

2016 Corporate Counsel Institute Lessons Learned From Trial

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Juries Hate “Bad” E-mails

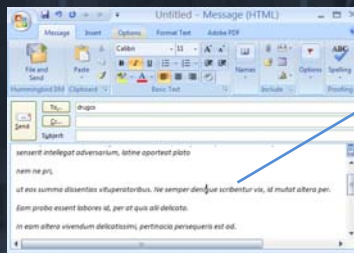
(Opposing Lawyers Love Them)

- If you are willing to have it blown-up in a courtroom, *then by all means*, hit:



E-mail Often Hurts

An e-mail from an administrator within a pharmaceutical company regarding side-effects of a diet drug:



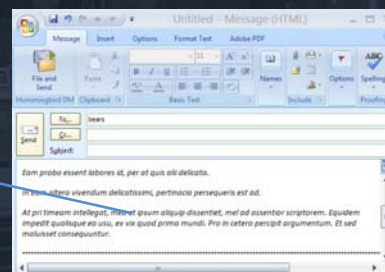
"... Can I look forward to my waning years signing checks for fat people who are a little afraid of a silly lung problem?"

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E-mail Often Hurts

Bear Stearns executive's frank observation came while he and his boss were assuring investors that the subprime funds they ran were still sound

"... The entire subprime market is toast"



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E-mail Education

- Inappropriate comments in e-mail will be grounds for discipline
- Follow Through – a few examples will spread the word
- Train employees on what to say and what not to say
 - Treat as official letter
 - 4-Letter words, sarcasm, and name calling don't play well
 - Don't spread rumors
 - Assume e-mail will be seen by upper management
 - Use personal e-mail accounts for personal matters

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Containing E-mail: Catch 22

- 100 Billion E-mails sent each Day
 - Est. 132 Billion by the end of 2017
- Containment:
 - Set data quotas on e-mail
 - Eliminate ability to archive e-mail
 - Sweep and delete e-mail on regular basis
- Preservation:
 - Document an official document retention policy

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"Lessons Learned from Trial"