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University of Richmond School of Law



Annual Survey of Electronic Discovery
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March 19, 2007

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Dear Readers,

I hope you enjoy the third issue of the *Richmond Journal of Law and Technology* for the 2006-2007 academic year, our *Annual Survey of Electronic Discovery*. This is our first annual survey since the new amendments to the Federal Rules of Civil Procedure, which at the time of this publication have been in effect for several months, that affect electronic discovery in several significant ways. The entire staff of the *Journal* has worked diligently to bring these articles to our readers. Whether you are new to the *Journal* and electronic discovery, or whether you are a long-time reader, you will find the observations that follow enlightening.

This issue starts with Thomas Y. Allman's article, *Managing Preservation Obligations After the 2006 Federal E-Discovery Amendments: The Litigation Hold Process in the ESI Era*. Mr. Allman's article is the second he has written for the *Journal*, and we are delighted to receive this follow-up to last year's *Annual Survey* commentary.

Jason R. Baron, Director of Litigation at the National Archives and Records Administration, and George L. Paul, a partner in Lewis and Roca, LLP, contributed an article entitled *Information Inflation: Can the Legal System Adapt?* The article discusses whether it is possible for the legal system as a whole, and the discovery process in particular, to adapt its paradigm to the flood of data in the digital age.

Mia Mazza is a partner, Emmalena K. Quesada is an associate, and Ashley L. Sternberg is a former associate, at the San Francisco office of Morrison

& Foerster, LLP. They have written an article entitled *In Pursuit of FRCP 1: Creative Approaches to Cutting and Shifting the Costs of E-Discovery*. The article posits that approaches to electronic discovery should be consistent with the command and spirit of Federal Rule of Civil Procedure 1. The article also articulates several practical approaches to cutting and shifting the costs of the discovery of electronically stored data.

Theodore C. Hirt is an Assistant Branch Director in the Federal Programs Branch of the Civil Division of the United States Department of Justice. He has written an article entitled *The “Two Tier” Discovery Provision of Rule 26(b)(2)(B): A Reasonable Measure for Controlling Electronic Discovery*, which describes how the Civil Rules Advisory Committee expects its “two tier” feature to operate, the Rule’s practical implications, and how practitioners can use the new Rule effectively.

Grant J. Esposito and Thomas M. Mueller have contributed *Backup Tapes: You Can’t Live With Them and You Can’t Live Without Them*. Mr. Esposito and Mr. Mueller are partners in the New York office of Morrison & Foerster, LLP. Their article describes backup tapes’ use in discovery, the law governing a litigant’s obligation to preserve backup tape data, and how to allocate the costs.

Finally, *Richmond Journal of Law and Technology* second-year staff member, Benjamin D. Silbert, has contributed *The 2006 Amendments to the Rules of Civil Procedure: Accessible and Inaccessible Electronic Information Storage Devices: Why Parties Should Store Electronic Information in Accessible Formats*. His article discusses how courts treated accessible and inaccessible electronic information before the Amendments, and puts forth some issues the courts will deal with in the future.

On behalf of the *Journal’s* editorial board and staff, I would like to thank you for visiting the Spring 2007 *Annual Survey of Electronic Discovery*. I would also like to thank the members of the Richmond law community for

their continued support of the *Richmond Journal of Law and Technology*.
Enjoy!

Sincerely,

A handwritten signature in cursive script that reads "Charlotte A. Dauphin".

Charlotte A. Dauphin
Annual Survey Editor
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T.C. Williams School of Law
University of Richmond

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