



**Fall 2017 Conference  
November 2-4, 2017  
Asheville, North Carolina**

**Host Firm:  
McGuire, Wood & Bissette, P.A.**



## LawPact Fall 2017 Conference Agenda

November 2 - 4, 2017

Hyatt Place Hotel, Asheville, North Carolina

<b>Thursday November 2, 2017: Board Meeting and Welcome Reception</b>		
<b>4:00 – 5:30 PM</b>	<b>Board Meeting:</b> All Members are invited to attend.	<b>Foothills C Meeting Room</b>
<b>7:00 – 10:00 PM</b>	<b>Welcome Reception:</b> Please join LawPact members for an opportunity to review the past six month's happenings and welcome our new participants.	<b>Foothills A and B Meeting Room</b>
<b>Opening Day: Friday November 3, 2017 (Foothills B and C Rooms)</b>		
<b>7:30 – 8:30 AM</b>	<b>Breakfast</b>	
<b>8:30 – 9:30 AM</b>	<b>Opening Remarks and Introductions</b> Delegates introduce themselves and provide updates about their firms	<b>Doug Conover,</b> LawPact President
<b>9:30 – 11:00 AM</b>	<b>The New Legal Marketplace:</b> Clients and the Competition	<b>Mary Vandennack, Esq., Tom Grella, Esq., John Bowers, and George Leloudis CPA</b>
<b>11:15 – 11:30 AM</b>	<b>Break</b>	
<b>11:30 – 12:30 AM</b>	<b>The Changing Workforce:</b> Capitalizing on our Most Important Resource	<b>Sabrina Rockoff, Esq., and Cynthia Ackrill, M.D.</b>
<b>12:30 – 1:30 PM</b>	<b>Lunch</b>	Dining Room

<b>1:30 – 3:15 PM</b>	<b>Cybersecurity: Our Most Significant Technological Challenge</b> Part 1: Survey of the current state of cybersecurity for firms. Part 2: Social engineering hack simulation (in teams and discussion). Note: All members in attendance will receive a copy of Dan Garrie’s book, <i>Law Firm Cybersecurity</i>	<b>Daniel Garrie, Esq.</b> , co-author of <i>Law Firm Cybersecurity</i> (ABA 2017).
<b>3:15 – 3:30 PM</b>	<b>Break</b>	
<b>3:30 – 5:00 PM</b>	<b>Cybersecurity: Our Most Significant Technological Challenge (continued)</b> Part 3: Cyber incident simulation (in teams). Part 4: Group discussion of best practice and key strategies to secure your firm.	<b>Daniel Garrie</b>
<b>5:00 – 5:15 PM</b>	<b>Presentation – Legaroo application</b>	<b>Alex Thompson and Adrian Obando</b>
<b>6:00 PM</b>	Reception for members and guests at the offices of our host firm, <b>McGuire Wood &amp; Bisette</b>	Drhumor Building 48 Patton Ave. Asheville, NC
<b>7:00 PM</b>	<b>Dinner at Cúrate</b>	13 Biltmore Avenue Asheville, NC

**Closing Day: Saturday November 4, 2017**  
**(Foothills B and C Rooms)**

<b>8:00 – 8:30 AM</b>	<b>Breakfast</b>	
<b>8:30 - 9:15 AM</b>	<b>Friday Follow Up Discussion</b>	<b>Joe McGuire and Scott Pohlman</b>
<b>9:30 - 9:45 AM</b>	<b>Break (adjust time as necessary)</b>	
<b>9:45 - 10:30 AM</b>	<b>Financial Survey Review</b>	<b>Mark Hoyt</b>
<b>10:30 – 11:30 AM</b>	<b>LawPact Round Table Discussion</b>	Discussion Leader: TBD
<b>11:30 - 12:15 PM</b>	<b>Member Discussion – Open Forum</b> regarding LawPact and what we can be doing to support our members.  <b>LawPact Finances</b> <b>LawPact Business</b>	

	<b>Membership Development</b> <b>Website and Forums</b> <b>Final Announcements</b>	
<b>12:15 – 1:30 PM</b>	<b>Lunch</b>	Dining Room
<b>1:30 – 5:00</b> <b>(approximate)</b>	<b>Group Tour - The Biltmore Estate</b>	
<b>7:30 (approximate)</b>	<b>Group Dinner</b> optional	To be determined






**Friday Morning Guest Event** (10 am) – Jean McGuire and Murphy Fletcher have graciously agreed to lead a walking tour of sights and galleries in downtown Asheville, culminating with lunch at Chestnut, a local restaurant. Those who wish to continue after lunch may visit Historic Biltmore Village with its many specialty shops.





Fall 2017 Conference  
Asheville, North Carolina  
2-4 November 2017

Conference Delegates and Guests

*Program Presenters*

	Daniel B. Garrie <b>Group Dewey Consulting</b>
	Thomas Grella <b>McGuire, Wood &amp; Bisette, P.A.</b> Asheville, North Carolina
	Mary Vandenack <b>Vandenack Weaver LLC</b> Omaha, Nebraska
	John Bowers Chief Operating Officer <b>Patterson Intellectual Property Law</b> Nashville, Tennessee
	George Leloudis Executive Director <b>Wood Rogers PLC</b> Roanoke, Virginia

	<p>Sabrina Presnell Rockoff  <b>McGuire, Wood &amp; Bissette, P.A.</b>  Asheville, North Carolina</p>
	<p>Cynthia Ackrill, M.D.  <b>Wellspark</b>  Washington, D.C.</p>

### Conference Delegate and Guests

(Alphabetical by member firm)

#### New Members

	<p>Rick Norman  <b>Norman Business Law Group</b>  Lake Charles, Louisiana</p>
	<p>Mary Vandenack  <b>Vandenack Weaver LLC</b>  Omaha, Nebraska</p>
	<p>Michael Weaver  <b>Vandenack Weaver LLC</b>  Omaha, Nebraska</p>

	<p>Chris Stevenson  <b>Adair Myers Graves &amp; Stevenson PLLC</b>  Houston, Texas</p> <p>Guest: Audra Stevenson</p>
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Kipp Williams  
**Blanchard, Krasner & French**  
La Jolla, California and Reno, Nevada



Lea Dearing  
**Berman Fink Van Horn**  
Atlanta, Georgia

Guest: Andy Dearing



Chuck van Horn  
**Berman Fink Van Horn**  
Atlanta, Georgia



James Radabaugh  
**Bowen, Radabaugh & Milton, P.C.**  
Troy, Michigan

Guest: Barbara Radabaugh



Joshua Glikin  
**Bowie & Jensen, LLC**  
Towson, Maryland



Robert Brouillette  
**Brouillette & Partners**  
Montreal, Quebec, Canada

*Member of the Board of Directors of LawPact*

Guest: Francine LeDuc



Bert Guy  
**Campbell Guin**  
Tuscaloosa, Alabama



Doug Conover  
**Law Offices of Douglas Conover LLC**  
Chicago, Illinois

*President of LawPact and Member of the Board of Directors*



Adrian Obando  
**Cresco Legal**  
San Jose, Costa Rica



Alex Thompson  
**Cresco Legal**  
San Jose, Costa Rica



David Gaw  
**Gaw Van Male**  
Napa, California

*Vice President - Americas of LawPact and Member of the Board of Directors*



Jamie Watson  
**Gaw Van Male**  
Napa, California



Thomas Mammarella  
**Gordon, Fournaris & Mammarella, P.A.**  
Wilmington, Delaware

Guest: Barbara Marsh



Scott Collins  
**Helsell Fetterman LLP**  
Seattle, Washington





Nathan Watson (firm administrator)  
**Helsell Fetterman LLP**  
Seattle, Washington

*LawPact Website Committee*



Ian Wick  
**Keyser Mason Ball, LLP**  
Mississauga, Ontario, Canada

Guest: Maggie Wick



Bernd Lichtenstern  
**Lichtenstern Partners**  
Landsberg/Munich, Germany

*Vice President - Europe of LawPact and Member of the Board of Directors*



Michael Margrave  
**Margrave Celmins, PC**  
Scottsdale, Arizona



Joe McGuire  
**McGuire, Wood & Bissette, P.A.**  
Asheville, North Carolina

Guest: Jean McGuire



Murphy Fletcher  
**McGuire, Wood & Bissette, P.A.**  
Asheville, North Carolina

Guest: Milton Fletcher



Michiel Bloemsma  
**Menaker & Herrmann LLP**  
New York, New York

Member of the Board of Directors of LawPact



Seth Briskin  
**Meyers Roman Freidberg & Lewis**  
Cleveland, Ohio



Kim Ritter  
**Minor & Brown, P.C.**  
Denver, Colorado

Member of the Board of Directors of LawPact

Guest: Elissa Augello



Scott Albrecht  
**Samuels Green & Steel, LLP**  
Irvine, California



Mark Hoyt  
**Sherman Sherman Johnnie & Hoyt**  
Salem, Oregon

Treasurer of LawPact and Member of the Board of Directors

Guest: Maggie Hudson



Carl Jacobson  
**Synergy Business Lawyers LLP**  
Vancouver, British Columbia, Canada



Eric Seigel  
**Tuesley Hall Konopa**  
South Bend, Indiana

Guest: Cindy Seigel



Madeleine ("Maddy") Lebedow  
**MfL Associates, Inc.**  
Lincolnwood, Illinois

Executive Director of LawPact

Guest: Aaron Lebedow

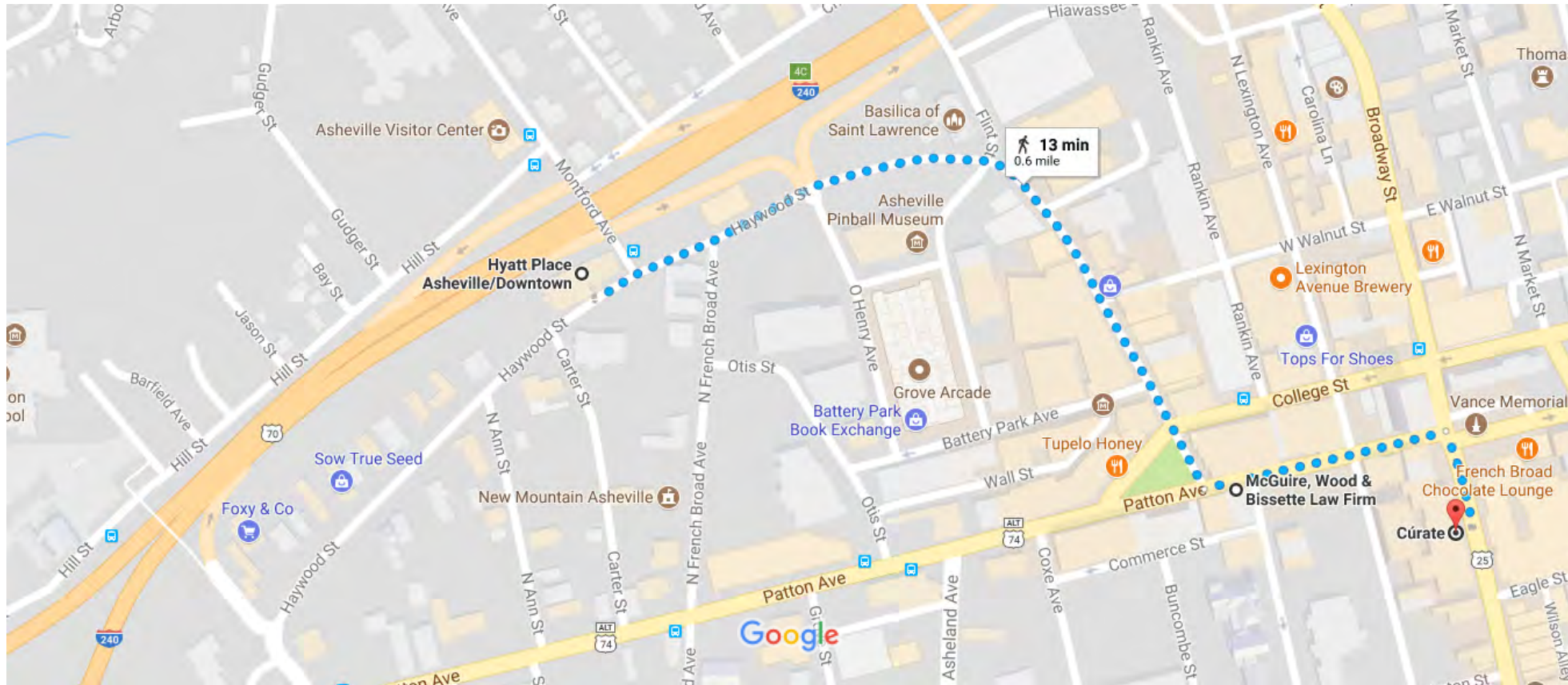


Shashik Makhija  
New Delhi, India



# Hyatt Place Asheville/Downtown to Cúrate, Biltmore Avenue, Asheville, NC

Walk 0.6 mile, 13 min



Map data ©2017 Google 200 ft



via Haywood St  
Mostly flat

13 min  
0.6 mile



## **Board of Directors' Meeting**

**November 2, 2017**

**4:00 p.m.**

**Hyatt Place Hotel, Foothills A Conference Room, Asheville, North Carolina**

LawPact Board of Directors:

Frederic Beele (not present)  
Michiel Bloemsma  
Robert Brouillette  
Douglas Conover  
David Gaw  
Mark Hoyt  
Bernd Lichtenstern  
Scott Pohlman (not present)  
Kim Ritter  
Ian Wick

Joseph McGuire, Host of 2017 Fall Conference  
Madeleine Lebedow, Executive Director

Call to Order and confirmation of quorum

Treasurer's Report: 2016 Financial Review and Accounts Receivable

Old Business

New York Conference Planning (Michiel Bloemsma, Madeleine Lebedow, and Doug Conover)  
Website Committee (Nathan Watson)

New Business

LawPact Europe (Bernd Lichtenstern)  
2018 Meeting Locations  
Advance Conference Planning and programs  
Membership Development  
Motion to terminate membership of delinquent members  
Dues for newly admitted members

Adjournment



## **THE NEW LEGAL MARKETPLACE: CLIENTS AND THE COMPETITION**

**Friday November 3, 2017**

Moderator: Tom Grella

Panelists: Tom Grella, Mary Vandenack, John Bowers, George Leloudis

Discussion Topics:

- a. The Buyer Market (or better put – The end of the Seller’s Market)
- b. Competition
  - i. Lawyer Substitutes
  - ii. Traditional Law Firms and Law Firm Substitutes
- c. Is Law a Profession or Business – Survival of the Profession?
- d. Strategies
  - 1) Client Strategy
  - 2) Competitive Strategy
  - 3) Culture Strategy
- e. Management and Leadership
  - 1) Firm
  - 2) Practice or Industry Group
  - 3) Financial consideration, and incentives to motivate a new workforce
- f. Training for Change and Innovation
- g. Succession Planning Key Issues for Today and Planning for Tomorrow



**Mary E. Vandenack**  
**Vandenack Weaver LLC**  
**Omaha, Nebraska**

Mary E. Vandenack is founding and managing member of Vandenack Weaver LLC in Omaha, Nebraska. Mary is a highly regarded practitioner in the areas of tax, benefits, private wealth planning, asset protection planning, executive compensation, equity fund development, business and business succession planning, tax dispute resolution, international tax, state and local tax, and tax-exempt entities. Mary's practice serves businesses and business owners, executives, real estate developers and investors, health care providers, companies in the financial industry, and tax exempt organizations. Mary is a regular commentator for Leimberg Publications and recently participated in the publication of "Tools & Techniques of Trust Planning" as a contributing editor. Mary is a member of the American Bar Association Real Property Trust and Estate Section where she serves as Co-Chair of the Futures Task Force and Chair of the Technology and Economics of Law Practice Committee. Mary is also a member of the American Bar Association Law Practice Division where she serves on the TechShow Board, and the Executive Council. Mary writes a Leadership column for the Law Practice Magazine. Mary is also active in the American Bar Association Sections on Taxation and Business. Mary was the winner of the 2015 James I. Keane Memorial Award, presented at the 2015 Tech Show. Mary was featured in the September 2015 issue of Fortune Magazine, is AV rated by Martindale Hubbell, was included in Women Leaders in the Law in the 2017 issues of American Lawyer, Corporate Counsel and the National Law Journal, and has been named to Best Lawyers in America and Lawyers of Distinction. Mary is a frequent writer and speaker on tax, benefits, asset protection planning, and estate planning topics as well as on law practice related topics including improving the delivery of legal services, technology in the practice of law, building sustainable law firms, and alternative fee structures.

John D. Bowers

Patterson Intellectual Property Law, P.C.  
Nashville, Tennessee

John Bowers serves as Patterson Intellectual Property Law's Chief Operating Officer and primary contact for vendor relationships. Within the firm, he is responsible for developing and implementing the Firm's business strategy. In addition, John oversees the day-to-day functioning of the Firm's finance, technology, business development and marketing, facilities, attorney and staff recruitment, human resources and benefits operations.



Prior to moving to Nashville in 2016, John led Fox Rothschild LLP's business development team serving more than 750 attorneys. He spent 16 years of his professional career in law firm business development in Philadelphia, where he also worked with firms Saul Ewing LLP, Duane Morris LLP and Schnader Harrison Segal & Lewis LLP.

He is currently the Chair of the Professional Development Board within the American Bar Association's Law Practice Division, the Executive Director of the Tennessee Intellectual Property Law Association and the Treasurer of the Middle Tennessee Association of Legal Administrators. John previously served as Editor in Chief of both *Law Practice* magazine and *Law Practice Today*, both publications of ABA's Law Practice Division.



**Tom Grella**  
**McGuire, Wood & Bissette, P.A.,**  
**and Strategic Legal Leadership**  
**Asheville, North Carolina**

Tom Grella is a Past Chair of the Management Committee of McGuire, Wood & Bissette, P.A., in Asheville, North Carolina. He remains a member of the Management Committee. Mr. Grella has a JD from Wake Forest University Law School of Winston-Salem, NC and has been licensed as an attorney in North Carolina since 1985.



