

Pay Attention to the Emoji

BY JENNIFER PLATZKERE SNYDER

As lawyers, words are both our shield and our sword. They can be used to craft our clients' victory and help our clients avoid defeat. Words are our weapons and our power.

To my ongoing frustration, words are not employed as carefully or thoughtfully today as they were when I graduated from law school, let alone as when our country was born. Maybe this is on my mind because I have the soundtrack of "Hamilton" on constant repeat on my iPhone, or because of the tweet storm from our president we have become accustomed to seeing every few days, but there was a time when words were painstakingly chosen by the leaders and lawyers of our country, to craft a story and make a specific point, with attention paid to both the reason for the words as well as their intended effect. Given that the technologies on which we have become so dependent didn't exist back then, those words had to be committed to letters and then delivered by hand to communicate any message whatsoever. It required work and thought and planning (and expense), so each word had a meaningful purpose. There was no ability to commit verbal knee-jerk reactions by typing a few keystrokes followed by "enter."

Over time, it has become easier and easier to communicate with a wider and wider array of audiences. When I graduated law school, email was still a novelty (usually provided by AOL with the telltale "beep" notification) and the Internet had just begun to impact our daily lives, at work and at home. Fax was still the most widely used form of communication for speedy delivery, while pagers and beepers were used mostly by expectant fathers who needed to be alerted when a baby was coming or medical professionals being summoned to respond to an emergency. Court filings had to be done by mail or in person, with an enclosed envelope if you wanted the clerk to give you a time-stamped copy to prove you made your submission on time. iPhones and Blackberries hadn't been invented, so we still had

to walk down a hallway, pick up a phone, or type a letter in order to communicate with our colleagues, our clients and opposing counsel. There was no Facebook, LinkedIn, Twitter or Snapchat. There was no YouTube or Pinterest. There were no blog posts by anonymous authors providing behind-the-scenes dish on work life at major law firms and companies.

Just as the 24/7 news cycle sped up our ability to learn what is going on in the world, the proliferation of electronic methods of communication has increased the expectations on the speed of responses. It is no longer ok to wait more than a day to respond to an email. Indeed, if an email goes unanswered for more than an hour, expect an onslaught of follow up. The response time expected for a text, or a Facebook post, or a tweet, is even shorter.

On the positive side, we can now advertise information to a wide group in milliseconds, without having to notify each and every person individually. The speed and breadth of communications is a power in and of itself – at times, more powerful than the words themselves – evidenced by how our citizenry have become mobilized as never before since the November elections, seeking to get involved in state and local government and to respond to changes coming from our federal government. The Philadelphia Bar Association's collaborative #TakeActionPhilly campaign's first initiative was to take on immigration and refugee policy, drawing more than 500 attendees on only a few days' notice.

Such initiatives would not be possible if we had to advertise them with individually handwritten communications to each member of the Association.

On the negative side, however, wordcraft is often sacrificed in the interest of speed. Thoughtful grammar and punctuation have been shunted in favor of abbreviated words and emojis. The timely making of a point is suddenly more important than the craft of the message. I fear that an entire generation mired in their phones – who have never known a life without computers,





emails and iPads – are at risk of losing the ability to read non-verbal cues and thus gain powerful information. Don't get me wrong – I love a good emoji to convey a quick sentiment. But such communication is not a substitute for good old-fashioned conversation.

Further, that we all have become increasingly dependent on technology to communicate means that there is likely a record made of our every keystroke, interaction and movement in this world – those we wanted communicated publicly as well as those we didn't. In my world of labor and employment law, this means that now, more than ever, every case of alleged harassment or discrimination, or theft of confidential information or trade secrets, will rely in some fashion on a digital footprint of evidence. Maybe it is a Facebook post or an email message. Maybe it is a computer's connection to a private WiFi network or a phone's connection to a public cell tower at a certain day and time. Or maybe it is metadata showing when and where an electronic file was created or when a

flash drive was plugged in. Evidence that may seem innocuous on its face could, in fact, become quite powerful when put into the context of a story where legal rights are at issue, and these types of digital records can tell a story that was barely conceivable 20 or more years ago.

The words in this issue have been thoughtfully chosen by their authors. I hope you enjoy it. Once you are finished, please pick up the phone or go down the hall and have a real conversation about something you read – without using any technology to assist you.

If you are interested in learning more about how technology can play a powerful evidentiary role in a legal case, look for a video encore of my April 4, 2017 Philadelphia Bar Association CLE titled "The Forensic Fruits of a Labor (& Employment) Client." ■

Jennifer Platzkere Snyder (jsnyder@dilworthlaw.com), partner at Dilworth Paxson LLP, is editor-in-chief of The Philadelphia Lawyer.

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