

# CyberBytes

## Subject: The Boomerang Factor

**Chicago 3/27/04:** On Tuesday morning the Law Bulletin Seminars group kicked off their 2004 Electronic Discovery Conference at the University Club in Chicago. There were various attorney speakers and some vendors who delivered the usual insights into the numerous aspects and importance of conducting more thorough electronic discovery in civil litigation.

But when Judge Sidney Schenkier of the U.S. District Court for Northern Illinois spoke, valuable insight into the topic of digital evidence discovery was shared with the audience. Judge Schenkier shared that over the last five years on the bench he could count on one hand the actual number of civil cases in which digital evidence discovery played a "meaningful role" in over 1,500 cases he has presided over. The judge offered two explanations as to why he believes digital evidence discovery is not more prevalent in civil litigation cases today:

1. Lawyers simply do not possess enough knowledge about electronic evidence discovery and how to implement it into their case strategies.
2. Lawyers are fearful to launch an e-discovery request because they anticipate a boomerang request to be launched right back at their own client.

For those of us at CyberControls who work day in and day out with attorneys in pursuit of digital evidence in behalf of their cases, the judge's comments are all too familiar. CyberControls has tackled these two primary obstacles facing litigators head on over the years with much success.

First, our staff of digital evidence consultants provide free presentations to law firms on all matters concerning electronic and computer forensic evidence discovery. This includes insight and tips on orchestrating an all-out e-discovery attack upon an opponent as well as recommendations for defense counsel to effectively defend against such e-discovery attacks. Beyond these presentations, our staff provides consultancy for specific cases as a support service.

As for the boomerang effect that many attorneys anticipate, CyberControls has been advocating for years that plaintiff attorneys need to insist that their clients first need to prepare for a retaliatory attack by getting their own house in order. Again, CyberControls can play a role in this preparatory stage to avoid chaos later on. This quid pro quo understanding between opposing counsel to not aggressively pursue e-documents, e-mail, and other forms of digital evidence that may include deleted files will only diminish if lawyers, who recognize this paradox, will have the motivation to break out of this way of thinking.

That motivation should stem from a lawyer's obligation to perform in-depth discovery in behalf of the client. Anything less than that is inadequate and yields diminished results.

If your client has to win the case and you are considering whether or not there may be deleted data on someone's computer that would be useful to you, you have nothing to lose in exploring how digital forensics might play a role.

Don't wait any longer in exploring the possibilities as to how computer forensic discovery can support your most difficult cases. Call and ask to speak with one of our forensic consultants for an assessment as to how computer forensics may be a fit for a particular legal matter at **800-862-7671**, or see us on the web at [www.cybercontrols.net](http://www.cybercontrols.net).