He is a past Chair of the ABA Law Practice Management Section (now Law Practice Division), and presently sits on its Executive Committee. Grella has served in many positions within the ABA Law Practice Division, including being a member of its Council, Chair of its Core Groups, a member of its Publications Board, Chair of its Diversity Committee, Chair of its Task Force on the Evolving Business Model of Law Firms, and as Chair of its ABA Lead Law Board. Grella co-authored The Lawyer's Guide to Strategic Planning in 2005, and is author of the 2013 released Lessons in Leadership: Essential Skills for Lawyers, both publications of the ABA Law Practice Division. He is currently an ABA Law Practice Division Delegate serving his fourth 3 year term in the ABA House of Delegates, and is a Past Chair of the ABA House Technology and Communications Committee. He also serves the ABA as a member of the ABA Day Planning Committee. He is currently on the Law Practice Magazine Board, is immediate past Columns Editor, is author of the Managing column in that publication, and received the 2017 ABA Law Practice Division Wilkins Award for best column in Law Practice Magazine. He is also presently Vice Chair of the Professional Development Committee. Tom was the 2012 recipient of the Sam Smith Award, the highest achievement award of the Law Practice Division, presented annually to an individual who has demonstrated excellence in law practice management. He is also a Fellow of the College of Law Practice Management, and serves on its Board of Trustees, He is also a Fellow of the National Institute for the Teaching of Ethics and Professionalism, and a Fellow of the American Bar Foundation. North Carolina Lawyers Weekly awarded Grella with a 2014 Leaders in the Law Award. He is a frequent speaker on law practice management topics such as strategic planning, law firm leadership and management, and the future of the profession. His leadership blog, known as Strategic Legal Leadership is found at [www.tomgrella.com](http://www.tomgrella.com). Grella is a member of the Corporate Practice Group of his law firm and his practice focuses primarily on business entity formation and acquisitions, commercial transactions, commercial leasing, and condominium law.

**George Leloudis**  
**Woods Rogers, PLC**  
**Roanoke, Virginia**



George is the Executive Director of Woods Rogers PLC, a 75+ attorney firm with 4 offices located across the Commonwealth of Virginia. As a CPA, CGMA and CLM, George has over 15 years of leadership experience within professional service organizations. He enjoys challenging complacency and promoting change to impact operational efficiencies and profitability. He also enjoys sharing his perspectives as a contributing member of the ABA Law Practice Division and the Association of Legal Administrators (ALA). George is currently Vice Chair of the Law Practice Division's Magazine Board and an author of numerous articles appearing in Law Practice magazine. He currently is the President of the Western Virginia Chapter of the ALA and has served in numerous leadership positions at the national level.

# Law Firm Growth: Key Considerations

A roundtable discussion on the issues one must resolve before taking on new hires and the consequences of these hires.



# in Expansion



By Mary E. Vandenack

Law firm growth is a complex issue. A firm considering an expansion must consider whether, when and how to grow. There are common circumstances experienced by law firms that might suggest to firm decision makers that growth should be considered. This potential growth might be considered, for instance, with respect to number of lawyers, service in new physical geographic locations or expanded practice areas. It's important, however, to not misread the tea leaves when it comes to these common circumstances. Being immediately overwhelmed by increased demand for legal services alone may cause a firm to leap—before it looks into all of the potential risks of action.

This article contains the input of four experts in the area of law firm growth. Each, as leaders in their respective firms, has had to address knowing when to expand, and how to do it successfully. Our contributors are myself, the founding and managing partner of Vandennack Weaver LLC in Omaha, Nebraska; John Bowers, chief operating officer of Patterson Intellectual Property Law, P.C. in Nashville, Tennessee; George Leloudis, executive director of Woods Rogers PLC in Roanoke, Virginia; and Tom Grella, a former managing partner and a present member of the Management Committee of McGuire Wood & Bissette in Asheville, North Carolina.

**LAW PRACTICE (LP):** What are some key indicators that you should consider in deciding to expand your law firm by adding another lawyer or staff member?



**VANDENNACK:** Some essential factors that you should consider before adding another lawyer or a staff member include:

- You have tapped an untapped legal market and need additional support to capitalize on that market.
- You have more business than you can handle.
  - You are so busy that your quality of service is at risk of slipping.
    - Clients are asking you to take on additional work.
    - Your firm is profitable, and you have a steady cash flow and/or capital in the bank.
  - The marketplace is changing in ways your firm should respond to.
  - Everyone in your office is consistently struggling with work overload.
  - You are spending a lot of time

on tasks that are not within your expertise or are not the best use of your time.



**BOWERS:** Mary is exactly correct with these indicators. A fundamental way to measure the impact of many of them is tracking nonbillable

time. I am amazed that lawyers, vendors of time itself and thus able to justify productivity in 0.1-hour increments, often fail to effectively track hours spent administering their practice. Imagine a carpenter using 3.5 feet of wood out of a 6-foot board and then routinely discarding the remaining 2.5 feet.

Nobody is suggesting that you track every moment following entry through the office door. However, attorneys in practices of all sizes spend hours every month on marketing and business development activities, technology issues, practice management, CLE and maybe even pro bono work. Clients are likely unwilling to pay for your time to produce and review their bills. Attorneys who aren't solo practitioners will spend some amount of time developing staff or other lawyers. Larger-firm lawyers may not have to take out the garbage but will still expend plenty of nonbillable time.

If you are tracking all your time, you should be able to identify what billable hours, if any, a paralegal or another lawyer at a lower rate could pick up. Clients don't want to pay to train young attorneys, but they also don't want to pay mid- to high-market rates for routine and unsophisticated legal work.

The breadth of skills nonlawyers possess often correlates directly to the size of the law firm: the smaller the firm, the wider the skill set. Are you even able to spend 50 percent of your time in the office on billable work? It may be that a



IMAGE ON PREVIOUS PAGE: WESTEND61, GETTY IMAGES; CHAIR: HEMERA TECHNOLOGIES/THINKSTOCK

**“It’s also important to measure the opportunity cost of not expanding. If you have employees with available capacity, how much training might be needed to develop new or different skills?”**

—John Bowers

staffer covering a variety of administrative areas could technically be your best new hire.



**LELOUDIS:** Growth is often seen as a pathway to greater market share and profit. And anyone who has read a legal publication in the last decade knows that

the siren song of mergers has enticed a number of firm captains. Heard this song yourself? Are your partners walking the halls humming the tune? It’s certainly an enticing melody but one that must be followed carefully. Without cautious navigation, a deck manned by seasoned professionals and some measure of good fortune, mergers can lead to your firm being cast upon the shoals. But with the correct amount of due diligence (both from a financial and cultural perspective), experienced advice (and perhaps not from one of your corporate attorneys who has never crewed a merger of professional service firms) and tenacious follow-up, a law firm merger can result in increased competitiveness through enhanced specialization, deeper bench strength and geographic expansion.

A successful merger can also help solve the time challenges mentioned by my co-contributors. Suppose your firm

has been extremely conservative in hiring additional administrative staff as it has grown, but you now find that nonbillable hours are encroaching on the billable. Perhaps there is a mate out there that could support your growth within your existing margin and their administrative structure. To my knowledge, beyond consultants, there are no law firm dating services; so how do you find such a mate? Simple: Do your research, find the right timing/opportunity, and ask.



**GRELLA:** Mary sets out some really great indicators when a firm might need to consider expansion. They are primarily factual

observations, or experiences, leaders of a firm should realize are occurring and consider how the firm should respond. In addition to her list, I would suggest that the strategic planning of a law firm—in whatever form that takes—should include how the firm should plan for expansion opportunities. Some factors that should be included in a plan, as prerequisites, are whether the proposed expansion will do one or more of the following:

- Enhance the firm’s competitive position in one or more existing markets.
- Improve firm compensation.
- Fill gaps of expertise lacking in the firm but necessary to enhance firm success.
- Increase stability or visibility of the firm in its markets.
- Increase or diversify the firm’s client base.

**LP:** What are some key factors that indicate that you do not need to immediately expand?

**VANDENACK:** It’s possible that you and everyone in your office are extremely busy but that the pace of work is temporary rather than an indication of long-term growth. For example, you may have a one-time or unusual project. Additionally, consider whether the workload is due to staffing changes that will resolve as new people are brought up to speed. Finally, consider whether you need to expand or whether some of the volume is coming from work that is not profitable and should be referred elsewhere.

**BOWERS:** Attorneys who work hard on communicating with clients enjoy an advantage on so many levels. One such area is where the client’s strategic focus is: areas in which they identify growth opportunities (which may be aspirational only) and, more importantly, market contraction (which tends to be more objective fact). Before assuming that recent history is the best indicator for next year’s productivity, talk to your key clients.

If a client has promised to transfer a sizeable amount of commodity work



**“In some ways it’s easier to temporarily toil under an increased workload than it is to hire additional attorneys only to have to part ways when the spike in work has vanished.”**

—George Leloudis

to you, give it a limited time frame to evaluate whether you can complete it with current head count. It costs a lot more than salary and benefits to hire a new employee considering that nearly 50 percent of hires don’t work out, for one reason or another.

**LELOUDIS:** I like the cautious tone of John’s and Mary’s responses. I, for one, believe the line “build it and they will come” is best suited to the big screen. Hiring up to become the largest firm in your locale or to one-up the firm down the street in a particular area of practice is less than prudent. And, to further John’s point, in some ways it’s easier to temporarily toil under an increased workload than it is to hire additional attorneys only to have to part ways when the spike in work has vanished. In some cases these unneeded attorneys remain on the roster due to reasons of governance, popularity or simply due to a lack of will to make the hard decisions.

Jumping back to mergers for a moment, think hard before pursuing a merger for the purpose of fixing productivity problems that exist within your firm. As a Southern boy, I’ve toured a number of textile mills. These once-expansive mills housed numerous looms that ran full-out, often 24/7. Suppose a mill had 24 looms and eight of them were underproducing due to a lack of maintenance. Would it be wiser

to carefully evaluate the return on investment of the investment options. If your top-line is flat or declining and you have consistently underperforming timekeepers, perhaps you should consider an investment in “maintenance” before betting on new producers acquired through a merger or the hiring of laterals.

**GRELLA:** I agree with all of what John, Mary and George have said and believe

for the owners to pay a bit more attention to the eight less productive units or to invest in eight new looms? It’s possible that the time has come to scrap the existing eight, but the owners have

that a big part of their message is to not jump to unfounded conclusions or, put another way, to not talk yourself into an expansion that is not warranted. While I’ve never subscribed to the “I’m not very busy right now, so how can we possibly consider it?” theory that has kept some of my own colleagues from agreeing to expand, I also agree that when we are very busy at the specific time we need to ask ourselves why that is the case, and whether our present workload will sustain in the long term.

This question brings to mind an expansion that my firm undertook, actually when I was managing partner and George was our chief operating officer. Our main competitor in town had an office in a neighboring town. We had only one office, and some of us were interested in expanding our geographic presence. We opened a small office, staffed it and have subsequently closed it. What I learned through that



IMAGE BY GEERATI/THINKSTOCK

experience is that a failure to vet the additional following questions thoroughly and honestly should give you pause when it comes to expanding by hiring, by opening another office in another geographic area or by merger:

- Will the expansion properly mesh with existing firm culture?
- Are your co-owners willing to make the long-term financial commitment that expansion requires (so are they willing to sacrifice now for a more successful future)?
- Does your firm compensation system reward the activities that some members (including possibly some of your most productive billing lawyers) will necessarily need to do to make the proposed expansion work?

If you cannot answer yes to these questions, it's better to admit it up front than to realize failure later.

**LP:** How do you evaluate the profitability of possible expansion?

**VANDENACK:** Analyzing the profitability of expansion requires that you have a clear understanding of the services that you currently provide and the profitability of each service. You should also be clear about current capacity. Consider the type of calls you get the most often and which of those are most profitable. To the extent you are going to expand, what will the increased revenue be? To achieve that revenue, what will the increased costs be? It is important to have a clear picture of cost. Cost includes the salary of the new attorney or staff member, another computer and related licenses, space, furnishings, more efforts by firm bookkeepers and billing staff and any other related support. Consider the total cost of any expansion.

**BOWERS:** It's also important to

measure the opportunity cost of not expanding. If you have empty office space that is fully furnished, how much per square foot does it cost you? If you have employees with available capacity, how much training might be needed to develop new or different skills? If you refer any new work out, are you able to send it to a colleague who has a dependable history of returning work to you? Through the course of answering these questions, it will become evident whether not growing is even an option.

**LELOUDIS:** As a number cruncher, I love financial modeling. If you have a modicum of financial acumen and can use Excel, spend some time constructing best and worst case scenarios of the growth opportunity being considered. If this sounds a bit too nerdy to you, reach out to colleagues in the CPA world for their expertise and perspective. Beyond their financial strengths, they will offer objectivity, which can sometimes be overwhelmed by an infatuation with growth.

**GRELLA:** Unlike George, I'm not a CPA, but I've hired some good ones. Some are not so good, however, and the financial advisors you hire need to be more than just number crunchers. They should be number crunchers with an understanding of legal profession economics and also the ability to apply the actual motivations and work ethic of those lawyers at the firm they are advising to the recommendations they are making.

**LP:** Once you conclude in favor of

growth, how do you determine the best timing for it?

**VANDENACK:** Successful growth is well timed. Before adding a new position, develop a long-term plan. Consider where the firm will be in five years and whether and when a current addition is a step in the right direction.

**BOWERS:** Certainly an onslaught of work from a client comes with its own deadlines. Jump on the earliest realistic timing that you can. Since you've made an important decision, you need to act upon it or risk falling victim to the threat you hoped to avoid in the first place.

**“There's a tendency to make hiring decisions based on current personnel. A better long-term approach is to consider what your firm will need in five years in terms of functions.”**

**—Mary Vandenack**

**LELOUDIS:** From solo practices to midsize and large firms, all have their seasons of frenetic business and relative calm. Would you look to integrate a tax practice in March? And remember your administrative staff as you plan for growth. Dropping the merger bomb in the middle of year-end lowers the probability of an error-free migration.

Most importantly, the best timing follows the development of a plan. The plan doesn't have to be elaborate, and it's okay to overlook items when formulating one. What's not okay is to rush into a growth opportunity without first thinking through and memorializing



the items key to the opportunity's success. Build a time line and checklist, and be sure to involve all of the players. If a new attorney starts on Monday, don't wait until Tuesday to inform your IT staff. And why hire a high-powered attorney without a plan for announcing his or her association with your firm? We all know that the best of intentions typically die on the vine when not written down, and without a time line, the tyranny of the urgent annihilates those "gotta remember to do" thoughts.

**GRELLA:** I think you have all hit the nail on the head. The key is strategic planning. Within a well-thought-out plan, you will have growth goals based on many of the factors we have already discussed. Within that plan you should also have strategic vision regarding the geographic communities you will serve and the best means to serve those communities. Also, within that plan, you should have a means to respond to strategic opportunities as they arise—how to not only respond initially to the inquiry or opportunity, but the key factors that will need to be considered in analyzing the opportunity presented.

**LP:** How do you make a good decision about what position you need to add to your firm?

**VANDENACK:** There's a tendency to make hiring decisions based on current personnel. A better long-term approach is to consider what your firm will need in five years in terms of functions. Then look at current personnel from a function perspective. Hire someone who will fit with current personnel but be part of moving the firm to where it needs to be in five years.

**BOWERS:** When you clearly need to hire, consider whether the work really needs a 10-year lateral hire or if the billable project could be perfect for a third-year associate given three months of handholding. In addition, do you need to offer your new hire an annual salary, or could you bring on an alternative arrangement—on a contract basis or pay by hours billed?

**LELOUDIS:** Succession . . . there, I said it. What a beast, not unlike a dragon! Like a dragon, the succession beast can

be slain, but it takes effort and strategy. When taking the down-the-road look mentioned by Mary, also look to see if succession issues (that is, dragons) are growing within your firm. They can exist within both your attorney and staff ranks. I believe the best way to slay the beast is to have open but direct conversations with the dragons themselves. Start by having the conversations years ahead of any projected need. With attorneys, it's always best to talk about the ways that work will be transitioned in a manner that is mutually advantageous. Avoid any strategy that's devoid of such conversations, i.e., don't hire an associate in the hope that in five years he or she will have ingratiated him- or herself with the retiring rainmaker.

**LP:** Once you make a decision to add a position to your firm, what steps can you take to ensure the addition will be successful and profitable?

**VANDENACK:** As a firm expands, it's very important to stay focused and operate the firm in a manner that remains true to the vision delineated in



IMAGE BY KPALIMSKI/THINKSTOCK

**“Unless your firm members have an understanding of organizational values, mission and vision, not knowing that the new hire will mesh is simply an unknown risk you will be taking.”**

—Tom Grella

the firm’s strategic plan (which can be flexible). If your firm has been successful enough to need to grow, then you have created a firm culture and client relationships that work for you and for your clients. Understand your firm culture and build a team that supports the values of your firm culture.

**BOWERS:** Treat the hiring process with the same level of excellence as you do performing client work. Having earned the job sets the tone for your new hire for at least six months after his or her start date. A bad hire can have a long-lasting and disastrous impact. So set a date for when you need to have the new employee start, and begin the recruiting process at least two months before that. Prescreen candidates with worthy résumés by video or phone before bringing them into the office. In addition to checking all references and web research, pay for personality testing from a proven vendor.

Once in the door, integrate new hires into the fabric of your firm. Introduce them to clients early on and let clients tell them about your firm. Regardless of the position, involve them in the billing process; if you can’t see it, you may not believe clients pay for it. Perform a less formal 90-day review

that isn’t focused only on their performance as much as about how they feel they’re settling in. More than simply being nice or training them to do what you’re paying them for, set up welcome lunches for them and routinely involve them in firm and community events.

**LELOUDIS:** Be clear and upfront with expectations, then monitor, measure and correct. Don’t let unmet expectations simmer on either side. The prognosis isn’t good when you have a managing partner who feels like he or she has to avoid a certain timekeeper because of perceived or real shortcomings and/or the timekeeper works every day under the pressure of not knowing where he or she stands. Use subjective data to identify weaknesses, but approach the issues with objectivity.

