

Emoji Goes to Court: An Analysis of Emoji in Court Proceedings and Implications for Legal Practice

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Emoji, emoticons, and bitmoji are communicative tools that express thoughts, feelings, and ideas in electronically mediated communication. As a popular form of communication, it is natural they now appear in court cases as evidence of communication in both civil and criminal proceedings. Researchers explored the frequency of the appearance of these terms in reported court cases and analyzed the context of how these symbols appear in court opinions. Further, researchers identified that references to these symbols have increased in frequency in court opinions each year, appear more frequently in criminal cases than civil, and as evidence of communication among parties. Additionally, there is a large number of cases that reference emoticons in matters involving sexually related crimes. The increased appearance of these terms in court cases indicates the need for the judicial branch and legal professionals to examine the nature of this form of communication to avoid misunderstandings.

Keywords: emoji; litigation; court proceedings; pop culture

Emoji are commonly used communicative tools that are present in everyday electronic communication. While emoji as symbols do not necessarily appear consistently across platforms, most smartphones contain the ability to send and receive them. Therefore, due to this popularity of emoji as well as the nature of emoji being symbols open to various interpretations, uses, and meanings, courts in the United States are seeing an uptick in cases that contain references to the icons. In 2017, the American Bar Journal indicated courtrooms should prepare for an increase in cases using symbols such as emoji and emoticons as evidence which will be open to interpretation

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by juries (Walsh, 2017). There exists a wide body of case law with references to these symbols being used as evidence of guilt in criminal cases or even involving copyright issues pertaining to the symbols themselves. This study examines available court data to determine how frequently words emoji, emoticon, and bitmoji appear in the legal system as well as discuss the types of courts (i.e. criminal or civil, federal or state) seeing the biggest increase. As these terms increase in court records, there are a number of ramifications for legal professionals and legal communication scholars. This paper seeks to answer the following research questions to better provide guidance for professionals and scholars:

R1: To what extent are emoji, emoticons, and bitmoji appearing in court records in the United States?

R2: Which type of proceeding and court sees the most?

R3: What is the context in which emoji, emoticons, and bitmoji are being used in court?

Overview

While both emoji and emoticons are commonly used by people when sending electronic messages, either by email or by mobile telephone, they are two distinct phenomena. Emoticons are the older of the two and are a series of symbols put together by the user to create facial expressions (Sampietro, 2020). Emoji are small symbols created in the 1990s that appear to be cartoon-like representations of people, places, and objects. In 2016, Snapchat created the bitmoji (Keating, 2016). Bitmoji allows users to create their own 3D cartoon replica of the user (Ugwu, 2018). Unlike emoji and emoticon, which are used across text platforms, bitmoji are used primarily in the application Snapchat. Although researchers posit emoji are used more frequently than emoticons due to the expressive nature of emoji, both are used in communication to reflect “punctuating messages, expressing affection, signaling sarcasm and irony, etc.” (Sampietro, 2020, p. 27). Younger generations are the primary users of emoticons and emoji in computer-mediated communication (Krohn, 2004).

Researchers discovered emoticons express more literal and logical statements than emoji, which tend to express emotions. Other studies indicate emoticons give the user a positive feeling and can be a useful tool in communication (Sampietro, 2020). As such, there is the potential for these small forms of electronic communication to be introduced as evidence of criminal actions, to document communication between parties, and even are the subject of drug-related or sex crime actions.

The critical issue facing emoji and all other icons similar to the emoji relates to the potential for misunderstanding among communicators. Researchers studied how people interpret emoji when presented via the same text platform and across platforms (Miller et al. 2016). Emoji are not uniform across different platforms, for example, Apple vs. Google. Unsurprisingly, people interpret emoji symbols differently in terms of the meaning and the feelings they generate. This increased when emoji were sent across different text platforms (Miller et al. 2016). Therefore, taking an emoji out of text communication and into the courtroom could result in confusion over meanings. Additionally, there are a number of ways an emoji can be misinterpreted. Not only are some emoji customizable based on skin tone, even the sequence or repetition of an emoji can alter the meaning and interpretation. Furthermore, emoji can be used as emotions, nouns, and even as verbs (Cohn, Engelen, & Schilperoord, 2019).

