



IMPEACHMENT VIA SOCIAL NETWORK WEBSITES

DISCUSSION:

Can what you post on social network websites (such as Facebook and MySpace) be used to attack your credibility in a courtroom?

SCENARIO

Recently, in a the New York State court, a NYPD officer was questioned by the defense regarding statements he had posted on his Facebook webpage that portrayed him as a rogue cop. At the conclusion of his testimony, what should have been a slam-dunk "ex-con with a gun" case, resulted in an acquittal for the defendant. The verdict was a direct result of reasonable doubt that was created by the officer's postings on Facebook and MySpace. In other words, his own statements were used to impeach him.



Convictions rest on the credibility of the officer(s). The defense strategy was to show the jury that what the officer writes about himself on social network websites is how he "really" conducts police work. The suspect in the case claimed that the officer used excessive force on him, which resulted in three broken ribs. The suspect went on to allege that when the police officer realized that he had to explain the broken ribs, he "planted" a stolen 9mm Beretta and charged him with it. The officer in the case claimed that his internet persona was simply bravado, similar to what might be said in a locker room. The major difference between jokingly "talkin' trash" in person and posting it on the internet is that one of them ends up preserved on a digital server.

One of the notable comments introduced to the jury, was that he watched the movie "Training Day" (a motion picture that displayed corrupt police behavior and brutality) to brush up on "proper police procedure." Another series of comments revolved around miscellaneous internet video clips of police arrests. One of his postings said, "If he wanted to tune him up some, he should have delayed cuffing him." In another he added, "If you were going to hit a cuffed suspect, at least get your money's worth 'cause now he's going to get disciplined for a relatively light punch."

In another example of poor judgement, an Indiana State Trooper posted comments on his Facebook page that were in direct conflict with the policies and procedures of his department. In one comment he shares his views of police work, referring to himself as not a state trooper, but as a "garbage man, because I pick up trash for a living." Another comment was, "These people should have died when they were young anyway, I'm just doing them a favor." An off-duty picture posted by the officer (see photo) shows him holding a gun to a fellow officers head. Both officers had been drinking alcohol, which the officer personally validated when he posted that they were "drinking lots of beer" that day. Take a moment to ponder all of the possibilities as to how a skilled defense attorney would use this photograph to aid in the defense of their client(s).



In life, there are often second chances; in law enforcement, there are none when it comes to integrity. As a peace officer, malicious statements, even in jest, can be used against you. Contemplate the tactical significance of your comments before you hit the [enter] button and preserve them on a digital server for all of eternity.

RELATED MATERIALS

Brady v. Maryland (1963)

Under Brady, evidence affecting the credibility of the police officer as a witness may be exculpatory evidence and shall be given to the defense. Indeed, evidence that the officer has had in his personnel file that displays a sustained finding of untruthfulness is exculpatory to the defense.

Tennison v. City and County of San Francisco (2008)

The Ninth Circuit U.S. Court of Appeals held that "exculpatory evidence cannot be kept out of the hands of the defense just because the prosecutor does not have it, where an investigating agency does. That would undermine Brady by allowing the investigating agency to prevent production by keeping a report out of the prosecutor's hands until the agency decided the prosecutor ought to have it..." This ruling reiterates that the investigating agency is a part of the prosecutorial team.

Policy

The Manual of Policy & Procedure states that, "All Department members shall be held accountable for their actions, conduct, and speech when these behaviors conflict with our core values, mission, or creed. Personnel who cause undue embarrassment or damage the reputation of and/or erode the public's confidence in the Department shall be deemed to have violated this policy."

Information regarding the content of this newsletter may be directed to Field Operations Support Services at FOSS@LASD.ORG or (323)526-5760.

REFERENCE / CITATIONS

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Manual of Policy & Procedure: 3-01/000.10 - Professional Conduct
<http://intranet/Intranet/MPP/index.htm>

Brady v. Maryland (83 S. Ct. 1194).

Tennison v. City and County of San Francisco (548 F.3d 1293).

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