March 3, 2011

The New Legal Writing: The Importance of Teaching Law Students How to Use E-mail Professionally

Kendra H Fershee, University of North Dakota

Available at: https://works.bepress.com/kendra_fershee/4/
The New Legal Writing: The Importance of Teaching Law Students How to Use E-mail Professionally

Kendra Huard Fershee
Assistant Professor of Law
The University of North Dakota School of Law

I. Introduction

Anyone who has worked in a legal capacity in the last ten years or so can attest to the meteoric rise in the use of e-mail as a means of communication in the professional setting. There is empirical research that supports the notion that e-mail is probably the most common method for professional legal communication today.1 Professor Kristin Robbins-Tiscione conducted research regarding the decline of the interoffice memorandum as a tool in most lawyers’ arsenals and the rise of a e-mail as a more straightforward and informal medium to convey legal analysis.2 As Prof. Robbins-Tiscione determined through her research, lawyers have trended away from writing memos with all of the traditional accoutrements to instead distilling the most crucial components of their legal analysis into an e-mail that can be quickly and efficiently read and shared.3 The reality of this change is raising questions in the legal writing community about the usefulness of the traditional written memo and whether legal writing professors should be teaching students how to boil down their analysis into this new, shorter, more direct form of legal analysis. While I cannot purport to answer this question on my own, the discussion has brought about an even more intense need for

---

1 Kristen Konrad Robbins-Tiscione, From Snail Mail to E-Mail: The Traditional Legal Memorandum in the Twenty-First Century, 58 J. Leg. Ed. 32 (2008) (discussing her survey of practicing attorneys, which showed that the traditional format and substance of the legal memorandum has become nearly obsolete in favor of substantive e-mail as the preferred method for communicating with clients).
2 See id.
3 See id. at 32-34.
legal writing professors to address professionalism and effective communication in e-mail with their students.

Whether the traditional legal memorandum is in its twilight is not yet clear, but Prof. Robbins-Tiscione’s research did make clear that the most common mode of written communication used in law offices today is e-mail.\(^4\) The reasons for the newly emerging preference for e-mail are probably multilayered and driven by a demand for cost-savings and efficiency by clients, but are somewhat immaterial to the fact that, at least for now, e-mail is getting a workout at most law firms.\(^5\) The change has prompted legal writing professors to think harder about whether teaching the traditional, redundant, and expensive memo is appropriate any longer. It seems that, at least in form, and also perhaps in substance, that version of legal communication is falling out of favor.\(^6\) It may not be clear yet whether a new style of teaching students how to communicate legal analysis is in order, but it is clear that students should be able to enter into legal practice with a basic working knowledge of e-mail etiquette and professionalism.\(^7\)

The use of e-mail in everyday life is a recent phenomenon, and even more recent for lawyers. Very little had changed with the method in which the written word was distributed until the invention of e-mail, thirty-seven years ago.\(^8\) E-mail made the transmission of the written word practically instantaneous, paperless, and virtually limitless. The adoption of e-mail as a popular mode of communication was swift. The

\(^4\) See id. at 32.
\(^5\) See id. at 47-48.
\(^6\) See id. at 32-34.
\(^7\) See id. at 44. Prof. Robbins-Tiscione quoted one survey respondent who expressed that students should learn the proper use of e-mail in law school: “Although e-mail by nature is informal, students should not perceive it as a more casual form of communication that a memo to another attorney.” Id. Another survey respondent noted: “If e-mail is to be formally taught, I do think it’s important to realize that e-mail to clients is very different than e-mail to friends.” Id. at 45.
common usage of digital or electronic communication has been pervasive for approximately twenty years, which means that the current generation of law students is the first to have no memory of a time before e-mail.

