

# NEW MEXICO INJURY ATTORNEY BLOG

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## Post at Your Own Risk! Social Media Discoverable in Litigation

There are 500 million users on Facebook. The level of candor of many users is pretty amazing. It's as if they are having a private and intimate conversation. With the World!

It is clear that much of this information taken in the wrong light could prove embarrassing and legally damaging. Yet many continue to share and share and share. Maybe, a Miranda/Dragnet style warning before each send command would help, "anything you post can and will be used against you in a court of law."

Despite what appears to be a commonly held belief, there is no Facebook-User privilege. Anything you post, no matter what your privacy settings, is considered private under the 4th Amendment and immune to search & seizure. Even if you have no friends and the most stringent security settings, which would raise the question as to why you are posting at all, it is still a post to a public forum.

What does this mean? It means exactly what Joe Friday told you it meant, your posts "can and will be used against you in a court of law."

It is not just nosy, jealous, angry or malicious ex spouses that might use it against you; it is insurance companies, employers, and worst of all prosecutors that will be sifting through your posts. That romp through Club Med captured on video will surely not help your personal injury claims of pain and suffering. Neither will even playful flashing of gang signs with your buddies look too good in court.

Oh yeah, and the courts will assist these folks in their digging through your most intimately shared moments. A number of courts, and the number is growing, have held that Facebook, Myspace, YouTube and other social networking sites are discoverable. Though the term sounds inspiring, "discoverable" is not really a good thing. What it means is that in a lawsuit, divorce or criminal prosecution, the other side can seek access to your social media pages. It is not just what's on there now, but your history as well.

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Nervous yet? You should be. Because even fleeing to Canada will not help you now. They have the same laws and court rulings making social media fully discoverable in legal proceedings. Those videos and party pics posted by your adoring friends will surely be enjoyed by jurors and judges in your next legal proceeding. You may be less amused.

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