Beginning in law school, aspiring lawyers are taught about a lawyer’s ethical mandate to zealously advocate for her or his clients. What is rarely taught is that lawyers should zealously advocate for themselves. Gone are the days where a lawyer will start, spend and end a decades-long career with the same firm or organization. The natural trajectory of many lawyers’ careers may involve multiple lateral moves to other firms or organizations and/or transitions from private practice to in-house companies or even public service. Knowing how to effectively brand and advocate for oneself is a necessary skill that each lawyer should develop to make the most of potential career opportunities.

Young lawyers are often hyper-focused on obtaining their first position with a firm or organization such that they do not consider the long-term implications that their actions (or inaction) may have on their career. Further, young lawyers often feel out of their depth when starting out and may lack the confidence or resources to take control of their reputations. Every lawyer has a brand with various dimensions and that brand has a direct impact on professional development and career trajectory. Mentorship and sponsorship are integral to creating, managing and, when necessary, rehabilitating one’s brand.

Branding is all about shaping others’ perceptions of you. Perceptions are not always accurate, but perceptions are all that matter. Intentionally branding oneself to fully capitalize on one’s unique strengths is a practice that requires focus and attention. Focus on both the inward-facing (inside organization) and outward facing (outside your organization) dimensions to one’s professional brand is key to having a strong, positive brand.
Sponsorship and colleagues’ opinions are key to developing one’s inward professional brand. With regard to one’s inward professional brand, the opinions of the following are important: one’s (i) partners’ and supervisors; (ii) colleagues; and (iii) support staff or subordinates. Performance evaluations are a good indicator of how one is perceived. Additionally, within an organization, one’s brand is largely communicated by word of mouth thereby making effectively and actively manage one’s brand important. Sponsorship can play a key role in that pursuit. Obtaining a sponsor, an individual with authority within your organization who will advocate for you and will intentionally use their influence to help you advance, can be an important part of one’s brand. Choice of sponsor will reflect upon the young lawyer and the brands of the young lawyer and her or his sponsor will become linked from the organization’s perspective. Mindfully choosing to pursue a sponsor relationship can be an effective tool in managing one’s brand.

Networking is key to developing one’s outward professional brand because it involves nearly all connections one makes. A service-oriented approach to networking is a positive way to build a brand and shape others’ perceptions.

One’s outward professional brand can also be positively impacted through intentional and effective use of mentoring. Mentors are often outside of one’s organization and generally are individuals with relevant experience who are willing to provide support and assistance. As a young lawyer progresses through her or his career, another avenue through which to manage one’s brand is by paying it forward an mentoring someone else.

Once one has created a positive brand, maintaining the brand is equally important and requires one to be intentional. Ways to manage one’s brand include managing up, down and across, intentional use of social media and involvement in one’s community, bar association
and/or professional organizations. Further, ensuring one stays connected with colleagues and clients both through social media and otherwise is integral to managing one’s brand. Other ways to manage one’s brand include: (i) regularly updating one’s forms, databases and checklists; (ii) being ahead of the curve in one’s practice area; (iii) providing relevant and timely updates to colleagues and clients on matters that may impact and/or interest them; and (iv) effective use of one’s mentor and sponsor relationships.

Mistakes are common and consequently knowing how to rehabilitate one’s brand is also critical. The old cliché is true – everyone makes mistakes. As soon as one makes or discovers a mistake, taking responsibility is vital. One must then determine the message that one desires to come from the mistake experience and who the best people (partners, sponsors, support staff, mentors) are to help disseminate that message. Learning from one’s mistakes is a fundamental step and using mistakes as opportunities for growth and change are key aspects of brand rehabilitation, as is the strategic use of mentorship and sponsorship.

Developing the substantive knowledge and practical skills required of lawyers are obvious, critical components of a lawyer’s career. Advocating for oneself and developing an effective professional brand is a less obvious but still critical component for the long-term success of a lawyer. Being mindful and intentional about creating, managing and, when necessary, rehabilitating one’s brand will aid a young lawyer in leading a successful and rewarding career.
I HAVE TIME FOR NOTHING BUT LOVE

By: Melanie S. Griffin, Esq.
Spread Your Sunshine Founder

"I have decided to stick with love. Hate is too great a burden to bear."
- Martin Luther King, Jr.

