

E-mail can bounce back to hurt you

Experts: Easily retrieved electronic messages fodder for litigation

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(CNN) -- There you are, sitting in your office cubicle when you're overcome by wit. So you fire off an e-mail to an appreciative colleague.

Bad move, legal experts say. Because e-mail lives on in cyberspace, that message you send today can come back to haunt you tomorrow.

If you work for a private company it can get you fired, arrested or sued. If you work for the government it's probably a matter of public record. Either way it won't be you who's LOL.

Office e-mail has become such fertile ground for lawyers in search of smoking guns that investigative firms now specialize in digging dirt out of company hard drives, legal analysts said.

"E-mails are all the rage in terms of discovery in civil litigation," said Douglas E. Mirell, a First Amendment lawyer in Los Angeles. "That's where all the good stuff is."

His advice: "Don't use e-mail."

Like other written documents, e-mail is fair game for a subpoena or a search warrant, said Kendall Coffey, a former federal prosecutor in Miami and frequent CNN commentator.

"To an amazing extent, careless e-mailing has become one of the most frequent minefields in civil and criminal discovery," Coffey said. "Case after case, ranging from criminal prosecutions to sexual harassment lawsuits, have been anchored on careless e-mails."

People are easily lured into thinking their missives are private, Coffey said.

"Because they are generated in what may seem to be a very comfortable setting, the frequent candor has led to multitudes of embarrassing moments," he said. E-mail was used to gain convictions in the Martha Stewart and Enron cases. It brought down some of Arthur Andersen's accountants.

Anyone working for the government could wind up in the same embarrassing predicament former FEMA director Michael Brown found himself in on Thursday. "If you're a government employee, e-mail is considered public property," Coffey said. (Read about Brown's e-mails)

Rep. Charlie Melancon, D-Louisiana, posted a sampling of more than 1,000 e-mails provided to the House committee assessing responses to Hurricane Katrina. Some of Brown's e-mails showed him making flippant remarks about his responsibilities.

"Can I quit now? Can I come home?" Brown wrote to Cindy Taylor, FEMA's deputy director of public



Former FEMA director Michael Brown is the latest person to be publicly haunted by his e-mail.

affairs, the morning of the hurricane. A few days later, Brown wrote to an acquaintance, "I'm trapped now, please rescue me."

But even seemingly innocent office banter can spell trouble.

Mirell, whose firm recently held a seminar on using e-mail in litigation, pointed to several cases where an e-mail was, indeed, a smoking gun. Consider:

- In a Massachusetts class-action suit over the dangers of the diet drug combination Phen-Fen, the court allowed this e-mail from a company executive to be admitted: "Do I have to look forward to spending my waning years writing checks to fat people worried about a silly lung problem?"
- Chevron settled a lawsuit for \$2.2 million that involved an interoffice e-mail giving 25 reasons why beer is better than women.
- Former star investment banker Frank Quattrone was convicted of obstructing federal investigations into stock offerings at Credit Suisse First Boston. Central to the case was an e-mail Quattrone forwarded telling employees it was "time to clean up those files" after he learned of the investigation.
- More than 500 of former West Virginia Gov. Bob Wise's intimate e-mails with a state employee were obtained under the Freedom of Information Act and made public in 2003. The employee's husband filed for divorce and Wise didn't seek re-election in 2004.

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