Most law students today have never received instruction about how to write e-mail professionally, which leaves them to their own devices when they try to venture into their first post-law school job and use e-mail in a professional context for the first time. Most law students today do not remember a time when e-mail did not exist. The gap of understanding about how to use e-mail professionally between today’s law students, who are familiar with electronic and digital communication in an informal context, and those who learned to write before e-mail existed, is vast. Professors may not appreciate that writing professional e-mail for many law students is not intuitive and must be learned. Law schools must make teaching students how to write e-mail in a professional setting as high a priority as teaching students how to write a basic legal memorandum has been since the inception of legal writing programs.

II. The Importance of Quality Written Communication in the Legal Profession

The process and ability to convey thoughts and concepts in writing is crucial to the foundation of the law. Without the written word, neither statutory nor common law could have created stability for emerging nations attempting to establish standards and boundaries for the people. But more importantly to lawyers and law professors, the

\[ \text{9 Blackstone alluded to as much when he espoused the virtue of precedent:} \]

For it is an established rule to abide by former precedents, where the same points come again in litigation; as well as to keep the scale of justice even and steady, and not liable to waver with every new judge’s opinion; as also because the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, is not become a permanent rule, which it is not in the breast of any subsequent judge to alter or vary from, according to his own private judgment, but according to the known laws and
development of the written word, and its use to convey the law, created the foundation for the legal profession. Without the introduction of the written word in a legal context, lawyers would have been doomed to suffer the whims of those tasked with deciding the fate of their clients or the word of the parties involved in business transactions. With only memory to supply the foundation of the law, the legal profession would have had to re-invent the law in every new dispute or deal.

It is obvious that written law is crucial when establishing and maintaining a legal and political system for a nation. The United States Constitution is one of the earliest examples of this in American history, a document revered for its ability to provide reliable and consistent governance over hundreds of years, and a document that elegantly reveals the written word as a lawyer’s most important tool. It is hard to imagine the fledgling U.S. government, battered and unsure after the brutal Revolutionary War, taking shape and surviving without a system of written rules. Moreover, those rules had to be drafted with precision and care to convince a wary people that rules in this legal system would result in more just and fair governance than rules promulgated by the British. While reasonable minds can disagree about whether the Constitution was written as perfectly as it could have been, it is hard to deny that it is the seminal work of customs of the land.


[10] The earliest reporting of court proceedings were said to be helpful to the litigants and judges to help them remember what had been asserted earlier in the proceedings. Paul Brand, Selden Society Lecture: Observing and Recording the Medieval Bar and Bench at Work, The Origins of Law Reporting in England 9 (July 6, 1998) (transcript printed by The Selden Society, 1999).


American lawyers and a fine example of how the careful employment of the written word can create and maintain a stable “nation of laws, not of men.”

While few will dispute that writing is important to lawyers, there is much room for debate about what quality writing is. Legal research and writing professors’ bookshelves are stacked with textbooks that teach lawyers-to-be how to write about the law. If it were simple or intuitive, none, or one, of those books might be necessary. But one thing is obvious: lawyers can identify poor writing as easily as Justice Potter could identify pornography: they know it when they see it. The attendant negatives that accompany poor legal writing are vast and harsh; a lawyer who does not write well can lose respect, business, or even violate his or her ethical responsibility to effectively represent his or her clients. To confront the potential problems created by inartful writing, most law schools decided to address the issue directly by creating classes in which students could learn how to best represent their clients using the written word.

III. The Value of Teaching Legal Writing

---

14 See id. at 379.

We caution Plaintiff’s attorney that his counterstatement of facts and brief opposing the Facticon Defendants’ motion for summary judgment borders on sanctionable. The use of unsupported insults and rhetorical questions neither persuades nor impresses this Court, especially when it fails to accompany any kind of legal argument or discussion of relevant case law. Moreover, the numerous incoherent, grammatically incorrect statements (see e.g., Counterstatement of Facts at 4(# 2), 6 (12, 13, 15-20), 7(# 27)), combined with garrulous rhetoric (see e.g., Br. at 7) frequently placed this Court in the inappropriate position of having to attempt to decipher Plaintiff’s legal points. The dignity of this Court demands that parties submit coherent, concise, and legally sound arguments. At the very least, materials should be proofread before being filed. We expect that Plaintiff’s lawyer will heed this warning should he file any papers with this Court in the future.

