

Women's Rights as Human Rights

On December 10, World Human Rights Day, the Organization of American States' Inter-American Court of Human Rights made public its decision holding Mexico responsible for failing to respond to the disappearances of three young women, part of a wave of unsolved slayings of hundreds of women and girls in the border city of Ciudad Juárez over the past 15 years. The Court found Mexico violated human rights laws by failing to diligently investigate these killings, failing to adequately compensate the victims' families, and failing to punish officials who mishandled the murder investigations. The Court ordered the Mexican government to pay hundreds of thousands of dollars in damages to the families of the three victims. The case, *Campo Algodonero*, is named for the abandoned cotton fields in which the three young women's bodies were thought to have been found. It is a landmark human rights decision, both for the breadth of its legal findings and for the scope of its remedies.



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Since 1993, women and girls have disappeared and been killed at an alarming rate in Juárez. According to the Rapporteurship on the Rights of Women of the Inter-American Commission, from 1993 to 2003 an estimated 268 women and girls were murdered, with only 20 percent of these crimes ending in trials and convictions, while the disappearances of an additional 250 women and girls also remained unsolved. The number of women killed in Ciudad Juárez throughout the 1990s increased at twice the rate for men. The homicide rate for women in Juárez is reportedly more than three times as great as that in Tijuana, a border city of comparable size. The disappearances and murders of women and girls, including those of the three young women in the *Campo Algodonero* cases, have continued unchecked.

Even more troubling than the sheer volume of the killings is the apparent serial nature of many of them: the victims were generally 15 to 25 years old, were either students or employed in local shops or businesses (including the 300 large foreign-owned assembly plants known as maquiladoras that sprang up in town after the signing of NAFTA), were largely newcomers to the town (having migrated from other parts of Mexico for work), and were found days or months after their disappearances, their bodies abandoned in vacant lots and bearing signs of torture, sexual assault, and in some cases mutilation. Police response to their disappearances and murders reportedly ranged from indifferent to negligent.

Claudia Ivette Gonzales, one of the victims in the *Campo Algodonero* cases, was 20 years old and on her way to work when she disappeared on the afternoon of Oct. 10, 2001. One month after she disappeared, police handed her mother a bag of bones which they claimed to be Claudia's remains. Authorities had at first flat-out refused to investigate or prosecute suspects in the disappearance.

Esmeralda Herrera Monreal, 15-years-old, another *Campo Algodonero* victim, disappeared en route from her home to a house where she

worked as a maid. Her mother reported her missing to the police the next day, but there is no record of the police searching for her before her remains were found seven days later. The authorities suggested that the family search for Esmeralda themselves, and dismissed her disappearance by saying that she had probably gone off with her boyfriend. According to her mother, she and Esmeralda had just moved to Juárez the month prior to earn money for Esmeralda's quinceañera party, a coming-of-age celebration that takes place on or near a girl's fifteenth birthday.

Eventually, two suspects were arrested and prosecuted for the murders of Gonzalez and Monreal. Officers told Monreal's family, however, that the arrest of these men "was not based on probable cause." One man died in prison and the other was acquitted and freed.

Laura Monarez, the third victim in the *Campo Algodonero* cases, was a 17-year-old fifth semester high school student when she disappeared. For one month after her family reported her missing, authorities did not search for her. The family's efforts to collaborate with and provide leads to the police also were ignored.

The experiences of these three women's families is not unique in Juárez. As the United Nations Special Rapporteur on Violence Against Women reported when she visited the region in 2006: "the majority of cases remain unsolved and the perpetrators continue to enjoy impunity [...] The failure to convict and curb the murders has been to a large part the result of extremely poor, indifferent and negligent investigations by the authorities of the State of Chihuahua, who have jurisdiction over these cases [...]"

Four years ago, Mexico acknowledged the severity of violence against women in Ciudad Juárez and asserted that, while the process would take time because of the entrenched gender-biased attitudes underlying it, Mexico had nonetheless begun to respond to the situation. But none of these efforts resulted in effective investigation and prosecution of a significant number of these crimes.

Now, the regional human rights court for the Americas has declared that Mexico's indifferent and ineffective response to the violence violates Mexico's international obligations to protect the rights of women and girls. In its decision, the Inter-American Court applied two international human rights documents: the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women ("Convention Belém do Pará"). Mexico and 23 other countries have ratified the American Convention and 32 countries, including Mexico, have ratified the Convention Belém do Pará. The United States has not, although as a member of the Organization of American States, it is obligated to support and promote their protections.

The American Convention on Human Rights generally provides that every human being has a right to personal liberty and security as well as a right to have his or her life and physical, mental, and moral integrity respected. It provides for the right to due process, judicial protection, and a remedy for rights violations. Under the American Convention, moreover, "[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state" and that each person is entitled to equal protection under the law, without discrimination.

Mexico and other member States to the Convention are required to "respect" and "ensure" fundamental human rights "without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition." The Convention also directs States to take "legislative or other measures as may be necessary to give effect to those rights or freedoms." Taken together, these provisions impose



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affirmative obligations upon States to respect and guarantee fundamental human rights.

M.C. Sungaila and David Ettinger, a partner at the Los Angeles law firm Horvitz & Levy, filed a brief pro bono in the Inter-American Court of Human Rights for amici curiae Amnesty International and over 50 other groups and legal experts in the *Campo Algodonero* cases.

