**The Road to Discovery -- Documents and Yourself**

*This week we are introduced to two young lawyers whose legal careers we will follow over the course of the semester. Mindy Fuller is a third-year associate at a large corporate law firm. Pedro Respono has just joined the firm. Pedro’s journey begins with his first big case and the various ethical questions that emerge as he makes his way through this exciting and challenging time in his career.*

Pedro Respono is excited and nervous to begin work as an associate at the big firm. He had clerked at the firm during his 2L summer but today marks the start of his real career. He is assigned to the litigation team working on a major commercial case that involves a patent dispute concerning the ownership of new cutting-edge technology. Mindy Fuller, now a third-year associate and Pedro’s friend since law school, tells Pedro that it is a great assignment because he will be working with Laura, one of the firm’s most ambitious and successful young partners, and Larry, one of the firm’s most experienced paralegals.

The case is currently in discovery and Pedro is assigned to review the pleadings so that he can assist with the document review and deposition preparation. As Pedro reviews the documents produced by the opposing party, he finds an electronic file with documents that appear to be inadvertently produced; there are letters between the opposing attorney and his client discussing the case strategy and possible witnesses. Unsure of what to do, Pedro prints out the documents and takes them to Laura. She begins taking copious notes and then thanks him for being so thorough.

Later that week, Pedro asks Larry, who is cataloging the new documents, whether there is anything wrong with using them since they seem to have been accidentally produced. Larry comments that it’s not the firm’s fault that the other side might have produced the wrong documents. Sensing that Pedro was still doubtful, he reassures him that the ethics rules that don’t require a lawyer to return inadvertently produced documents. “Don’t worry about it,” he tells Pedro.

Larry changes the conversation, showing Pedro how he is using Facebook to “friend” as many of the other side’s witnesses as possible to gather additional information for depositions and cross examination.

Pedro decides to focus his energy on doing the best job he can assisting Laura in preparing their client’s employees for depositions. When Laura prepares a few of the main witnesses she is impressed with Pedro’s knowledge of the case. She allows Pedro to prepare one of the minor witnesses while she observes. Laura tells Pedro that he has done a great job and asks him to prepare other witnesses on his own with Larry assisting in the process.

Pedro works late into the night studying the case and the documents that he needs to review with his first witness. He prepares mock questions to ask the witness so that not only will the witness be prepared, but also Pedro will be sharpening his skills in hopes of being able to take a deposition of one of the opposing party’s witnesses.

The next day, Pedro meets with Claire, an employee of the client who is on the witness list. Pedro carefully reviews all of the documents with her and asks her questions as if he is the opposing counsel. Pedro’s thoroughness results in Claire discussing documents with which Pedro is unfamiliar. She shows Pedro 21 emails that appear to be relevant to the discovery requests, but had not been produced. Pedro wonders whether the keywords used to do the electronic discovery search were adequate to cover these emails.

Pedro reports to Laura on his meeting with Claire and informs her and Larry of the additional emails, showing them copies. Laura looks at the first several documents and explains that they either are not responsive to the way the discovery request was framed or privileged.

While Pedro is unsure about Laura’s decision, he feels comforted that he raised it with her and reminds himself that just because he might decide differently doesn’t mean that he’s right. Pedro is excited about the prospect of participating as third chair at the trial, defined as “the learning seat.” He is there to take notes, run errands and absorb as much as possible. Pedro is ecstatic! This is why he attended law school---Pedro updates his friends on Facebook every evening as to the happenings at the trial. He has also started a young lawyer’s blog on which he describes the trial. The trial appears to be going well for his client.

Unfortunately, midway through the trial, Pedro’s dream seems to be turning into a nightmare. Laura demolished a witness during cross-examination using notes she had taken from the inadvertently produced documents and the information that Larry had obtained from the Facebook witnesses.

Opposing counsel is outraged and moves to disqualify the firm. The client is confused and upset. Furthermore, on cross-examination Claire referred to the 21 emails that had not been produced. When asked whether she had discussed them with any of her lawyers, Laura raises the attorney-client privilege.

The Judge is losing his patience and orders the firm to revisit the electronic search. Pedro looks over the original discovery request and realizes that the e-mails were clearly responsive. When appropriate keywords are entered, the search reveals an additional 46,000 documents that should have been produced.

The Judge disqualifies the firm from representing the client based on Laura’s use of the information from the inadvertently produced documents, sanctions Laura for the discovery violations, and refers her to the state bar. She resigns from the firm in disgrace. The Judge calls Pedro aside during a recess, and tells him that he narrowly escaped being reported to the Bar. Pedro silently recollects his conversations with Claire when she told him about the 21 documents and nods.

A few months later, during Pedro’s annual review, the managing partner tells Pedro that the firm was extremely disappointed with his handling of the discovery matters in the case and his failure to speak with someone other than Laura and Larry at the firm. The partner says that the firm’s reputation is all the more important during tough economic times and the firm has decided to terminate Pedro’s employment. Pedro feels sick and disillusioned as he ponders the events and his future.