An example of miscommunication involving emojis can be seen in a case involving an apartment owner and prospective tenants. In this case, a couple sent the apartment owner a text that contained a string of many different emoji, including a smiley face, a comet, a champagne bottle with a popping cork, dancing women, and a chipmunk (Moore, 2019). From this text, the apartment owner interpreted these emoji to express agreement to rent an apartment when the sender of the emoji did not agree. These interpretations can have legal consequences.

Attorneys have a difficult task when faced with emoji-based communication both in terms of research and in the courtroom. On a practical level, when writing legal documents or orally reading communications into the record at trial, attorneys must decide if they plan on using the icon itself or if a verbal depiction of the icon is sufficient. Also, legal research platforms are not equipped to fully reflect the wide range

of emoji in their original form (Behrens, 2019). Thus, an attorney may have a difficult time researching other cases where emoji have been used in court if the court opinion in the legal database does not contain the term “emoji.” This issue is discussed further below in the methods section.

Courts are no strangers to interpreting communication as it plays a vital role in almost every area of the law (Goldman, 2018). Despite this tradition, some judges and juries may be unfamiliar with emoji and could ascribe their own interpretation to them, which may result in confusion or misunderstanding of the evidence (Cheng, Yuxiu, & Li, 2020). It took up until 2018 for emojis to be added to dictionary.com, but even that site acknowledges that definitions will have to be updated as the meanings associated with these symbols constantly change over time (Steinmetz, 2018). Moore advises caution when using one of these online dictionaries in the event that users are allowed to update meanings and also cites that meanings are constantly changing (2019). Therefore, lawyers encountering these symbols must conduct research or attend seminars to better understand the meaning behind these symbols (Cherney, 2018). They are becoming more aware that taking an emoji out of context from text messages, emails, and discussions boards and into the courtroom can result in a loss of the true meaning behind the communication. Wagner, Marusek, & Yu (2020) indicate lawyers should strive to create a total picture when submitting an emoji as evidence the court will then have to interpret the meaning behind it. In order to present the whole communication, lawyers may even have to question witnesses in order to draw out the correct interpretation and meaning behind it (Couch, 2020).

Notwithstanding these potential problems, there is another issue of whether an emoji can be used to establish a defendant’s motive or intent. A person using emoji to express ideas may find themselves in a legal situation having to assert a First Amendment freedom of speech argument to avoid having an emoji be used as a representation of “consciousness of guilt” (Kirley & McMahon, 2018). Milott indicates “communications made by a witness, defendant, or victim can provide insight into their intent, knowledge, or motivations” (2017, p. 62). Under this assertion, emoji as communication should be allowed to reflect a defendant’s motive. Sullivan questions

whether emoji should be used as sufficient evidence of a person's motive to convict a criminal defendant (2016). Therefore, the question remains whether an emoji would be enough to prove motive in a case necessary for a conviction.

These symbols are used in a variety of contexts in the legal world. For example, the case *Mobile Telecommunications Technologies, LLC. v. Sprint Nextel Corp.* (2014) involved a motion to strike an expert witness' damages report. The expert witness in this case reported on the value of applications and referenced emoji in his report. The United States District Court for the Eastern District of Texas denied the motion to strike which resulted in the report being allowed into evidence along with the term emoticon.

While the word emoji appears in court records in the context of corporate or business-related proceedings, it also could be used as evidence in a plethora of other proceedings. For example, the phrase emoji appears in sexual harassment cases as evidence of the alleged harassment. In *Harrison v. City of Tampa*, a former employee sued the city for wrongful termination after being fired for complaining about harassment at the workplace (2019). The specific emoji used to establish harassment included "face kissing, a face with hearts for eyes, and what appears to be a smiling dog with hearts next to it" (*Harrison v. City of Tampa*, 2019, p. 13). The court granted the City of Tampa's motion for summary judgment, but did not reference emoji in its reasoning or holding.

