Northern Illinois University Law Review

Volume 30 | Issue 3 Article 7

7-1-2010

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Northern Illinois University Law Review

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# Law Review

Volume 30 Summer 2010 Number 3

## SYMPOSIUM:
## WHAT IT MEANS TO BE A LAWYER IN THE DIGITAL AGE

### ARTICLES

Can a Computer Read a Doctor's Mind? Whether Using Data Mining as Proof in Healthcare Fraud Cases is Consistent with the Law of Evidence

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*Healthcare fraud is a growing problem in the United States. Data mining is increasingly being used to combat it. After briefly explaining data mining, this article analyzes whether evidence obtained by data mining is admissible in court under the laws of evidence. It then examines the issue under both the Federal Rules of Evidence and the common law. This article focuses on three key questions: (1) Whether the use of prior acts by practitioners is proper under the law of evidence? (2) Is testimony based on data mining proper expert testimony? and (3) Does the methodology of data mining satisfy the* Daubert *or* Frye *standard?*

How the Lack of Prescriptive Technical Granularity in HIPAA Has Compromised Patient Privacy

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*This article argues that HIPAA legislation has a severe flaw within its architecture, which has compromised patient privacy. Although the drafters of the legislation recognized the importance of providing comprehensive federal legislation to improve regulatory uniformity amongst states, they failed to recognize the importance highly specific ("granular") technical requirements play in facilitating improved privacy for patients. HIPAA rules surrounding technology implementation give too much latitude to covered entities, and as a result, provide inadequate protection to protected health information. HIPAA rules should be amended to mandate baseline technical ("granular") standards to ensure uniform efficacy in the safeguarding of protected health information.*

## ESSAYS

At Issue Waiver of the Attorney-Client Privilege in Illinois: An Exception in Need of a Standard

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*This essay analyzes the "at issue" exception to the attorney-client privilege and suggests the adoption of a specified standardized test for finding the exception in Illinois. In general terms, at issue waiver of the attorney-client privilege occurs when a party pleads a claim or defense that places at issue the subject matter of privileged material over which she has control. Throughout the years, United States jurisdictions have employed four approaches for testing the application of the at issue exception, although recently the focus has been on two primary tests (the* Hearn *test and the anticipatory waiver test). Illinois courts have used the at issue exception to find waiver of the attorney-client privilege in a number of cases, but have yet to elucidate a test or set of standards for finding such waiver. This ad hoc approach has led to inconsistent case law and uncertainty in the area of attorney-client privilege. After examining Illinois case law, the article concludes by presenting the argument that Illinois courts should adopt the anticipatory waiver test for finding the at issue exception to the attorney-client privilege.*

A Discussion of the Seventh Circuit's Electronic Discovery Pilot Program and Its Impact on Early Case Assessment

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*In response to the skyrocketing costs of electronic discovery, the Seventh Circuit Court of Appeals Electronic Discovery Committee has enacted a pilot program called the Principles Relating to the Discovery of Electronically Stored Information ("Principles"). The Principles' purpose is to reduce the burden and cost of discovery in litigation brought on primarily by the use of electronic stored information in today's world. The Principles emphasize cooperation and proportionality. As a result, counsel and their clients must not only understand the identity and location of a client's ESI prior to the initial status conference but also meet and confer with opposing counsel prior to the initial status conference to develop a comprehensive ESI plan. This essay outlines the requirements set forth in the Principles and how the Principles affect a client's preparation for engaging in litigation that includes discovery of ESI.*

## NOTES

Vehicle Search Incident to a Lawful Arrest: The New Two-Part Rule from *Arizona v. Gant* Misses the Mark

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*This Note examines the recent Supreme Court decision of* Arizona v. Gant *and how it affects a vehicle search incident to a lawful arrest exception to the Fourth Amendment's warrant requirement. The rationales for a search incident to a lawful arrest were established by* Chimel v. California *to search the reachable area of an arrestee for an officer's safety and to prevent the destruction of evidence. In* New York v. Belton, *the Supreme Court established a bright-line rule that officers may search the passenger compartment of a vehicle as incident to a lawful arrest since the Court found that* Chimel *was difficult to apply in the vehicle context. In* Arizona v. Gant, *the Supreme Court established a two-part rule for a search incident to a lawful arrest that limited* Belton *since* Belton*'s bright-line did not follow* Chimel, *and the rule permitted unreasonable searches.* Gant*'s two-part rule departs from the reasoning of both* Chimel *and* Belton, *and will have a significant impact on the search incident to a lawful arrest exception. This Note concludes that the Court should have taken a different approach instead of its two-part rule. As an alternative approach, this Note recommends a rule that combines* Belton *with the second-part of* Gant*'s rule.*

Getting *Ready* to Settle: The Exclusion of Settled Defendants and *Ready v. United/Goedecke Services, Inc.*'s Impact upon Statutory Interpretation in Illinois

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*In* Ready v. United/Goedecke Services, Inc., *the Illinois Supreme Court held that settled defendants are not to be considered when apportioning liability between parties to a suit. In so holding, the court manipulated several tenets of statutory construction in novel ways. This Note analyzes the court's reasoning, the practical implications of the decision for plaintiffs and defendants, as well as the uncertain future of statutory interpretation in Illinois courts.*