**GRELLA:** Do your best to make sure that the person hired fits well with the firm culture you want to encourage and support. Unless your firm members have an understanding of organizational values, mission and vision, not knowing that the new hire will mesh is simply an unknown risk you will be taking.

**LP:** If you conclude that expansion should not be imminent, but you want to be in a position to expand, how can you position yourself for profitable expansion?

**VANDENACK:** Any firm considering expansion should decide whether it really wants to take on growth and all that goes with it. You should consider

whether you have a managing partner who can accomplish it. You should focus on having your firm as profitable and efficient as possible before taking on expansion. Automate. Streamline procedures. Train current personnel. Constantly evaluate how your firm can be more efficient, more automated and more responsive to market changes.

**LELOUDIS:** Have you ever sold anything on eBay? If so, you know how important a flattering picture is to the salability of the item and the profitability of the transaction. The actions outlined by Mary are spot on. Constant attention to these items will make your firm more profitable in the short run and produce a more flattering picture down the road for that merger “mate” mentioned in my first response or for the lateral you are trying to attract to fill the succession need you’ve discussed with the partner considering retirement in three years.

**GRELLA:** I agree with Mary and George, and would add that I think a firm that wants to be ready should adopt a strategic opportunities plan. I have discussed such a plan in depth in *Law Practice’s* September/October 2016 Managing column. Without it, many opportunities will pass by before you know how to respond.

**LP:** Thanks to one and all for taking the time to participate! **LP**



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# Clueless

By George E. Leloudis

**THIS IS THE STORY** of the Clueless Law Firm. Clueless is an established firm made up of 30 well-respected and talented attorneys. The firm has a loyal, hard-working staff, including a seasoned accounting department. Firm profits have been modest and consistent, so little has changed over the years. Attention to financial detail has been perfunctory, and little has been expected from the firm's investment in its time and billing software. The firm survived the Great Recession intact. Life is good.

Then one day Clueless receives a letter from its top client asking about the firm's cybersecurity measures. Ultimately, in an effort to retain the client, Clueless realizes it needs to spend the cost of an associate on new software and hardware. Before the checks can be written, one of the firm's rainmakers announces his retirement. Suddenly, as a result of these and other unexpected factors, Clueless is facing a possible cash crunch. A meeting is called, and the partners get to work on the problem or at least what they perceive to be the problem.

Everyone at the meeting agrees that firm expenses need to be scrutinized. Mary, Clueless' recently elected managing partner, picks up the phone and invites Bob, the accounting manager, to the meeting. Having detected rumblings over the preceding weeks, Bob heads to the meeting armed with data. Questions regarding expenses are tossed about the room. Bob, who has worked hard to contain expenses, somewhat defensively explains that one way to examine expenses is to look at them as a percentage of revenue. He illustrates how, over the past three years, total expenses before distributions to partners held steady at 56 percent of revenue. As a result of the recent shocks to the firm's economics, Bob shares that he projects total expenses for the current year to be 60 percent of revenue. At this point, the room gets quiet.

## GO FORTH AND CUT EXPENSES

After sharing numerous assumptions and a few accusations, the partners charge Mary and Bob with the task of reducing expenses, with a goal of returning the percentage to the former

level of 56 percent. Bob goes to work on developing the data for his and Mary's review, and Mary works to clear her plate so that she can focus on the issue. Once Bob develops the needed financial data, they begin meeting to analyze the projected increase and to identify possible expense reductions. It doesn't take long for them to agree that they have a tough row to hoe. Most of Clueless' expenses are tied to office space and people—two areas in which immediate cuts are difficult, if not impossible, to implement. They also agree that the wrong cuts could negatively impact the firm's level of service.

After several meetings Mary and Bob decide that they need to broaden their analysis to include the revenue side of the equation. Mary, who has fully assumed the yoke of leadership, begins amassing a personal library of management resources. One morning over coffee she reads an article in *Law Practice* magazine regarding realization. Mary is familiar with the term and concept but has never seen information related to Clueless' performance. That afternoon, she asks Bob his thoughts related to the subject. Like Mary, Bob is familiar with the concept. After

IMAGE BY TOMAKE\_PHOTO/THINKSTOCK



a mutually inquisitive discussion, Bob volunteers to take a look at Clueless' realization.

The first place to which Bob turns is the firm's time and billing software. He quickly learns that the software calculates realization rates at the timekeeper and firm levels. Bob notes that many of Clueless' timekeepers have realization rates in

the 80- to 85-percent range and that the rate is just shy of 85 percent for the firm overall. After some research he determines that  $\text{Billing Realization Rate} = \text{Billed Amount} / \text{Worked Amount}$ , with  $\text{Worked Amount} = \text{Hours Worked} \times \text{Rate}$ . Bob spends the balance of the day (and a few sleepless hours that night) pondering what might be behind the numbers. The next

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morning, he shares his findings with Mary and, to Bob's surprise, Mary appears shocked. Before he can ask, Mary volunteers that the *Law Practice* article she had read benchmarked realization for comparable-sized firms at 90 percent. And then she questions the validity of Clueless' numbers.

Bob walks away from the conversation knowing that he has his work cut out for him. As he digs into the numbers, it hits him that Clueless' time and billing software falls short in its ability to break down the data. Bob knows that the difference between the value of hours worked and hours billed can be tied to discounts and write-downs. Unfortunately, these numbers are not easily accessible, nor are they reported at the client and matter level. Frustrated and feeling the pressure of an anxious partnership, Bob reaches out for help. Through a colleague, Bob is introduced to a freelance consultant who has a solid understanding of Clueless' software and its database structure. The consultant quickly, and at a surprisingly modest cost, develops a report that extracts and presents all of the relevant data in Excel format. Bob is then able to slice and dice the data at the firm, timekeeper, client and matter levels.

### THE DEVIL IS IN THE ... NUMBERS

Once comfortable with the data, Bob and Mary meet, and immediately Bob thanks Mary for her interest in realization, adding that her inquiry led him to his own realization—that Clueless' cash crunch is not solely tied to expenses. He explains:

"Mary, as you know, we set target rates for our timekeepers every year. These are often referred to as 'standard rates.' We

**Yes, expenses need to be analyzed and controlled, but revenue production and billing realization demanded equal scrutiny.**

also know that our attorneys can demand target rates on some matters but have to charge lower rates on others. For discussion purposes, let's call the lower rates our 'negotiated rates.' As you can see on this report, because of negotiated rates, the value of hours worked this year is 15 percent less than if worked at standard rates. So, immediately out of the gate, we have less available to bill than you might expect. To be exact, based on a worked amount of \$12,000,000, we had \$10,200,000 available to bill. Using the benchmark number of 90 percent referenced in the article you read, we would have billed \$10,800,000—an additional \$600,000."

Enlightened, Mary leans back to ponder the numbers. Bob stops her when he shares, "Unfortunately, there's more."

"Of the \$10,200,000 we had available to bill, we actually only billed \$8,600,000." Mary quickly does the math and leans forward and asks, "What happened to the \$1,600,000?" Bob points to two other columns on his report, titled "Time of Billing Discounts" and "Time of Billing Write-Downs." He notes that the total of the two columns matches the lost billings. "Who's writing down so much time and discounting their bills?" Bob had anticipated this question and shares his findings. "Well, as it turns out, there were a few cases of large write-downs but, for the most part, the \$1,600,000 is made up of a large number of smaller adjustments. It appears that all of our attorneys are writing down or discounting every bill."

### NO CLUE

After reviewing the details in Bob's report, including her own numbers, Mary sighs and shares, "I had no clue." As it turns out, Mary herself had written down time and discounted her bills almost \$60,000 over the past year. Her individual realization rate was 83 percent. Against her target, or standard rate, her realization rate was an astonishing 72 percent. As a whole, Clueless' realization against standard rates was comparable at 71 percent. The two wrapped up their sobering discussion



knowing that the real goal before them was to increase the firm's billing realization. Yes, expenses needed to be analyzed and controlled, but revenue production and billing realization demanded equal scrutiny. By increasing billing realization 5 percent, Clueless' expenses as a percentage of realization would return to the targeted 56 percent.

Does Clueless live happily ever after? Does the firm improve its billing performance? Does Mary gain the support and full cooperation of her partners as she works to improve firm profitability? Does Bob, now excited by the power of data, continue the quest for timely and relevant information? Perhaps the final chapter will be told in a future article. A happy ending is

certainly feasible, but such an ending requires diligent attention to performance (management) and straightforward and honest communication (leadership). How does your story end? **LP**



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# A Law Firm Millennial Retention Plan

By Thomas C. Grella

**A FEW MONTHS AGO A LAW FIRM** with a long Asheville, North Carolina, tradition decided to dissolve. Older members retired and put the building in which the firm was located on the market, and the remaining younger lawyers had to fend for themselves, seeking employment opportunities elsewhere. Succession planning was not a priority. Its youngest member is now working at my firm.

More recently I had dinner with a friend who owns his own small law firm. Within the past year he had taken on his first two young associates, both of whom are Millennials—usually defined as those born between the early 1980s and 2000—in the hopes that he would have a sustaining firm to pass on to a subsequent generation when he retires. The dinner was filled with observations about how the two simply don't understand the work ethic necessary to succeed in a challenging litigation practice. It was not that their work product or decision making was bad, but he believed that they have attitudes and methods that will not lead to a sustaining, successful practice.

I have heard several leadership/futures speakers say that by the year 2020 one-half of the U.S. workforce will be made up of Millennials. Though there is some disagreement in exactly when one generation ends and the next begins, at my firm it appears we are almost there (and are already there with our nonlawyer staff). With respect to our youngest lawyers, most of whom are Millennials, only one has come to us directly out of law school. All others came from different law firm experiences that, for one reason or another, they desired to leave. I have heard it said that unlike other Millennials, young lawyer Millennials are driven by compensation. I'm not a professor or consultant with expertise in generational differences, but that is not our experience.

As I have considered law firm leadership over recent years, it is my impression that many law firms, especially midsize and larger firms, are now being led by late Boomer or Gen X lawyers. If, in fact, 50 percent of the workforce in 2020 will be made up of Millennials, it may be time to rethink the way we do leadership and management and ask, Are our firms ready to be made up by a majority of Millennials?

**Firm leaders show they understand those in the Millennial generation when they figure out ways to provide younger lawyers with opportunities to lead, whether in firm management or important client work.**

## STRATEGY AND VALUES

For many years strategic planning has been a discipline understood to result in marketplace success and sustainability when it includes firm succession as a priority, is accomplished through plans of three to five years and is committed to goal and strategy follow-through. There appear, however, to be two significant factors that should cause law firms to rethink strategic planning. The first is change. Simply put, change is occurring like a waterfall; it is both rapid and constant. The second factor is that the typical strategic planning systems of the past 20 years were developed for a prior generation with different expectations and needs.

The Millennial generation is more interested in planning through small collaborative teams to achieve long-term success—sometimes referred to as “intrapreneurship.” Team successes across the firm lead to comprehensive organizational success. The organizational values part of strategic planning, which in the past has been often absent or minimized, is an important factor to those of the Millennial generation. For my own firm, this fact led us to collaboratively create a firm-wide values statement, one that we agreed would be reinforced regularly. Of course, just like the laborious process of past strategic planning systems, firm members do not simply want to know that words exist, but that members will be held accountable for their actions if they are not consistent with stated values.



## SIGNIFICANCE

My observation is that older generation lawyers believe that individual significance within the firm results from proven sustained personal achievement. This runs counter to the Millennial, who desires to be quickly engaged in important work that makes a significant impact and that results in prompt recognition. In the legal world, however, many factors run counter to this need for immediate significance by our younger members, not the least of which are client requirements that disallow work to be performed by newer lawyers.

Regardless of the various competing reasons and demands that must be considered, it's my belief that long-term sustainability of a firm is more likely achieved by recognizing that the value of an individual Millennial to the organization is more important than the value that firm leaders attach to their graciousness in providing a young lawyer with employment. Firm leaders show they understand those in the Millennial generation when they figure out ways to provide younger lawyers with opportunities to lead, whether in firm management or important client work.

## SUPPORT

Throughout my tenure as managing partner, I believed that successful development of a young lawyer was attained through a strong mentorship program. In our program, young lawyers were assigned to seasoned lawyers. At first we tried to match lawyers within the same practice area. Then we decided that it would be better to match lawyers in different practice areas (making it less about mentoring in the practice area and more about firm integration). Then we tried to make the process more formal by requiring pre-meeting written reports. None of these things worked. The result is that we came to believe we simply are not a firm that will ever be great

at mentoring and therefore should only hire experienced self-starters.

Ultimately, I realized our program was founded upon our own past assumptions and not on what is more likely to work for a Millennial with a different life experience. Millennials want relationships and inclusiveness. This means less structure and reporting, and more face time with the younger generation. For late Boomers and Gen X leaders, this is a difficult road since we are accustomed to a different experience. Time spent in relationship building, though seemingly counterproductive to the billable hour, ends up being what the younger generation needs to develop into successful practitioners and productive firm leaders.

## SATISFACTION

“Work/life balance” is a term created by Gen Xers. It was a realization that work is great but only so long as there is balance—enough time to do the important nonwork things in life, or down time. Perhaps it was a philosophy created out of looking back and seeing a previous generation that worked itself to death, missing out on the finer aspects of life. The term itself connotes a divorce between work and outside interests. It seems that Millennials seek a different experience, what I have heard referred to as “work/life integration.” It is about doing work and life together—success defined through a life that fully integrates all 24 hours of every day. In this integration, volunteerism is not only encouraged but also part of work itself, fully supported by the firm. The concept is that as full integration is achieved in the individual life of the lawyer, the firm will, as a positive consequence, experience organizational success. If true, firms need resources and tools that support Millennials in achieving integrated fulfillment.

I have heard that certain cities are considering developing Millennial retention strategies. Perhaps law firms should consider something similar, not necessarily a written plan but a mindset that will lead to firm sustainability. Such a mindset includes planning through a more collaborative team approach, creative opportunities for leadership, learning relationships with seasoned lawyers and support for full work/life integration. **LP**



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# Leading Through Change

By Mary E. Vandenack

**OVER THE LAST TWO YEARS** I have led my law firm through a merger, an unmerger, the loss of a founding partner, a significant internal transition of technology, and transitions in the legal industry and practice areas. I learned that leading through times of significant change requires a depth of strategic focus as well as leadership skills that I had not previously discovered. This column seeks to identify the key skills that must be applied to lead a law firm through a time of significant change.

**Communicate.** The most important skill to practice on a regular basis during times of change is communication. Finding a spare minute when you are practicing law and managing a firm is nearly impossible. When you are navigating through a time of change, it becomes an even rarer commodity. You are typically moving from one fire to another. It's extremely important, however, to find the time to communicate with your team members on a regular basis. You simply must find the time. It's likely that there is a discomfort with the change that you will overlook if you are not communicating regularly with your team

members, and it's crucial to identify discomfort and uncertainty and help the team find its way through. Additionally, team members are seeking to help you but may be unclear about how to do so. You must take the time to communicate with them as to how they can assist you. The required level of communication during change can be exhausting, but that is the most important leadership skill to navigate your firm to change. You simply can't make it happen without interacting.

**Involve your people.** Good leadership is always about bringing out the best in others. This is even more important in a time of significant organizational change. You need to know the strengths of those in your organization and consider how to best utilize those skills to help navigate through the change. Create a leadership team to help you identify skill sets that will be particularly helpful to navigate change. Actively look at every member of your team. Delegate effectively and seek to create a safe environment for team members to express thoughts and ideas. Continue to listen.

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**Have a plan.** Having a plan in a time of change is mission critical. Being flexible in terms of modifying the plan is also important. Outline the plan. Communicate the plan. Be clear about the role of each team member with respect to the plan. Execute the plan.

**Handle one thing at a time.** When dealing with significant change, the focus shifts to that which is critically urgent. Sometimes the focus on the critically urgent will erase, on a temporary basis, the long-term necessities. It remains important to keep the long-term game in mind, but you simply must stay focused on what is immediately in front of you. If you seek to focus on the long term when the short term has become urgent, you will tax your own energy level and those about you in a manner that will result in disorganization and disarray, rather than taking a strategic pass-through change. Stay focused.

**Identify what will stay the same.** Despite all of the change that is occurring, some things will stay the same. Within a law firm the general philosophy toward client service might remain the same. The roles of some personnel will stay the same. Identify for your team members the norms that will stay in place.

**Clarify roles.** If the roles of your team members become unclear, in their eyes conflict can result. To avoid such conflict, clarify roles on a regular basis. Continue to clarify roles as they evolve.

**Provide direction.** A time of change requires clear direction. Think ahead. Start with that which is positive. Be clear and concise. Circle back. Follow up. Provide as much direction as possible in writing.

## Having a plan in a time of change is mission critical. Being flexible in terms of modifying the plan is also important.

**Face change head-on.** Change does not have to be stressful. Seek to shift a sense of uncertainty or concern about change to a positive outlook of excitement.

**Applaud excellent efforts.** Notice and applaud the efforts of those who help you. Be specific in your acknowledgments so that it is clear what actions have value.

**Celebrate milestones.** As you make progress on the plan through change, celebrate milestones. If miles seem elusive, celebrate inches. **LP**



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# Leading Innovation

By Mary Vandenack

**GIVEN THIS ISSUE IS** about big ideas in the practice of law, this column is focused on how to lead innovation. As a first step, it's important to consider what innovation really is.

In preparing to write this, I read numerous definitions of innovation. They varied widely. Some commentators indicate that innovation can be difficult to define. Best-selling author Scott Berkun suggests not using the word at all.

Because innovation is important and necessary to survive and stay competitive as the business world changes and as consumer demands change, it is important to establish a working definition from which to develop strategic objectives. A simple definition comes from *Merriam-Webster*: "the act or process of introducing new ideas, devices, or methods." A particular innovation can be a completely new idea or one that modifies a currently existing idea in a manner that creates value in the sense of internal efficiency or creation of a value for which consumers are willing to pay.

Those organizations that are willing to innovate are typically risk takers. Organizations seeking to innovate must consider the right leadership.

**Recognize the value of the beginner.** I once took a yoga class in which the instructor said, "In the eyes of the beginner, all things are possible." At my firm, when we bring in new associates or new staff, we ask them to actively question how we do things. We have to be careful to be truly open to the ideas and comments so that we don't quash the possibilities that a beginner can provide to us that we might not see otherwise.

