

Legal How-To: Using Facebook as Evidence

By [Daniel Taylor, Esq.](#) on May 13, 2014 6:55 AM

Facebook can often be a powerful way to discover the truth. Whether it's [incriminating evidence in divorce proceedings](#) or [video of a grisly murder](#), Facebook profiles can be a well of inadvertently candid information.

Evidence from Facebook and other social media sites are increasingly popping up in lawsuits. Oftentimes, [in divorce cases](#), one party will use Facebook evidence to prove that the other party is hiding assets, is an unfit parent, or is just unbalanced. Remember that what you post on the Internet has the potential to remain there forever.

But how can you harness this potential fact-finding power for your legal case? There are a few simple steps you can take to use Facebook posts and messages as evidence:

1. Save a Screenshot of the Post Before It's Removed.

It's a good idea to preserve a copy of the post or image in question before the poster realizes the implications of what they posted and erases it.

Any computer, smartphone, or Web browser will let you send the page you're viewing to a printer; you can also [capture a screenshot of the post](#) and its surrounding context. That way you'll have an image of the post that you can save to a hard drive *and* print out to show the judge.

2. Be Prepared to Authenticate the Evidence.

Before evidence can be admitted, [it must be authenticated](#). This is where using Facebook posts in court can get tricky.

Simply showing that the post or message originated from another person's Facebook profile may not be enough. This came up in a [2011 Connecticut case](#): Although the defendant showed that Facebook messages did in fact come from the account of the person in question, he failed to prove that the account owner had personally written the messages.

Ideally, getting the Facebook user to admit he or she posted the image, message, or update in question is best method of authentication. Absent that, however, evidence showing that the person was aware of the content of the posting, along with witnesses who may have seen the person posting it (and other evidence that the person was in control of his or her Facebook account) will go a long way toward authenticating Facebook evidence.

3. Is the Message/Post Considered Hearsay?

The next legal hurdle to introducing evidence is [proving that it is not hearsay](#), or if it is, that it is allowed under one of the many exceptions to the hearsay rule in federal and state evidence codes.

Several courts have allowed Facebook messages to be admitted as non-hearsay by virtue of the automated e-mail notifications prompted by the messages. As these messages were generated by a computer, and not a person, they weren't considered hearsay (as hearsay only pertains to statements by a person).

Need More Help?

Introducing Facebook evidence in court can be a powerful tool, but as you can see it's not as simple as just holding up a printout in court.

Source: http://blogs.findlaw.com/law_and_life/2014/05/legal-how-to-using-facebook-as-evidence.html