Finally, the word emoji also appears in criminal matters. In *Johnson v. State*, the Court of Special Appeals of Maryland discussed the ambiguous meaning of one particular emoji (2020). This case involved a criminal defendant convicted of selling drugs. He used the fire emoji in text messages to indicate the quality of the drugs, however, there was ambiguity regarding the interpretation of the fire symbol as noted below:

During argument, the State drew an inference from Trooper Buckius's description of the drugs and argued that "really good" means "really strong." But the trial court did not draw that inference. It stated that the "term fire, which the defendant used at one point, in and of itself, is *ambiguous*; [it] could mean marijuana, could mean heroin or could mean any other illicit drug, which is of

especially *high quality ...*” (Emphasis added). And the Trooper's testimony that the fire emoji meant the drugs are “really good” does not resolve that ambiguity. “Really good” could mean that the drugs have a particularly pleasant effect and that they're above average in quality, without meaning necessarily, as the State asserts, that the drugs were “really strong” or, more to the point, strong enough to demonstrate a disregard for human life. (*Johnson v. State*, 245 Md. App. 46, 63-64, 225 A.3d 769 (2020))

The convicted defendant filed an appeal, arguing the evidence at trial was insufficient for the court to find him guilty of multiple drug-related charges. The Maryland Court of Special Appeals held the trial court correctly admitted the text messages into evidence, including the text messages. Nonetheless, this case reflects the unique nature of these symbols regarding the possibility of multiple interpretations. This article analyzes the frequency and context in which emoji are referenced in the courtroom so that practitioners are aware of the emoji and can better prepare for potential issues.

Methodology

There are many challenges with regard to emoji appearing in the legal context. In fact, researchers commonly bemoan the fact that legal research databases are limited in their ability to display symbols on their platforms (Behrens, 2019). To answer the research questions central to this paper and to determine where and how often the terms emoji, emoticons, and bitmojis appear in legal proceedings, the researchers used Westlaw. Westlaw is a legal research tool that accesses all reported or published cases appearing at the appellate level and above both in federal and state court. Researchers searched all published cases, both in the State and Federal court systems for the keyword “emoji,” “emoticon,” and “bitmoji.” Researchers then coded the cases based on the state and year the case was filed, the court name, and whether the case was filed in State or Federal court as well as at what level of court (i.e. an appeals court or a supreme court). Cases were then coded by their emoji references into categories based on the context in which it is used in the courtroom. This context will show researchers how they are being used, for example, as evidence of criminal behavior. Researchers pulled cases on Westlaw up until March 1, 2020. Together, this information was used

to analyze the trends in how often they appear in court opinions and the context in which they are used in order to answer the research questions contained in this paper.

As noted by Behrens (2019), the inability to search for the symbols themselves creates a hurdle in researching this issue. This demonstrates the inherent problem with these forms of expression as court reporters and judges are unable to enter the symbols themselves into the record or court opinions. Thus, researchers were restricted to searching for the term rather than the actual symbol and then coding the context of the usage. The implications of this are discussed below.

Data

In total, the term “emoji” appeared in 196 reported cases on Westlaw. The term “emoticon” emerged in 120 cases. The word “bitmoji” appeared in 2 cases. The oldest case to reference any of the three terms is from 2004 and was a civil matter referencing an “emoticon” (*MicroStrategy Inc. v. Business Objects, S.A.*, 2004). Emoticons appear in 30 different states or jurisdictions, including a federal claims court, a patent court, and military tribunals. California had the most emoticon use with 23 of the 120 cases using the term. Texas had the second highest use with 12.