Mindset: I Have Time for Nothing But Love

Reflecting on the celebration of a great leader, Dr. Martin Luther King, Jr.’s quote “I have decided to stick with love. Hate is too great a burden to bear.” reminds me of a March 2017 conversation I had with my friend Jessica Muroff. She said, “I have time for nothing but love.” She explained, “if I allow myself to dwell on certain challenges, they will be all-consuming. Instead, I choose to show others love.” That conversation was life-changing. While I had previously strived to be positive, there were times that I dwelled on the negative and felt angry. While human, reflecting back, I allowed a dark Eeyore cloud to depress my mood when I could have focused on the positive. Following the conversation with Jess, I decided that I, too, have time for nothing but love.
Identification of Internal Cheerleader & Naysayer

One of the ways I identified to show people love was to determine my personal hero who excels at it, Dr. Laura Osteen, and the opposite who does not. Dr. Osteen now acts as my internal “love-o-meter” and is pictured at the onset of each difficult situation. A national leadership guru, Dr. Osteen is genuine and authentic and makes everyone feel special, heard, empowered and inspired. Quite literally, her last Facebook message read, “when it rains on your hardwood floors, sometimes the only thing you can do is dance the night away on them.” It would be an honor if people had a “Dr. Osteen experience” when interacting with me. Oppositely, I never want someone to feel like they met my internal naysayer.

Creation of Optimal Interactions

With these two internal polestars, I intentionally try to create an optimal experience for the people with whom I interact. For example, since deciding that I have time for nothing but love, I verbalize compliments instead of silently observing someone’s awesomeness. I force myself to tell the stranger on the elevator that his outfit is sharp and the speaker returning from the podium that she delivered a riveting keynote. I respond to emails sent by a friend to a group to let her know she is doing an awesome job leading the organization and I forward emails recognizing a colleague regarding how proud I am of his achievement. If a recipient replies to my email requesting information that was included in my message, I don’t inform the sender of the error, I copy, paste and resend the information.
This past week, I used my nothing-but-love mindset when picking-up a birthday cake order first thing Monday morning. The bakery had the cake ready, but had not yet written the personalized message on top. Problematically, all of the icing was hardened from being in the fridge on Sunday when the bakery was closed and it would take too long to make new icing to use for writing. So, the bakery wrote “Happy Birthday, Connie!” on a ribbon and laid it across the cake. It wasn’t what I wanted. As I worried that my friend might question the specialness of her ribbon-laid cake, I considered explaining to the staff why bakeries should have writing icing on hand during all bakery hours. Then, I reminded myself that ending the conversation in such a negative way is not the experience with which I wanted to leave the staff. This is especially true given that I had no idea how the mistake occurred (what if the bakery was short-staffed that morning?) or if I was speaking with the responsible party (versus a co-worker not responsible for icing?). So, instead of providing negative feedback as I might have pre-March 2017, I smiled and told the bakery my friend would love her cake (she did!). The staff looked relieved and I felt joy seeing their smiles that would not have come from an explanation of Bakery 101.

A similar experience occurred when recently waiting for a morning meeting. After 10 minutes, I sent a friendly text asking if the colleague was on her way and informing her of how to reach my assistant and me if further location or parking directions were needed. When no response was received, I texted that I would wait an additional 10 minutes and was excited if she could still make it and understood if that was no longer possible. After another 10 minutes, I texted that I was leaving and hoped everything was okay. That afternoon, the colleague responded with her apologies – a family member was unexpectedly hospitalized and due to the stress of the situation, she forgot to cancel our meeting. I was extra glad that my messages extended love, not judgment. My day was fine not going as planned – while I waited, the “extra” time was used to enjoy a rare sit-down breakfast and send necessary email responses. More importantly given what happened, I would have looked like, and felt like!, a jerk had my messages been negative.
I HAVE TIME FOR NOTHING BUT LOVE

*The Challenge: Show Grace*

Inspirational posts about not knowing how others are feeling and extending grace are often shared. But, how often is that mindset actually practiced? Analyze it. Do you consistently show others love? If not, make *that* your challenge this week. It’s promised that the joy and inner peace you'll experience from making someone’s day will far outweigh any short-term satisfaction you may (or may not!) experience if you abandon love.

