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<https://www.law.com/thelegalintelligencer/2023/05/22/lawsuit-filed-by-ex-nfl-coach-proof-that-email-is-forever/> NOT FOR REPRINT
COMMENTARY **Lawsuit Filed by Ex-NFL Coach Proof That 'Email Is Forever'** When we do "respect in the workplace" training for employees, one of the lines that typically gets the best response is: "Email is forever." It just is. And the lawsuit filed by former Oakland (and now Las Vegas) Raiders coach Jon Gruden against the National Football League (NFL) demonstrates this.
 May 22, 2023 at 11:00 AM By Jeffrey Campolongo and Scott M. Badami | May 22, 2023 at 11:00 AM

When we do "respect in the workplace" training for employees, one of the lines that typically gets the best response is: "Email is forever." It just is. And the lawsuit filed by former Oakland (and now Las Vegas) Raiders coach Jon Gruden against the National Football League (NFL) demonstrates precisely why before anyone hits "send" on an email (or text), we typically advise you to ask two questions before pressing the button:

- What would you think if that email/text was published in The Washington Post?
- What would you think if your mother read it?

Why is this important? Here is the backstory.

Gruden resigned as head football coach of the Raiders in October 2021. Gruden stepped down after emails he wrote from 2011-2018 when he worked as an ESPN broadcaster (emails in which Gruden used racist, homophobic and misogynistic language) came to light during the NFL's investigation into workplace harassment issues related to the Washington Commanders and Washington's owner, Daniel Snyder. Reports are that the NFL collected more than 650,000 emails during its inquiry into the Commanders.

The unfiltered emails also denigrated any number of individuals associated with the NFL, including Commissioner Roger Goodell. An initial batch of emails were provided by someone to the Wall Street Journal. After nothing happened to Gruden, a few days later, additional emails were leaked to the New York Times. Gruden resigned shortly after the Times published the offensive material.

A month after Gruden stepped down, he filed a lawsuit in Nevada state court asserting that the NFL and Goodell wanted him out of the league. In his complaint, Gruden asserts that the NFL itself was the cause of the leaked emails (again, authored by Gruden between his stops as head coach of the Buccaneers and Raiders) which, according to Gruden, was a "Soviet-style character assassination" carried out to force him from the NFL. Gruden claims the NFL acquired the emails during the league's investigation into alleged harassment of Washington employees, but that they were held until

taking heavy criticism for only fining the Commanders \$10 million as a sanction for years of alleged workplace misconduct caused by senior Washington team officials.

How did the NFL respond to Gruden's complaint? Similar to the complaint filed by former Miami Dolphins head coach Brian Flores ([which we reported on last month](#)), the NFL moved to send the case to private arbitration, pursuant to the terms of Gruden's contract with the Raiders. The NFL's position is that releasing the emails would only harm the league and it was certainly not in the league's interest to leak them.

Additionally, the NFL noted if the league wanted to fire Gruden (which they did not), the NFL could have simply terminated his employment contract and that the claims are a distraction as it was Gruden who sent offensive emails for years to multiple league personnel and apparently wrongfully expected his offensive musings to stay private.

In October 2022, a Clark County Nevada state court judge agreed with Gruden and denied the NFL's motion to compel arbitration. In so ruling, the court noted that Gruden's employment contract was terminated prior to the complaint being filed; the NFL's arbitration provisions do not cover former employees; the complaint does not relate to allegations of detrimental conduct; and (d) arbitration would be "unconscionable" to apply here. The NFL appealed that ruling, and in January 2023, the Nevada Supreme Court issued a ruling pausing Gruden's case, pending appeal of the arbitration motion. The parties have since filed materials with the Nevada Supreme Court pressing their respective positions.

As with the Flores case, the NFL continues to (understandably from their point of view) want all disputes with current and former employees resolved pursuant to private arbitration. Lawyers for both Gruden and Flores (understandably from their point of view) want their disputes litigated in a public forum as they believe embarrassing facts will come to light, which will impact even a multibillion-dollar entity like the NFL. Interestingly, Gruden settled with the Raiders prior to his filing the complaint (as his lawyers understood the league's arbitration effort would have been much stronger had Gruden's employer been a defendant).

While we don't know how this case is going to get resolved, we do know that it was Gruden's own emails (which he believed would stay private) that caused him to lose his coaching job with the Raiders in a most public and embarrassing manner. There is no way he would have hit "send" on inappropriate and offensive emails had he thought for a minute the materials someday would be published in the newspaper or read by his mom.

The Gruden case is obviously an extreme example, but it remains a cautionary tale for everyone before firing off an email, text or tweet. Emails are forever. They are not private. And deleting them from your sent items or even from your computer will not matter as IT professionals can always find them once they are sent. Jon Gruden knows it. And now so do you.

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