**Establish the intention to innovate.** Without leadership setting a tone and creating a setting that allows innovation, it doesn't happen. The practice of law can sometimes be rigid in hanging on to outmoded ways of doing things because they had always been done that way. Establish the intention to innovate and then define ways to build an environment that truly allows it to happen.

**When you begin to shift your law firm toward innovation, identifying objectives will help facilitate getting innovations that benefit your firm's competitive edge.**

**Identify the objectives of innovation.** When we work with clients, we can best help them if we can become really clear about their objectives rather than concentrating on what we think they should do, which might have nothing to do with their objectives. When you begin to shift your law firm toward innovation, identifying objectives will help facilitate getting innovations that benefit your firm's competitive edge. The objectives that make sense for your firm will depend on what your clients want from your firm, how you can provide that and have it be profitable, and the type of services you provide and would like to provide. Once you have defined objectives, define the type of innovation that will meet those objectives.

**Trust yourself enough to trust others.** Lawyers often fall into the category of control freaks and struggle to delegate to others. I recently met with the CEO of a very innovative company. He suggested that a leader needs to trust him- or herself enough to hire the right people to innovate and then let them do it. He provided a simple example of how he began to let go and let others innovate. He identified some functions handled by others that he typically micromanaged but for which there really wasn't a right or wrong. He then practiced trusting the person who was handling it. A typical conversation went like this:

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*Key Employee:* “Should I send this out before the announcement?”

*CEO:* “You decide. There is no right or wrong here.”

*Key Employee:* “Well, maybe I should send it out after.”

*CEO:* “You decide. There is no right or wrong here.”

The key employee went back to his desk and came up with an approach to handling the issue that was innovative. In the process of letting go, the CEO allowed the employee to generate his own ideas.

**Create innovation networks.** Find some employees who are passionate about innovation and bring them together. Connect employees from different areas who don’t typically work together. Connect employees who are different from each other and encourage embracing their differences. Add innovation as a subject for every single meeting of any type. I started doing this. At the first meeting that innovation was on the agenda, the room went silent when I asked for ideas. A few meetings later the ideas were flowing.

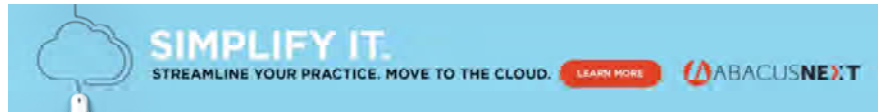
**Make implementation happen.** In an “idea generation” group that I participated in the last few years, the ideas

were coming by the hundreds. It was overwhelming. It’s important that idea generation does not overwhelm implementation. You will likely be unable to implement all the ideas that are generated. At some point, pick two or three and make them happen. The other ideas will still be there, waiting for later execution.

Innovation leadership requires flexibility. Leading innovation requires flexibility. A leader must be able to participate as a creative, innovative mind at one stage of the innovation process but shift to a technical, business savvy mindset at a different point in the process. **LP**



**Mary Vandenack** is a founding and managing member of Vandenack Williams in Omaha, Nebraska. She won the ABA Law Practice Division James Keane Award for excellence in eLawyering in 2015. [mvandenack@vanwil.com](mailto:mvandenack@vanwil.com)



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## Attorney-Led Client Surveying: Curbing the Pettifogger Coefficient

BY JOHN BOWERS ON OCTOBER 13, 2016 ·

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Failing to acknowledge the 800-pound gorilla may yield just enough guilt to make you seem dubious. Repeat purchasers and fine purveyors of legal services each have a knack for stumbling headlong into impossibly complicated circumstances seemingly written for daytime dramas. If lawyers are overly literal and clients often take legal problems personally, it may be mathematically inevitable that expectations and interests become more misaligned as the one constant, time, elapses.

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That's the essence of the pettifogger coefficient: If the customer is always right, then a partial or total lack of interest in the client's point of view—correct or incorrect—may cause even the most factually righteous lawyer to appear self-interested or underhanded. The effect is multiplied the longer the distortion continues unchecked.

Call it what you like, but the only way to combat the pettifogger coefficient is to gain perspective from your client at appropriate intervals in the relationship. In more than 16 years of varying legal industry roles and responsibilities, only on the rarest of occasions have I heard an attorney admit that they are not completely certain what their client thinks about them, the other members of the legal team, the quality of service provided or whether anything under the sun could be improved. Instead, most lawyers behave as if they know what is best for every one of their clients and, in fact, were deeply aware of such facts before the thought even began to crystallize in the client's pretty little head.

Sensing the unintended arrogance that leads to potentially incorrect assumptions, some client relationship managers excel at double- and triple-checking those assumptions against client preferences and standard operating procedures. Some attorneys send surveys at the end of important projects. Still others employ "outside" people to interview clients on their behalf, typically someone from the firm not on the legal team, or sometimes a consultant, and report back on opinions and targeted areas of improvement.



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THIS ISSUE OF LP TODAY

The Client Issue | October 2016

While I have been intimately involved in end-of-matter surveys and outside client satisfaction interviews, let's look at the first approach: informal surveying performed by the lawyer who oversees the client's work. It is not that this approach is necessarily better; it is fundamentally different from the other approaches, which could be covered in other articles. I think the attorney-led client satisfaction query approach is likely easiest, and, while it certainly falls under the ABA's Model Rule 1.4 duty of communication, may also be the most often overlooked of the three.

One last point before jumping in: *If you have no intention of changing your provision of service in some way, do not ask for feedback.* I cannot possibly emphasize that enough. Client feedback, whether glowing or scathing, should be treated as infinitely valuable and necessarily actionable. The greatest damage done through such a process may be in gaining the knowledge and then failing to respond in any meaningful way. Ignorance may indeed be bliss.

## Client Selection

The very best clients to target for regular satisfaction queries are your bankable, year-over-year clients. These clients have been writing you checks that, though they vary in size, underwrite your practice in terms of longevity and dependability. And though you may not do every stitch of their legal work, you know who does and may even wield some influence on who does work that is outside your wheelhouse. Perhaps you aren't geographically situated to get face time often. On the other hand, maybe you end up at the same event every other week and your kids are practically relations: occasionally such conversations don't happen for fear of risking the personal relationship. That doesn't seem like a healthy relationship at all.

You may be tempted to get an "attaboy" from your favorite clients. You know the ones: they *love* you; in their minds you are capable of walking on water. I'm not suggesting that positive feedback doesn't go a long way. However, be sure that you're not wasting your favorite client's time and yours. Instead, you just might glean the most beneficial feedback from "one of those clients."

Come on, everybody has them. They are the clients that call on the weekends and late at night with the granular question that they should have asked weeks ago, but now require answers yesterday. These special clients demand a discount out of the gate, and then nickel-and-dime you on bills that you wrote down before they went out the door. In short, if you dream of having the ability to fire a problem client but simply can't afford to, you may be well-served to get proactive and ask how you're doing. And don't do it only to preempt the next complaint from left field. Ask the questions because you have to work for them for an indeterminate period of time.

Another direction could be newer clients that demonstrate serious potential to grow. Nobody (but lawyers) wishes legal problems on someone else. Instead, these clients have roadmaps that are more than aspirational. In addition, they are the ones where you are literally a part of their team, not a lawyer, consultant or vendor. Though they may not have serious liability on the horizon, their business will explode and legal spend will scale to meet new business challenges. Asking open-ended questions about how your service level could improve will only embed you deeper into the executive team.



## Blessed be the Prepared

You can fire off your questions to the client you have selected in an informal way while still doing your homework. But rather than making preparation the last bastion of procrastination, thoughtfully organize your queries and then be ready move from the script to bring greater clarity to the best nuggets. Consider preparing for your conversation by planning to:

- Get there in person on your dime. Technology is great, but personal contact will always be better. The most critical reason to do your interview live is because your clients pay good money for excellent legal services. Secondly, it is just as important to read body language as it is to listen to your client's answers. Do it off the clock for obvious reasons.
- Take notes on what is said and not said. Though it may not seem informal to you, to the interviewee it shows that you plan to revisit the conversation later, if nothing else. You will have to work a little harder to make it feel informal. However, the result is that interviewees provide more thoughtful responses and you can better recall the non-verbal cues to more completely frame the tone of the message.
- Ask probing, follow-up questions to your lead open-ended questions. As you'll see below, your opening questions are high-level, innocuous inquiries that cannot be answered "yes" or "no." Such a format eliminates your influence from the start, since this entire exercise is about your client and not you. By deeply listening

THE CLIENT ISSUE  
OCTOBER 2016



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to their answer, you should be able to ask two or more follow up questions on each line of questioning to drill down into their underlying motivations.

- Not sell. That's right: your interview can't be a thinly veiled sales pitch. If you really want honest, uninterrupted feedback, take notes on potential leads that come up and circle back to them later. Otherwise, your interviewee will sense that you don't place much value on their perspective, and worse, feel like you only showed up to shake them down. Play it cool. In my experience, new legal work comes out of such conversations a majority of the time, and that's when you *pass up* the completely open door in the interview.

## What Questions?

Lawyers shy away from asking open-ended questions, especially those for which they don't already have the answers. On the other side of the coin, who likes being cross-examined? This exercise may be a different skill altogether from lawyering. Regardless, below are some questions to get you started. Supplement this list based on your relationship and service issues that you know have occurred in the past, as well as emerging problems in the future.

- What do you like about working with me [and my firm]?
- What is the best part of your job?
- When I'm (we're) handling your matters, what is working and what isn't?
- What do other lawyers with whom you work do that is better or different than my service to you?
- Do you feel like you see me often enough?
- What type of educational information do you like to receive from lawyers?
- What could I be doing to make your life easier?
- What are your current, major concerns when it comes to legal issues?
- What industry trends are affecting your company? How can I help you stay ahead of those trends?

## Follow Through

Just like tennis players who have difficulty directing their shots, lawyers who don't follow-up risk the scattershot effect: just hoping something lands. After you've spoken with your client, confirm your notes back to the client and ask whether you got it right. Since clients often work with more than one lawyer, consider who else on your legal team could benefit from the feedback. Then make a plan to deal with any issues and rank them in terms of immediacy. Finally, report back to your client on actions you are taking to demonstrate that you've listened and are taking action.

Healthy relationships take work. Those relationships that have soured make for great punchlines. In the end, a worthy goal should be to appreciate good lawyer jokes, and not be the subject of one.

## About the Author



*John D. Bowers is the chief operating officer at Patterson Intellectual Property Law, PC in Nashville, Tennessee. He is the editor-in-chief of Law Practice, executive director of the Tennessee Intellectual Property Law Association and is a member of the Association of Legal Administrators. Contact him at [JDB@iplawgroup.com](mailto:JDB@iplawgroup.com)*

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BY JOHN D. BOWERS

**LIFE**

A CONVERSATION  
ABOUT WHY  
“SMALLERLAW” IS A  
PREFERRED OPTION  
FOR SOME.

**BEYOND**

**BIGLAW**





**If you were to gauge** developments in the legal industry by what's fit to print in legal and business publications, you might assume that, as BigLaw goes, so it goes for law practices of all shapes and sizes across North America. Could that possibly be true?

If so, what precisely is BigLaw? Are such firms only those larger than 100 lawyers? The biggest law firm in Idaho is 52-lawyer Hawley Troxell. Does it not rank as a large firm?

Beyond being national or (let's face it) intergalactic in geographic scope, it is perhaps easiest to qualify BigLaw as law firms that are not small or even midsized. No matter how you measure it, however, our panel of practicing lawyers is quite content letting BigLaw be something in which they are simply no longer involved.

After graduating from law school, **HEIDI A. BARCUS** was hired at the largest firm in town. Shortly thereafter, she accepted a job as an in-house hospital lawyer. Then Heidi had her own solo practice. This is her 15th year at London & Amburn, a 20-person firm in Knoxville, Tenn.

**MARY E. VANDENACK** is the founding and managing partner of Parsonage Vandenack Williams LLC, a tax, trusts and estates, and business boutique in Omaha, Neb. Before founding this firm, Mary had been a partner at a regional firm based in Omaha as well as two large Omaha law firms.

**COURTNEY E. WARD-REICHARD** is a shareholder at Nilan Johnson Lewis in Minneapolis, a 48-lawyer firm founded in 1996. Courtney's practice focuses on defending corporate clients in complex products liability and commercial litigation.

**LANCE G. JOHNSON** started in a small firm and became partner in two midsized boutiques before starting his own intellectual property firm in February. With the help of a part-time paralegal, Lance works with litigation, opinions, licensing and prosecution.

## Law Practice (LP): Now for a simple question: Why are you where you are?

**JOHNSON:** I wanted more control over my practice and less commute. My commutes started to extend to two to three hours a day for the round-trip. The rush hour times started to get earlier and later simultaneously. I was arriving at 10:00 or 10:30 in the morning and not able to leave most nights until 7:30 or 8:00 p.m. This made my family life schedule unnecessarily complicated. Something had to change. My solo firm became a way to do what I love while also eliminating the downtime of the commute investment. It was one of the best decisions I ever made.

**BARCUS:** It had been my plan to return to my large firm, but after working both as a government lawyer and a solo practitioner, I decided to look for middle ground. Like Lance, I wanted to work at a place where I had some control over the work I could accept, what I could charge and how much money was spent on overhead. In my current position, I have a voice. Every lawyer in my firm has a voice, regardless of ownership or status. When we moved into our new space, we designed the offices so that each lawyer had an office with the same square footage. I recently learned that two lawyers swapped offices and measured the spaces to confirm that the offices were indeed the same size. In my firm, if a lawyer is interested in choosing the next copier, case management system or document storage vendor, there is room on the committee. Additionally, each employee is reviewed at the end of the year by every lawyer. It is *our* firm, not *their* firm. In terms of morale, that makes a difference.

**WARD-REICHARD:** In my practice I am able to do sophisticated legal work in complex cases, without the downsides of a large firm environment. I've been there; I started my career in 1992 at a large firm with over 250 lawyers. In 1996 I joined 29 other lawyers from that firm in forming Nilan Johnson Lewis. Similar to Heidi's experience, we were looking to create a different kind of law firm—still doing the same quality legal work, but with a smaller size and smaller overhead that would allow us to give clients better service and value. Over the last 18 years, we have grown strong practices representing *Fortune* 100 and 500 clients in product liability/mass tort, labor and employment, commercial litigation, health care and business transactions/real estate. I've been able to develop and apply my skills in e-discovery and trial technology all over the



COURTNEY E.  
WARD-REICHARD

country, often working alongside lawyers from some of the largest firms in the country who are representing my clients' co-defendants.

**VANDENACK:** Similarly, I was a partner at three different midsized to large firms. When I joined a larger law firm, I had expected that economies of scale would reduce costs and result in being able to take home a larger share of what I brought in than I had been able to do in a small law firm. I expected that technology would be used in a way that resulted in efficiencies and phenomenal client service. I also expected that I would find plenty of support for the work that I brought with me.

Before joining a large law firm in the early 2000s, I had all of my documents automated in HotDocs and linked to a database. While the large law firms I joined had excellent forms, automation did not exist. Most firms had several databases, and they weren't well used. My partner and I are very good with technology. Rather than spending months and thousands of dollars simply discussing what technology could do, we built our basic systems and websites on our own for a very low cost, and that was before the cloud.

I started a smaller law firm so that I could focus on the use of technology in a way that makes legal services cost-effective and improves client service. My partner and I wanted to fly "low to the ground" in terms of overhead and structure. Because we have big-firm skills and backgrounds but wanted to stay small, we identified a niche area and client type that we could serve in a small-firm environment. To date, we have been busy, profitable, happy and continually evolving our use of technology to improve what we do and how we do it.

## LP: Do you perceive any downsides to not practicing in a large law firm?

**WARD-REICHARD:** We have successfully defended clients in numerous high-profile trials, what are sometimes called bet-the-company cases. Nevertheless, our firm is occasionally at a disadvantage competing for this work because of a perception that a BigLaw firm is the safe choice—not because the large firm will provide better representation but because no one will question the decision to hire the BigLaw firm if the client suffers a loss.

**VANDENACK:** Large firms are able to hire numerous associates knowing that only about one in five will succeed. We have to spend significant time and effort evaluating our hires in the hopes that we can beat those odds. Unfortunately, the numbers remain about the same in the small-firm environment.

Also, in a small firm, I have to be involved in more day-to-day issues related to running the firm than I care

to be. I would love to be able to close my door and simply focus on my clients and the work I do for them, which is what I like to do best. But in a small firm, even with a great staff, I have to handle more administrative and managerial issues than I did in a large law firm.

**JOHNSON:** The lack of an existing cadre of specialized support staff across the hall is likely to be the biggest drawback for me. Trained and intelligent support is important for an intellectual property practice where docketing, deadlines and agency procedures are crucial.

Fortunately, I have found a very skilled and cross-trained paralegal who wants the same type of virtual structure that I have. Together, we make a pretty good team for the types of client matters I handle. The lack of a large-firm structure with teams of skilled lawyers and, as others have pointed out, recognized

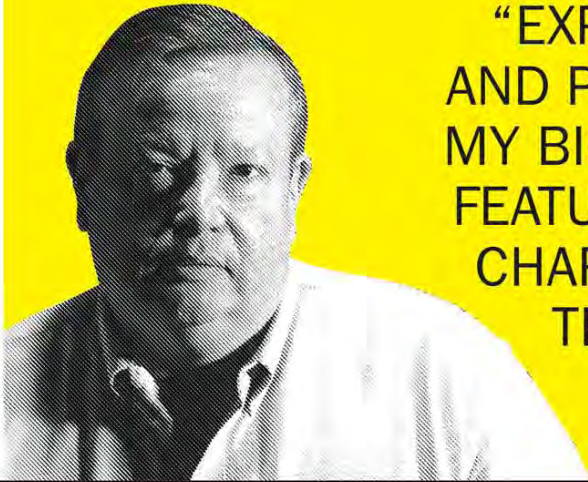
reputation in litigation will lend itself to favorable consideration more in the nature of expert opinions, product development counsel and licensing rather than beauty contests as lead counsel in big-stakes litigation.

