

Screenshots don't lie — or do they?

The crucial role of social media in modern litigation

By B.J. Abron

In today's courtroom, it's not just the facts that are on trial, it's also the filtered versions of our clients' lives that are posted online. In addition to sub rosa, social media has become the modern surveillance tool of choice for defense firms, offering curated snapshots that can be used to question a plaintiff's credibility, pain, or limitations. One smiling photo, one check-in at a restaurant, one harmless meme can be twisted into a narrative that undermines months of treatment records and pain.

As plaintiffs' attorneys, we can no longer afford to be reactive. This article explores why you must evaluate your client's digital footprint early, set firm expectations about online behavior during litigation, and prepare to counter social-media impeachment if it's introduced at trial. Because in the era of Instagram and cross-examination, a screenshot may not lie – but it rarely tells the whole truth.

Pre-litigation and early case evaluation

The very moment a client retains you, whether it's a car crash, slip-and-fall, or catastrophic injury, you're not just taking on the facts of the incident. You're also inheriting their digital footprint. In 2025, that digital footprint is often vast, unfiltered, and full of potentially case-altering evidence.

Most clients don't consider the implications of what they post. They're not thinking about how a smiling photo at a friend's barbecue two months post-accident might be interpreted by a jury. They're unaware that a seemingly innocuous comment like "feeling better today" could be weaponized by the defense to argue they've made a full recovery or were never that injured to begin with.

The audit begins at intake

Your intake process must include a social-media audit. This doesn't mean you're spying on your client or digging through every tagged photo since high school, but you are being strategic. Ask for a list of all platforms your client uses or has used within the past five years. This should include the obvious ones like Instagram and Facebook, but also TikTok, Twitter (now X), LinkedIn, Twitch, BeReal,

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and even platforms like Snapchat or WhatsApp where posts can still be screenshotted or saved.

Check what's public. If there's a video of your client dancing on TikTok a few weeks after a spinal injury, you need to know about it, before the defense does.

Counseling the client: The dos and don'ts

Many clients make the mistake of thinking they can simply delete content. That's dangerous. We know that deletion of potentially discoverable material can lead to spoliation sanctions. Instead, the client should be instructed not to delete anything after the litigation hold is in place. But they should also be advised to immediately stop posting anything related to their injuries, activities, or lifestyle that could be interpreted as inconsistent with their claims.

Set the tone early with your client and let them know:

- No venting about the lawsuit.
- No "feeling blessed" hashtags after a deposition.
- No gym selfies.
- No memes about money, lawsuits, or "finessing the system."

Even private accounts aren't completely safe. Courts have ruled that relevant social-media content can be discoverable, even if it's behind a privacy wall, if the request is narrowly tailored.

Build a system

You should have a simple form or checklist for every new client:

- List of platforms used.
- Whether the account is public or private.
- Whether there are any injury-related posts since the incident.
- Prior posts that might reflect physical activity, lifestyle, or pre-incident conditions.

You should also have clients sign off on an advisory that confirms they've been warned about posting and preserving content.

Why it matters

A single post can undermine your case, but a well-handled social-media review can also eliminate surprises and help you shape the case narrative properly. By knowing what's out there, you can work to contextualize it early, file the right motions if needed, and prepare your client for how it may come up later. You can't control the internet, but you can manage your client's exposure if you're proactive.



Discovery and defense surveillance

Once your client's complaint is filed, the defense's eyes are no longer just on your allegations, they're scanning every pixel of your client's online life. And make no mistake; they're not just searching manually. There are third-party investigation services, bots, and AI tools now being used to comb through public and semi-private online content at scale. If you're not actively monitoring your client's digital footprint, someone else certainly is.

Assume surveillance is happening. Period.

Whether your client has 200 followers or 2,000,000, if their profile is public, it's fair game. And if it's private, the defense may still try to gain access by issuing discovery demands for social-media access of images, posts, or statements made by your client. But it's not just about posts. Surveillance today includes:

- Tagged photos by friends or family.
- Location check-ins and geotags.
- Comments made on public pages or under news stories.
- Online reviews left on Yelp or Google.
- "Stories" and time-limited content that may have been screenshotted.

You must train yourself to think like skilled defense counsel, and your team to think like insurance adjusters. If your client says they haven't done anything physical since the accident, and yet there's a photo of them carrying a toddler up a hill during a family trip, the defense will find it and frame it in their narrative. Context won't matter unless you're ready to provide it.

