[Wisc. Police Come To Man's Home, Arrest Him For Calling Them Racists On Facebook](http://crooksandliars.com/2014/11/wisc-police-come-mans-home-arrest-him)

By [David](http://crooksandliars.com/user/7) November 26, 2014 1:31 pm - [229](http://crooksandliars.com/2014/11/wisc-police-come-mans-home-arrest-him#disqus_thread)

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In 2012, Thomas G. Smith had seen an Arena Police Department Facebook post thanking community members for helping to detain two black children. Smith responded with a profanity-laced message about how Arena officers were racists.

A federal lawsuit [obtained by the *StarTribune*](http://www.startribune.com/lifestyle/283853771.html) said that Officer Nicholas Stroik had deleted Smith's comments, and the comments of others who accused police of targeting suspects based on race.

Smith then received a call from officers, who wanted to know if he had posted the comment. Smith replied that he had posted the Facebook message, and that he had meant it.

That night, officers arrested him at his home in Arena. He was charged with disorderly conduct and unlawful use of computerized communications.

Prosecutors asserted that his words had not been protect by the First Amendment of the Constitution because they could incite violence. Smith was convicted, and sentenced to probation with community service.

But in July, a state appellate judge overturned the case on the grounds that the Supreme Court's so-called "fighting words doctrine" only applied when the speaker was in close proximity to the listener. The judge ruled that Smith's Facebook messages should have been protected under the First Amendment.

Smith's lawsuit alleges that the officers retaliated against him. He is seeking legal fees and unspecified damages. The lawsuit noted that his arrest could have the effect of chilling free speech, and that the department only chose to delete Facebook messages that were critical of officers.

**Facebook & Free Speech**

by [Michelle Fabio, Esq.](https://www.legalzoom.com/authors/michelle-fabio) Sep 2009

For many of us, the idea that a high school coach could legally request a student's personal password for Facebook and then punish her for her private online exchanges is absurd. And yet, taking high school junior Mandi Jackson's assertions as true, this is exactly what happened at Pearl High School in Mississippi—and that's why she's suing the school district for violating her right to privacy and freedom of speech.

Mandi contends that a cheerleading coach asked the squad to provide their Facebook passwords; while some cheerleaders immediately deleted their accounts, Jackson willingly provided her account password only to be "publicly reprimanded, punished and humiliated" according to the complaint.

In Mandi's personal Facebook message box, the coach allegedly found a series of messages that contained vulgar language and had been sent between Mandi and a peer. The coach then shared these messages with other teachers and coaches, as well as the principal and superintendent, resulting in Mandi's banishment from certain school activities and events, including those for which she had already paid fees.

"I would have been completely fine with the school officials looking at my public [profile on] Facebook, but I think they went too far with getting my password and looking at my personal messages between me and my peers," Jackson said. "They were conversations between me and my friends, so I shouldn't have gotten in trouble for them."

**Was This a Violation of Privacy and Freedom of Speech Rights?**

In *Tinker v. Des Moines Independent Community School District*, the watershed case regarding students' rights in public schools, the Supreme Court famously announced, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Given that Jackson's Facebook communications took place off-campus (the social media site is blocked from school computers) and that the matter discussed in the messages didn't apparently involve any threats of violence or anything having to do with the school, it's hard to imagine how the school can even attempt to justify its intrusion into and punishment for Jackson's personal messages.

From Jackson's complaint, it seems that the school district expects its students to shed their rights not only at the schoolhouse gate, but at home, at the mall, or wherever else they might use the Internet. The school district has not commented publicly on the lawsuit.

Find more information on this developing case at the [Student Press Law Center](http://www.splc.org/newsflash.asp?id=1938).

**Possible Response Questions**

* From a school’s perspective why might they check student’s facebook accounts?
* If you are not doing anything wrong, why should you be concerned about 1st amendment rights violations?
* Has social media become so common that a revised constitutional amendment should be created to create guidelines for people's’ individual rights?