Id. See also Section III, supra.
As early as the 1950s, some law schools began to understand that their role in the professional development of budding lawyers was more than just lecturing about the doctrine of law.\textsuperscript{18} In the United States, the tradition of legal apprenticeship, carried over from the British colonial days, began to wane in the 1800s.\textsuperscript{19} Prior to that, lawyers were responsible for teaching legal apprentices how to write in a legal context by providing instruction about how to write important legal documents, such as contracts, briefs, motions, and writs, as well as client correspondence, although many mentors did not spend much time teaching their pupils any of those important skills.\textsuperscript{20} Lawyers in the apprenticeship days often relied on their students as scribes and for help doing menial tasks, not teaching doctrine or writing.\textsuperscript{21} This lackadaisical teaching attitude made it possible for many new lawyers to begin practicing law without a solid foundation in writing.

In the late-1800s, law schools began to change the apprenticeship system with a more formal instructional setting for law students.\textsuperscript{22} Law schools focused primarily, and still do, on teaching the doctrine of the law by using case law and the Socratic teaching method to encourage (terrify?) law students to learn the intricacies of American law.\textsuperscript{23} There was little to no instruction available on how to craft any kind of legal writing for the students.\textsuperscript{24} That task was reserved for their future employers, who either accepted this responsibility as a vestige of the apprenticeship system, provided instruction out of

\textsuperscript{18} See id.
\textsuperscript{20} See id.
\textsuperscript{21} See id.
necessity, or refused to train the budding lawyers, leaving them to train themselves or lose their jobs.\textsuperscript{25} As late as the 1980s, many law schools still did not address the importance of the skill of legal writing in their curriculum and continued to rely on law firms to do that training on the job.\textsuperscript{26}

While many law schools did not value the need to teach students how to write about the law for far too long, a few law schools, with the able guidance from a few pioneering professors of writing and the law, began to offer writing courses to law students in the 1960s.\textsuperscript{27} A new philosophy began to take hold, and within 25-30 years, most law schools had adopted some version of a legal writing, research, and analysis course.\textsuperscript{28} These courses helped alleviate the problems and concerns many practicing attorneys had with young lawyers’ ability to draft memos, motions, briefs, client correspondence, and, depending on the depth and requirements of the course, possibly more.\textsuperscript{29} Professors of legal writing could closely monitor the style, analysis, and quality of the writing and catch bad habits before they took hold. Professors could also emphasize, in the relatively safe environment of law school, the attention to detail and precision students need to succeed in the legal profession and how that affects a student’s reputation in the legal community.

The rhetorical concept of ethos characterizes the credibility that, in the context of legal practice, a lawyer evinces as she communicates in a professional, or any, setting.\textsuperscript{30} Legal writing professors have begun to return to rhetorical concepts to frame students’

\textsuperscript{25} See id.  
\textsuperscript{26} Id.  
\textsuperscript{27} Id.  
\textsuperscript{28} Id.  
\textsuperscript{29} Id.  
\textsuperscript{30} Michael R. Smith, Advanced Legal Writing: Theories and Strategies in Persuasive Writing 127 (2002).
thinking about how to establish credibility in their writing.\textsuperscript{31} Not surprisingly, the words a lawyer puts on a page tell a multilayered story about the writer herself, which goes far beyond the meaning of the message she is trying to convey. A lawyer can signal her competence, intelligence, diligence, forthrightness, a sense of good will, and more, in her writing.\textsuperscript{32} Through discussing ethos or not, legal writing professors have stressed the importance of thoughtful organization, careful research, precise citation, articulate expression, and much more since the beginning of legal writing programs. The importance of establishing ethos in writing becomes a particularly important consideration when teaching law students who will likely be expected to use e-mail in their communications immediately upon entering legal practice.

