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CyberLaw
By Russell Leibson

This past term, the U.S. Supreme Court decided one of the first cases raising questions about the scope of free speech rights on the Internet. It is only fitting, therefore, that the theme of this issue of *California Litigation* is Cyberlaw.

John J. Steele's article looks at how to mine the wealth of evidence available on the Internet, including e-mail, web pages and government and private data banks. He also offers valuable tips on authenticating such evidence and overcoming hearsay objections to its admissibility.

Eugene S. Wilson's article surveys the plethora of new tools available to litigators on the Internet: E-mail, remote access, "virtual meetings," and a host of on-line legal and non-legal materials. His comprehensive overview is a useful guide to navigating the overwhelming body of information on the Internet.

Richard E.V. Harris tackles the thorny issue of electronic communications and the law of privilege. He points out that merely because a communication is electronic, and therefore susceptible of being intercepted, does not vitiate its privileged character.

Morgan Chu and Perry Goldberg also wade into the "uncharted legal seas" regarding the complex privilege issues raised by e-mail and other forms of electronic evidence, arguing persuasively in favor of preserving the attorney-client privilege for such communications. They point out that no published California state court decision has discussed, let alone decided, discovery or evidentiary issues about e-mail. In their view, such communications should be privileged, even if actually intercepted by a third party.

Carla B. Oakley examines the issue of personal jurisdiction and the Internet, pointing out that the unique nature of the Internet often strains traditional jurisdiction analysis. She cautions that Internet users need to be aware that the courts have taken an expansive view of minimum contacts and should factor the hidden but significant cost of being haled into an inconvenient or inhospitable forum into the cost of doing business on the Internet.

Thomas J. McDermott, Jr.'s interview with a "Cyberlord" is a sardonic look at the trial lawyer of the future. Although the "virtual courtroom" is still years away, his article is both a wake-up call and a cautionary tale about the "information" Poltergeist and what it can do to, or for, you.

Kenneth MacVey's article revisits the role hearsay plays in expert testimony and offers valuable practical tips on dealing with hearsay problems at trial. As technology inexorably advances over the coming years, many civil cases will inevitably become more complex, leading to increasing reliance on experts.

Franklin J. Brummett addresses the increasing problem of "elder abuse" and provides his insights on protecting clients vulnerable to such abuse.

The Honorable George P. Schiavelli's Judicial Opinion offers a trial judge's perspective on questions surrounding admissibility of computer simulation evidence in the courtroom. He cautions that trial judges will subject such evidence to rigorous scrutiny to ensure that it adheres closely to the facts the evidence will support, that its prejudicial impact does not outweigh its probative value and that resolving foundational issues will not consume undue time at trial.

Finally, my Editor's Postscript discusses the California Supreme Court's recent landmark ruling on fairness in arbitration.

- Looking Forward -

There is no doubt that the highly competitive marketplace for legal services and the delivery of legal services are undergoing dramatic change. Our next issue looks at "The Business of Lawyering," including articles on creating winning relationships with clients, changes in law firm culture, marketing techniques, outsourcing of legal services, alternative fee arrangements, and similar important topics.

Russell Leibson, Editor-in-Chief of California Litigation, practices at his own firm in San Francisco.

California Litigation is pleased to review original articles submitted for publication.
(Articles should be 8-10 double-spaced pages, or about 2,000 words.)

Please submit proposed articles to:

Russell Leibson
Editor-in-Chief, California Litigation
Law Offices of Russell Leibson
One Market Plaza
Steuart Street Tower, Suite 1600
San Francisco, CA 94105-1016

The journal is sent free to members of the Litigation Section.

The Litigation Section
State Bar of California, 180 Howard Street, San Francisco, CA 94105-1639