



Social Media Dos & Don'ts for Expert Witnesses

By Erica Evans, Director of Expert Search Services, Tina Grenier, Lead Recruiting Consultant, Nick Polavin, PhD, Jury Consultant, & Keith Pounds, PhD, Senior Jury Consultant

Being an expert witness is a demanding task, but an expert's testimony is crucial and can either make or break a client's case.

Credibility is paramount for any expert witness; it is the foundation an expert stands on to effectively persuade judges and jurors. As an expert witness, it is vital to avoid situations that could be used to attack or harm your credibility on the stand, such as arrests, felonies, disbarments, and even social media posts.

Before you accept an engagement, do your homework—make sure you know what information is available in the public realm and check your privacy settings. In our experience, most experts do not realize that social media activity can harm a case. Therefore, we have prepared this article to discuss the dangers of social media as an expert witness and how online presence is searched by counsel.

Part 1: The Dangers of Social Media and the Attack on an Expert's Credibility

Today, much of the population relies on social media (Facebook, Twitter, Instagram, LinkedIn, or some other platform) to stay connected with colleagues, friends, and family. When used appropriately, social media is a valuable and inexpensive marketing tool for an expert to spotlight and celebrate their expertise and successes. On the other hand, if not utilized carefully, social media could be the perfect way to discredit an expert witness and harm their reputation.

Counsel typically reviews several factors before selecting an expert witness for litigation, including: Is the expert likable, credible, confident, and knowledgeable? Does the expert possess engaging communication skills and flexibility? Can this expert support the case at hand? Is their skillset best aligned with the key issues of the matter? And more importantly, is there anything to be aware of that might harm the expert's credibility or objectiveness if raised on the stand?

As an expert witness disclosed to the court, statements made in the public arena—or opinions shared through social media—can become highly scrutinized by opposing counsel as well as the retaining client. Depending on what is uncovered, social media can be used to attack an expert's credibility and objectiveness.



Opinions shared through social media can become highly scrutinized by opposing counsel.

It is common for opposing counsel to attempt to discredit the other side's expert. The last thing an expert witness wants is for something personal to be raised in a legal setting.

Expert witnesses should be mindful of social media activity, including their own posts, resharing posts made by others they follow, and what others may have posted of them. Once on the internet, content in the public domain remains there for anyone to find. This can be an open invitation for attack by opposing counsel during cross-examination—particularly if an expert posts or reshares information that alludes to a counter stance from the one they are currently providing under testimony.

For instance, take an example where an expert is testifying to the effectiveness of a particular drug. Imagine the potential repercussion if the expert reshared an article online alluding to the opposite of that opinion or stating a lack of advantage or effectiveness. Let us also think more generally. If an expert witness is testifying under the opinion that it is unreasonable and nonsensical for an individual to ride in a car without a seatbelt, it could be quite damaging if pictures were located online showing that same expert riding in a car without a seatbelt. This could certainly dampen the strength of their credibility and testimony.

An expert must remain consistent when sharing opinions or graphics online, in writing, or under oath.

While it is particularly important to be mindful of social media in terms of past postings, it becomes just as sensitive mid-engagement. Before an expert witness is engaged and disclosed, it is important they know what is online. It is best not to delete past posts mid-engagement, and it is especially critical to be mindful of what is posted throughout the life of the case. All case information is confidential, so the expert must receive permission

from retaining counsel prior to sharing anything with another party, including online. An expert should avoid social media posts containing any topic areas planned for testimony mid-engagement. It is equally important to avoid discussing any pending or past case engagements online.

Expert witnesses should not underestimate the power of the internet and publicly available information. Law firms can easily find positive or negative information on an expert through Google. Free and simple internet searches can result in discoveries that quickly impact an expert's credibility and harm a client's case. It is important to remember that once credibility is challenged in any case, it could come into question in every case thereafter and potentially damage the expert's ability to secure future engagements.

Part 2: How Online Presence is Searched by Counsel and What to Do About It

Many people are unaware of just how much personal information is publicly available online—even for those who make efforts to hide themselves with privacy settings or by using a nickname or initials rather than their full name. In fact, there are a few details that can be found no matter what someone does, even if they do not have a social media profile.