Prof. Michael R. Smith has articulated for students the many ways lawyers can evince traits of intelligence in legal writing in his Advanced Legal Writing book.\textsuperscript{33} Prof. Smith organizes these traits into several categories of writer: the informed writer, the writer adept at legal research, the organized writer, the analytical writer, the deliberate writer, the writer empathetic toward the reader, the practical writer, the articulate writer, the eloquent writer, the detail-oriented writer, and the innovative writer.\textsuperscript{34} Ideally, each of these traits is evident in an intelligent and credible writer’s work, but in terms of teaching students how to use e-mail effectively, the most important trait to emphasize is how to be articulate. Being articulate requires a writer to use proper grammar,

\begin{thebibliography}{99}
\bibitem{32}See Smith, supra note 29, at 101-73.
\bibitem{33}See id.
\bibitem{34}See id. at 133-70.
\end{thebibliography}
punctuation, and to write in a clear, simple, understandable style, and, in the context of e-mail, these skills are often overlooked by law students.35

IV. The Development of Electronic Communication

   The medium of written communication provided a foundation upon which the legal profession could build, and the use of the written word has kept lawyers busy since the beginning of legal practice. And while the importance of the ability to write about the law is obvious, little had changed about how lawyers write to each other, the courts, or clients for thousands of years. Putting ink to paper, either by quill, ball-point pen, typewriter, word processor, or personal computer has been the only means through which lawyers could communicate until the development of electronic, and now digital, communication. In 1972, e-mail was invented, but it took approximately twenty years for it to become as commonly used as it is now.36 In the approximately fifteen to twenty years since e-mail has been a part of most people’s everyday lives, it has supplied another sea change to the profession.

   Electronic communication has been immensely helpful to lawyers, who can work faster and more efficiently than ever. Lawyers can e-mail clients the results of research, opposing counsel working on a deal, court clerks for information about docketing and local rules, and on and on. E-mail can make difficult conversations a little easier by subtracting potentially volatile person-to-person contact that can make achieving client goals difficult. E-mail can make file sharing easier, late-night communication possible, and help lawyers check ministerial tasks off of their to do lists more quickly by providing a quick and easy medium to ask neutral questions of opposing counsel. In short, e-mail

---

35 See id. at 164.
has created huge advantages for many people in the legal profession and is likely here to stay, in its current form or another.

The benefits of e-mail to lawyers are vast and cannot be easily quantified, but lawyers who are not careful can also suffer greatly through the misuse of e-mail. Problems with tone can inadvertently and counterproductively anger a client, opposing counsel, or the court. As discussed in Section III, supra, a lawyer can build credibility by evincing intelligence in her writing, and being articulate is one way to do that.\(^{37}\)

Unfortunately, however, it is much easier to lose credibility by sending inarticulate communications, particularly those that can be easily shared with others.\(^{38}\) E-mail mistakenly forwarded to the wrong person can create embarrassing consequences, or even professional ethics repercussions, for the person forwarding the information.\(^{39}\) And including sensitive client information in e-mail can create discovery problems that can adversely affect clients who are under investigation or engaged in litigation.\(^{40}\)

While electronic communication has a few potential downsides, the good news is that lawyers and law students can be trained to use e-mail properly. In fact, lawyers and law students must be trained to use e-mail properly to help them avoid making mistakes that electronic communication can invite. Obviously, there is no way to avoid every mistake that can be made in e-mail, but with careful instruction, those mistakes can be limited to the good old fashioned kind that lawyers have made on paper since the

\(^{37}\) See Section III, supra.

\(^{38}\) See Robbins-Tiscione, supra note 1, at 45. One of the survey respondents suggested: “I also think it’s important to remember how easily e-mails can be forwarded. I’ve definitely had people at client companies other than the person to whom I sent the e-mail call me to talk about it.” Id.