The use of emoticons has gradually increased over time due to advances in social technology. The word “emoticon” was associated with 54 state matters and 66 federal matters. See table 3. Of the 120 cases using the term emoticon, 53% were criminal, whereas 47% were civil. The majority of the emoticon usage centered on communication between parties, but also was mostly used in cases involving sexual offenses. Communication was through various platforms such as text messages, social media, and other messaging outlets. For example, in *MicroStrategy Inc. v. Business Objects, S.A.*, an email was sent with the intent to be “playful” when joking about a potential spy inside the MicroStrategy business (2004). This playfulness was intended to be understood by the use of a smiley face emoticon after the statement. Since this case, there has been a steady increase in the frequency of use over time, yet there is a sharp decrease as the frequency of the word “emoji” increases. Emoticons appear at the

highest rate in criminal sexual offense cases at 32% of all emoticon cases analyzed. See table 4.

Table 3
Emoticon Breakdown of Court Appearance

| Type | Year | | | | | | | | | | | | | | | Total |
|----------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|-------|
| | 2004 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | |
| Civil | 2 | 1 | 5 | 1 | 6 | 1 | 5 | 4 | 2 | 6 | 8 | 8 | 3 | 3 | 1 | 56 |
| Criminal | 0 | 2 | 2 | 4 | 1 | 3 | 3 | 6 | 4 | 5 | 8 | 4 | 14 | 7 | 1 | 64 |
| State | 1 | 1 | 1 | 2 | 2 | 3 | 2 | 2 | 5 | 7 | 8 | 4 | 11 | 4 | 1 | 54 |
| Federal | 1 | 2 | 6 | 3 | 5 | 1 | 6 | 8 | 1 | 4 | 8 | 8 | 6 | 6 | 1 | 66 |
| Total | 2 | 3 | 7 | 5 | 7 | 4 | 8 | 10 | 6 | 11 | 16 | 12 | 17 | 10 | 2 | 120 |

Note. Numbers reflect the type of case and in which court system the emoji appeared that year.

Table 4
Emoticon Descriptive Statistics

| Type | Year | | | | | | | | | | | | | | | Total |
|-----------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|-------|
| | 2004 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | |
| Civil | 1 | 0 | 2 | 0 | 2 | 0 | 1 | 1 | 0 | 1 | 1 | 3 | 1 | 0 | 1 | 14 |
| Business | | | | | | | | | | | | | | | | |
| Civil | 1 | 1 | 3 | 1 | 2 | 0 | 1 | 2 | 1 | 2 | 7 | 4 | 2 | 2 | 0 | 29 |
| Com. | | | | | | | | | | | | | | | | |
| Civil | 0 | 0 | 0 | 1 | 2 | 1 | 2 | 1 | 1 | 2 | 0 | 1 | 0 | 1 | 0 | 12 |
| Copyright | | | | | | | | | | | | | | | | |
| Civil | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 2 |
| Sexual H. | | | | | | | | | | | | | | | | |
| Criminal | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 5 | 3 | 6 | 5 | 0 | 22 |
| Com. | | | | | | | | | | | | | | | | |
| Criminal | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Drugs | | | | | | | | | | | | | | | | |
| Criminal | 0 | 2 | 2 | 3 | 1 | 3 | 3 | 6 | 4 | 2 | 3 | 1 | 6 | 1 | 1 | 38 |
| Sex | | | | | | | | | | | | | | | | |
| Criminal | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 2 |
| Other | | | | | | | | | | | | | | | | |
| Total | 2 | 3 | 7 | 5 | 7 | 4 | 8 | 10 | 6 | 11 | 16 | 12 | 17 | 10 | 2 | 120 |

Note. Number reflects the frequency that each emoticon appeared in a court document that year.

The term “bitmoji” only appeared in two cases, both from 2019. Both were criminal in nature, but one case was in a state court and the other in federal. The low appearance of this term likely relates to the fact bitmojis are the newest form of communication of the three terms searched and have yet to make its way into the courts.

