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## Incorporating Electronic Communication in the LRW Classroom

By Ellie Margolis

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It is no secret or surprise that use of electronic communication is supplanting hard-copy writing in the world of law practice. The formal memo is on the decline,<sup>1</sup> and lawyers and clients alike are asking for answers to their questions via e-mail, reading them on a computer screen, BlackBerry, Droid, or iPhone. I had been feeling increasingly like I needed to address electronic communication in my legal research and writing (LRW) course, and I was hearing similar things from colleagues at various schools, so I decided to find a way to bring an electronic writing assignment into my first-year LRW class. After some thought, I developed a real-world writing assignment that reflects current law practice. The exercise was very well received by my students and, I discovered, had pedagogical benefits beyond the immediate practical assignment. I came away from the experience with a renewed sense of the importance of this type of assignment, and I urge all LRW professors to think about incorporating e-communication into the LRW classroom.

As with trying anything new, I had several challenges to address. First was figuring out exactly what I wanted the students to produce. I left practice before the tech revolution really took hold, so I had no firsthand knowledge to draw from. A quick review of the existing literature revealed that most of the articles and book chapters are about issues of security, etiquette, and

professional tone,<sup>2</sup> and very few are about the form and content of electronic communication. After a few conversations with friends and former students currently in practice, I decided that a realistic scenario would be for the students to sum up the results of their research and analysis of a client problem in an e-mail to me, in the role of a partner preparing for a meeting

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<sup>1</sup> Kristen Konrad Robbins-Tiscione, *From Snail Mail to E-Mail: The Traditional Legal Memorandum in the Twenty-First Century*, 58 J. Legal Educ. 32 (2008).

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<sup>2</sup> E.g., Janice Mac Avoy, Ivan Espinoza-Madrigal & Sherita Walton, *Think Twice Before You Hit the Send Button! Practical Considerations in the Use of Email*, 54 Prac. Law. 45 (December 2008).

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with the client. While e-communication takes many forms, this seemed to be a task frequently required of junior associates, and one I thought students would be capable of handling.

Next came the challenge of working the assignment into the curriculum of my fall semester LRW class, which already packs in more work than the two credits allotted to the course. The students write multiple drafts of two open-research office memoranda and attendant smaller assignments. I did not want to add to the students' workload or my own by adding in this assignment without removing anything else. After some reflection, it seemed that the e-mail summary was closest to the brief answer in a traditional predictive memorandum of law. Since my fall semester includes two brief answers, and since I have never felt that time spent on brief answers was particularly useful, I decided to replace them with the e-mail assignments. This way, the students could write the e-mails based on an issue they were already familiar with, and it was roughly equivalent to the amount of writing they would have been doing in the course anyway.

I timed the e-mail assignments so that they were due the day before the full, formal memos were to be turned in. Before the first due date, I assigned some reading about e-mail communication<sup>3</sup> and held a class meeting, in which we focused not only on etiquette issues, but also on the needs of the reader in this particular context.<sup>4</sup> The discussion emphasized the need for a clear, up-front answer and succinct analysis as well as the importance of organization, bearing in mind that the message may be viewed on a variety of different electronic devices. I did not give any particular advice about content or level of depth in the analysis. At the

end of the class, I told the students that they would soon be receiving an e-mail from me with further instructions regarding this assignment, but I did not tell them exactly what the assignment would be. This first assignment was not graded,<sup>5</sup> and I told the students to give it their best effort, curious to see what they would turn in.

A few days later, I sent an e-mail explaining that I (as their supervising partner) was going to meet with the client and needed an overview of what they had found so far, even though I knew they hadn't yet completed the full memo. Although in the real-life scenario, an associate would likely have a day, or a few hours, to complete a task of this sort, I gave the students several days. The students responded to the e-mail by the designated time, and I reviewed the messages. As with any new assignment, there was a wide variety in the content of the students' work, but overall, the e-mails provided a good summary of the students' analysis.

Because this was the students' first attempt and I had given little guidance, I decided not to give individual feedback, and instead, selected a representative sampling of the student work to go over, workshop style, in class. This is a technique I often use with drafts of smaller parts of the assignment, such as questions presented. The students' observations about the e-mails were perceptive, and we had a very productive discussion. They seemed to find it easier to put themselves in the shoes of the reader for this assignment, and commented on both the substantive aspects of the messages, as well as some of the visual and style aspects. The most interesting part of the discussion focused on their observations about how important organization was, as they thought about how the message would appear on a BlackBerry or iPhone, where the reader would have to scroll through a longer document.

“I timed the e-mail assignments so that they were due the day before the full, formal memos were to be turned in.”

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<sup>3</sup> These included a *New York Times* article on the pitfalls of electronic communication: John Schwartz, *A Legal Battle: Online Attitude vs. Rules of the Bar*, Sept. 12, 2009, <<http://tinyurl.com/4oc35x4>>, and *Writing to the Email Recipient in Wayne Schiess, Writing for the Legal Audience* (2003).

<sup>4</sup> This class took place when the students were in the final stages of revising their memorandum assignments in anticipation of a final deadline. As such, they were already quite conversant in the legal issues the assignment addressed.

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<sup>5</sup> In my LRW course, only the final memorandum assignment is graded, and students are never graded on a task the first time they are asked to do it. For more on this approach, see Ellie Margolis & Susan Dejarnatt, *Moving Beyond Product to Process: Building a Better LRW Program*, 46 Santa Clara L. Rev. 93 (2005).