\(^{40}\) See, e.g., Zubulake v. UBS Warburg, 217 F.R.D. 309, 316-17 (2003) (holding that electronic mail is governed by Federal Rule of Civil Procedure 34, which governs discovery requests, just as relevant writings on paper are).
beginning of the legal profession. The combination of common use among lawyers and
the potential for dangerous errors in e-mail make it imperative that legal writing
professors include instruction about how to write e-mail as part of their curriculum. Any
more, not teaching students how to use e-mail professionally could be likened to not
teaching students how to write a legal memorandum (setting aside, for the moment, the
burgeoning debate about whether the legal memo is dead with the advent of the shorter,
more direct legal analysis e-mail lawyers commonly use now).

V. Why E-mail Professionalism Should Not Be Assumed and Must Be Taught

Just as it is unfair to stereotype all law students as totally ignorant of professional
norms regarding e-mail, it is also unfair to assume that writing professional e-mail is an
inherent skill that law students possess. Most law students are in their mid-twenties,
which means that most people in law school today were born in the mid-1980s.\textsuperscript{41} The
infant stages of e-mail communication began in the early 1970s.\textsuperscript{42} Of course, e-mail was
not commonly used in a professional or social context until more than twenty years after
that, probably the late-1980s or early-1990s at the earliest. That means that law students
today were probably just learning how to print when e-mail communication began to gain
momentum as an effective communication tool.

As today’s law students entered elementary school and began learning how to
write, these students had more exposure to technology such as e-mail than their parents
did. But while they may have been taught how to write a paper about grasshoppers or
what they did over the summer, they probably did not receive the same instruction

\textsuperscript{41} See Law School Admissions Council, Think About Law School,
28, 2009).
regarding the proper way to write an e-mail. As children, many of today’s law students rarely used e-mail to communicate with anyone other than their peers, or possibly their parents. Youth generally use e-mail to make social plans, discuss school assignments, or chat about friends, movies, or popular culture. The style of communication that many young adults now possess is a direct result of self-training and peer influence, not lessons they received from teachers or parents.

The self-guided nature of children’s learning and handling of electronic communication is not all bad. Confidence, freedom, and social connections are but a few of the positive results that can come with learning and possessing a new skill without adult influence. But those positive results do not necessarily include the skills lawyers must possess to write professional e-mail. In fact, many of the advantages to e-mail for young people appear to be linked to the decided informality of the medium. Its speed and efficiency may have inadvertently encouraged young people learning how to use e-mail to loosen whatever standards they were being taught about writing in more formal settings.

The trend toward text messaging and away from e-mail as a means of social contact among young people has resulted in even more rudimentary language usage. And

43 See Pew Internet & American Life Project, Teens and Parents 2004 Survey, http://www.pewinternet.org/Shared-Content/Data-sets/2004/Teens--parents-2004.aspx (July 15, 2009). Comparing the oldest survey on record, which was conducted in 2000 to the 2004 survey, it is clear that Internet and e-mail usage, as well as Instant Messaging or text messaging among young people was high to begin with and has only continued to rise. Pew Internet & American Life Project, Teens and Parents 2000 Survey Data, http://www.pewinternet.org/Shared-Content/Data-sets/2000/Teens-and-Parents-2000-Survey-Data.aspx (July 15, 2009). In 2004, 89% of young people indicated that they have sent or read e-mail. See id. In 2005, the Pew Internet Survey indicated that as many as 75% of teens used Instant Messaging to communicate with friends. See Antone Gonsalves, Internet Week, Study: IM Surpasses E-mail Among Teens, Young Adults, http://www.informationweek.com/news/showArticle.jhtml?articleID=173601785 (July 15, 2009).
44 See Pew 2004 Internet Survey, supra n. 31.
while it may be clever, it does not help students write e-mail professionally. Digital messages are sent via cell phones, which often have only limited alpha-numeric key pads on which to type, and few punctuation options. Some cell phones have adapted to make typing words easier, but interestingly, many people sending text messages have adapted their writing style to speed up the process of typing text messages. Texting has given birth to a whole new system of writing that might seem like top secret encryption to those unfamiliar with the popular vernacular. Spelling, punctuation, and grammar have no place in proper text messaging, but that has certainly not stopped, and perhaps is contributing to, the popularity of the medium.