#SpreadYourSunshine #ShineItForward #ShineBeyondTheGlassCeiling #MentoringMatters
At the beginning of the year, I went to the gym. Not exactly a novel January 1st idea. The workout was noteworthy, however, because I did not go to start losing the ever-elusive “10 pounds,” a past go-to New Year’s resolution. I went for mental health and happiness, one of my 2019 focuses.

Last fall was exceedingly busy. The packed schedule from September through November is always a challenge. In 2018, though, the addition of awesome professional opportunities and a baby tipped the scales. To save time, I quit the workouts enjoyed since middle school to exclusively focus on the workload of my then three-person law office.

What was then unknown to me, however, is that I did not create additional time, I worsened my situation. Although physical benefits are most-often associated with exercise, physical activity has significant mental health benefits, including stress reduction. Since I unwittingly eliminated a major stress-relief outlet, stress had no where to go, bottling-up inside me and manifesting in physical health issues.

The first month or so, nausea was a frequent symptom. Then chronic “ear infections” ensued. By late October, the pain radiated from my ear down my jaw, making it difficult to talk and chew.

About every two weeks, I visited the doctor. Prescriptions included antibiotics, nasal sprays, new techniques for using them, pain relievers, heating pads, liquid diets, and a flying ban to avoid bursting an eardrum. Eventually, I was referred to a specialist.

Two days before my appointment, I read an article about a woman under extreme
stress. She visited her doctor complaining of ear and jaw pain, each time sent home with a diagnosis that “nothing was wrong.” I immediately instinctively knew that I shared this woman’s fate. The specialist confirmed my intuition 48-hours later when he concluded that although it felt like I had an ear infection and inner-ear fluid, they were mental ailments that did not physically exist. Leaving that doctor’s office, I knew the key to improved wellness rested with me.

5 Suggestions That Improved My Health & Happiness to Better Serve My Clients, My Family & Me

Self-Education: In 2018, I insatiably listened to audiobooks and podcasts focused on entrepreneurship and empowerment. For the first time, it was realized that although I have zero time to read, I have tons of time to listen. Hearing stories about additional entrepreneurs who overcame physical ailments caused by mental stress led to my epiphany when reading the above-referenced article that I had traveled down the same path. It’s unlikely that my health would have soon improved without such self-realization and subsequent implementation of techniques learned this past year. Audiobooks that were especially helpful to me included: Drop the Ball by Tiffany Dufu, Girl Wash Your Face by Rachel Hollis, Option B by Sheryl Sandberg & Adam Grant, and Shoe Dog by Phil Knight. Podcasts included: How I Built This with Guy Raz, Rise with Rachel Hollis, and Skimm’d from the Couch by theSkimm.

Ask for Help: Additional tasks meant learning to ask others for help completing projects that I previously did and did well. For example, instead of planning our son’s first birthday party by myself as would have been my usual mode of operation, I asked my husband if he would create and mail the invitation, handle RSVP’s, and oversee additional aspects of the festivities. Working together was a lot more fun than working in isolation and balanced the work between us so that it was manageable, not overwhelming. Brainstorming with colleagues, regarding, for example, best practices for tackling your email inbox, will also equip you with tools not thought of alone in your office. One additional tip here – when possible, identify when assistance with tasks and/or mentorship is needed and proactively ask for it. As much as we may wish or think differently, others are not mind readers. To best allow them to assist you, verbalize your request and the anticipated amount of time necessary to complete it so that they can plan for such task and schedule adequate time to help you.
**Use Mindfulness Apps:** A significant hurdle last fall was an inability to divert my mind away from the stressor, such as challenging conversations with clients or overly aggressive opposing counsel. Although the thoughts expressed here had not yet come full circle, I was aware that stress triggered at least some of my symptoms. Yet, without a game plan, the stressful event remained on auto-loop with no relief in sight. Use of a mindfulness app is one resource that changed that and equipped me with tangible tools, including meditation guides, breathing techniques, and visualization maps, useful in successfully navigating recent stressful situations.

