

Editor's Perspective



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Lost in Translation

Electronic mail, “e-mail,” love it or hate it, is the most utilized form of communication relied upon by attorneys practicing today... at least until text messaging or some other technology comes along to take its place. Regular mail, or as many younger people refer to it, “snail mail,” is now reserved almost exclusively for enclosing original signed copies of documents and settlement checks. Often very important and sometimes difficult to ascertain when communicating via e-mail are the tone and intended message of the sender.

Communication theory is a subject that I find fascinating. There are a number of communication models or contexts that scholars and experts most often focus upon. Most of these theories hold that communication, at its base, involves a “sender” creating a message and in some way transmitting the information contained in that message to the “receiver” or intended audience. Before I delve too deeply into communication theory, let’s just agree that there are a myriad of ways to actually communicate your intended message.

Part of being a successful lawyer includes the ability to effectively communicate your clients’ arguments. However, the methodology that we employ to most effectively communicate as lawyers has changed over time. For example, in today’s practice it is not unusual for attorneys to take information that would literally take several hours or days to relay to a jury or the Court and condense that same information into a PowerPoint presentation that lasts less than one hour.

As attorneys, we are usually trained from the outset of our careers to be very mindful of our time. What better way

to make effective use of time, than to be able to type out a message that captures what you want to convey and passes it along to all of the intended recipients with the simple click of a button. When you combine that with the fact that it is now virtually mandatory that all attorneys carry a BlackBerry or other type of smart phone, we are now able to communicate with one or ten or more people simultaneously. The unknown variables of e-mail include not knowing where the receiver is located, much less what he/she is doing when receiving the message. Consequently, there can be a great difference in what the sender intends to communicate and what the receiver actually reads and interprets from any given e-mail.

When you consider the fact that even face-to-face communications can be misinterpreted, deciphering the intended message in an e-mail requires a great deal more effort. Depending on the e-mail, any one of the following alone or in combination could be important in determining the sender’s intended message: the identity of the sender, the time the e-mail was sent, the subject line, the people that are copied on the e-mail, the font, size, color, capitalization of the text, and whether there are attachments. I haven’t even gotten to the content of the actual written message.

Another aspect of the interpretation of e-mail communication that you also have to take into consideration is the tremendous volume of e-mail traffic that many of us face on a daily basis. This volume, depending upon your practice, may be largely related to the technology of electronic filing or “e-file.” In any case, in the event that your practice is anything like mine, you may have days of 500 or more e-mails. On those days, I sometimes feel like I am taking another bar exam. I

literally only have so much time that I can realistically devote to each e-mail before I have to just give it my best effort based upon what I know at the time, combined with my gut reaction and experience and then move on the next question, um, I mean e-mail.

Then there are the occasions when even those attorneys with the purest of heart, get a Mephistophelean glint in the eye and purposefully send an e-mail that they know or reasonably expect will induce an expletive filled verbal outburst and/or a severe negative physical reaction, such as the taste of bile, on the part of the receiver of the e-mail. In fact, there have been a few times where I have read such an e-mail and I felt as if I had literally just been punched in the stomach. In fact, there were no actual gut-wrenching issues raised. I simply had not been copied on a prior e-mail that provided a perfectly reasonable context for the later e-mail.

At this point it is probably needless to say, but I have had occasion to misinterpret an e-mail or two in my time. I have also dealt with the sometimes-alarming consequences of the misinterpretation of e-mails that I erroneously thought clearly set forth the message that I was attempting to communicate.

The point of this article is that when you consider all of the challenges associated with effectively communicating by e-mail, picking up the phone seems like an obvious alternative and yet in today’s practice it is often overlooked. I wholly acknowledge that I am guilty of failing in this regard despite my interest in communication theory. All of us could benefit from pausing for just a moment before plowing through the daily deluge of e-mails to remind ourselves to print a few of them and make some calls. ☪