The informality of personal e-mail use and texting are not appropriate in a professional context. As noted above, professional e-mail use by lawyers is common today and is not likely to wane as even courts have moved toward paperless communication and filings. The problem arises when law students and newly graduated lawyers, many of whom have never worked in an office setting that requires professional e-mail communication before, are expected to transfer the legal writing and analysis skills they have acquired in school into the e-mail medium without any training. It is true that many, probably most, students and new lawyers inherently have the ability and intuition to write e-mail professionally, but not all do. And of those who know how

47 See Administrative Office of the United States Courts, Frequently Asked Questions, http://pacer.psc.uscourts.gov/cmecl/ (Aug. 28, 2009) (“In January 1996, the Administrative Office of the U.S. Courts began development of the Case Management/Electronic Case Filing (CM/ECF) system. CM/ECF is a comprehensive case management system that allows courts to maintain electronic case files and offer electronic filing over the Internet. Courts can make all case information immediately available electronically through the Internet. Eventually, CM/ECF will replace the current case management systems used by the federal courts across the country.”)
to write e-mail professionally, many do not know how to maximize the efficiencies e-mail offers in a professional environment.

In addition to the problems that can arise when someone who has only used e-mail in a social setting makes the switch to using it in a professional setting, there are potential legal implications to e-mail that students should learn. E-mail is discoverable communication, which can get lawyers and their clients into trouble if it is not used carefully. Because many people do not understand the far reaches of document discovery, the use of e-mail in a professional setting can serve to document legally questionable conduct by clients in a business setting, for example. Even receiving an e-mail that raises criminal or civil legal issues can be devastating for a client, and it can affect the client’s lawyers negatively as well. Simple instruction about what should and should not go into e-mail will save students a lot of trouble in the future, and prepare them to teach clients how to do the same.

Law students today are going to be lawyers who know how to communicate effectively via e-mail tomorrow. As stated above, legal employers do not take much responsibility in training their new hires in any aspect. E-mail is no exception to that rule, even though it is perfectly reasonable to expect that new lawyers would not know how to use e-mail in a professional context. As was true when law schools began to understand the importance of teaching legal research, writing, and analysis, law schools should also take on the responsibility of teaching students how to improve their e-mail

48 Before he became the former governor of New York who resigned in the face of a huge prostitution scandal, Eliot Spitzer was the Attorney General of New York with strong opinions about the professional use of e-mail. Spitzer was once quoted as saying: “Never write when you can talk. Never talk when you can nod. And never put anything in e-mail.” My Golden Rule, Business 2.0, November 28, 2005, http://money.cnn.com/2005/11/28/news/newsmakers/goldenrule_biz20_1205/index.htm (Aug. 28, 2009).
50 See id. at ?.
communication skills. Even though the lessons students must learn are crucial to their budding legal careers, they are not complex or difficult to teach.

VI. How to Teach E-mail Professionalism

As previously discussed, professors cannot assume that students know how to write e-mail professionally, so writing classes must include instruction on e-mail form and style. That instruction must include several components, all of which dovetail nicely with other topics that must be addressed in legal research, writing, and analysis classes. The lessons must be crafted to reach a skeptical audience, provide examples of good and bad e-mail technique, address tone and grammar issues that can easily occur in e-mail, and offer students an opportunity to practice the more refined style they have learned.

Teaching students how to write e-mail professionally is easier than teaching any of the skills that students learn throughout the semester, because students will be using a similar skill set, just in e-mail instead of on paper. The crucial difference that makes a separate e-mail lesson imperative is that most students’ prior experience with e-mail has been extremely informal, and using it more professionally is not as intuitive as it might seem.

