ELECTRONIC DEVICES AND DATA CROSSING INTERNATIONAL BORDERS

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Biography: Gail L. Gottehrer, JD

• Founder, Law Office of Gail Gottehrer

• Practice focuses on technology-related litigation and counseling, including autonomous vehicle regulation, connected vehicle regulation, data privacy, biometrics, cybersecurity, facial recognition, and the IoT. She is one of the few defense lawyers to have been involved in the trial of a class action to verdict before a jury.

• Teaches Law for Knowledge Innovation at Columbia University, is a member of the Advisory Board for Rutgers University’s Leading Disruptive Innovation Program, and a Fellow at the Center for Legal Innovation at Vermont Law School.

• Appointed Co-Chair of the State of Connecticut’s Task Force to Study Fully Autonomous Vehicles, the NYSBA’s Transportation Committee, Law360’s Transportation Editorial Advisory Board, and NYSBA’s Technology and the Legal Profession Committee. She is the New York Regional Co-Chair for the ABA’s Judicial Intern Opportunity Program, Co-Chair of the Programming Committee of the ABA’s Woman Advocate Committee, Vice-chair of the ABA-TIPS Automobile Litigation Committee, Co-Chair of NAWL’s IP & Technology Affinity Group, and a member of the Sedona Conference Working Group on eDiscovery Cooperation and Training (WG-1).

• Selected as one the Profiles in Diversity Journal’s 2017 Women Worth Watching in STEM and one of the Connecticut Technology Council’s 2016 Women of Innovation.

• Graduate of the University of Pennsylvania Law School, and served as a law clerk to the Honorable Murray C. Goldman, in the Philadelphia County Court of Common Pleas. She is admitted to practice in New York, New Jersey, Connecticut, and Pennsylvania.
Biography: Ronald J. Hedges, JD

• United States Magistrate Judge, District of New Jersey, 1986-2007
• Senior Counsel, Dentons US LLP
• Co-Senior Editor, *The Sedona Conference® Cooperation Proclamation Resources for the Judiciary* (all editions)
• Member, Committee on Technology and the Legal Profession, New York State Bar Association
• Co-Chair, Social Media Committee, Commercial & Federal Litigation Section, New York State Bar Association
What’s the problem?

• Why would attorneys bring “sources” of electronically stored information (“ESI”) across an international border?
• What might these devices contain?
• Who might be interested in content and why?
• What restrictions might there be on requesting ESI from abroad in aid of U.S. Litigation?
• What restrictions might exist on requesting ESI from the U.S. in aid of foreign litigation?
The lessons of Microsoft

• What happened in the Southern District of New York?
• What did the Second Circuit Court of Appeals do?
• What did the Supreme Court do?
• The CLOUD Act
Seizing and Searching ESI in Devices at the Border

• How is the border defined?
• What protections are afforded by the Fourth Amendment at the border?
• What about the attorney-client privilege and work product protection?
Requesting information for use outside the United States

• 28 U.S.C. Section 1782
  
  “(a) The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

  A person may not be compelled to give his testimony or statement or to produce a document or other thing in violation of any legally applicable privilege.

  (b) This chapter [28 USCS §§ 1781 et seq.] does not preclude a person within the United States from voluntarily giving his testimony or statement, or producing a document or other thing, for use in a proceeding in a foreign or international tribunal before any person and in any manner acceptable to him.”
Requesting information for use outside the United States

Requesting information for use in the United States

QUESTIONS?
CLOSING COMMENTS
THANK YOU
Resources


Resources


• “Are You at Risk of Having Electronic Data Seized When Travelling Abroad?” *Dykema Resources* (Dec. 10, 2018), [https://www.dykema.com/resources-alerts-are_you_at_risk_of_having_electronic_data_seized_when_traveling_abroad.html](https://www.dykema.com/resources-alerts-are_you_at_risk_of_having_electronic_data_seized_when_traveling_abroad.html)

• *The Sedona Conference Practical In-House Approaches to Cross-Border Discovery and Data Protection* (June 2016), [https://thesedonaconference.org/publication/Practical_In-House_Approaches_for_Cross-Border_Discovery_and_Data_Protection](https://thesedonaconference.org/publication/Practical_In-House_Approaches_for_Cross-Border_Discovery_and_Data_Protection)
Resources