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**Free, top-ranked apps that may assist in your mindfulness journey include:** Aura, Breethe, Buddhify, Calm and Headspace.

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**Engage in Release & Transition Techniques:** Additional techniques can also reduce stress during the day. For example, substantial research evidences that the most efficient employees work for increments of approximately fifty minutes followed by a short break. Intentionally following such a schedule by setting an alarm on your phone can maintain energy throughout the day, prevent burnout, and facilitate longer productive work hours. To illustrate, although it may be tempting to power through motion drafting for four hours, the research is steadfast that forcing yourself to stop every fifty or so minutes, say for a glass of water and a quick walk around the block, will improve the quantity and quality of your work.

Similarly, your productivity can increase by properly transitioning from one task to the next, such as by: (1) closing your eyes; (2) quickly repeating the word “release” several times with the intent to release tension from your body; and (3) visualizing your intent for the next project on which you will work or experience to which you will transition. A time that this approach is particularly helpful to me is the transition between the office and home. Briefly visualizing the experience I want my family to have when we’re together instead of immediately rushing through the door has made me a better wife and mom upon arriving home.

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**One resource for learning such technique is Brendon Burchard, who details strategies for maximizing performance in all aspects of life through his The Brendon Show podcast, High Performance Habits book, and The High Performance planner.**
**Make Time for What Brings You Joy:** What ever that may be!! This article is not intended to promote exercise if you despise physical activity. The point is that you must intentionally live life in a way that fosters well-being; you cannot practice law 24-hours a day. For me, Orangetheory Fitness classes are a part of being joyful; for you, a different tool may be best. What ever you choose, choose something! No matter how heavy the workload, attempting to work around-the-clock will not make you more productive, especially not over what is hoped is the long-haul of your solo or small firm career. Additionally, remember to scale the activity to fit your current season. Whereas I completed a full workout most days of the week when I had more time, I now give myself grace to workout less often and for shorter periods. What is most important is weekly engaging in at least one activity that in some way minimizes your stress, increases your happiness, and maximizes your productivity.

So, here’s to intentionally living your best 2019, friends - continue to #ShineItForward and #SpreadYourSunshine!

**For additional helpful information like this:**

**Connect with Melanie**
FB & LI: Melanie S. Griffin  
Twitter: @melaniesgriffin  
IG: @spreadingthefloridasunshine  
melanie@spreadyoursunshine.com

**Connect with Spread Your Sunshine**
FB: Spread Your Sunshine  
Twitter: @sunshine_women  
IG: @spreadyoursunshine  
www.spreadyoursunshine.com
THE BUSINESS CASE FOR MENTORING

BY: MELANIE S. GRIFFIN

While the term “mentoring” is often used, establishment of meaningful mentoring relationships and programs is a true art form that when effectively implemented, yields significant gains for both the mentoring pair and the firm/company investing in such resources. The following highlights mentoring subtleties that make a critical difference in the success of the relationship, including: how mentorship differs from coaching and sponsorship, formal and organic relationships, reverse mentoring, optimal mentor pairings, effective communication, the benefits of mentoring, and useful mentoring resources.

I. Types of Mentoring Relationships

“Mentoring” is broader than often described and takes many forms beyond traditional, formal, one-on-one pairings. The following is an overview of those relationships, including the differences between coaching, mentoring and sponsorship; formal versus informal pairings; and reverse, or millennial or reciprocal, mentorships.