A. Remember Your Audience and Avoid Finger-Wagging

Although using e-mail professionally takes more than intuition, instructing students on the subject is not difficult as long as the students do not feel patronized by their professor. Students are so comfortable and familiar with e-mail that they may be skeptical of being taught how to use it from someone who may be, perhaps, more “mature” than they are. They need the reassurance that they are not going to be treated as neophytes, that most of them have an obvious expertise when it comes to the process of using e-mail, and that they are not going to be barred forever more from using e-mail in
ways with which they are comfortable. Professors should make clear to their students that this information is simply intended to ease their transition to using e-mail in a professional context, and has to do with tone and style more than ability or knowledge. In sum, students deserve some deference regarding their e-mail acumen; most of them have been using it for nearly their entire lives.

In keeping with this deferential tone, professors should avoid finger-wagging and preaching in their approach to introducing the concept of professionalism in e-mail. As most professors know, a holier-than-thou attitude, particularly about a topic with which most students feel is their rightful domain, will do little to encourage change and learning. One good way to connect with students is to employ humor in the lesson to soften what might be taken as sharp criticism if not handled delicately. An easy way to introduce humor into the lesson is to give, if possible, real-life anonymous examples of horrible e-mail mistakes people make. Examples of poorly written e-mail are all too easy to acquire, unfortunately (except in this context), and are often so bad that they are funny.

It might seem risky to show examples of terrible e-mail style, form, and grammar when introducing the concept of e-mail professionalism because students might recognize errors they make and take offense. If the example e-mails are terrible enough, though, students tend to see little resemblance to their own e-mail style (even if they should), but relate to the information because they have received similar e-mails from others. As is true in many contexts, it could be hard for students to fix a problem if they cannot acknowledge that there is one in the first place. But students tend to be able to understand e-mail professionalism as a broader issue and are often able to incorporate rules and tips into the e-mail that they write without first having to admit that their usual
e-mail style is not fit for professional contexts. Using bad example e-mails written by others is personal, but personal to someone else and can issue a wake-up call in a non-confrontational way.

B. What to Emphasize When Teaching E-Mail Professionalism

The more things change, the more they stay the same, as the old adage goes, which holds true when teaching students about writing e-mail professionally. First, students may not be accustomed to writing e-mail with careful editing and proper grammar in mind, but it is obviously as important there as it is when writing on paper. Second, students may not realize that the context in which they are writing e-mail can dramatically change the style and form they use. And third, students should have an understanding of how the tone of their communication can be very difficult to discern in the electronic medium, but using the same tone they would use in paper writing will serve them well. Grammar, context, and tone are important concepts to students to understand, regardless if they are writing on paper or in e-mail, but e-mail presents particular challenges of which they must be apprised.

Grammar is grammar is grammar, there can be no dispute. But many people employ their grammar skills in non-formal e-mail less stringently (much as we do in speech), which is widely accepted. Whatever people do in their private e-mail is their business, but a lack of capitalization, punctuation, and proper spelling can become a bad habit that creeps into professional e-mail as well. As was stated in Section III, supra, because lawyers evince intelligence through articulate writing, transferring those skills to e-mail is particularly crucial. Professors should make two important points with students to help
them “professionalize” their e-mail correspondence: their inner grammar maven must emerge, and they must edit their work.

Reminding students to use proper grammar in professional e-mail is an easy task, but what students may not realize is that making typos in e-mail is much easier to do than on paper. Reading and editing on a computer screen can be more difficult than reading and editing on paper. Errors are easily missed and the “send” button can be prematurely hit. To help ensure that recipients only see clean, carefully edited messages, students should be instructed to save their messages as drafts before hitting send, and then to print and edit their e-mail on paper when the text is longer than four lines. While this might diminish the efficiencies of e-mail (and the relatively low environmental impact it offers), it is the only safe way to edit e-mail for content and avoid errors.