'Discovering' Social Media Content

Today, more people are using social networking sites like LinkedIn, Facebook, MySpace and Twitter than ever before. In many households and corporate America, these Web sites and services have become verbs and nouns that are used in everyday discourse. Social networking is now surpassing even e-mail as a form of communication in 2008, according to the Nielsen Co. report.

Increasingly, messages, photos and videos online can become evidence in civil and criminal cases. In 2006, Congress mandated changes to the Federal Rules of Civil Procedure, expanding the acceptance of electronically-stored information as evidence. In light of this, do applicable discovery rules apply to content on social media sites? If so, what are the differences, if any, between e-mail, on the one hand, and messages, photos and videos on social media sites, on the other hand? Finally, how should litigation support professionals, e-discovery specialists and attorneys proceed within this largely uncharted territory?

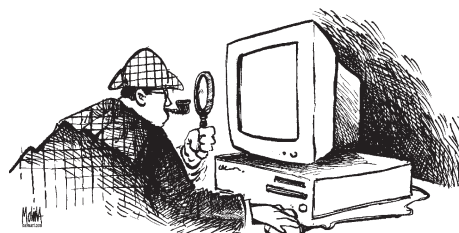
Generally, evidence that is relevant to the claims or defenses in a case and not subject to a recognized privilege (i.e., attorney-client communication) is discoverable. While the scope of discovery may also be

subject to other limitations, such as a right to privacy, privacy is not an absolute bar to discovery, but is instead a factor that is balanced against the importance of the information to the parties' claims and defenses. See *Ragge v. MCA/Universal Studios*, 165 F.R.D. 601, 604 (C.D. Cal. 1995). Within this scope, parties may request electronically-stored information that is within the possession, custody, or control of another party. Federal Rules of Civil Procedure 34(a), "Electronically-stored information" is defined broadly by the Federal Rules of Civil Procedure to include all writings, photographs, and other data stored or maintained in any medium from which information can be obtained, including Internet files.

Thus, the Federal Rules of Civil Procedure do not focus on the form in which information is communicated, used, or stored. Instead, the focus is on the content of the information—whether the information is relevant to the claims and/or defenses of a party. For example, relevant text messages and instant messages are discoverable and must be turned in as evidence. See *Flagg v. City of Detroit*, 252 F.R.D. 352, 353 (E.D. Mich. 2008); *Gooden v. Ryan's Restaurant Group, Inc.*, 2006 WL 2946313 5 (W.D. Ky. 2006). With the broad sweep of these rules and their focus on relevance, information maintained on social media sites by a party or a party's agents would likely be discoverable, so long as the information is within a party's "control" or is accessible to that party or the opposing party.

Unlike e-mail, social media content is not usually stored or saved with the party, but maintained on social media websites and on multiple servers. However, the Federal Rules make all relevant information within a party's control discoverable, so long as the information is accessible without undue burden or expense. A party can log in to its account and retrieve all information stored in that party's profile, settings, and mailbox. Depending on the social media site, a party can also arguably demand that the service provider give the user access to its information, including archived information. See *Mercy Catholic Medical Center v. Thompson*, 380 F.3d 142, 160 (3d Cir. 2004) (documents are deemed to be within the "control" of a party if it "has the legal right to obtain the documents on demand.") Similarly, the opposing party or third parties can use relevant electronic data.

However, unlike traditional electronic data, such as e-mail, social media pages are constantly changing. Information once relevant therefore can change or vanish completely, and Web-pages change by the second, potentially making accessibility burdensome and expensive. Moreover, data on a social media site is not necessarily on a single server. Instead, social media sites, like many interactive Internet Web sites, scatter data across various repositories, URLs, and data centers. Technologies like Twitter further complicate the situation since people communicate in messages that contain 140 characters or less. From



an e-discovery perspective, this makes it very difficult to ascertain exactly what information a party could access, from where, and in what form.

This really means a party must consider whether requests for discovery that require this much effort is objectionable on the grounds that obtaining the information is unduly burden or expensive.

Even so, because retrieval of this information could become necessary, it is important for companies to begin to think about what mechanisms and procedures should be in place when it comes to e-discovery and social media.

The first thing management should do is learn the kinds of social media sites and tools that are being used within the organization and the reasons for their use. Knowing this information will be invaluable in developing a common sense corporate policy around what is and is not appropriate for social media. For instance, corporate policy should be very clear that if employees are using any of the different social networking outlets that they are speaking as individuals and not as representatives of the corporation, that the company has its own formal/official presence on social media sites, which is managed by authorized personnel and that they should refrain from mentioning the company or its products or services on their personal profiles. Requiring that each employee read and sign off on this kind of policy will help ensure that everyone within the organization is aware of it and is expected to comply.

E-mail, text messages and social media content each have different repositories and ways in which information technology personnel would go about retrieving data. Knowing who is familiar with how any retrieve the data, as well as the steps necessary to access, search and organize the information may be critical to efficiently accessing relevant information when it becomes necessary.

Once litigation begins or is anticipated, corporate, and if appropriate outside counsel, should together quantify the merits of the case before beginning any e-discovery. Doing this will help to ascertain whether or not the allegations and facts of a particular case will necessitate delving into social media repositories. If they do, having taken the above steps will help make the process easier.

Any litigation holds should also explicitly include employee use of social media sites for business purposes. This will help ensure that those employees who are authorized to maintain the company's formal/official presence on social media sites also begin to take the necessary steps to preserve relevant data.

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