Responding to defense discovery requests

It's now routine for defendants to include discovery that demands production of:

- All social-media posts made by plaintiff since the incident.
- Posts relating to physical or emotional well-being.
- Photographs, videos, and communications made on any social-media platform.

These requests can feel broad and burdensome, but the law provides some guidance. Courts are increasingly requiring specificity and a showing of relevance before ordering full-blown social-media production. A narrowly tailored protective order or meet-and-confer letter may be your best friend.

Sample objection strategy:

- Argue overbreadth if the defense is demanding "all social media posts."
- Push back if there's no evidence of relevance.
- Offer a reasonable compromise (e.g., produce injury-relevant posts with redactions for private content).

Monitoring the defense's conduct

While you're reviewing your own client's exposure, don't forget to keep tabs on how the defense is sourcing content. If they're using investigators to follow your client online, or worse, creating fake profiles to "friend" your client and access private accounts, that can cross ethical lines. You have a right

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to demand transparency and potentially challenge how they obtained the material.

Preserving the digital trail

Don't just advise clients what not to post. You must remind them not to delete what they've already posted. Explain the importance of preservation: screenshots, download archives, even exporting metadata when relevant. You never want a case derailed by a spoliation motion over a deleted Instagram story. If anything is taken down or archived, document when and why it was done. Credibility is everything in our cases and when credibility is compromised, the risk of damage to your client's case can become insurmountable.

Use the data to your advantage

In some cases, social media may help corroborate your client's claims. For example, photos taken immediately after the incident may show bruising, limited mobility, or pain. Posts where the client expresses emotional distress can support general damages. It's not all bad; it's just a matter of anticipating how each piece might be used, and choosing whether to own it or fight it.

Trial preparation

By the time you're preparing for trial, any social-media content tied to your client is no longer just background noise, it's evidence waiting to be used against them. If a single post could alter the jury's perception of your client's credibility, then preparing for that possibility must be a formal part of your trial strategy.

Mock cross-examination: Weaponize the defense's playbook

Treat every potentially harmful post as a future trial exhibit. If the defense has flagged an Instagram video of your client walking their dog or attending a birthday dinner, rehearse it in mock cross. Pull up the post, show it to your client, and ask the hardest questions yourself. Make your client uncomfortable now, so they aren't blindsided in front of a jury.

This isn't just preparation. It's inoculation. By the time they get on the stand, they need to be comfortable acknowledging what's in the post without appearing defensive, evasive, or disingenuous. Juries in most circumstances don't punish honesty. They punish dishonesty, or worse, arrogance. Help your client own their truth, not deny it.

Context is everything

A client smiling in a photo isn't proof they're pain-free. It's proof they're trying to live through the pain. A restaurant check-in doesn't disprove migraines. It may show resilience. Develop clear, simple narratives to explain each piece of content that may surface. Train your client on framing: "Yes, I smiled in that photo because I was trying to support my niece on her graduation day. But I paid for it that night. I could barely move when I got home." That's how you reframe a post from a liability to a relatable moment of endurance.

In opening statements, you can also make it clear to the jury that they will hear evidence about how your client has not given up in life, and they try to attend gatherings or family events despite being in pain. So, by the time your client is on the witness stand the pictures have less of an impact.

Motions in limine: Don't let them define the narrative

Too often, lawyers fail to challenge social-media evidence until it's already in front of the jury. That's too late. You should be filing motions in limine that seek exclusion of content unless a proper foundation is laid. Argue that isolated posts are irrelevant or prejudicial under Evidence Code section 352. Challenge authentication if screenshots don't include source metadata. Even if the court denies exclusion, the motion forces the defense to clarify how they intend to use the evidence, and gives you a head start on framing your rebuttal.

When social media is used to impeach

There's nothing more frustrating than watching the defense reach into their folder, pull out a screen capture, and ask your client on the stand: "Isn't this you hiking with friends at Runyon Canyon just three weeks after your injury?"

It doesn't matter that your client was in pain afterward. It doesn't matter that they barely moved for days. What matters, in that moment, is how your client handles it, and how you respond.

Know it's coming

By the time trial begins, there should be zero surprises. If a post might be used to impeach, you should have already seen it, addressed it, and prepped around it. But if it does come up unexpectedly, don't panic. The courtroom doesn't reward overreaction. Immediately object if: the post hasn't been authenticated; it lacks proper foundation (who took it, when, what platform?); it's being used misleadingly or out of context, or if it is not actually impeaching your client's testimony. If the objection is overruled and the post is shown, pivot to rehabilitation.

