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Law and Technology Symposium - Coping with Computer-Generated Evidence in Litigation

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This group of articles constitutes the first Law and Technology Symposium published by this review. We hope to make the Symposium a yearly feature. The purpose of this Symposium is not to review and comment upon cases in which technology is a villain which is being subdued through litigation for wreaking havoc on our environment and our lives. The purpose is to provide attorneys with information on areas of technology in the context in which they might be called upon to deal with them or to use them. Our goal is to increase the sophistication of the legal profession, so that it can deal with technology in its many forms on a rational basis. We have tried to execute this general concept in this Symposium on computer-generated evidence.

Computer-generated evidence is any information whose most immediate source prior to its introduction in the courtroom is a computer. It may be introduced in court as printed matter or as oral testimony by a witness who previously read it from a computer printout or an electronic display device attached to a computer. The only unique characteristic of computer-generated evidence is that it once existed as electrical impulses within a computer.

Many courts have admitted into evidence computer printouts or oral testimony of the information contained in them. The legal basis for admission has been a business records statute or the common law shop book exception to the hearsay rule. When admissibility has been denied, the basis has usually been the lack of a sufficient foundation as to the method of preparation of the information that would indicate its general trustworthiness and allow it to be admitted under one of the aforementioned rules. The acceptance of computer-generated evidence seems to be an acquiescence to the reality of business practice that such records are relied upon in the day to day operation of a majority of businesses. A ruling in favor of the admissibility of computer-generated evidence should be expected in most cases because the original records are likely to be unavailable or so
voluminous that the court will take advantage of an existing summarization or organization of them which is stored on the computer.

This acceptance of the admissibility of computer-generated evidence should not, however, spill over into an acceptance of the validity of the information generated by a particular computer system. When we speak of a computer system, we are referring to a conglomeration of people, mechanical and electrical devices, and logic sequences known as computer programs. These systems can be highly complex, and one totally free of potential error producing elements has never been devised. By answering the question of admissibility affirmatively the courts have chosen to place upon the legal profession the much more complicated task of arguing the credibility of computer-generated evidence.

Several articles have dealt with the admissibility of computer-generated evidence. These articles discuss computer-generated evidence in purely legalistic terms of hearsay rule exceptions which are familiar to all attorneys. A discussion of that type is sufficient when the problem confronting the attorney is the formalities of laying an adequate foundation. But when the attorney is required to assume the role of an advocate and attack or defend the credibility of a computer printout, he needs to understand the system that generated it. The articles in this Symposium attempt to examine these systems in terms that anticipate the types of questions concerning credibility that will be raised in litigation. They also examine the possible uses of the computer to create evidence specifically for litigation in the form of summaries of data or outputs of special computer programs which simulate environments or make statistical analyses.

This Symposium is not meant to be a handbook on arguing the credibility of computer-generated evidence. Rather it explores some of the issues and suggests some guidelines to be followed by attorneys and judges alike. Its purpose is to establish that credibility is a real object of concern and give the advocate some background that will enable him to explore the area in greater depth when confronted with a specific case. At the present time very little seems to have been said concerning credibility. Hopefully, this effort will be the cornerstone from which others will progress, and we will have started them on a path of rational investigation and analysis of the credibility of computer-generated evidence.

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