Focus | *Family Law*

When Screenshots Speak Louder Than Words

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In a world where nearly every moment is captured by a digital device, attorneys face the daily challenge of turning a client's phone gallery into persuasive evidence. Requests for texts, social media metadata, and even doorbell footage have become just as common in family law discovery as tax returns. But with these changes come complications. How can we effectively utilize this type of evidence? What is admissible?

Text messages remain one of the most frequent forms of digital evidence. Screenshots are easy to obtain but can be misleading when taken out of context or selectively altered. Lawyers should always request native format messages when possible, along with associated metadata such as timestamps or sender information, to confirm authenticity. Programs like "iMazing" are excellent for exporting large text chains with all the relevant data.

Modern messages are rarely just words. Emojis, GIFs, and memes have become shorthand for representing complex emotions and social cues. A thumbs-up emoji might signal agreement, sarcasm, or passive aggression, depending on the context and platform. GIFs (animated images) can convey tone, humor, or intent more clearly than words, while memes can serve as coded messages, combining cultural references and humor to mock or affirm specific ideas. In family law, these seemingly lighthearted symbols can carry enormous weight in cases involving harassment, alienation, or intent.

When presenting this type of digital evidence, lawyers must provide the context in which it was sent. Was the emoji sent in a cordial conversation or a hostile exchange? Does the meme reference a shared experience between the parties or a veiled insult? Judges may view such evidence skeptically unless its meaning is clear and relevant. Emojis and GIFs also carry hearsay implications and must be authenticated as part of the surrounding message or conversation. Practitioners should be prepared to argue relevance and to address Rule 403 concerns when opposing counsel challenges admissibility based on potential confusion or prejudice.

Smart home devices, such as Ring doorbells and security systems, have added a new dimension to litigation. These devices can record real-time video, audio, and entry and exit data that can corroborate or refute allegations made regarding disputes between the parties. To admit this type of evidence, attorneys must authenticate it through someone familiar with the device who can testify that the footage is accurate and unaltered. Practitioners should be mindful of audio recording laws. While Texas is a one-party consent state, the recording party must be a part of the conversation being recorded.

Geolocation data from smartphones or other devices can also be influential, particularly in instances where a party may not be where they are supposed to be. Location history from apps like Google Maps or Apple's Significant Locations feature can place a party at (or far from) a scheduled pickup or exchange of a child. This information is generally accessible directly from the device itself and can be authenticated through testimony. However, accuracy may be challenged, especially if location services were disabled or spoofed using VPNs. Attorneys should preserve original records and consider issuing subpoenas for data when necessary. Like all digital evidence, location data must be shown to be relevant and reliable.

Equally important is counseling clients on the ethical boundaries of collecting digital evidence. While it is appropriate to advise clients to preserve communications they lawfully possess, accessing a spouse's private accounts (yes, even if the client knows the password) can violate privacy laws and should be discouraged. It is also essential to instruct clients not to delete potentially relevant information, regardless of how damaging it may seem to be. Clients should be told to preserve all devices and content as-is and disclose any apps or settings that may affect data retention.

Technology evolves faster than courtroom norms, but the evidentiary framework remains grounded in the principles of relevance, authenticity, hearsay, and prejudice. As digital footprints become increasingly complex, lawyers must adapt by staying current on platforms, understanding how to preserve and challenge digital materials, and guiding clients through the process. When screenshots speak louder than words, lawyers must ensure they tell the whole story and that it's a story that the Texas Rules of Evidence allow the court to hear. **HN**

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