Far surpassing letter writing and even phone calls, email has become the primary method by which attorneys communicate with their clients.

But in light of recent court decisions, email may soon go out of use in a place where clients need to communicate quickly and efficiently with their lawyers: prison. As is currently playing out in the Eastern District of New York, some criminal authorities are taking the position that there is no privilege governing emails between inmates and their attorneys sent over the Bureau of Prisons ("BOP") TRULINCS email system, and that those authorities can therefore capture, read, and use those emails in litigation. In June of this year, the U.S. Attorney's Office in the Eastern District of New York sent a letter to the Federal Defenders of New York stating that it, "**intends to review all emails obtained from the TRULINCS system**" given that it does not view emails sent over that system to be privileged. The Office reasoned that inmates consent to monitoring prior to sending

emails in TRULINCS, thereby admitting that the email is not confidential. The lack of confidentiality, therefore, precludes application of the attorney-client privilege. Not surprisingly, several inmates have raised challenges to this position. Counsel for one inmate wrote the U.S. District Court seeking that the government be ordered to segregate and not review any correspondence sent over TRULINCS between the inmate and his attorneys of record. The letter argued that the position taken by the U.S. Attorney's Office would necessarily inhibit attorney-client communications and effectively limit their client's right to counsel. Judges in the Eastern District of New York are proving somewhat divided on the issue. Judge Dora Irizarry, in an oral ruling, precluded the U.S. Attorney's Office from reading emails sent by the inmate-defendant to his attorneys, reasoning that the burden imposed on defendant's counsel (e.g. conducting in-person visits, undertaking the laborious and delayed process to conduct a phone call, etc.) outweighed the burden that would be imposed on the government in screening out emails sent from a client to his attorney. The court was particularly sensitive to counsels' expenditure of time and money given that the attorney was appointed under the Criminal Justice Act ("CJA"), and those costs must eventually be paid by the court itself. In another ruling out of the Eastern District, the court held otherwise. There, Judge Allyne Ross reasoned that although it would potentially be more efficient and cost-effective for an attorney and inmate-client to communicate over email, there was no basis to find a Sixth Amendment problem. Notably, defense counsel in that case was retained, and *not* CJA-appointed, likely obviating the court's cost-saving concerns. Nonetheless, the court wrote that it would be a "welcome development" if the TRULINCS system was improved to allow easy separation of privileged email from the rest. Regardless of the outcome, these decisions uniformly hold that emails from clients to their attorneys sent over TRULINCS are **not privileged**. In order to send an email over the system, the inmate must consent to that email being monitored, precluding the application of the attorney-client privilege. That being said, attorneys seeking to communicate with inmate-clients over email are not without hope, as arguments related to the burden of communicating (without the benefit of email) are gaining traction. The argument appears to be particularly effective in the case of CJA-appointed counsel, where the federal judiciary pays for the attorneys' expended time. Until a technical solution to the TRULINCS system emerges, attorneys and their federally-incarcerated clients are likely to favor 20th century forms of communication where the privileged status is universally acknowledged: phone calls, hard-copy letters, and in-person visits.

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