



# ON THE RECORD

BY BEN BRAFMAN, J.D., LL.M.



## Emails & Texts—Very Good & Very Bad

*Published in Ami Magazine*

I believe it was the Rambam who said, “Before you speak, think, but before you write something, think twice.” That was many years before emails and texts became not only fashionable but virtually addictive. This sage advice applies today, perhaps now more than ever, when applied to electronic communications.

I have been asked to discuss a topic that may and, in my opinion, should be of genuine interest and concern to all people, young and old.

We often discuss and/or hear about the dangers of texting while driving. We are all nevertheless glued to our phones and or computers, and, as a result, communicating electronically has become almost second nature to many of us, not just while driving. In fact, there are many people who I communicate with regularly with whom I may not have actually spoken in months. “How is that possible?” you may ask—or perhaps by not even asking, you acknowledge that you fully understand that fact.

Indeed, we now prefer texting to actually talking by phone, because among other reasons, it saves time, and we also manage to avoid the courteous parts of a conversation that texting can shortcut. For example, when we call to ask a specific question on a specific topic, we must first respond or listen to at least five minutes of extraneous conversation before we even get to the reason for the call. With text or email, we can be more direct without sounding obnoxious, impatient or discourteous.



I fully understand the convenience of electronic communication, but there are dangerous components as well. Furthermore, despite being warned about the obvious dangers of texting while driving, I strongly believe that the vast majority of people reading this column would honestly acknowledge they too regularly text while driving.

### Emails As Evidence

As a criminal defense lawyer, I have found that in virtually every criminal prosecution, texts and emails from or to the defendant are often the most incriminating evidence offered by the prosecution. Furthermore, when tape recordings were used by the government as evidence, the “tenor” of a conversation might be defended or successfully undermined by arguing, for example, that the speaker was merely being sarcastic. With an email or text, it is much more difficult to undermine the

plain language that lacks tenor or tone. If the written incriminating words appearing in a text or email seem damning, they often are.

Also, we regularly hit the “send” button almost without thinking, whereas in a handwritten letter or note, we often review our words before sending or mailing. When an email or text is produced years later, one can be stunned by how they are then interpreted and used against him. In the context of a criminal fraud case, for example, when these texts and or emails are read or used with a jaundiced eye, they can be devastating.

### Students and Texting

I have spoken about this issue before. Usually to high school students who text all day without any real thought or concern about how inappropriate the words may appear in several years or what might happen if the text is sent to an unintended

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recipient. Someone who simply receives, or forwards, a text or email, or a photo they were not intended to see, has the power and the ability to ruin someone's life. Indeed, I have witnessed reputations and careers irreparably destroyed where the "reply all" button was pushed inadvertently when the response was intended as a private communication to only one person.

### Texts and Emails Are Forever

We need to understand that a text or an email can *never* be taken back once sent, nor can they be erased after the fact. There are technical forensic experts today who can restore an email or text long after the phone or computer is smashed or even thrown into the ocean. We also need to keep in mind that an email can be forwarded to thousands of people to whom it was never intended. I note that even marriages and especially *shidduchim* have been destroyed when, for example, a personal photo is distributed to hundreds of people.

So, I stress to all, young and old. Be careful. Be very careful before you hit the "send" button or the "reply all" button. Careers are destroyed, marriages ended, and students smeared for life. Indeed, the literature today provides that even many suicides are induced by internet bullying that begins with a mild email, which then builds and builds until the crescendo is not capable of being controlled.

Stay off the computer and phone. Think carefully about how you spend your time.

These technical inventions are good, but they can also be bad. Perhaps the danger lurking in the shadows of these fabulous technological advancements can be a great topic for a family discussion.

As the Rambam reminded us, think twice before you write something and send it to others, and in his time, we were only dealing with handwritten missives that could not be carelessly forwarded to so many. Technology is truly great until it is not. Technology is safe until it leads to a serious motor vehicle accident. Emails and texts are used to send and receive private messages until the intended message is carelessly or recklessly spread to so many to whom the relationship was never close.

Simple common sense can resolve this problem. Think twice before sending and, at the very least, read the text before sending. ●

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