**BARCUS:** There are downsides to every work environment. I agree with Courtney that the most significant downside to working outside of BigLaw is the lack of name recognition and market power. Big firms are often perceived as the experts in legal markets. It's hard to swallow when I feel I've been overlooked by a client in favor of a lawyer in a large firm from a big city. We spend a lot of time trying to determine how to position our successes and expertise. We feel our expertise is as good, or better, than the expertise of the lawyers at big firms. However, sometimes a new client is swayed by the name of a big firm.

“IN MY CURRENT POSITION, I HAVE A VOICE. EVERY LAWYER IN MY FIRM HAS A VOICE, REGARDLESS OF OWNERSHIP OR STATUS.”

**HEIDI A. BARCUS**





“EXPERIENCE, FLEXIBILITY AND PERSONALIZATION ARE MY BIG THREE DISTINCTION FEATURES. MY PRACTICE IS CHARACTERIZED BY LONG-TERM RELATIONSHIPS.”

LANCE G. JOHNSON

## LP: What are the competitive advantages that you’ve experienced outside of BigLaw, and how have you exploited them?

**VANDENACK:** We can make and implement decisions quickly. When we want to add a client portal, we simply do it.

Additionally, our overhead is very low, which allows us to be very cost-effective for clients. We are able to serve clients well that might not get the same service for the same cost from BigLaw firms. We work a lot with closely held businesses and their owners, whose typical complaints are cost and inattention to their matters. We targeted that market with the goal of addressing those issues.

In a smaller firm it’s easier to coordinate services in a similar manner and with a similar philosophy. Our brand is related to the type of service we provide consistently, regardless of the attorney with whom a client works. One of my objections at one of the larger firms at which I worked was that there were at least three different forms for the same type of work. My partner and I wanted our documents to present a certain type

of product, irrespective of who prepared them.

**JOHNSON:** Experience, flexibility and personalization are my big three distinction features. Larger firms can often be perceived as having lots of experience but with higher rates and a feeling that the small client will not get the sort of personal attention that a larger client would receive. My practice is very personal and is characterized by long-term relationships. I have much greater flexibility for discretionary billing in my own firm and no need to explain my billing decisions to others. Some clients have greater educational and counseling needs than others, so maybe some of those phone calls don’t get billed because I see the time as an investment in a more informed client. The billing and productivity pressures that prevail at larger firms often cannot accommodate those sorts of support efforts. My

clients seem to appreciate that they can call me with a quick question and get an answer without necessarily incurring a \$200 bill. And no, I don’t charge for long-distance calls, copies, staples or office supplies like larger firms do to recover standard overhead charges.

Although I have been lead counsel as a solo, more typically I help the client avoid getting sued or figure out why they were named. We can then choose an appropriate lead counsel firm to handle the matter with the appropriate level of resources. My role then shifts to one of helping the company to achieve a favorable settlement based on my experience with the market segment players and the intellectual property issues of the case.

**BARCUS:** The most significant competitive advantage I have is freedom. Like Lance, I have the ability to talk about rate structure without going to the compensation committee. I can work with

clients to develop alternative fee arrangements without fearing that my numbers will be scrutinized at the end of every quarter. Additionally, I have flexibility to concentrate solely in one area of the law or to develop a new practice area without pitching my professional development to a committee. The absence of oversight by an elected board allows me to better serve my clients.

Within my firm, clients in the health care industry have access to lawyers who specialize in every aspect of that field. We have audit lawyers, litigation lawyers, transactional lawyers and compliance lawyers all focused primarily in the health care field. Because our compensation depends on the success of the firm as a whole, as opposed to the success of the individual, the lawyers work as a team. The transactional lawyers will drop everything to close a deal for one of my litigation clients, just as I will drop everything to respond to a subpoena issued to a transactional lawyer's client.

**WARD-REICHARD:** We are able to deliver better value to our clients because of our expertise and efficiency in staffing cases, with lower overhead. We form total partnerships with our clients. Achieving excellent results is just the start; we also know the importance of understanding client needs and delivering value. Also, since my practice is highly dependent on technology, our firm's smaller size allows us to be much more nimble. Finally, our firm's flexible and open culture has allowed us to attract a diverse, talented pool of professionals who are a pleasure to work with—something that can't always be found at a larger firm.

MARY E. VANDENACK



## APPLICATION

Do you desire a voice, or even a realistic level of control, in your practice? Are you paying for economies of scale that simply are not economical? Do you consistently confront firm-imposed obstacles that prevent you from satisfying the actual needs of your clients? There is no perfect job. However, if you answered yes to any or all of these questions, consider refocusing discrete aspects of your practice and then fight for them. After all, "SmallerLaw" may be calling. **LP**



**John D. Bowers** is assistant director of business development at Fox Rothschild LLP in Princeton, N.J. In this capacity, he identifies and promotes new business strategies for individual attorneys as well as practice areas and industry groups.

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**Sabrina Presnell Rockoff** is the Managing Partner of McGuire, Wood & Bisette. She advises employers on issues related to human resources. Sabrina develops and drafts human resources practices, policies and contracts; conducts employee-related investigations; represents employers in front of governmental agencies and in federal and state courts and works with employers on union-related matters. Sabrina frequently trains human resources professionals and managers through her involvement with Western Carolina Industries, Inc., the Asheville Independent Restaurant Association and the Asheville Area Chamber of Commerce. Sabrina practiced for 10 years with large international law firms prior to returning to her hometown.

## CLIENT SUCCESSES

- ▲ Achieved the dismissal of a multi-count employment-related lawsuit against a local municipal employer
- ▲ Represented several local restaurants successfully in audits by the Department of Labor
- ▲ Defended one of the largest U.S. forest products manufacturers in disability discrimination lawsuit brought under the Americans with Disabilities Act
- ▲ Argued an issue of first impression under the ADA before the Tenth Circuit Court of Appeals, resulting in summary judgment for her client on all claims
- ▲ Investigated and brought to resolution significant sexual harassment and fraud allegations concerning management-level employees in corporations

## COMMUNITY INVOLVEMENT

N.C. Stage Theatre Company Board (Vice President 2014-2015)  
 YWCA of Asheville Board Member  
 Congregation Beth HaTephila Board of Trustees  
 Federal Bar Association, Western District of NC Chapter,  
 Executive Committee  
 Leadership Asheville (Class of 2012)  
 Leadership Raleigh (Class of 2010)

## EDUCATION

University of North Carolina School of Law (J.D., 2002)  
 University of North Carolina at Chapel Hill (B.S., 1999)

## BAR

North Carolina (2002)  
 New Jersey (2006)  
 New York (2009)  
 U.S. District Court for the Eastern District of North Carolina (2002)  
 U.S. District Court for the Middle District of North Carolina (2003)  
 U.S. District Court for the Western District of North Carolina (2003)

## AWARDS

Super Lawyer "Rising Star" (2011-2017)  
 Business North Carolina's Legal Elite (2012-2017)  
 Biltmore Beacon 40 Under Forty (Class of 2015)



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## **DR. CYNTHIA ACKRILL**

Cynthia Ackrill M.D. is a leader in the field of stress management and an expert in the critical relationships between lifestyle choices, performance capacities, and leadership effectiveness. The rare deal– a physician trained in neuroscience and wellness and leadership coaching, she travels the world to teach better ways to lead and thrive in the face of stress and constant change.

She leads workshops to reduce the waste of human capital, health, happiness, and profits lost to stress and ineffective leadership. And she continues one-on-one and team coaching and create realistic stress strategies and advance performance and leadership goals.

Dr. Ackrill earned her B.S. at Duke University and M.D. at the University of Maryland School of Medicine, and practiced primary care medicine for over a decade before taking time off to raise her daughter. It was her daughter's ADHD that triggered a deep interest in neuropsychology and led to her study of brain mapping, neurofeedback, and biofeedback for a variety of mood and behavior challenges, including stress. Fascinated by how humans struggle with behavior choice and change, she trained in wellness and leadership coaching.

In addition to her extensive integrative medical training, Dr. Ackrill is certified by Wellcoaches, Wellness Inventory, The College of Executive Coaching, and Team Advantage, and has advanced training in positive psychology, motivational interviewing, and peak performance. She contributes widely as a stress and behavior change expert to a range of media- radio, TV, and print- including Katie Couric, Huffington Post, eHealth, SPA, Today's Practice, BAR Association, IMF, Daimler, Corning, AIBTM, Employers Association. She is dedicated to finding real life strategies based in neuroscience and the science of human performance and to making the learning process engaging and fun.

She is on the faculty of Kent State Institute for Excellence, Federal Leadership School, Davidson Centre for the Professions, and The Healthcare Coaching Institute and a coach for The Physician's Leadership Institute. Currently Dr. Ackrill heads the Workplace Stress board of the American Institute of Stress and has served on the board of the International Society of Neurofeedback and Research. She is also a charter member of Heartmath.

Cynthia was born and raised in Baltimore, Maryland, and after 24 years in Asheville, North Carolina, she decided to shake up life and move to the Washington, DC area–a great decision!



## 10 COSTLY MYTHS ABOUT STRESS YOU CAN'T AFFORD TO BELIEVE

by Cynthia Ackrill, MD, FAIS

When we operate—think, behave, and make choices—under errant assumptions we may pay dearly and unknowingly in financial, mental, physical, and emotional health.

There is too much written and said about stress today. It is stressful just to tune into it! And, if what we focus on becomes our reality, why would we want to focus on **stress? We don't—we don't want to** keep focused on anything in the obstacle category. But we will benefit from dispelling some of the myths under which we subconsciously and consciously operate, so we can be pro-active in managing both the big and little trials of daily life.

Clearly understanding the challenges and choices of dealing with the stressors in our lives allows us to move from a sort of numb, reactive, or overwhelmed state to a **pro-active, empowered state**. It can also help us move from good performance to excellence, brilliance, and vitality. Think of a day when you **have been really "on."** You felt pre-

sent, quick, focused, energized, and able to energize and influence others. Stress, whether obvious or lurking below awareness, steals such moments from us, eroding our performance capacity. In 2003 improperly managed stress alone was estimated to have cost US businesses **\$300 billion dollars/year**. Imagine what that number has become in the last few years!

Now at this point, many high-achievers object, **"But, I thrive on stress!"** or **"Stress is something that happens to wimps who miss opportunities!"** It is very true that we do not all have the same reactions, resilience, or even perception of stress. And therein lies part of the fodder for myths and the reason stress can be a ruthless profit thief and silent killer. But before addressing this further, it is crucial to make sure we are talking about the same beast. From a performance (and health) perspective-**what is stress?**



## Myth # 1 Stress is something that happens to us.

Truth: Stress is our reaction to what we perceive is happening to us. **This is key! One man's garbage is another man's treasure. Why?**

Because of *perception*, the meaning we assign to what we sense is happening. One person may experience complete exhilaration and liberation walking across fiery coals in a fire-walking ceremony, and another may experience intense pain barely touching a hot pot during an argument with a spouse. In both cases the stimulus to the body, *the stressor*, is heat, but differing perceptions of that heat assign different meanings to the stimulus.

Expectation plays a critical role here. *Whenever our perception does not meet our expectations we feel threatened, out of balance, stressed.* When a car cuts us off, a supposed colleague disrespects us

in front of peers, or when our most loyal client suddenly moves to the competitor, we feel stressed by our perception that what we expected to happen did not. Expectations color perception, and set the context for the stories into which we fit how we experience our world. Expectations also offer an important opening for stress management.

## Myth # 2 It's the big stuff that brings us down.

Truth: Major life changes are significantly stressful, but it's the constant barrage of little stressors that wears down our resilience, our performance, and our health.

Most stress assessments ask you about major life events—job loss, death, marital status change, etc. But they miss the profoundly additive effects of the day in, day out tiny challenges to our systems: the irritable boss/spouse/child, an



**“It ain't what you don't know that gets you into trouble.  
It's what you know for sure that just ain't so.” -Mark Twain**

unexpected bill, the broken garage door, or the meeting running late. Ever heard of death by a thousand paper cuts? The “little” stress reactions tax every system in our bodies and rapidly drain our energy and brainpower.

**Myth # 3 Stress is bad for us.**

Truth: We need stress to survive! We cannot perform at all without some level of arousal from perceived challenge. But when our perceived capability to meet that challenge is exceeded, we feel stress. Maintaining just the right amount of challenge for peak performance is truly hard to do without proactive stress management.

**Myth # 4 We can accurately tell when we are stressed.**

Truth: Ha—just ask a friend, coworker or spouse! When we are in the thick of it, we cannot accurately assess how off balance we are. The stress reaction evolved to protect us from danger and is triggered by any perceived threat—hissing snake or IRS envelope. It is an amazing system involving 1400 chemical reactions that evolved to keep us safe. It automatically redirects blood away from the higher functioning, thinking, self-awareness part of our brains to our large leg muscles, so **we can escape. After all, it's not time to analyze what type of snake**

**that is in front of you; it's time to run!** So the person in dis-stress is much like the person at the office party who has had one too many drinks—not really aware of their impairment.

Think again of a day when you **were really “on,” had great energy,** felt optimistic and creative. That is very different, not only from those days of acute crisis, but also from those days where you are just plodding on, slightly distracted by simmering worries, hoping to make it through with some things crossed off your to-do list. This awareness can help you discover more “on” days.

***When we are in the thick of it, we cannot accurately assess how off balance we are.***

**Myth # 5 One day we will be stress-free.**

Truth: Chronic stressors ebb and flow, but are here to stay. Our job is to learn ways to proactively manage the challenges of life in ways that preserve our

health, energy, brain-power, and productivity. Chronically operating **as if today's challenges are unusual** is an aspect of denial subconsciously used by many to cope—a delusion that creates unrealistic expectations and unhappiness. This denial also keeps us in an unempowered, reactive state, and allows the deleterious chronic effects to wear us down. This does not mean that some times in our lives are not worse than others, but stress is part of life. We should give

up hope for or stop working to create better situations, but we do need to be realistic about building up resilience for what life doles out.

**Myth # 6 We can ignore stress.**

Truth: NO! Unmanaged stress is a silent killer—draining our finances, productivity, brilliance, creativity, focus, energy, health, and happiness. On the financial front stress drains profits through costly absenteeism, direct and indirect health-care costs, accidents, and presenteeism—that feeling of being at work without our full energy, focus power, or access to brilliance.

Research provides a very lengthy list of the destruction caused by chronically sounding the stress alarm. Prolonged or frequent production of cortisol, the key hormone of the stress system, impairs memory, zaps creative power, ages cells, causes fat retention, leads to depression, and triggers or advances most disease states contributing to 80% of medical visits. The good news: proper stress management can reverse these statistics!

**Myth # 7 We have no choice, no power in the face of stressors.**

Truth: We can make a huge difference by proactively reducing our exposure, re-aligning our perspectives, and raising our resilience. By

learning how to make clear choices, assess and address challenges, and incorporate techniques and practices to fortify resilience, we can negotiate stressors with far less toll on our productivity, health, and happiness.

**Myth # 8 Stress management is mostly about time management.**

Truth: Stress management is about energy management, perception control, and balance. Yes, good time management definitely helps you avoid creating more stress. But

managing the energy of the human system is the real key. Stressors challenge our systems and use energy. So to function well with resilience, that energy must be continually renewed. Effective stress management addresses both ways to reduce the energy drain of stress exposure, as well as

ongoing ways to renew energy and build resilience. Think of creating a “hybrid model” of performing with built in habits and rituals to refresh the energy supply.

**Myth # 9 My thoughts are “real!” (My perspective is right!).**

Truth: Moment to moment, our brains create our thoughts, feelings, memories, and even what we think we see, in the context of our

***Stress management is about energy management, perception control, and balance.***

## Think... what small habit can you shift or tiny choice you can make that will buy you more energy, more resilience, and a greater feeling of proactively managing your life?

perception. And perception is completely individual and malleable—the product of our history, beliefs, emotional and physical states, the environment, circumstances, and the influence of others. To say, “Our minds play tricks on us,” can be an understatement. Think of optical illusions. In experiments, food appears bigger if we are hungry. Research shows that if we even *think* about a situation where we felt out of control before performing a task, we are more likely to make mistakes or experience inappropriate suspicion. And as independent thinking as we would like to assume we are, peer pressure is actually hardwired into our brains.

Imagine you are on your way home and a car cuts you off. You’ve had a long day, started by yet another spat with your teenager. You missed lunch and 2 important new client calls stuck in an exasperating meeting about the red tape stalling your project. As that car zips into your lane your thoughts are probably very different than if you had just had a stellar day complete with a surprise hug from your daughter and landing a great new client, and now you are on your way to a fun-filled weekend with old friends. In both cases, your brain should react with an appropriate quick stress reaction to keep you safe—applying

the brakes before you even realize what is happening. *But how much that event harmfully raises your stress hormone levels depends on the thoughts you have in response to the situation.* Attitudes, perceptions, emotions, etc. profoundly influence those thoughts.

Perception context explains why two people can have very different reactions to the exact same experience. We have a natural bias to believe our thoughts, our story. That is usually a good thing. But when our perception colors thoughts and feelings as threats, it raises our stress levels. *Part of effective*

*stress management is perception management*—checking and actively managing our perceptions. The good news: repeated attention to values, purpose, and gratitude gives us “perception resilience.”

**Myth # 10 I can take care of myself later after....”**

Truth: Stressors are always present and the negative effects of poorly managed stress are silent and cumulative. Poorly managed stress hijacks our brainpower. Much like heart disease the symptoms are not apparent until most of the damage is done. You need to plan and act now to protect against the damage of dis-stress.

The good news is there are multiple ways to reverse the trends and find more energy, focus, hap-

***Much like heart disease the symptoms are not apparent until most of the damage is done.***

piness, and health. And small changes have disproportionate results! The ROI for self-care is huge—improved health, access to brilliance and life satisfaction. This is true individually and collectively. Feeling energized, engaged, and effective is a far better feeling.

**Bonus Myth # 11 I can't make much of a difference in this crazy workplace or world.**

*"Be the change you want to see in the world." –Gandhi*

There is a lot of controversy over the exact origin of this quote, but in our hearts and in our experience we know its truth—that how we handle the world affects those around us. Mirror neurons explain how our brains reflect the behaviors of others. Parenting certainly provides many examples of how our ability to manage our own stress level impacts the stress levels of those around us. And stress is definitely contagious at work, but so is positivity and calm, and they create a more productive environment.

