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RICHMOND JOURNAL OF LAW & TECHNOLOGY

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By: William P. Barnette

March 12, 2012

Dear Readers:

The *Richmond Journal of Law and Technology* is proud to present its Annual Survey issue of the 2011-2012 academic year.

Since its inception, the *Journal* has sought to expand academic and legal scholarship in the field of electronic discovery. Electronic information is ubiquitous. With the ever-increasing pace of technological advancement, and with courts and practitioners alike grappling with the parameters of e-discovery law and procedures, this area of law has never been more important. This year, for our Annual Survey and its accompanying symposium, we have been fortunate to work with several individuals who work every day to address these issues.

In our first article, “Cooperation: What Is It and Why Do It?” Magistrate Judge David J. Waxse explores a fundamental paradox of the discovery process: while attorneys seek to win cases through an adversarial process, the governing rules of discovery require a degree of collaboration between opposing counsel and with judges as well. Judge Waxse explores the necessity of cooperation within the Federal Rules, and offers advice on how to smooth the process. As a Federal Magistrate Judge for the District of Kansas, Judge Waxse works with these issues on a regular basis. He is renowned for his national and international presentations on e-discovery.

Kenneth N. Rashbaum, Matthew F. Knouff, and Dominique Murray co-authored our second article, “Admissibility of Non-U.S. Electronic Evidence.” As a thirty-year litigator, trial lawyer, and counselor, Kenneth Rashbaum has developed a reputation as an expert in cross-border proceedings and the particular discovery issues involved in those cases. Dominique Murray is a litigation attorney with detailed experience in transborder e-discovery. Matthew F. Knouff is general counsel and e-discovery counsel for an international e-discovery service provider. Together, they have assembled an in-depth exploration of the compounding issues that arise when the complexities of e-discovery law intersect with the complexities of international cases, and a methodology for tackling such difficulties.

William W. Belt is the leader of an e-discovery practice group, and works with partners Dennis A. Kiker and Daryl E. Shetterly in cases that involve extremely

large amounts of electronic information. Their article, “Technology-Assisted Document Review: Is It Defensible?” offers a hypothetical case in which a party has used a computer program to examine a stockpile of electronic documents to determine which are discoverable. In that construct, they have drafted a response to an anticipated motion to compel manual discovery, through which they justify the use of computer software to aid in the e-discovery process.

Our final article, “Ghost in the Machine: *Zubulake* Revisited and Other Emerging E-Discovery Issues Under the Amended Federal Rules,” was written by William P. Barnette, chief litigation counsel for a major corporation. Mr. Barnette has conducted a case-by-case analysis of major e-discovery litigation leading up to the amendments to the Federal Rules in 2006, and examining how courts have applied the rules—often very differently—in cases since the amendments.

On behalf of the entire 2011-2012 *Journal* staff, I would like to extend our deepest gratitude and most sincere thanks for your continued readership and support. The *Journal* also appreciates the continuing support and assistance of the faculty and staff at the University of Richmond School of Law, most especially the guidance we receive from our faculty advisors, Professors Melanie Holloway, Jim Gibson, and Chris Cotropia.

We are confident you will enjoy our Annual Survey issue. As always, your comments and suggestions are welcome at jolt@richmond.edu.

Best regards,



Joel Hermsdorfer
Annual Survey & Symposium Editor

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