“My students were much quicker to grasp the purpose of the e-mail assignment, and to understand how an e-mail like this would be used. ...”

The e-mails the students submitted, and the ensuing discussion, made me change some of my preconceived notions about the role of e-communication in law practice. I began to think that this kind of e-communication called for a different kind of writing than is traditionally covered in a legal research and writing course. It wasn't just a brief answer plunked into an e-mail. It was longer, and organized differently than a brief answer would be, yet was still a concise summary of the analysis of the client's problem. The assignment involved the analysis of a five-part test for determining a hostile work environment under Title VII. Where the typical brief answer would have presented the test and one or two sentences about how the client facts satisfied the test, the e-mails that worked best presented each factor, one at a time, with a brief description and application to the facts.

The second e-mail assignment was tied to the final, graded assignment of the semester. This time I did not have a class meeting, but did send out an e-mail request about a week before the final memo was due asking the students to attach to their memos an e-mail summary of their analysis.<sup>6</sup> I did not give any detailed instructions, other than telling the students to use what they had learned from the last e-mail assignment in drafting another one. Grading the e-mails did not add significant time to my grading process, and I was pleased to see that many students had incorporated concepts about clarity and organization based on the first assignment cycle. When all was said and done, I felt that the students had a valuable experience and I had learned a great deal in the process.

One of the most interesting things that struck me about the experience was the fact that many students in the class did their best writing of the semester on the final e-mail assignment. Even students who were weaker analytically, or who

had difficulty with writing clear, direct prose, did a very good job summarizing their analyses clearly in the electronic context. I think this was due to several factors. First, digital natives (the generation of students who has grown up using computers from a very young age) are simply more comfortable and familiar with electronic communication. While the downside of this is the oft-noted problem with overly casual tone in professional communications, this experience reminded me that there is an upside as well. As legal writing professionals, we should continue to think about how to harness this comfort factor.

The second, and related, reason is that students were so much more easily able to put themselves in the shoes of their reader with this assignment. I do a lot of work in my course trying to help the students understand why different documents are written, what purposes they serve, and what the reader generally needs to get from the document. The traditional office memorandum is difficult for students to relate to, especially when they have no context to understand its purpose. My students were much quicker to grasp the purpose of the e-mail assignment, and to understand how an e-mail like this would be used, than they ever were with the traditional formal memorandum.

One student suggested to me that part of the reason it was easier to relate to the reader in this assignment was the lack of pre-existing structure. The class discussion about the first assignment had showed the students that, as a new type of communication, there weren't a lot of "rules" about what the document should include, or what form it should take. As a result, this student felt freer to really focus on what information she thought the reader would need and the best way to convey it. This discussion reinforced my decision to incorporate electronic communication into my course, and served as a reminder that I need to

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<sup>6</sup> Because I grade the final assignment anonymously, I could not have the students send me an e-mail reply for this assignment. Instead, they were to draft an e-mail, print out a hard copy with identifying information removed, and attach it to the hard copy of their memos.

continue working at helping students understand how the traditional forms of legal writing are designed to help the reader, and aren't just a bunch of arbitrary rules for the students to get right.

The other major takeaway for me as the teacher was how much we, the community of legal writing professors, have to learn about e-communication. It is not as simple as taking traditional written forms and sending them electronically. Like electronic legal research, the change in the medium necessitates changes in the form of the communication. What literature there is on the subject of electronic communication does not address this substantive component of how analysis conveyed via electronic device differs from traditional forms of legal writing. With my small assignment, for example, I came to believe that something longer than a brief answer, but much shorter than a full-fledged memorandum, would be the most helpful to inform a partner going in to meet with a client. This experience showed me that there is much to learn about how best to communicate legal analysis when it is being conveyed via electronic devices.

As legal writing professors, it is incumbent on us to learn more about the ways in which practicing lawyers are using e-communication. I believe we can also play a role in shaping the forms of that communication. Much more thought needs to go into issues such as whether different organizational principles are called for, what level of citation is appropriate, and how in-depth the analysis should be. We are still at the beginning of this adventure. I urge all teachers of legal writing to begin to incorporate electronic communication into the classroom, and to begin to think about what it should look like.

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## Another Perspective

“When was the last time you spoke with your client? When was the last time you wished him or her happy birthday or happy anniversary? Does your client communication extend beyond a perfunctory holiday card? If not, you may find yourself losing clients or, even worse, being the subject of a disciplinary complaint.

It is well known that the most common—and most avoidable—type of complaint against attorneys results from their failure to communicate with their clients. It is particularly ironic that, despite the availability of more and more ways to communicate—including letters, faxes, e-mail, instant messages, text messages, and cell phones—some attorneys still ignore this critical obligation to their clients.

In reality, good client communication only begins with promptly returning phone calls and answering e-mails. At its core, communicating with clients—and potential clients—requires giving them information. It also may be the most important way to expand your practice.

Regular communication not only avoids ethics complaints but also gives you a marketing opportunity. Remember the expression ‘out of sight, out of mind’? After all, if clients aren’t thinking of you, they may not give your name to a friend or relative who needs a lawyer. The last thing you want is to discover that you lost a case because your client ‘forgot’ you were his or her lawyer.”

—Daniel J. Siegel, *Keep on Top of Client Communication*, 46 *Trial* 54 (April 2010).