Specifically, regarding the use of the term “emoji,” since 2014 the frequency of the term increased every year. A total increase from 2014 to 2019 of 4400% is reflected (i.e. a jump from 2 cases to 90 annually). Data from the year 2020 was limited to the first quarter (January through March), but already reflects the word will appear more frequently in 2020 than past years. Emoji appears more often in criminal matters than civil. Roughly, 58.7% of total cases using the word emoji were criminal whereas only 41% of total cases were civil in nature. The emoji appears in criminal sexual offense cases with 13.7% of all cases analyzed with the term. Additionally, more emoji related text appeared in state court opinions than in federal court at a rate of 115 to 81. There were 39 different state or territorial jurisdictions that used the term, including Puerto Rico and the U.S. Virgin Islands. Also, six cases used emoji in varying military courts. See table 1 for more details regarding the type of case using the term. Similar to emoticon’s geographic span, California had the highest references to the term emoji with 29 references. This is double any other states’ usage.

Table 1
Emoji - Breakdown of Court Appearance

| Type | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | Total |
|-------------|------|------|------|------|------|------|------|-------|
| Civil | 2 | 4 | 4 | 9 | 17 | 39 | 6 | 81 |
| Criminal | 0 | 2 | 6 | 16 | 28 | 51 | 12 | 115 |
| State | 0 | 2 | 7 | 15 | 27 | 53 | 11 | 115 |
| Federal | 2 | 4 | 3 | 10 | 18 | 37 | 7 | 81 |
| Total Cases | 2 | 6 | 10 | 25 | 45 | 90 | 18 | |

Note. Numbers reflect the type of case and in which court system the emoji appeared that year.

Of the 81 civil cases, the largest use of the term related to communication between persons, with 63% or 51 cases reporting emoji use to transmit thoughts or ideas between individuals by text, email, or social media. The same was true regarding criminal cases, with 67% or 77 of the 115 total criminal cases using emoji as communication. For example, communication between parties can include a defendant posting the rat emoji on social media to communicate that his co-defendant was a “snitch,” like in *United States v. Douglas* (2019). Civil cases also used emoji in cases involving copyright or trademark infringement and in sexual harassment cases as evidence of the accused misconduct. Lastly, the word was used in civil cases relating to either a business dispute or involving litigation over an emoji related product.

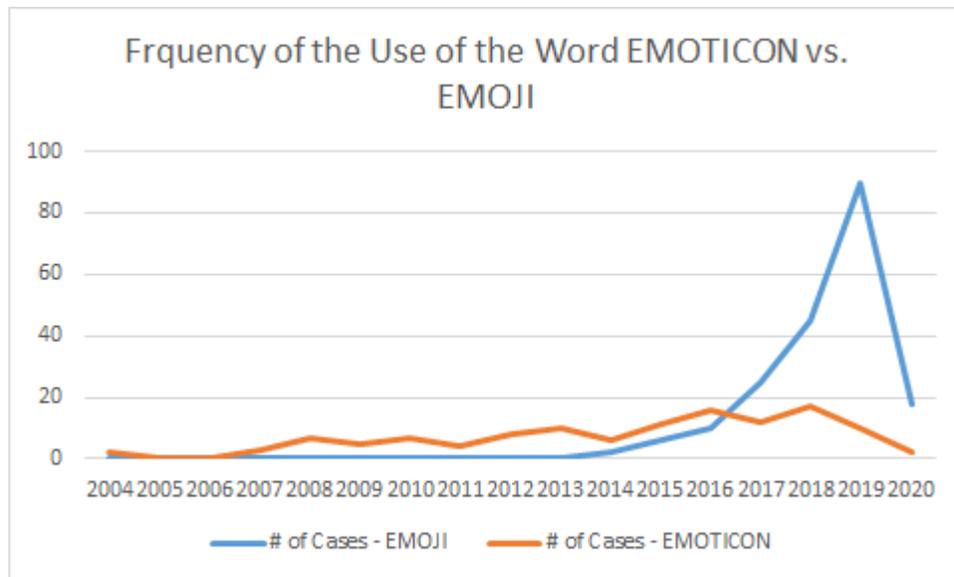
Of all criminal cases using emoji, 23.5% involved sexual offenses. This can include cases where emoji are used in sexual messages that are sent to minors, as in *United States v. Schweitzer* (2018). This is less than the percentage of sexual criminal cases using emoticons. In court, emoji became evidence of the defendant’s illegal sexual conduct. Emoji appeared less frequently in cases involving drugs or other criminal activity, such as electronic harassment, nonconsensual dissemination of private sexual images, or maltreatment.