A. How Mentoring Differs from Other Professional Relationships

Coach. Mentor. Sponsor. Each plays a vital, yet different, role in the development of a professional. Eloquently explained, “[a] coach talks to you, a mentor talks with you, and a sponsor talks about you.” (Emphasis added.)
Further examining the importance of each relationship, a business coach, like a sports coach, assists with learning a new skill, overcoming a challenge, or improving performance. The pairing is often short-term, focusing on perfection of a specific task that once achieved ends the partnership.

Generally longer-term and more broadly-focused, a mentor enhances a “mentee’s professional performance and development.” Through this relationship, advice, guidance and support boost confidence, allowing the mentee to improve performance, navigate corporate politics, and enjoy increased competence and self-worth.

Transcending a mentor, a sponsor uses personal power and reputation to advocate for another’s advancement achieved, at least in part, as a result of the sponsor’s influence. Usually a leader with the ability to control the behavior of others, a sponsor generally differs from a mentor in the following ways:

<table>
<thead>
<tr>
<th>Mentor</th>
<th>Sponsor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can sit at any level in the hierarchy, provide emotional support, feedback on how to improve, and advice</td>
<td>Must be senior managers with influence, make sure their people are considered for promoting opportunities and challenging assignments</td>
</tr>
<tr>
<td>Help mentees learn to navigate corporate politics</td>
<td>Give them proteges exposure to other executives who may help their careers</td>
</tr>
<tr>
<td>Focus on mentees' personal and professional development</td>
<td>Protect their proteges from negative publicity or attacking contact with senior executives</td>
</tr>
<tr>
<td>Serve as role models, strive to increase mentees’ sense of competence and self-worth</td>
<td>Fight to get their people promoted</td>
</tr>
</tbody>
</table>

Given the inspiration mentoring infuses into a career that can blossom into a sponsorship, the often unexplained nuances of the art of mentoring are next explored.

B. Formal v. Organic Mentoring Relationships & the Role of Differing Personality Types

When envisioning mentoring, a formal program facilitated by a business or organization often comes to mind. Such programs are usually structured, founded to accomplish a specific business objective, and measured to determine if such goal is met. Pairs are often strategically matched to meet the business objective and last for a designated length of time, generally nine to twelve months.

Informal mentoring relationships, on the other hand, are usually based on chemistry between the mentor and mentee and arise naturally when the two meet, recognize their commonalities, and agree to enter into a mentorship together. While, as discussed below, the pair can establish the criteria of their relationship to maximize its effectiveness, such matches often have unspecified goals and unknown outcomes. They also often last longer, sometimes evolving into a friendship. The two types of mentoring relationships are well-summarized in the following chart:
THE BUSINESS CASE FOR MENTORING

![Mentoring Table]

Many report heightened enjoyment from informal mentorships due to the genuine human connection between the mentor and mentee. To wit, the benefits received by protégés in formal programs typically fall short of the benefits bestowed upon mentees “involved in naturally occurring, informal mentoring relationships” as a result of the social attraction that “may be absent in formally assigned mentoring pairings.” Formal programs excel, though, in creating meaningful mentoring opportunities for introverted individuals who are less likely to attempt to initiate a mentoring relationship than their socially-skilled peers. Such programs are thus important for noticing and appropriately preparing high potential introverts for advanced leadership positions.

As shown, wonderful benefits are associated with both formal and informal mentoring. Organizational leadership thus must facilitate the mentorships best suited for the business while taking into account the personality types of its key talent to be developed.

C. Reverse Mentoring, or Millennial or Reciprocal Mentorships

Equally as powerful as a traditional mentoring pair where a more seasoned executive mentors a younger professional is a match through which a younger colleague mentors an older peer, often referred to as reverse, millennial or reciprocal mentoring. Millennial mentors are often particularly adept at teaching their senior counterparts about technology, the Web, computers, social media, and current business trends, including catering to new markets, development of fresh products and services, and organizational and social change.

First popularized more than a decade ago by GE Chairman Jack Welsh, reverse mentoring benefits include: closure of the knowledge gap for both parties, such as business terminology and best industry practices for the younger employee and online...
THE BUSINESS CASE FOR MENTORING

marketing for the senior counter-part; empowerment and development of both emerging and established leaders; and a cohesive cross-generation workforce. Given technology’s revolution of the workplace, millennials provide a fresh perspective critical to the success of the organization. Simply, when the boss is willing to learn new techniques from the organization’s freshest members, office relationships are improved and strengthened.