Experiment at your next meeting. Take several long slow deep breaths before you start talking and observe the difference in your communication and how others listen. Watch as they mirror your deliberate slow down of the "business." Go bold...reframe something

to explore the positive/possibility side. Surprise a group with a stretch break to refresh their brain ram. Let others mirror the vitality, alertness, and engagement you begin to feel from proactively taking care of your stress.

*Understanding the definition and mechanisms of stress is the beginning of the awareness necessary to make change.* But unfortunately, knowledge alone does not equal motivation. (There would be no fat doctors if this were the case!) Our brains love novelty, but by nature resist changing habits,

because habits conserve energy. Change is inherently hard—only 1 in 9 patients faced with the near death experience of cardiac surgery are able to sustain lifestyle changes!

But there is lots of good news. Brain and behavioral sciences offer new understand-

ings and tools to support our learning to make choices and develop habits that will reverse the energy drain of stress. Habit creation is the secret to lasting change. And small changes have huge effect. ***We really can create brilliant, effective, and healthy lives by proactively managing our stress and energy.*** What small shift are you willing to make for your future performance and happiness?

***Let others mirror the vitality, alertness, and engagement you begin to feel from proactively taking care of your stress.***

Today's Speakers:

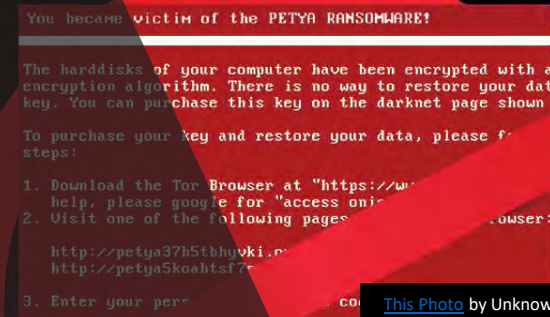
Daniel B. Garrie, Co-Founder & Managing Partner at Law & Forensics; Arbitrator, Mediator, and Neutral with JAMS, CPR, and LCIA

# Managing Current and Future Cyber Risk



[This Photo](#) by Unknown Author is licensed under [CC BY](#)

## Stop Petya Ransomware



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Daniel Garrie is the executive Managing Partner of Law & Forensics. Daniel is the co-founder and leads the Computer Forensics and Cyber Security Practice Groups. He is also an arbitrator, mediator, and neutral with JAMS, CPR, and LCIA resolving complex international disputes. Mr. Garrie is also an adjunct Professor of Law at Rutgers School of Law and Cardozo School of Law lecturing on Data Governance, Privacy, and Cybersecurity

Mr. Garrie has built and sold several Internet security, e-commerce, and search technology startups. Prior to his time at Pulse Advisory, Daniel Garrie was the Worldwide Director of Electronic Discovery & Information Governance at Charles River Associates. He also works as a Strategic Partner for Quorum Ventures and a Board of Governors member for the Organization of Legal Professionals. He is a nationally recognized educator and lecturer on various topics including computer software, cyber security, e-discovery, forensics, emerging internet and mobile technologies, and cyber warfare. He is the Editor in Chief of the *Journal of Law & Cyber Warfare*, a fellow at the Ponemon Information Privacy Institute, a distinguished neutral with JAMS and CPR, and on the editorial board of the Beijing Law Review.

Mr. Garrie's scholarship in e-discovery, forensics, and cyber security is frequently cited by the bench and the bar, including: *Arrivalstar v. US*, *US v. Briggs*, *Coast Professional, Inc. v. US*, *Genger v. TR Investors, LLC*, *John B. v. Goetz*, and *Northrup Grumman Computing Systems, Inc. v. US*. Mr. Garrie is also frequently quoted by leading publications including the New York Times, Fortune, Forbes, and the Wall Street Journal on issues relating to cyber security and cyberwarfare.

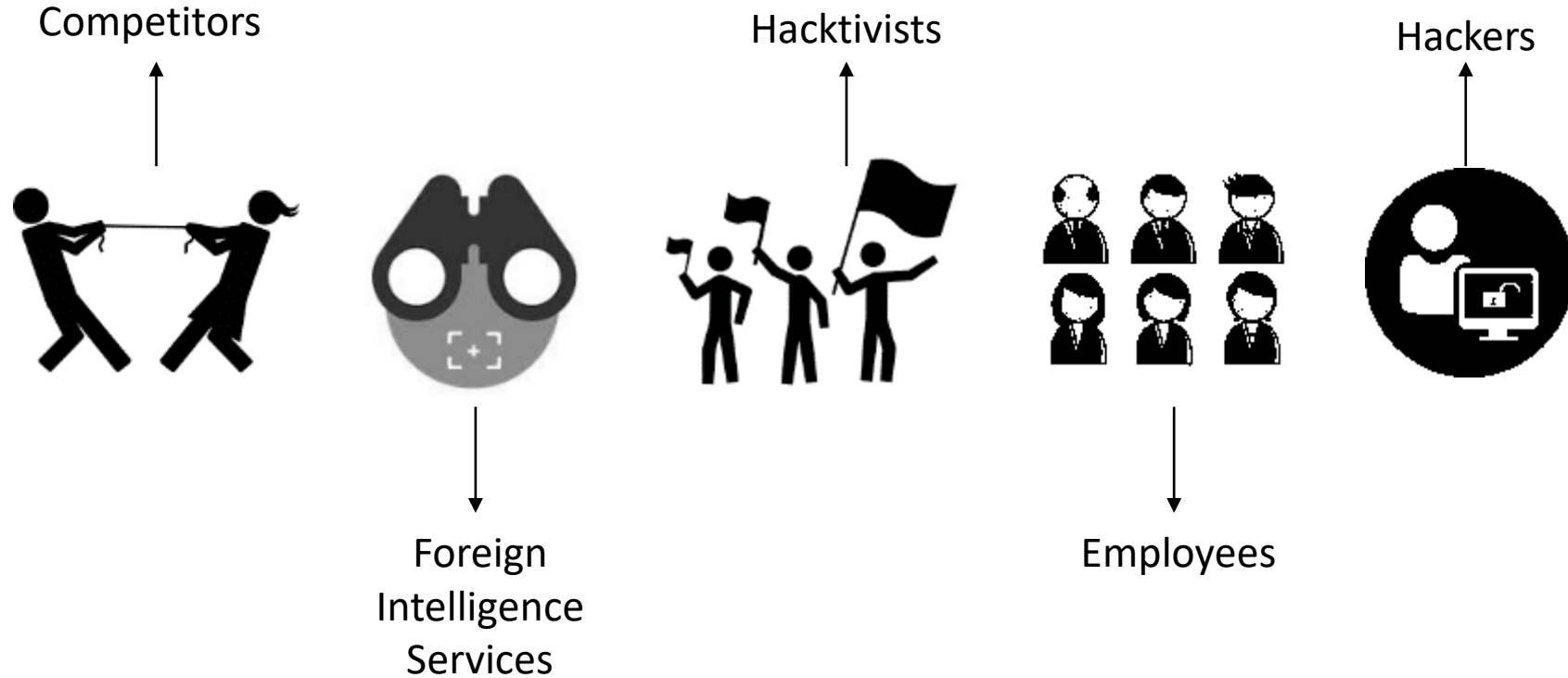


# Cyber Threats Facing Law Firms



# Who Might Attack Your Firm?

*Attacks can be by a range of actors and intentional or unintentional*



45.00%  
Outside  
Threat

31.50 %  
Malicious  
Insiders

23.50%  
Inadvertent  
Actors

# What is a Cyber Attack?

“Deliberate action to alter, disrupt, deceive, degrade, or destroy computer systems or networks or the information and/or programs resident in or transiting these systems or networks.” – National Research Council

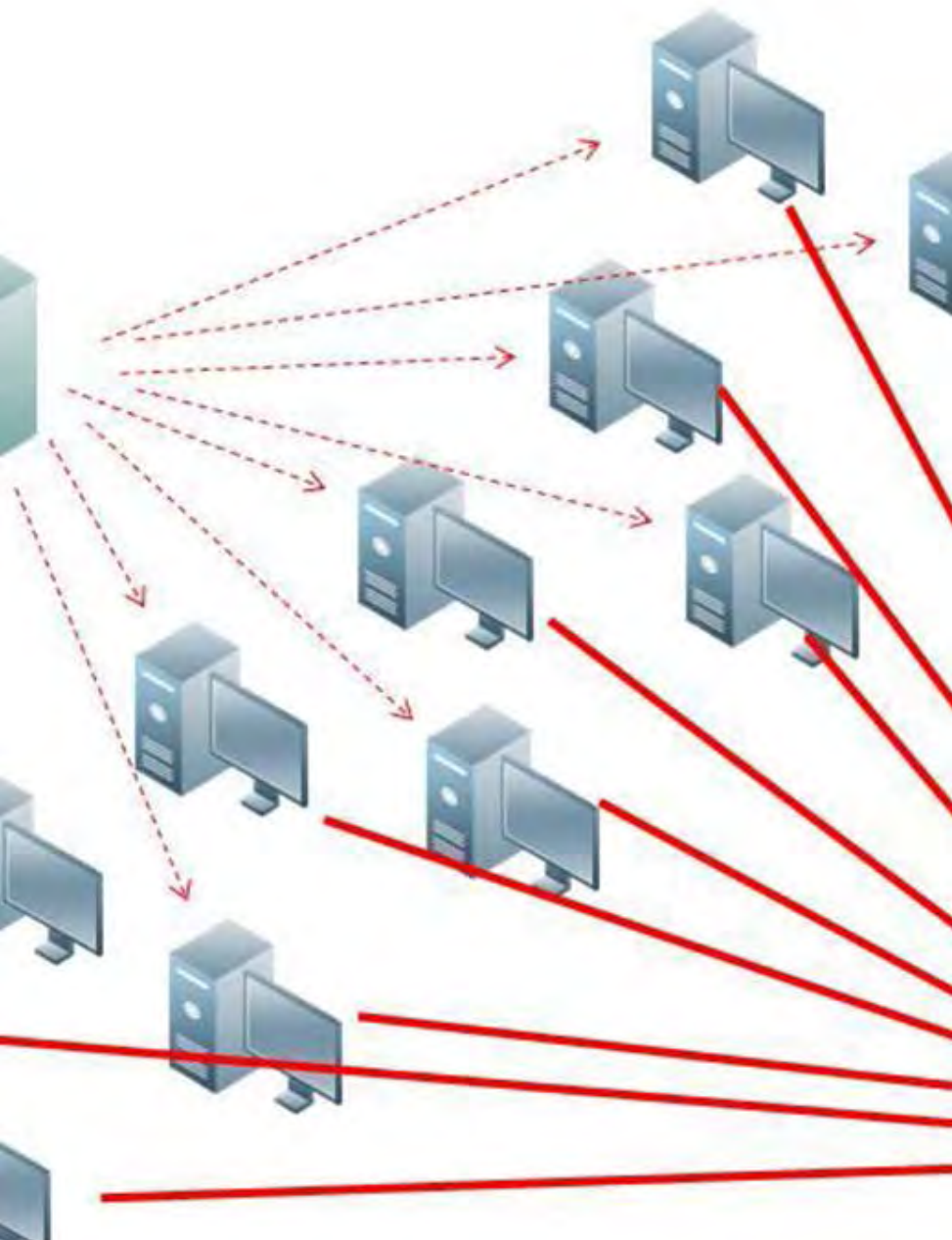
# What is a Data Breach?

A data breach is an incident in which sensitive, protected or confidential data has potentially been viewed, stolen or used by an individual unauthorized to do so. Data breaches may involve Personally Identifiable Information (PII), trade secrets or intellectual property.

# Trust the Fact

## It Is Not If It Is When

- 78% of organizations experienced a data breach in the past two years.
- 72% of businesses that suffer major data loss shut down within **24** months.
- 60% of small to medium sized businesses admit that they do not routinely back up data.
- **The legal industry was the third most targeted sector in January 2016, after retail and financial sectors.**



# Distributed Denial of Service

## Definition:

- A distributed denial-of-service (DDoS) attack is one in which a multitude of compromised systems attack a single target, thereby causing denial of service for legitimate users of the targeted system. The flood of incoming messages to the target system essentially forces it to shut down, thereby denying service to the system to legitimate users. (US-CERT)

## Real World Example:

- March 2nd, 2017 -Luxembourg government's web servers slowed to a crawl. The attack shut down about 100 web servers used by state authorities and offices

# Malware

## Definition:

- Generally, code/script that is put on a user's device without knowledge or consent (e.g., Viruses, Worm, Trojan Horse) that cause harm. (Cisco)

## Real World Example:

- The Storm Worm began attacking thousands of (mostly private) computers in Europe and the United States, using an e-mail message with a subject line about a recent weather disaster, "230 dead as storm batters Europe". At its height, the Storm Worm accounted for 8% of all malware infections globally.

irus Alert!  
Warning! Threat detected  
malicious item has been

# Social Engineering

## Definition:

- Social Engineering refers to the use of social/psychological skills to obtain insider knowledge to gain unauthorized access. This is a growing threat because it can often be combined with malware and publicly available information (e.g., LinkedIn and Facebook) to create highly targeted believable schemes. (Kaspersky)

## Real World Example:

- The 2014 Yahoo data breach was the result of hackers targeting a “semi-privileged” employee, which allowed them a meaningful foothold within the company’s networks.



# How to Hack a Law Firm?\*

The Israeli firm CyberRisk was asked to execute a “**red team attack**” on a prestigious law firm. In **less than 48 hours** the team had **full control** of the network, all assets including servers and shares, and all of the users’ mailboxes.

\*[http://www.philadelphiabar.org/WebObjects/PBA.woa/Contents/WebServerResources/CMSResources/TPL\\_Winter17\\_cybersecurity.pdf](http://www.philadelphiabar.org/WebObjects/PBA.woa/Contents/WebServerResources/CMSResources/TPL_Winter17_cybersecurity.pdf)





# Law Firm Data Breaches

## ATTENTION DLA EMPLOYEES-

All network services  
are down, Do  
NOT turn on your  
computers! Please  
remove all laptops from  
docking stations & keep  
turned off.

\* No exceptions \*

# Specific To Legal Community

- **Mossack Fonseca,**
- **DLA Piper**
- **Rhode Island Law Firm**
- **Cravath, Swaine & Moore LLP**
- **Employment firm in L.A.**
- **Weil, Gotshal & Manges LLP**

## How did it happen?

- An anonymous source, John Doe, found that the Mossack Fonseca law firm was not encrypting its emails, and was running a severely outdated version of Drupal, a content management system

## What was the result?

- The Prime Minister of Iceland resigned. The Prime Minister of England came under fierce attack for potential financial impropriety. Countless businesses face new and substantial regulatory and compliance risks as a result of the breach.

## What happened to the partners?

- The two founders of Mossack Fonseca were arrested on February 11, 2017, after both were indicted on charges of money-laundering in a case allegedly tied to a wide-ranging corruption scandal in Brazil



## How did it happen?

- Hackers broke into the computer networks of some of the most prestigious law firms. The firms include Cravath Swaine & Moore LLP and Weil Gotshal & Manges LLP. Likely sponsored by the Chinese government.

## What was the result?

- Three Chinese hackers made more than \$4 million in illicit profits after breaking into the servers of top corporate law firms in New York, the U.S. said in announcing charges and the arrest of one of the men.

## What happened to the partners?

- Unknown

Best

Practices

for Securing  
Your Law Firm

## Regularly update software and hardware

- Patch servers
- Laptops
- Phones

## Implement Access Controls

- Employees
- Partners
- Vendors
- Systems

## Software security solutions such as:

- Secure and easy-to-use file transfer solutions
- Advanced email encryption services
- Full disk encryption on laptops and other devices
- Integrated malicious-code-detectors



# Protect The Important Data

1. Identify and segregate critical data and systems
2. Verify and update access controls
3. Ensure continuous protection and monitoring



# Vendor Management

1. Limit access in accordance to need
2. Review existing contact language
3. Bind vendors to security standards and protocols
4. Identify, rank, engage, and audit third-party vendors.
5. Notification timeframe



# Cloud Computing

- What are the economics and benefits and negatives of moving to the Cloud?
- Did clients provide their written consent to place information in the cloud?
- Will the information in the cloud be encrypted?
- Does the cloud provider employ adequate security to protect the data?
- Will the data be stored internationally? If so, will it be subject to search and seizure?
- Lawyers must use due diligence in selecting a cloud provider by asking the right questions.





# Mobile Devices

- Do you have a policy dictating use and control of mobile devices?
- How do you manage personal devices used for work?
- Do your employment agreements allow you to remotely access and wipe a mobile device?
- Do you require encryption on all mobile devices?
- What type of password requirement do you have for mobile devices?
- Do you have anti-virus and malware scanning on the mobile devices?
- Did you evaluate the risk that encryption means that you do not know what data is being put on an employee's mobile device?



# Incident Response Plan

Does it exist.

- Who wrote it?
- When was it written?

Did you test it.

- What frequency is it tested?
- Who is involved in the testing?
- Do you track results?

Does it include.

- Backup verification, validation
- Bitcoin account
- Cross-functional team
- Law enforcement points of contact

# Cybersecurity Insurance

1. Do you know how your current coverage operates in the context of a cyber incident?
2. What gaps exist with your existing cyber coverage around cyber?
3. When you purchased cyber insurance did you go to the market to get a firm grasp of the costs that can be incurred in the context of sub-limits?
4. Do you verify and validate that your vendors have cyber coverage?
5. Do you require your vendors to close if they have been compromised?





# Perfection Is Not The Goal, But People Can Be The Biggest Problem.

## Investment

- Technology
- Systems
- Processes

## Education

- Training
- Testing
- Engaging

## Accountability

- Senior management
- Vendors
- Employees

## Culture

- Awareness
- Focus
- Dialog

GREETINGS PROFESSOR FALKEN.

# Simulation

# Key Points

## Incident Response

- Does it exist.
- Did you test it.
- Does it include.