Discussion

From review of the data, there has been an uptick in the frequency of emoji, emoticons, and bitmojis appearing in the courtroom. See figure 1. Emoticons appeared in cases as old as 2004, but have recently declined in usage in comparison to an increased use of emoji. See figure 1 for a graph of the frequency of usage over the years. The data supports that more people are using emoji than emoticons than previously as they appear more frequently in the court data. This also may be due to updates in technology that now allow for emoji to provide a more detailed manner in which one can express emotions than a series of punctuation as with emoticons. Further, data also suggests that around the time the emoticon starts to decline, the word

emoji starts to increase in regard to appearance in courtrooms. This supports other research indicating emoji use is steadily increasing in popularity (Sampietro, 2020). In this way, emoticons paved the way for emoji. Bitmoji are a relatively new invention, but are already appearing in court records as well, but not at the same degree as the other terms. Because of this increased use, it is important to recognize how these cases and their emoji references fit into the bigger picture. While fun to use, the misunderstanding or misuse of emoji symbols can lead to possible legal recourse.

Figure 1
Frequency of the term emoji vs. emoticon from 2004-2020



With 31.6% percentage of all emoticon cases analyzed being criminal and sexual in nature, this indicates attorneys may be using them more as evidence that a defendant committed an alleged sex act. Emoticons suggested criminal misconduct within text messages in the majority of these cases, which then supported the charges. Many of the sex offenses used smiley faces and winky face emoji or emoticons. However, smiley faces and winky faces seem to have different interpretations across the board. Thus, this type of communication is ambiguous as one person's smiley face may be representing joy to one, but evidence of sexual misconduct to another. Because of this possibility for misunderstanding, one should be cautious of their use of emoji and how a receiver

understands the message. The intent of the message and emoji could be an emoji sent in good faith can quickly ruin relationships.

Not surprisingly, due to the nature of emoji as an expression of communication, the emoji appeared regularly as proof of communication between parties across both civil and criminal courts. See table 2. Emoji are now an essential aspect of conversation and expressing and interpreting emotions. In some cases, the appellant requested his or her case be reviewed due to the omission of emoji evidence, which arguably changed the meaning of the text messages, social media posts, etc. It is possible, then, for a different judge to interpret the interaction differently, which gives the defendant another opportunity to argue their case.

Table 2
Emoji - Descriptive Statistics

| Type | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | Total |
|------------------------------|------|------|------|------|------|------|------|-------|
| Civil Business or Product | 0 | 1 | 0 | 0 | 1 | 5 | 1 | 8 |
| Civil Communication | 0 | 2 | 3 | 6 | 12 | 25 | 3 | 51 |
| Civil Copyright or Trademark | 2 | 1 | 0 | 2 | 1 | 4 | 1 | 11 |
| Civil Sexual Harassment | 0 | 0 | 1 | 1 | 3 | 5 | 1 | 11 |
| Criminal Communication | 0 | 2 | 6 | 12 | 15 | 34 | 8 | 77 |
| Criminal Drug Related | 0 | 0 | 0 | 1 | 2 | 2 | 1 | 6 |
| Criminal Sexual Offenses | 0 | 0 | 0 | 3 | 9 | 13 | 2 | 27 |
| Criminal Other | 0 | 0 | 0 | 0 | 2 | 2 | 1 | 5 |
| Total Cases | 2 | 6 | 10 | 25 | 45 | 90 | 18 | 196 |

Note. Numbers reflect the category in which the emoji was used in court documents.

In civil matters, emoji appeared equally as evidence of sexual harassment and in copyright-related matters, but again at a lower rate than as evidence of communication between the parties. Thus, evidence of communication is the most common use in courts. In criminal cases, emoji was not only used as expression, but also in cases involving sexual offenses, more so than other categories of other crimes. This is similar to the trend of emoticons in criminal matters.

