



# The Times

## The e-mail trail

**Electronic messages can come back to bite the hand that typed them**

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**Newhouse News Service**

On April 22, 2007, Bear Stearns hedge-fund manager Matthew Tannin hit the send button of his personal e-mail account to inform one of his superiors at the troubled investment firm he feared "the entire subprime market is toast."

More than a year later, it's Tannin himself who may be getting burned.

In the legal world, the "e" in e-mail stands for evidence, as prosecutors mine the digital realm for information that can become the foundation for criminal charges.

But despite numerous high-profile cases that have centered on e-mail evidence in recent years, the message e-mail is hardly a secure form of communication just doesn't seem to have sunk in.

Tannin and the recipient of the "toast" e-mail, Ralph Cioffi of Tenafly, were arrested yesterday on federal fraud and conspiracy charges in connection with a Bear Stearns hedge fund that invested in subprime mortgages and ended up costing investors \$1.8 billion in losses.

At the heart of the government's case are a series of e-mails Tannin and Cioffi exchanged in which they expressed concerns about the investments even as they were promoting them to investors.

Ned Searby, a former federal prosecutor who defends clients in white-collar criminal cases, said e-mail is such a ubiquitous and convenient form of communication that people forget what they type one day can be their undoing the next.

"People tend to communicate very quickly with it, and they don't reflect on what they're saying. They speak more colorfully and they say things they would never commit to paper or even say face-to-face," he said.

"They forget that what they write is probably going to stay around forever, trapped somewhere on someone's computer hard drive or on a back-up system," Searby said.

Wall Street is littered with disgraced insiders who committed e-mail hari-kari, often, like Tannin and Cioffi, revealing their doubts about investments they were touting to their clients. The list includes Henry Blodget, formerly of Merrill Lynch, Jack Grubman of Citigroup and Frank Quattrone of Credit Suisse First Boston.

Ned Barnett of the Nevada-based Data Empowerment Group, which provides training and technology to corporations, said everyone, especially businesspeople, need to remember e-mails are subject to federal rules regarding their retention, just like paper documents.

"When a company employee creates a written document, like a contract or a memo, they understand it exists and can be part of discovery in a legal proceeding," he said. "E-mail, on the other hand, is too often seen as conversational, as informal, like a discussion at the water cooler or a meeting behind closed doors."

Barnett added company policies have to make it clear certain kinds of information cannot be discussed in e-mails, even on personal e-mail accounts accessed from computers away from the work site.

"You must have a closed system and require people not to step outside that system and use a Blackberry or web-based e-mail system from their personal computers," he said.

Dave Dampier, who trains investigators in the art of recovering e-mails and other data as director of the National Forensic Training Center at Mississippi State University, was at a loss to explain why people treat e-mail so casually when law enforcement has been using digital evidence to send people to jail for years.

"Every agency, federal, state and local, has somebody who can recover e-mails, even when they're deleted. But people still believe that when they press that send button, then delete it from their computer, it's gone," he said. "It's never gone."

"Whatever you say in e-mail is potentially going to become public. If you want to protect it, don't say it in an e-mail."

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