Be Careful What You Ask For, Because Someone Just Might Produce It

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There were three big "search term" cases in 2008 by Magistrate Judges John Facciola and Paul Grimm (both of whom also wear bow ties).[1] In *United States v. O'Keefe,* Judge Facciola wrote, "…for lawyers and judges to dare opine that a certain search term or terms would be more likely to produce information than the terms that were used is truly to go where angels fear to tread."

The following is not one of the "Big Three," but illustrates the point lawyers need to be very careful what search terms they use and demand in discovery.

In *Whitlow v. Martin,* 2008 U.S. Dist. LEXIS 46111 (C.D. Ill. June 12, 2008), the Plaintiff supplied search terms to the Defendant in a request for production. The Defendant in turned produced all the information that was found by the Plaintiff's search terms.

The Plaintiff brought a motion to compel and claimed the production incomplete, because, "[t]he only search was one using the terms Plaintiffs supplied."

The Court denied the motion to compel, finding that the Plaintiffs failed to explain how a search with search terms provided by Plaintiffs' counsel was insufficient.

Lawyers truly need to be careful what they request with search terms. This area is truly "where angels fear to tread" and attorneys will serve themselves well by seeking out experts to assist with determining search terms for collection, processing, meet & confers and requests for production.

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[1] The "Big Three" include *United States v. O'Keefe*, No. 06-CR-249, 2008 WL 44972 (D.D.C. Feb. 18, 2008; *Equity Analytics, LLC v Lundin*, 248 F.R.D. 331 (D.D.C. 2008 **)**; *Victor Stanley, Inc. v Creative Pipe,* 2008 U.S. Dist. LEXIS 42025. There were many other search term cases that also warrant review.