The significance of this data shows these symbols are increasingly appearing in courtrooms across the United States. In fact, they appear in a vast number of states and in every geographic region of the United States. They appear more in criminal courts than in civil courts and more at the individual state level than at the federal level. Due to the vast number of criminal cases using these terms, scholars and legal practitioners should have heightened awareness of the impact that a single emoji can have on an individual's liberty and be extra cautious to avoid misinterpreting the sender's intended meaning. The higher rates of the symbols being used as evidence of communication are not surprising, however, the use of them as evidence of sexual offenses and of other bad acts or deeds should raise some concern. While sending an emoji may not be criminal, it appears that it may influence whether someone is criminally convicted. Therefore, the increase in use over the years should be taken seriously as clearly they will continue to appear more and more in the future.

Limitations

There are many limitations to this study as the legal research platforms available, such as the one utilized in this study, do not contain trial court decisions. Thus, there is a substantial likelihood of even more prevalence of emoji references in courtrooms that are unsearchable by researchers. Additionally, researchers found that most databases do not allow the user to search for a specific emoji itself. Therefore, they were restricted to searching for the words "emoji," "emoticon," and "bitmoji" themselves. Therefore, emoji have likely appeared in even more cases, but researchers are unable to collect that data due to legal research platforms not having the functionality to display

the symbols themselves. Even though emoji may not always appear in legal databases as a result of search features or display issues, the researchers were still able to locate and study the increase in emoji using the existing features.

Finally, the researchers are reviewing data available to them on these search platforms in the form of court opinions. The inability to use transcripts from every case prevents researchers from knowing the full context and extent of the use of emoji in court. Therefore, future research may require complete documents and transcripts from all levels of legal proceedings to fully understand the impact of emoji in court and their interpretations. Additionally, in the future researchers should analyze the court opinions for the specific emoji used to determine which exact icon appears most regularly, rather than coding the context of how the emoji was used. This may be difficult as again, it is impossible to search for the icon itself as the researchers will have to search for the word emoji instead.

Implications for Communication Scholars

Communication scholars understand the power of words and symbols to communicate meaning yet miscommunication occurs all the time. Even more significant, this research shows emoji, symbols open to many different interpretations, now have legal implications that could cost someone their liberty. As more of these symbols are entered into evidence in legal cases across the United States, the likelihood of juries misunderstanding them may also increase. Therefore, communication scholars should be open to the possibility of being called in to testify as an expert witness as well as study the most commonly associated meanings with emoji so that there is a body of literature that legal professionals can rely on to inform their decision making.

Further, this study reflects how emoji are increasing in popularity and are increasingly being used in our culture as a communication tool. The problems identified by the researchers of this study need to be addressed and fixed. Communication scholars are the individuals that can accomplish this with their understanding of the functions of communication.

Implications for Legal Professionals

What is evident from this study is that emoji are increasing in usage and will continue to appear more regularly in court records. Attorneys, judges, and juries will have to work with caution to make sure the interpretation of these often ambiguous symbols are correct and consistent with the communicator's intention. Emoji do not always appear consistently across platforms, for example, a skull emoji on an iPhone may appear different on a Samsung product. Therefore, legal professionals will have to be extra cautious that juries are shown an actual image of the icon itself as if an attorney merely verbally describes the icon, one juror may have an iPhone and another a Samsung which would then impact their understanding of the symbol.

Similarly, legal professionals should tread carefully when using an emoji as evidence especially as evidence of guilt. As communication mediated through computers or telephones lacks context, it certainly can be possible that a court's or attorney's interpretation of the emoji is in error. As highlighted by the excerpt of *Johnson v. State* above, a fire emoji could be interpreted in many ways (2020).

Finally, procedural rules may need to be revised to address how to enter them into court records (i.e., the symbol itself versus a text depiction of the symbol). Legal databases should be updated to reflect the actual symbol itself rather than merely a description of it due to the aforementioned ambiguity. Finally, the fact the majority of these symbols appeared in criminal cases gives one pause. Perhaps more people should be mindful of how their use of fun symbols to communicate ideas could come back to haunt them in the court of law.

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