Meanwhile, Twitter sees more than 1 billion Tweets posted per week, with an average of about 140 million per day.

“Anytime you are trying a case, it is the trial attorney’s obligation and duty to accumulate as much information as he or she can to support the client’s case or defend against it,” Jackson says. “Many trial lawyers today are learning as much as they can about the parties and the witnesses through social media sites. And what people need to understand is that this information doesn’t simply evaporate into thin air after it leaves your screen. It can be mined, analyzed and reviewed in civil and criminal cases.”

Jackson cites an example where a high school varsity football player [suffered brain injuries](#) during the course of a game. The player had alerted a coach to a malfunction with his helmet before taking the field, but the coach allegedly brushed off the problem and instructed the student to play. The case was complicated by the fact that by the time the player sued, he had gone to college where pictures of him fraternizing and partying were taken and posted to his Facebook page.



John Mitchell Jackson

“These pictures gave the wrong impression as to the severity of his diagnosed brain injury,” Jackson says. “But I happened to know he was seeking extensive care for those injuries, which affected a number of things including his ability to concentrate in school.”

Jackson was careful not to instruct the student to take down his Facebook photos, a measure which could be construed as tampering with evidence. This kind of evidence tampering is referred to as [spoliation](#) in many states and can result in serious penalties. Instead, Jackson counseled his client to not post any new information on his Facebook page while the trial was ongoing.

Making Social Media Work for You

This proliferation of evidence isn’t all bad, says Jackson. Plaintiffs and defendants can use social media sites to their advantage by using these networks to promote their side of the case.

For a related story, please read [Anything You Say on Facebook Can & Will Be Used Against You in a Court Of Law](#)

“People can use social media sites to share their stories accurately and truthfully,” Jackson says. “As long as you have a message to share and it is honest, social media can actually have beneficial ramifications.”

Jackson encourages his lawyer colleagues to consider leveraging the power of social media sites to benefit their clients. As Internet access becomes more ubiquitous with the rise of smartphones, the public, and even jurors, are more likely to conduct their own research into a case. Jackson says you may as well put forth your side of the story.

“This is something that lawyers need to look at for planting seeds for truthful information so that if somebody, for whatever reason, chooses to go online and research facts and issues concerning a case, you may be able to direct them toward accurate information,” he says.

Jackson says that although individuals need to be aware of the consequences of posting to social media sites, the obligation to remind them of these ramifications falls on the shoulders of their attorneys.

“Lawyers need to counsel their clients about social media and to instruct them to either stop posting or to update their accounts with honest information about their case,” Jackson says. “Also, people should not post anything that references their injury, accident or dispute without first talking to their attorneys.”

[Keith Ecker](#) is a news reporter for Lawyers.com.

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