Students should also understand how important context is in e-mail. While professional e-mail is always going to be more formal than e-mails sent between spouses, friends, or family, it does not have to be stiff or unfamiliar. Knowing one’s audience can serve students well when writing professional e-mail. For example, an e-mail to a long-time client who is also a friend can be more informal than an e-mail to a Judge’s clerk. Writing e-mail more formally than is called for can also be off-putting to recipients, as can the obvious problem of sending e-mail riddled with colloquialisms and typographical errors, so students should be very thoughtful about their intended recipient while drafting professional e-mail.

Writing professional e-mail requires more than simply cutting and pasting text from a document that might have been printed onto paper into an e-mail. E-mail should be kept short and simple. Dumping huge amounts of text into an e-mail can be overwhelming to
read on the screen, so if a long document must be sent, it should be forwarded in its original form with a short cover e-mail describing what is attached. If the e-mail is one or two paragraphs long but has several important points, those should be set off by bullets or numbers to highlight the “action items” or crucial bits of information. In addition to being straightforward, e-mail should also be respectful, devoid of sarcasm, and written with clarity.

The most important message to deliver to students about the style in which they write e-mail is to be very careful about tone. Many people do not realize how easy it is to sound annoyed or angry in e-mail, when the writer actually intended to be sarcastic or humorous. A standard aid in clarifying a playful tone is the “emoticon,” a sideways grouping of punctuation marks that look like smiley faces, but emoticons are unprofessional and often hard to decipher, leaving the reader to believe that the writer is angry and/or uses punctuation sloppily. Instead of relying on emoticons to set the tone of an e-mail, students should carefully choose their words to ensure that the message they send is the intended message. In short, the students need to know that they should say what they mean, in the most deferential, respectful, and clear terms possible.

C. Assign Some Practice

Most law students have lots of practice at sending e-mail, but not a lot of practice sending professional e-mail. An easy way to rectify this is to explain in course guidelines to the students that they are expected to start implementing the rules that govern e-mail in a professional setting when interacting with their professors, potential employers, and any other recipient who might expect something more formal. An easy way to assign practice to students is to ask them to condense an assignment already completed in the more
traditional format, such as a client letter, into a shorter, more concise, clear e-mail and send it to you. This might also be the appropriate place to consider teaching students how to re-style a traditional memo into an e-mail that focuses more on the substance of the legal issue and less on the old-fashioned redundancies built into traditional memos.

VII. Conclusion

Law professors must take the opportunity to teach e-mail professionalism to students because it is a skill that cannot be assumed. The learning curve for law students and new lawyers is incredibly steep, so the temptation to allow students to figure out how to use e-mail in a professional setting rather than overload them is great. With the pervasiveness of e-mail in the lawyer’s workplace, however, it is unfair to assume that students know how to translate their legal writing skills into proper e-mail form. Just as legal writing professors do not leave students to their own devices to learn how to write memos or briefs, professors should not assume that students can use e-mail professionally. The medium is likely here to stay, and while its usage may change over time, injecting some common sense rules into students’ minds regarding e-mail will allow them to present themselves well professionally and adjust as e-mail etiquette rules change.

Legal writing professors have proved themselves flexible and adaptable when change in the legal profession commands adjustment to what students learn. Knowing what we now know about the winds of change in client communication, teaching students how to effectively use e-mail is imperative. Doing what we already do – for example, requiring properly written e-mail from students in our classes, asking students to think about and adjust their online personas to reflect their new professional identities,
modeling good e-mail etiquette – is certainly important. But an affirmative effort by legal writing professors to help students use e-mail in a professional legal context will be even more effective in assisting them to start to shape their professional ethos. If, for no other reason, legal professors should teach e-mail professionalism to avoid having to read any more horrifically written, unclear, inappropriate e-mails written at 2:00 a.m. and demanding an immediate response.  LOL.