

lier statements that no longer reflect their understanding of the facts, but he acknowledges the difficulties faced by clients in justifying current recollections.

Small's final rule explains to clients the proper use of counsel both before and during testimony. He reiterates that thorough preparation as to the questions a client is likely to be asked is most important, but also covers objections that may arise, documents the client may encounter, and conferences with counsel during testimony. He recommends conferring when needed to avoid confusion, surprise revelations, or costly misunderstandings, even though opposing counsel may infer some impropriety. Small ends his rules by reminding clients that virtually nothing is "off the record" unless their attorney says so, and even then one cannot truly relax while under the scrutiny of opposing counsel. The rules, which are on the accompanying disk, are summarized in a list of short phrases intended to warn clients against straying into danger zones.

Preparing Witnesses concludes with suggestions for adapting the rules to the various settings in which clients may testify. It covers the differences between representing a client who is a party versus one who is a non-party, at an unrecorded interview and when giving recorded testimony, and at deposition or before a grand jury. Finally, it points out the differences clients will encounter between testifying at trial on direct and on cross-examination.

This small book is comprehensive enough for most trial lawyers to consider it a worthy addition to their libraries. More experienced attorneys may think its treatment of the topic too elementary, but most will find it useful, especially in this era of complex, document-intensive litigation when demands on one's time increase the risk of inadequate preparation. The task of preparing a client to testify is not an easy one, but if done well it can make the difference between a successful case and a costly failure. This concise primer can help make sure that it is done well. **TFL**

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Code and Other Laws of Cyberspace

By Lawrence Lessig

Basic Books, New York, NY, 1999. 297 pages, \$30.00.

REVIEWED BY ARI KAPLAN

A new year is upon us and the digital landscape is once again shifting. If 2000 was the year we asked how the sky in Cyberspace fell (at least in terms of market capitalization), then 2001 is certainly the year in which we will try to determine why. As lawyers in the year 2001, it is our role, indeed our obligation, to maintain a full awareness of the issues affecting our practices and society as a whole. The growth of the Internet is just such an issue. The Internet significantly affects the ways we do business, and it is breaking down barriers across the globe. The Internet has also had a dramatic social impact, affecting people's lives through the advanced communication and increased information it makes available. And, of course, it is revolutionizing the law.

The prevailing wisdom has been that Cyberspace is a world unto itself. It is a universe that cannot be regulated by the government or even the people who populate it. It is simultaneously a "no man's land" and yet every man's land. An example of the confusion in reconciling the status of Cyberspace is Congress's uncertainty over taxation of Internet transactions and its creation of a moratorium on Internet taxation for many years to come, arguably to provide itself with more time to establish a strategy. Although the federal government has offered guidance and recommendations through the Federal Trade Commission, it has not set forth hard and fast rules when it comes to the Internet. The likely reason is that it probably

just does not yet know what to do.

Lawrence Lessig does know. In *Code and Other Laws of Cyberspace*, he highlights that "[l]iberty in Cyberspace will not come from the absence of the state. Liberty there, as anywhere, will come from a state of a certain kind." Lessig argues throughout his book that, eventually, the Internet will require a certain architecture — a structure upon which it will have to be based. He cautions that, if we do not provide such a structure now, one will form on its own without proper influence or design, with little hope for easy modification later. He concludes that society must make difficult choices, and, like Congress on the taxation issue, it may not be ready to make those choices. In guiding us, he states that "there are no special set of dilemmas that Cyberspace will present; there are only the familiar dilemmas of modern governance, but in a new place."

Lessig's book is written for the Net-savvy and for the Net-challenged alike. Its purpose is to generate an awareness of the conflicting issues that the Internet has raised. With regard to government regulation, Lessig remarks that "[c]lost for the government is liberty for us. The higher the cost of a regulation, the less likely it will be pursued as a regulation. Liberty depends on the regulation remaining expensive." The same applies to the cost of obeying that regulation. Lessig notes that if "the state tells the phone company to do something, the phone company is not likely to resist. Resistance would bring punishment; punishment is expensive; phone companies, like all other companies, want to reduce their cost of doing business." Lessig therefore concludes that the government will regulate the phone company by setting the cost of disobeying the state above any possible benefit; however, it will not regulate when doing so is too costly. The ideal architecture of the Internet will develop from a compromise of these competing principles.

Lessig makes predictions throughout the book about the development of various possible Internet architec-

REVIEWS continued on page 60