## Insurance

- Catastrophic event
- Partner profits.
- Scope of coverage.

## Evil Twin

- Listen.
- Learn.
- Evaluate.
- Execute

## Culture

- Policies.
- Practices.
- Continuous.
- Investment.

## CONTACT

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# OVERVIEW

*Assisting clients to manage technology risk*

## Law and Forensics

- Technical consulting firm working with clients across industries on software, cyber security, e-discovery, and digital forensic issues
- Work with IT departments to assess security system and build a worry-free, secure system to protect your most valuable information
- L&F team members have a wealth of experience in advising firms of all sectors and sizes on their most critical technology needs.

## Areas of Expertise

Cyber Security

Electronic  
Discovery

Digital Forensics

Data  
Governance

## Past Clients

Global Oil and Gas Company

Teaching Hospital

Fortune 500 Chemical Company

Large Insurance Provider

Global Banks

Global Financial Institution

Major Pharmaceutical Companies

Technology Startup

U.S Government

Beauty Company

Unparalleled  
Expertise

# MANAGEMENT TEAM

## *Unparalleled Expertise*



Daniel B. Garrie Esq.

MANAGING PARTNER

In a field that is new to many, **Daniel Garrie** is paving the way when it comes to 2017's most pressing cyber security, forensic, and legal issues. In addition to his Law Degree, he holds a Bachelor's and Master's in computer science and appears as comfortable talking with entrepreneurs as he is with developers, lawyers, and judges. With an affinity for building start-ups and shaping a leadership team, Daniel is an active advisor and board member for a number of different companies, including Get.it, Norse Corp, and Eccentex.



Bill Spernow

CHIEF FORENSIC OFFICER

**Bill Spernow** is the former Director of Information Security, Investigations and Incident Response for Experian, the world's largest consumer reporting agency. He spearheaded the development and implementation of several projects funded by the US Department of Justice providing hands-on training to Federal, State and local law enforcement in the area of Cyber Crime investigation and has personally trained over 4,000 cyber investigators.



Rhea Siers, Esq.

DIRECTOR

**Rhea Siers**, Former Deputy Associate Director for Policy at the N.S.A., is Scholar in Residence at the Homeland Security Policy Institute at George Washington University (GWU) and a Senior Associate of the GWU Cyber Security Initiative. She is a veteran of over 30 years in the U.S. Intelligence Community, and served in a variety of operational, legal, and policy positions.



Alan Roper

DIRECTOR

**Alan Roper** is a former executive with the intelligence community with over 20 years of experience in the field of cyber security, privacy, and forensics. He is one of the foremost experts and thought leaders in the field of human intelligence. Alan used to run all of information governance and compliance regulation for The Boeing Company.

## LOCATIONS



### **NEW YORK**

1211 Avenue of the  
Americas, New York  
NY 10036

### **WASHINGTON**

6506 3rd Ave NW  
Suite C Seattle WA  
98117

### **GEORGIA**

1040 River Point  
Suwanee, GA 30024

### **CALIFORNIA**

1875 Century Park City  
Los Angeles, CA 90067

### **OTHER LOCATIONS**

London, United Kingdom  
Mumbai, India

*Law and Forensics' ("L&F") Cyber Security team can assist companies in protecting their valuable data by identifying legal and technical gaps and consulting on a long term cyber security strategy and solution.*

## Consulting

Law & Forensics protects your most valuable intellectual property, corporate secrets, client information, and personal data by identifying technical and legal gaps through sophisticated consulting on cyber security strategy.

- Analysis & Assessment  
*Identify and prioritize threats*
- Incident Response Playbook  
*Prepare the response team with training exercises and simulations*
- Vendor and Policy Audits  
*Work with boards and senior executives to identify and mitigate risks*

## Data Breach Investigations

Data breaches: It is a matter of when, not if, your organization is hacked. When a company suffers a data breach, no matter the size, an initial wave of panic spreads throughout. How much data is missing? What data is gone? How was the system infiltrated? These are just some of the questions that L&F has a track record of answering quickly.

- Breach Analysis  
*Utilize cutting edge patent pending software and hardware*
- Incident Response  
*Work with law enforcement all over the globe in countless investigations*
- Malware Threat Detection  
*Faster and more comprehensive threat detection at lower costs*

## Education/Training

Law & Forensics' team offers comprehensive webinars, online courses, and in-person training for the bench and bar on various topics, including: cyber threats, latest case law, security technologies, and international cyber security.

- Collaborative Program Design  
*Provide a custom built teaching program*
- Corporate Training  
*Educate at the technical and legal levels  
Simulate an interactive data breach with executive team and board*
- Hands-on Immersion

*Law & Forensics' computer forensics practice has led internal and external forensic engagements in the U.S. and abroad for global companies, government agencies, and international non-profits.*

## Forensic Investigations

Our team has conducted thousands of complex forensic investigations on all types of devices. We are able to collect, preserve, and harvest data from a wide range of formats and media.

- **Detection of Spoliation**  
*Discover evidence of spoliation in dozens of disputes and submit expert reports used by the parties*
- **Forensic Data Recovery**  
*Utilize patent pending hardware and software*

## Cloud Computing

Our team of experts is capable of recovering all types of deleted, corrupt, missing or inaccessible data stored in the cloud. We help law firms and companies run successful investigations and return to normal operations after they have been breached.

- **Incident Response**  
*Investigate and respond to a data breach within hours of being retained.*
- **Data Recovery**  
*Locate and recover deleted or partially disrupted files in private and public cloud computing environments using off-the shelf and patent pending cutting edge software.*

## Expert Witness

Our team has provided forensic expert witnesses in more than 1000 disputes. Our clients include companies of all sizes, as well as government agencies such as: The Department of Justice, The Federal Bureau of Investigations, Securities and Exchange Commission, and the Department of Homeland Security.

- **Expert Consulting**  
*Resolve challenges related investigations or litigation and assist counsel in understanding parties' expert reports.*
- **Wide Range of Cases**  
*Intellectual Property Theft, Patent and Trademark Disputes, Theft of Trade Secrets, Breach of Fiduciary Duty, Class Actions, Broker/Dealer.*

## PRODUCTS

### Forensic Scan™

Forensic Scan™, a patent pending comprehensive malware detection and identification solution investigates, diagnoses and identifies if known malicious cyber threats – malware, viruses, trojans and rootkits – have breached your corporate firewall and infected your servers, workstations, desktop or laptop PCs or tablet devices running Microsoft® Windows® operating systems. Forensic Scan performs comprehensive forensic scans of hard drives, storage devices and RAID arrays using more than 55 industry standard malware detection engines. Forensic Scan runs each malware detection application simultaneously and can detect and identify malicious threats more than 50 times faster than if your IT staff conducted the scans sequentially, one malware detection engine at a time. Forensic Scan also detects, recovers and scans deleted files and folders, which are not scanned by conventional commercial malware detection software.

### Computer Forensics Playbook

Law & Forensics' Computer Forensics Playbook proposes best practices in relation to computer forensics. The forensic frameworks set forth allow companies to understand what it takes to successfully navigate a computer forensics matter, how to follow proper forensic protocols throughout all stages of the investigation (consulting, data preservation and collection, analysis, and expert testimony and reporting), how to prevent data from being destroyed, how to select a computer forensics expert, and will provide a company with an understanding of fundamental computer forensics terminology in order to successfully participate in the investigation process.

### E-Discovery Playbook

Law & Forensics' E-Discovery Playbook proposes best practices in relation to e-discovery. The e-discovery frameworks set forth apply to email, documents and other electronically stored information owned or under the control of the client.

### Cyber Security Playbook

Law & Forensics' Cyber Security Playbook standardizes the questions all CEOs should ask about their companies' security practices as well as those of their suppliers, partners, and customers. Importantly, it also shows them what the answers ought to look like. Security playbooks powered by intelligent automation can effectively apply continuous remediation while seamlessly maintaining important compliance standards. They can be designed to meet both security and compliance requirements using automated workflows so that resource-constrained organizations can stretch their budgets for maximum efficiency and effectiveness.

Thank you . . .

# Daily Journal

LOS ANGELES & SAN FRANCISCO

www.dailyjournal.com

FRIDAY, JANUARY 6, 2017

— PERSPECTIVE —

## It's the most wonderful time of year...

### FOR CYBERCRIMINALS



New York Times

It's the most wonderful time of the year ... for cybercriminals.

By Daniel B. Garrie and Adrienne Publicover

mandating that disputes be resolved through arbitration. This should not be cause for alarm, as there are many potential advantages of arbitration in data breach litigation.

First, the legal landscape in the world of cybersecurity is ever-evolving and uncertain. And in litigation where personal financial or health information arguably has been compromised, the adage that bad facts make bad law may never be true. Fortunately, in arbitration, unlike a court proceeding, there are opportunities to preserve confidentiality, thereby reducing negative publicity and accompanying reputational damage.

Many cybersecurity insurance policies contain written procedures mandating that disputes be resolved through arbitration.

Second, arbitration promises a less lengthy and less expensive process for both parties. There generally is greater speed to a decision, which can save anywhere from months to years off the normal trajectory of a litigated case.

Similarly, arbitrators can more efficiently address procedural issues, such as standing, and advance more quickly to the merits of the dispute. Discovery also is more limited and controlled in arbitration than in traditional litigation. Less time and more control in the context of litigation typically leads to reductions in legal fees and costs.

Finally, arbitration allows the parties to select their arbitrator during this protracted time period, and years to reach resolution. And, take millions of dollars and several years to reach resolution. And, during this protracted time period, the uncertainty of the ultimate litigation outcome negatively impacts plaintiffs and defendants. To help avoid these drawbacks, all parties should begin considering arbitration as an alternative to litigation.

Many cybersecurity insurance policies contain written procedures that require years of experience to truly understand what happened, what happened and what harms it caused. Data breach cases are complicated, very technical and important. Data breach cases are the fact-finder can be incredibly efficient deal with data breach claims. The existing difficulties in litigating these claims hurts both consumers and companies. Arbitration holds the promise of focusing issues, reducing the immense

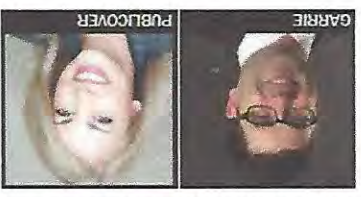
As the number and severity of data breaches have increased in recent years, there has been a corresponding rise in data breach litigation in courts across the country. There are many drawbacks to litigation. First, the time and cost factors associated with data breach litigation may vary, the legal complexity of most data breach situations, which require relegating legal fault and then aggregating sufficient proof of liability, means that it will likely take millions of dollars and several years to reach resolution. And, during this protracted time period, the uncertainty of the ultimate litigation outcome negatively impacts plaintiffs and defendants. To help avoid these drawbacks, all parties should begin considering arbitration as an alternative to litigation.

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may (or may not) result. Often these technical complexities may be accompanied by intricate insurance coverage issues. A competent arbitration panel can help cut through the many issues in a quick and easy manner, help focus discovery on the substantive issues and ensure that the parties do not waste time and resources fighting over non-substantive issues.

Arbitration is not without its potential for downside. There is minimal (if any) precedential value to an arbitration award, which means that the current uncertainties in cybersecurity law may not get resolved any time soon. There also is a very deferential standard of review for arbitration awards. While this promotes finality and avoids protected and expensive appeals, it also means that mistakes may go uncorrected. This is yet another reason why it is important to select the best arbitrators for your case.

As the number and severity of data breaches continue to increase, litigants should begin to look beyond the courthouse for ways to efficiently deal with data breach claims. The existing difficulties in litigating these claims hurts both consumers and companies. Arbitration holds the promise of focusing issues, reducing the immense



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# Is Cyberinsurance Really Worth It? Using ADR to Resolve Cyberattack Disputes

By Daniel Garrie and Andrew Nadolna

While strengthening a company's cybersecurity posture can make a considerable difference, companies must also prepare for the unfortunate inevitability of a successful cyberattack. Recognizing this risk, companies have turned to cyberinsurance as a tool for mitigating their cybersecurity risks. Unfortunately, uncertainty still exists regarding how courts will interpret this relatively new type of insurance policy. Accordingly, contractual alternatives such as arbitration or mediation are often the most efficient means for resolving cyber coverage disputes.

Cyberinsurance, as an industry, is experiencing rapid growth. With 25 to 50 percent annual increases in premiums, 2015 set a record with \$2.75 billion in gross premiums written. This is expected to double by 2020 and may get as high as \$20 billion by 2025. One feature of this rapidly expanding market is that not all exposures have been properly identified, turned into language and priced into the policy. Terms and conditions are negotiable and the forms are revised frequently. This means there is little value in court precedents in interpreting these policies and from the cases so far it is clear



Photo: iStock

that there have been unintended consequences from policy wordings to date.

Before delving into case law, it is important to understand what cyberinsurance is and what it insures against. A cyberinsurance policy is generally an amalgamated form of different types of insurance, including: errors & omissions coverage, network security coverage and privacy coverage. While policies can be heavily tailored, they generally feature several of the following types of coverage: loss/corruption of data, business interruption, public relations/crisis management, cyberterrorism, etc.

Of great importance is the fact that insurers can write specific baseline requirements for cybersecurity compliance into their policies, which provides sometimes-necessary guidance to companies who are developing or revising their cybersecurity posture. Further, insurers are able to provide services to companies before, during and after a cyberattack. These services can be invaluable in mitigating and remediating the harms associated with such an attack.

While cyberinsurance offers tremendous benefits to those who seek to mitigate their risks, due to its

relative youth as an industry, there are many cases where cyber claims will be disputed. For example, in *P.F. Chang's Inc. v. Federal Insurance Co.*, P.F. Chang's discovered a data breach in June 2014. The breach involved 33 restaurants and compromised the credit card data of roughly 60,000 customers. Upon learning of the breach, P.F. Chang's reported it immediately to Federal Insurance Company (Chubb). The company sought coverage under their cyberinsurance policy for payments to credit card companies resulting from fraudulent payments associated with the breach.

The policy covered "direct loss, legal liability, and consequential loss resulting from cybersecurity breaches," but the Court nevertheless held that the data breach fell outside the policy coverage. Relying on case law involving commercial general liability policy coverage for data breaches, the court found that liability is generally excluded for "the assumption of another's liability, such as an agreement to indemnify or hold another harmless." Because P.F. Chang's was seeking coverage for the assumption of the credit card companies' liability, the Court ruled that this was excluded under the policy and Chubb did not have to pay for vendor related, fraudulent payment costs.

The case of *P.F. Chang's* illustrates that cyberinsurance is still in relative infancy compared to other forms of insurance. The market has yet to

determine what should and should not be in an insurance agreement, and, more importantly, what the terms of an insurance policy necessarily mean. Most forms have now been amended to cover the exposures at issue in the *P.F. Chang's* case. But there continues to be new kinds of exposures that are fought over in court. This lack of steady footing in stable forms will continue to lead to a large amount of costly and time-consuming litigation. While the courthouse door is always an option, insurance providers and purchasers should begin looking at contractual options, such as arbitration, to expedite the dispute resolution process, and ensure a relatively quick and confidential outcome.

Why is ADR better than litigation in resolving cyberclaim coverage disputes? Depending on the specifics of a dispute, mediation or arbitration can save anywhere from a handful of months to several years. This is particularly true because the parties can set their own discovery procedures, which are almost always faster, easier and more direct than discovery in the traditional litigation context. Moreover, cyber insurance involves complex technical and insurance issues that judges will often need significant time and resources to understand. By contrast, mediation or arbitration allows the parties to select a neutral with technical cyber experience and/or relevant insurance experience to help navigate the nuances associated with cyber-related disputes. Additionally,

since these disputes can often be highly visible, ADR allows the parties to keep the dispute out of the courtroom and away from the media and public eye. Companies considering purchasing cyber policies should strongly consider adding arbitration or mediation clauses to allow for the more efficient resolution of coverage disputes.

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# A New Focus on Law Firm Cybersecurity



Daniel Garrie January 11, 2017

Law firms have long held a hallowed position in the corporate world, as the preeminent keeper of confidences. But the frequency with which law firms are falling victim to data breaches and hacks should leave clients questioning their firm's data security. Due to their trusted position in the business world, law firms have become a prime target for cyber criminals, and without adequate data security confidential client information can fall into the hands of a wide variety of bad actors.

Consider the following hypothetical about a top global firm. It has attorneys working with companies and individuals in virtually every industry in the world. These attorneys are privy to a wide variety of highly sensitive and confidential financial information — information that would be of great value to cyber-criminals. A senior mergers and acquisitions partner chose to use his smartphone for both work and personal use. As a senior partner, no one was willing to require the need to segregate data and users. The senior partner regularly let his son use the smartphone to surf the Internet and download games. One day, the son downloads a game which has malware code attached to it. The malware infiltrated the firm's email server. This silent intrusion allowed a cyber-criminal to monitor all emails in the senior partner's practice group. The cyber-criminal was able to access confidential financial information, which allowed him to engage in insider trading, making millions of dollars off of the information, and causing serious harm to the firm's client by driving up the price of the stock.

While the above hypothetical may seem like a doomsday scenario, it can happen, as revealed in a recent indictment in the Southern District of New York. The indictment alleged that three criminals gained access to a top law firm's email server through undisclosed means. On multiple occasions, these criminals were able to gain confidential inside information about pending M&A deals. The criminals were then able to trade on that information, making more than \$4 million before being caught. The criminals were charged with insider trading, wire fraud, and violations of [the Computer Fraud and Abuse Act](#). While the facts are little known for how the criminals in the above case broke into the firm's mail servers, it's likely that the criminals exploited a lawyer with access to the email server — a much easier pathway — rather than attacking the system directly.

While the recent actions of the US Attorney in the area of cybersecurity and prosecuting cyber-crime is a great step forward in raising awareness about law firm vulnerabilities, it only begins to scratch the

<http://legalexecutiveinstitute.com/new-focus-law-firm-cybersecurity/>

surface of the issue. A 2015 survey from the American Bar Association (ABA) found that [one in four law firms](#) acknowledged having experienced a computer systems breach. That number does not include firms who have yet to discover the breaches in their systems. Moreover, as [US Attorney Preet Bharara warned](#), law firms “are and will be targets of cyber-hacking, because you have information valuable to would-be criminals.”