Redirect/closing: Restore humanity, provide context

On redirect, help your client explain what the jury couldn't see. "You saw me for a second. You didn't see me wincing that night. You didn't see the heat pads or medication. You didn't see my daughter helping me in the morning because of the pain I was in for wanting to be present to celebrate my family member." Use this opportunity to humanize and not just defend your client. Remind the jury that your client is a real person trying to balance pain with normalcy. Living with injury doesn't mean living in isolation.

Another effective way to diffuse impeachment is to zoom out. Remind jurors that the entirety of the medical record supports the injury. One inconsistent post does not undo months of documented limitations. This is what I call using pattern and not perfection. In closing you can say: "You've heard from multiple doctors. You've seen the MRIs. You've reviewed the treatment timeline. One photo doesn't undo real injuries." Jurors understand nuance. They also understand manipulation. If you can show that the defense is using

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social media as a smokescreen, you may turn their evidence into your advantage.

Real-world example

The reality is that even though you have measures in place, things happen and sometimes details get missed by staff assigned to handle tasks. In a recent trial I handled in May of this year, the defense attempted to impeach my client with Facebook photos showing him on an ATV. Both my client and his family had already testified that he had not gone ATV riding since the injury. Over my objection the court allowed defense to show some of the photos and denied others I fought to keep out. Although I was extremely upset that I was blindsided by this, after sidebar I walked back to counsel table with a confident look as if the side bar went in my favor.

Defense began to impeach my client with the photos. But there was a detail that the defense did not know yet (neither did I, at the moment). These photos were posted after the collision but were actually taken well before the collision. So, on the stand, my client, who is in his early 60s, explained that he often dumps batches of photos onto Facebook well after the events occurred, and that a quick scroll through his timeline would confirm this habit. He was credible, clear, and composed.

During redirect, I reinforced his explanation and then said, "You gave me a lot more photos than what we have shown the jury. Photos just like the ones they just showed. We were not allowed to show all of them because defense did not want us to, so if the defense will allow it, do you mind if I show all the pictures?"

Without hesitation, my client replied, "Of course not." I then turned to defense counsel and, in open court, asked, "Can we show them?" As I expected, they shook their head and said no. So, I turned to the jury and said, "Exactly." Defense counsel objected, unintentionally reinforcing the point. The exchange turned the moment on its head. It now looked like they were the ones hiding something, not us. That's just one example of how you turn a risky moment into one of strength on the spot during trial.

Ethical obligations and client communication

An often-overlooked component of social-media litigation is your own ethical responsibility as an attorney. Advising a client to delete a post after litigation begins? That's a potential violation of ethical rules and could lead to sanctions – or worse.

Preserve, don't purge

When you first identify problematic content, your instinct might be to scrub it. Don't. Instead, direct your client to preserve everything. Print out key content, capture metadata, and consider a formal litigation hold on their digital platforms. You are allowed to counsel clients on adjusting their privacy settings or avoiding future posts, but never advise deletion of existing content if litigation is reasonably foreseeable.

Document the warning

Always provide a written advisory to your clients. This creates clarity and protects you. Include:

- Platforms covered.
- Examples of harmful content.
- Preservation requirement.
- Posting freeze guidelines.

Have your client sign it. Treat it like an informed-consent form for digital exposure.

The future of digital evidence

As technology evolves, so will the complexity of social-media evidence. Deepfakes, AI-generated content, and disappearing media are already creating new frontiers, and new problems. We're not far from a world where defense counsel might question the authenticity of your client's post, or worse, present manipulated evidence. Tools to authenticate or challenge the provenance of online content must become part of our trial toolkit.

You also need to consider how jurors interpret social media. In voir dire, ask questions about online habits. Gauge whether prospective jurors have biases about people who post frequently or present curated images of happiness. This helps filter for individuals who may unfairly penalize your client for doing what everyone else does: posting moments, not pain.

Conclusion

The courtroom is no longer confined to transcripts and testimony. In this era, it spills into timelines, tags, and photo grids. Social media can be a liability, but it doesn't have to be a fatal one. With preparation, education, and strategy, you can manage your client's digital exposure and minimize the risk of impeachment. More importantly, you can help jurors understand that *people are more than their posts*. Screenshots may not lie, but they rarely tell the whole story. And it's our job to make sure the jury hears the rest of it.

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