For example, political donations can be easily searched to discover the donor recipient, the amount of donations, and the frequency, as well as one's place of employment when donating. Other information—such as the witness's property values, address history, voter registration, criminal records, licenses, and financial information such as bankruptcies and business filings—is available to an internet searcher. Just this information alone can give anyone a snapshot of an expert witness. But for those with social media accounts, there is so much more available to an interested researcher.

When it comes to social media, choosing a setting where only connections can view the profile may keep posts out of public view. But if a witness makes their profile public or allows "friends of friends" to view it, a wide range of people will have access to any information that is posted.

While it may be obvious that posts, reshares/retweets, and photos can be seen by others, it is important to consider what other information can be revealed. For example, a social media researcher may look at the accounts a witness follows or which posts, pages, and interests someone likes.



A social media researcher may look at the accounts a witness follows or which posts, pages, and interests someone likes.

When conducting social searches of jurors before jury selection, we come across many people who appear not to take a political stance on social media because they do not post anything about politics. But if a person follows Bernie Sanders and MSNBC, or if they have “liked” posts about Elizabeth Warren or climate change, there is a good bet that they are liberal. Therefore, it is not only about what is posted and shared, but it is also important to be aware of interactions—commenting on a post or even viewing a video (if the app tracks that) can all be uncovered by social media searchers, as well as which accounts, interests, or causes that person engages with.



It is not only about what is posted and shared, but it is also important to be aware of interactions on social media.

Oftentimes, we have seen witnesses who take great care to craft and edit a LinkedIn profile to appear very professional, however, their other social media accounts are much less carefully maintained. So how can a witness have good “social media hygiene” and accounts that do not harm their reputation? Below are a few key reminders.

1. Just like drinking, posts with alcohol require moderation.

A photo with a drink on vacation is fine. But for someone who tailgates every weekend in the fall, they may only want to post pictures about it once or twice. And leave the alcohol out of it—people already know what happens at tailgates.

2. Avoid any posts/photos of bad behavior.

If someone is tagged in a picture from an embarrassing night, they can delete it from their page, ask the poster to delete it, and even report it to the social media platform to see if they will remove it.

3. Avoid political posts and balance the pages you follow.

The country is divided; no matter what you think, half of the country is likely to disagree. If social media is used to stay up to date on politics and news, it is okay to keep following those politicians and organizations. But to avoid any potential backlash, it is wise to follow accounts on both sides of the aisle. For example, keep getting daily updates from *The New York Times* but also follow *Wall Street Journal*. After all, it is good for everyone to expose themselves to diverse sources of news. However, do not go too far in either direction on the spectrum because that is a sign of following more opinion-based reporting rather than fact-based reporting.

In Conclusion

Ultimately, it is good practice for those considering expert witness work to review all of their social media accounts. The suggestions in this article are a helpful guide when deciding which edits are needed to present a more professional profile on various platforms.

It is important to take these steps before entering your next engagement and—most importantly—before your next trial begins. While jurors are unlikely to search a witness’s social media during trial because outside research is forbidden, it makes sense to lessen the risk of an expert’s online presence undermining their credibility or alienating the court for issues unrelated to the case.

Of course, it is possible for experts to still use social media to connect with friends and loved ones. However, remember that anything posted online may become public information, which can be easily identified and uncovered with a little bit of effort by a social media researcher.

References

Expert Witness Research Tips | Insights & Events | Bradley

Here’s How Social Media Can Be Used Against You In Court (forbes.com)

What You Need to Know About Social Media Discovery In Personal Injury Litigation (expertinstitute.com)

Witness’ Social Media: 4 Things They Should Know - Elite Court Reporting (elitedepo.com)

Social Media That Works for Expert Witnesses (expertpages.com)

IMS Consulting & Expert Services delivers award-winning consulting to support the most influential law firms through every stage of litigation, arbitration, and mediation. Combining the perspectives and proprietary methods developed over 30 years and more than 2,000 trials, IMS provides attorneys with the essential services they need to win: integrated strategy, expert witness placement, jury consulting, visual communication, and courtroom presentations. With strategic locations in major US and UK markets, the IMS team is primed to support in-person and remote dispute resolution needs across the globe. More at [expertservices.com](https://www.expertservices.com).