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*There are several useful, cost-effective tools available to all law firms, whether a solo practice or multinational firm, to help secure the firm’s data.*

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This example is not meant to scare law firms out of engaging in important work, and it is not meant as a prompt for law firms to radically overhaul their policies and procedures in an attempt to pursue perfect cybersecurity. What this example should do, is highlight the risk of poor cybersecurity, and serve as a conversation starter for how to develop a strong cybersecurity infrastructure and culture within a law firm.

There are several useful, cost-effective tools available to all law firms, whether a solo practice or multinational firm, to help secure the firm’s data. These tools include email encryption services, secure file management and transfer solutions, multi-factor authentication, mobile device management and integrated malicious code detectors that operate across both computers and mobile devices.



Often times, for a small premium, these individual tools can be bundled into a single solution that is managed by external third-parties. Taking these relatively simple steps will significantly hamper all but the most serious cyber-criminals and nation-state actors. Why then, if these steps are cost effective and simple do firms still face a significant threat of cyber-attack? The answer is simple: law firm culture.

The above-discussed tools, are for all intents and purposes, a sophisticated alarm system. Defeating an alarm system can be a difficult task for a criminal, but the alarm system requires that the homeowner properly follow the alarm's procedures in order to work. If a homeowner chooses to leave the front door open, no matter how effective the alarm system is, it cannot prevent a criminal from breaking in. Consequently, law firms must pay serious attention to developing a security conscious culture, and must be sure to close their digital front door. Training is a very good and necessary starting point to develop an effective cybersecurity culture. However, training should not just be checking a box. Every employee of the firm must be committed to taking the steps necessary to protect the firm's information and systems, even if there is some measure of inconvenience. The stakes are too high to do otherwise.

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*Not only is it [law firms'] responsibility as fiduciaries of their clients' data, but their decision not to implement these measures will become an untenable business position as clients begin auditing the law firms they employ.*

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Additionally, law firms can participate in cyber threat sharing through the Legal Services Information Sharing and Analysis Organization (LS-ISAO). LS-ISAO helps member law firms share cyber threat information to collectively improve their knowledge of threats in the community and better prepare for them. Information sharing can result in improving decision making, avoiding redundant effort, and promoting alignment with the most up-to-date best practices.

These are a few of the measures that law firms must begin and continue to implement in order to achieve meaningful data security. Not only is it their responsibility as fiduciaries of their clients' data, but their decision not to implement these measures will become an untenable business position as clients begin auditing the law firms they employ.

With that said, there is no one-size-fits-all approach to cybersecurity, and every firm must carefully consider the risks, costs and benefits, and then make an informed decision as what solutions would best protect the firm and its clients.

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***[Richard Borden](#), Counsel of Robinson+Cole and a specialist in cybersecurity risk management, contributed to this blog post.***



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## CLIENT DATA: SECURE AS THE WEAKEST LINK

By Daniel Garrie and Rhea Siers

**Abstract:** In this new white paper, authors Daniel Garrie and Rhea Siers examine some of the vulnerabilities that law firms face in keeping their own internal data and client data safe from cybersecurity attacks. The authors also offer several cost-efficient solutions to help law firms and companies remedy this growing and potentially disastrous problem.

Law firm culture has long focused on the ability of attorneys to bring a high level of thought and analysis to every legal case on the firm's roster. However, similar care has not been spent by firms when it comes to data security. Without data security, client files may inadvertently end up on a file server in China, Brazil, or perhaps even Russia.

Consider the following hypothetical: A 500-attorney global law firm had a policy allowing employees to use their personal devices for work purposes. One senior partner used his smartphone for work email, viewing files, remotely connecting to the law firm network to access client materials, and accessing documents stored in the cloud. This senior cost-conscious partner chose to use his smartphone for both work and personal use, as no one brought to his attention the need to segregate data and users. One day, while driving his son to school, the senior partner lets his son use the smartphone to surf the Internet and download a new game, which has malware code attached to it. When the senior partner later logged onto his firm's Intranet, the malware program infiltrated the firm's servers. This silent intrusion allowed the malware to transmit back to its developer the law firm's store of data, which included bank account information, credit card information, and confidential information for high-profile clients – all now available to the highest bidder. Within days of the breach, the law firm was floundering to determine how their networks were hacked, how to stop the leak, how to manage their client relationships, and how to remedy the reputational fallout.

While the above hypothetical may seem like a doomsday scenario, a vulnerable WiFi connection could also create an opportunity for a hacker. Imagine our same partner goes on a business trip and checks into a hotel, bringing his laptop with him. This hotel's WiFi system has been compromised because of a known vulnerability, giving hackers a doorway into the root access of the hotel's WiFi system. With this access, the hacker is able to target the attorney's email and hard drive, including where he keeps his clients' pending patent applications.

Like most enterprises, hacking is generally about making money. Even without a direct link to the attorney's confidential client information, any other data on the laptop can easily be bought and sold on the underground market. Take, for example, a personal email account. Within this account, our attorney friend has emailed his bank account information in 2007 to his brother so a transfer could be made. Between 2010 and 2015, before his law firm bought iPad®s for attorneys, our attorney would often send himself client documents to work on from home. As a highly organized attorney, our friend keeps all copies of receipts from Internet transactions in a folder in his Gmail account. He is wise not to save his username on his banking website, but he does maintain an email in his drafts folder with a list of all passwords for those less important sites, like his Netflix® account. Through the use of spear fishing, social engineering, and malware, even a *marginally* savvy criminal with access to this information can withdraw funds from the attorney's bank account, impersonate the attorney, and gather enough information and access to use the email accounts to send spam.

These examples are not meant as scare tactics, but merely an explanation of a few possible ramifications of a data breach. We all take calculated risks in our everyday lives, and now those risks must include how we handle our personal and business-related information online.

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*Like most enterprises, hacking is generally about making money. Even without a direct link to the attorney's confidential client information, any other data on the laptop can easily be bought and sold on the underground market.*

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## CREATING A SECURITY-AWARE CULTURE

However, there are cost-efficient methods that can dramatically improve a firm's data security, both on local hardware and mobile devices. While investing millions is not practical, if a law firm has a security-aware culture and has purchased and implemented one of the current solutions available in the marketplace, it can provide a secure and easy-to-use file transfer solution, a highly advanced email encryption service, an integrated malicious-code detector for both the firm's Internet connection and its individual physical devices. These are, respectively, a solution that manages and protects data in transit between mission-critical system and security platforms, and technology that provides network protection from all outside threats.

There will always be criminals who find your cell phone and the data on it to be profitable. However, our entire hypothetical can be averted by some thoughtful pre-planning and a little amped up security (unless you're trying to keep out the best rogue state cyber hackers).

Law firms have long been the vault for personal and corporate confidences. But the increasing number of hacks should leave clients questioning the strength and security with which their law firm protects their data. The simple principle of attacking the weakest link often may lead back to law firms' devices, as firms often do not invest in the technology, people, and cultural awareness necessary to provide strong security. A [2015 ABA survey](#) found that one in four law firms acknowledged having experienced a breach. That number, of course, does not even include firms who have yet to discover the breaches of their systems. Recent revelations about the 48 firms hacked by the [Russian cybercrime group Oleras](#) only confirms the extent of the problem. A firm can even have an outstanding cyber-practice but fail to sufficiently protect its own network.

Although some laud law firms as the first step in cybersecurity response, praising the benefits of attorney-client privilege and knowledge of corporate disclosure laws, simply knowing the law is only half the battle. Unfortunately, neither individual nor state-sponsored hackers are deterred by the tenets of attorney-client privilege.

An understanding of the physical hardware and software piece is critical as is an appreciation of cyberthreats and the human factor in cybersecurity. The attorney must be capable of serving as a leader in an incident or breach investigation and capable of balancing disclosures against the need for interaction with government and other cybersecurity resources. He or she must have enough background to lead a holistic approach including the need to protect the reputation of both the law firm and client. The attorney also must appreciate the need for expeditious remediation of the incident regardless of the perpetrator.

Unlike the physical structure of a bank, the level of information security readiness and effectiveness is not readily apparent to law firm clients. Thus, any company should require counsel to demonstrate that the law firm knows how to securely hold and manage an organization's data. In turn, law firms that know how to manage and secure technological assets should use that competitive advantage in marketing themselves to existing and potential clients.



There are a few critical steps that law firms can take to simultaneously enter this new area of practice and ensure that their clients' data remains safe. The firm should create network data maps, monitor digital access logs, hire in-house and outside experts, acquire appropriate computer hardware and software, and create a culture that is security centric. Often the weakest link is not the technology, but the people, so it is essential firms make sure that ingrained in every employee's mind is the need to be security aware.

These are a few of the preventive and prophylactic measures that are at the disposal of law firms. There is not a single solution befitting all firms, of course, and the right solution will vary based on the size, geography, people, and systems a firm has deployed. That said, every firm should seek and employ the right cybersecurity solution for itself and its clients.



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## TECHNOLOGY

# 'Ten Commandments' of Cyber Security Can Enhance Safety

Feb 24, 2016

📍 Global Focus, North America 🗒 Opinion



*Hacker attacks such as the one on Hollywood Presbyterian Medical Center show how easily digital platforms can be turned against organizations, but taking 10 steps can augment security, write RANE founder David Lawrence and his co-authors in this opinion piece.*

Imagine you are admitted to a hospital for treatment of a serious but treatable illness, and then your records are stolen. The medical staff is now at a complete loss about your care. While the doctors are scrambling to figure out what to do, they soon realize that all the hospital's records are missing and that someone is demanding that the hospital pay a ransom in exchange for their release. Now imagine further that the hospital has no alternative but to pay the demand (in Bitcoins) in order to ensure the safety of its patients.

One has to look no further than the recent attack on Hollywood Presbyterian Medical Center and other headlines to realize how quickly and easily our digital platforms can be used against us. While the Internet has delivered on its promise of global access and efficiency, it also accelerates and scales the darker forms of human activity — theft, fraud, extortion, blackmail, espionage (state and corporate), terrorism, insider trading, property destruction and criminal mischief. Soon, the Internet of Things (IoT) will even more seamlessly connect our devices to everything we need — as well as everything we need to fear.

As we continue to learn, the Internet was built for connectivity and speed — not security and protection. For criminals, rogue states and mischievous actors, the digital world has become the “promised land” — low risk and high reward — offering a borderless reach, assured anonymity and defenseless victims who are not allowed to fight back.

**“One has to look no further than the recent attack on Hollywood Presbyterian Medical Center and other headlines to realize how quickly and easily our digital platforms can be used against us.”**

Foreign governments, state-sponsored actors, criminals, terrorists and lone actors are increasingly targeting our data systems and information networks. The finances, trade secrets and operations of our enterprises, as well as the identities and privacy of our citizens, are at constant risk. President Obama addressed the urgency and ubiquity of this security crisis in his recent *Wall Street Journal* op-ed.

Networks that control critical corporate and governmental infrastructure (power grids, manufacturing plants, and communications, health and transportation systems) are being probed for vulnerabilities with an eye toward future infiltration and disruption. The federal government — as well as our leading military and law enforcement agencies — have been repeatedly targeted by cyber criminals, including the intrusion last year into the Office of Personnel Management when the personal information of millions of current and former federal employees was stolen. Hackers in China and Russia are targeting U.S. defense contractors. North Korea’s alleged cyberattack on Sony Pictures in 2014 destroyed data, disabled thousands of computers and disrupted the executive suite. Distributed denial of service attacks have been launched against governmental agencies, the media, utilities, banks, hospitals and manufacturing firms, just to name a few.

With more than 100 million Americans' personal data compromised in recent years — including credit-card information and medical records — it is no surprise that nine out of 10 Americans say they feel they have lost control of their personal information. These cyber-threats are among the most urgent risk to America's economic and national security and the personal safety of its citizens.

As America's cyber adversaries have grown more sophisticated and active — emboldened by their successes and the absence of consequences — the need to be proactive, nimble and resilient has increased. In this environment, it is easy for even the most sophisticated enterprises to feel overwhelmed. The federal government, which is obligated to protect the information provided to it by the American people, has a unique responsibility to lead. The fact is, though, that even the U.S. government does not have in place all the tools it needs, and in many areas it lacks safeguards that many businesses require.

### **Sharing Knowledge Matters**

In cyber risk management, because information systems are, by design, interactive and interconnected, and threats come from a wide variety of sources, knowledge sharing is essential. Lessons can be learned from both our successes and failures, so it is essential to share our hard-earned collective wisdom. When it comes to the risks of cyberattacks, we are all in this together.

**“For criminals, rogue states and mischievous actors, the digital world has become the ‘promised land.’”**

Recognizing the magnitude of shared cyber exposures, President Obama recently announced the formation of a bipartisan Commission on Enhancing National Cybersecurity to focus on long-term solutions. It will be composed of top business, strategic and technology experts from inside and outside the government, and provide specific recommendations for bolstering cybersecurity awareness and protections across the public and private sectors over the next decade. (In June 2015, we shared the idea for the formation of such a commission in *Knowledge@Wharton* in an opinion piece titled, “We Don't Need a Crisis to Act Unitedly Against Cyber Threats.”) While this is a significant step towards recognizing and responding to our exposures, the Commission's first report is not expected until December 2016.

Fortunately, in the interim, there are proven and common sense steps that can be taken immediately. These “commandments” are presented below. As a caveat to the ‘Ten Commandments’ of cybersecurity, we remind our readers of the Mel Brooks movie *A History of the World, Part I*, where Brooks plays Moses. He returns from Mount Sinai with three tablets and announces: “I give you the Fifteen Commandments,” but then accidentally drops and shatters one of the stones. He quickly recovers and re-announces “The Ten Commandments.” Already, we are aware of important and emerging “commandments” that will need to be shared in the future.

In this vein — because no single sector, industry, enterprise or individual can have all the answers — we invite your continued thoughts and suggestions about a problem that must be addressed, collectively and collaboratively, before it grows to Biblical proportions.

### **1. Develop and Practice Strong Cyber Hygiene**

- Conduct full background checks of personnel to mitigate “insider” threats.
- Implement robust passwords or other advanced means of multi-factor authentication.
- Ensure security of computing and communication devices, especially when traveling abroad.
- Train employees on email etiquette and “spear-phishing” schemes.
- Keep personnel up-to-date as to relevant incidents, causes and consequences.
- Increase and demonstrate cybersecurity common sense as part of performance reviews.
- Utilize surveillance and malware detection and “detonation” software.
- Assess the security needs for encrypted phones, laptops and smart devices.

### **2. Know and Secure Vendors’ Networks**

- Limit access in accordance to need.
- Conduct diligence on the backgrounds of vendors with access. Enterprise security is only as strong as its weakest link.
- Review existing contract language. Understand vendors’ cybersecurity protocols.
- Contractually bind vendors to security standards and protocols.

- Identify, rank, engage and audit third-party vendors in accordance with geography and business importance. Vendors must be willing to partner in maintaining your security.
- Require vendors that provide critical data to disclose cyber incidents within 72 hours of occurrence.

### **3. Identify and Protect the “Crown Jewels”**

- Identify and separately protect critical data and systems (such as customer data, IP, business strategy, market sensitive information and internal communications).
- Verify and update processes with business stakeholders, including the C-suite and board.
- Implement and regularly update appropriate controls, systems and processes to protect systems.
- Verify, validate and regularly test security systems to ensure the continued protection of critical data in the most effective manner.

### **4. Practice Your Incident-Response Plan**

- Engage the board of directors, as well as business, legal, marketing, insurance, human resources and technology departments to develop a cross-functional incident response plan and team.
- Retain outside technical, legal and public relations experts to be “on call” for the inevitable cyber incident.
- Identify appropriate contacts within law enforcement and applicable regulators before a cyberattack.
- Focus on range, motivations and objectives of potential attacks (i.e., theft, denial of service, ransom and publication).
- Comply with privacy laws, and work with counsel to protect the confidentiality of the work.

### **5. Create and Develop a Global Communications and Messaging Framework**

- Ensure that any communications plan covers all relevant constituencies — employees, consumers, customers, regulators and investors.

- Identify all regulators (federal, state, foreign) that will expect disclosure.
- Identify media, social media and source-channels for disseminating company information.
- Retain messaging experts to ensure a coordinated response when it is needed.

#### **6. Test the Incident Response Plan and Update Regularly**

- Utilize a third-party firm to conduct annual penetration tests to identify weaknesses in IT networks, infrastructure and employee practices.
- Report the results to the board and C-suite on a regular basis.
- Modify the plan to reflect the results of testing.

#### **7. Develop a Robust Cyber-threat Monitoring and Sharing Team**

- Monitor cyber-threats both internally and externally, and regularly probe systems for weaknesses.
- Monitor the Internet, social media and dark web for stolen data and information on key executives and business operations.
- Test employee practices and compliance with security procedures.
- Participate in industry cyber-threat sharing platforms, and ensure an organizational ability to act on the intelligence provided.

#### **8. Evaluate Cyber-security Insurance**

- Assess the full range of risks and costs from disruption of services, data leaks, data ransoms and extortion schemes.
- Ensure that coverages map to the cybersecurity controls, process, vendors, and protocols in any incident-response plan.
- Stay abreast of the market. Cyber insurance is still in its infancy and continues to evolve; coverage and pricing remain works-in-progress.
- Regularly review policies for gaps, newly available coverage and price-competitiveness.
- Verify and validate that key partners have coverage: A vendor that is hacked can lead to your organization being compromised.

## 9. Engage Privacy and Cyber-security Expertise for All Priority Jurisdictions

- Maintain industry contacts for information and threat sharing, including best practices and solutions.
- Use industry leverage to petition the government for needed information, assistance and liability safe harbors.
- Maintain and update this information on a regular basis.
- Consult privacy counsel to ensure that cyber-security solutions do not violate local laws.

## 10. Maintain Government Relationships

- Know the key agencies and personnel in the jurisdictions in which you do business: The government can be a critical partner in prevention as well as in response. Their expertise and intelligence can be invaluable.
- The time to forge such relationships is before a crisis — not after a cyber-security breach.

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October 2017

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(as of October 2017<sup>A</sup>)

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