

The Federal Lawyer In Cyberia

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Computer Nightmares and How to Avoid Them

I remember when, many moons ago, I was an administrative law judge for the state of California. Our chief judge often assigned me to conduct settlement conferences between and among parties who were almost literally at each other's throats. If I, or any other administrative law judge, failed to settle the matter, we had to write up a brief confidential report for the chief judge, apprising him of the length of time we estimated it would take to resolve the matter through the hearing process and setting forth the positions taken by the parties.

In one unforgettable memo to the chief judge, I indicated that I thought one side was not very serious in its position and that it was posturing in order to leverage an outcome in another matter. And, in my view, that was all true.



Unfortunately, my secretary sent the memo electronically to the *parties* rather than to the chief administrative law judge. As soon as my assistant pressed the “Enter” key, he realized what he had done, but there was no way of retrieving the e-mail. I had him immediately call both sides, tell them that a confidential memo had been mistakenly sent to them,

and ask them to delete it without reading it. Both sides swore that they would do so, but I have had my doubts ever since the incident. Given my position, I suppose it was not malpractice, but *it certainly was embarrassing*. And now that most of us acting as advocates send our own e-mails (and we send many

more than we sent in the early days of the Internet), often with documents attached, the potential for legal malpractice by making a similar mistake—sending a confidential e-mail to the wrong recipient—has grown exponentially.

Believe me, it is always prudent to double-check both the content and the recipient list of any outgoing e-mail message, particularly if it contains information that is sensitive or confidential. Another alternative is to configure your e-mail program not to send messages instantly. Instead, configure it to place your messages in a queue, allowing you (or a paralegal or another colleague) to review all electronic correspondence before it is actually sent.

To keep e-mail from falling into the wrong hands, as mine did, it is important to make sure that the reply button on your e-mail software automatically sends the message only to the sender and *not* to every recipient of the previous message. Also, it would be wise

to consider using encryption software; if encrypted, the return message will not make sense if it gets into the wrong hands.

To be safe, you might want to take a look at WinZip E-Mail Companion™, which works seamlessly within Microsoft Outlook, Outlook Express, or Windows Mail for Vista. Not only is the program a good solution for reducing the complexity and time that it takes to send and receive large attachments via e-mail—the process involves simply writing your e-mail message, attaching your files, clicking the “Send” button, and letting WinZip E-Mail Companion do the file compression you may need to get your e-mail system and your client's to swallow the whole thing—but, as a bonus, WinZip E-Mail Companion also allows you to encrypt attachments that contain confidential information. (If you have ever suffered the frustration of having an e-mail returned as undeliverable simply because the attachment was too large, you will appreciate the value of smaller, compacted e-mail attachments.) If you use WinZip E-Mail Companion's password-based AES encryption, it will ensure that only people that have your chosen password can view the information included in your attachments. For more information, visit WinZip online at www.winzip.com.

With the advent of more powerful computers and widespread use of the Internet, attorneys can now make a mistake on a level of speed and magnitude that far exceeds that of their previous nightmares. Let it not be you who “malpractices” at warp speed!

Giving It Away

Most computer users never give deleted files a second thought. I have an old Dell™ laptop computer that is still lying around in a closet. The computer was a beauty when it was new, and I bought two relatively expensive docking stations that allowed me to take that computer back and forth to the office with minimal set-up time and maximum efficiency. However, the last operating system I ever installed on that computer was Windows 2000™, and—if the truth be known—the computer is probably better suited for a doorstep now than a lean and mean typing machine.

Many computer owners believe that pressing the “Delete” button means that a file has completely disappeared. Deleted files, however, remain on hard drives. This is good news when a deleted file needs to be recovered, but it can be very bad news indeed when the wrong party finds what was supposed to have been erased. In both Windows and Macintosh



operating systems, the default action when the “Delete” key is depressed is to place the deleted file in a “trash can” on the desktop. The file is kept there until the user “empties” the trash can or until the trash can reaches full capacity and older files begin to be purged. A file in the trash can definitely has not been destroyed.

Even emptying the trash can does not completely destroy the file. When the trash is emptied, usually only the first letter of the file’s directory entry is deleted, which makes the space occupied by the deleted file available for use by other programs. However, the data from the deleted file is not actually erased from the disk. Until the file is overwritten, the old data remains. Accordingly, a great deal of the data can often be recovered by using an “unerase” utility that simply replaces the deleted first letter of the entry.

If your desktop computer, portable hard drive, or laptop computer gets into the wrong hands, files that you thought were long gone can be easily recovered by a person with a modicum of experience. Folks like me who want to donate or recycle their older computers should remember that data seemingly erased from hard drives is often recoverable.

Several methods can be used to delete files for good. The easiest way is to reformat the hard drive. Users must fully format the hard drive, however, which overwrites each sector of the disk and hard drive. Several utility packages can also wipe out a disk of sensitive file data.

Some rules for avoiding computer malpractice, such as simply not letting your laptop computer out of your sight (especially in airport security situations) reflect knowledge that is older than, well, electronics. Other rules, such as those regarding erasure of files, require only an elementary understanding of how computer technology works.

As a wise sage once said, “nightmares may come true for those who naively believe that bad computers do not happen to good people.”

Conclusion

Be careful out there in the wonderland of Cyberia! And, see you again in the next issue. **TFL**

Michael J. Tonsing practices law in San Francisco. He is a member of the FBA editorial board and has served on the Executive Committee of Law Practice Management and Technology Section of the State Bar of California. He also mentors less-experienced litigators by serving as a “second chair” to their trials (www.Your-Second-Chair.com). He can be reached at mtonsing@lawyer.com.

The Foundation of the Federal Bar Association Names Recipient for 2009 Public Service Scholarship

The Foundation of the Federal Bar Association is pleased to announce that Elizabeth (Libby) Hennemuth of Burke, Va., is this year’s recipient of the Foundation’s Public Service Scholarship. The Foundation received 18 applications for this year’s scholarship.

Each year, one graduating high school senior planning to attend a four-year college or university wins the scholarship. At least one of the parents (or guardians) of the student must be a current federal government attorney or federal judge and a member of the Federal Bar Association. Applicants are evaluated on academic record, leadership recognition, school and community activities and service, and their compelling essay response.

The \$5,000 scholarship is funded by the Earl W. Kintner Memorial Fund. Earl W. Kintner was a distinguished member of the Federal Bar Association and two-time national president. His professional and civic leadership and dedication serve as a model to any aspiring academic.