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Online clues now helping to get convictions

Prosecutors use social sites like MySpace to aid cases

By Kim Smith

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What you do online can haunt you later — especially if later involves standing before a judge in a criminal case.

Prosecutors are starting to use photos and statements posted to defendants' personal Internet pages as evidence against them. And judges are using the information to justify tough sentences.

Last week in Pima County Superior Court, prosecutor Jonathan Mosher used pictures found on a MySpace account against a robbery suspect.

And on Monday, prosecutor Mark Diebolt is to ask Judge Stephen Villarreal for permission to tell jurors that a witness in a murder case picked Vladimir Soza as the bad guy after looking at a photo posted on MySpace.

Prosecutor Rick Unklesbay said he is aware of the MySpace accounts of Mia Henderson and Galareka Harrison, the victim and suspect in the recent University of Arizona dorm room homicide, on which some comments about the strained relationship between the two were posted.

But Unklesbay said it's too soon to know if the comments play a part in the case.

Logging onto Myspace.com, Facebook.com and Google.com is now considered de rigueur for police agencies and investigators who work for defense attorneys and prosecutors, said John Wesley Hall, president-elect of the National Association of Criminal Defense Lawyers. MySpace and Facebook are social networking Web sites that let people post personal information about themselves along with photos, videos and music.

"You find out all kinds of things about people that you never would have known about without the Internet," Hall said.

More and more attorneys are using the Web sites to investigate the credibility of witnesses, victims and defendants.

"I don't think attorneys on either side can afford to overlook the Internet," said John O'Brien, an assistant Pima County public defender. "It's a whole new realm that attorneys didn't have to worry about 20 years ago."

While many teenagers and college students use social networking sites to keep in touch with friends and share their innermost thoughts, gang members use them, too, local prosecutor Diebolt said.

"The gang guys love this stuff. They like to make stuff up about themselves," Diebolt said. "They'll talk about their weapons and their likes and dislikes."

In Mosher's case, Matthew Cordova, 19, was accused of holding up a UA student with a Tech 9 semiautomatic handgun last June.

After Cordova's arrest, a UA police dispatcher found Cordova's MySpace account — which had photos of Cordova holding what appeared to be a Tech 9.

Cordova pleaded guilty to aggravated assault with a deadly weapon and was sentenced to five years in prison.

In the Soza case, detectives showed a group photo downloaded from a MySpace account to a witness in a murder case. The witness identified Soza as the man who shot Lee Linares to death last September, despite not being able to identify him in a normal photo lineup.

Defense attorney Harold Higgins doesn't want jurors to learn about the identification, noting Soza was the only person in the photo matching a description of the shooter and the only one flashing gang signs.

Defense attorney D. Jesse Smith was able to secure an acquittal last year for a client accused of assault based on the alleged victim's MySpace page. He showed jurors videos on the site of numerous fights in which the alleged victim was the aggressor.

Young people don't realize that what they post can come back to bite them, said John Seamon, assistant Pima County public defender. A photo taken during a drunken episode or a prank can be misconstrued in the future.

"Kids can really hurt themselves by putting themselves on the Internet," Seamon said. "There could be 27 explanations for a photo and only one might be inculpatory," or incriminating.

Defense attorneys Hall and Seamon both expect a lot of legal arguments in the future, locally and nationally, about the admissibility of MySpace and Facebook pages.

Attorneys on both sides need to be able to prove when damaging photos were taken, when the information was posted and if it is relevant. Attorneys also need to show that the information won't unfairly prejudice a jury, Seamon said.

Moreover, some MySpace and Facebook accounts can be accessed only by people who have been invited to visit them, raising the question: Should law enforcement agencies be required to get a search warrant before accessing them?

One might argue that a password-protected account is the same as a locked door, but if someone has given out the password to 50 people, it might be argued that there is no expectation of privacy, Hall said.

"I think we're just seeing the tip of the iceberg when it comes to litigation," he said.

● Contact reporter Kim Smith at 573-4241 or kimsmith@azstarnet.com.

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