II. Optimal Mentorship Pairing: Find the Spark! & Focus on Goals

Organizations facilitating formal mentoring programs frequently attempt to match mentees with mentors with any number of identical traits, including gender, ethnicity, profession, marital and familial status, interpersonal skills, and leadership styles. Many times, however, such matches fail, as too many criteria complicate pairing and oftentimes, create categorically-ideal matches that lack a human connection. The best practice is thus to make achievement of the mentee’s goals,22 the point of the relationship, the focus of the pairing, while also considering if a “spark” exists between the mentee and mentor.23

Indeed, a good mentor is a trusted advisor who provides sound advice.24 Such person may be older or younger, and in the mentee’s chosen profession or not. This is especially true for beginner and intermediate-level mentees. Although their inquiries are uniquely phrased, distilled, they constitute a core set of questions that can be answered by a myriad of professionals, in their field or not, such as guidance on interview preparation, salary negotiation, business development, networking, work-life balance, avoidance of professional mistakes, and career best practices.25 Answering such questions requires general business knowledge from a successful, productive professional, not an overly complicated matching process.

Moreover, a mentor with traits different from the mentee’s may broaden the mentee’s depth through alternative perspectives and skillsets, best helping the mentee grow and advance. For example, a mentor of the opposite gender may most effectively foster the development of the mentee’s weaknesses in a way that a mentor of the same sex cannot.
THE BUSINESS CASE FOR MENTORING

Based on the forgoing, the most successful mentoring programs will consider replacing lengthy mentor applications with recruitment of knowledgeable, compassionate, enthusiastic mentors, who take mentoring seriously, are committed to lifelong-learning and invest in the gratification and success of the mentee, and have the talent and expertise to best cultivate and nurture the mentee.27

III. Effective Mentoring Communications: The Critical First Meeting

It is commonplace at the end of a formal mentoring program to hear that although the pair was initially excited to work together, they failed to meaningfully connect during their relationship. Such failure is often the result of an ineffective initial meeting.28

To facilitate a successful mentoring relationship, at the outset, the mentor and mentee must be prepared to agree upon their roadmap. Discussion topics may include: who will initiate conversation – the mentor or the mentee; preferred method(s) of communication – in-person, email, phone conference, Skype/GoToMeeting/etc., or social media; expected response period – within 24 hours, the week, etc.; whether your communications are confidential; frequency of interaction – weekly, monthly, quarterly, etc.; length of the relationship if not established, and if it is, whether such relationship may be extended; critical dates – for example, known periods of unavailability or a key project deadline for which guidance is sought; discussion topics; taboo inquiries, such as regarding personal life; anticipated connections; contemplated activities; desired programs and events to attend; and ideal goal achievement. Consider using the following prompts29 during the initial strategy session:

<table>
<thead>
<tr>
<th>Agenda Items</th>
<th>Strategies for Conversation</th>
<th>Possible Approaches</th>
</tr>
</thead>
<tbody>
<tr>
<td>Take time getting to know each other</td>
<td>Obtain a copy of the mentor's bio in advance, if one is not available, create one through conversation</td>
<td>Establish rapport; Exchange information; Identify points of connection</td>
</tr>
<tr>
<td>Talk about mentoring</td>
<td>Ask: Have you ever been engaged in a mentoring relationship? If so, what did you learn from that experience?</td>
<td>Talk about your own mentoring experiences</td>
</tr>
<tr>
<td>Determine the mentor's goals</td>
<td>Ask: What do you want to learn from this experience? Give the mentor an opportunity to articulate broad goals</td>
<td>Determine if the mentor is clear about his or her goals and objectives</td>
</tr>
<tr>
<td>Define the deliverables and a time table</td>
<td>Ask: What do you want out of this relationship?</td>
<td>Be sure you are clear about what your mentor wants from the mentoring relationship</td>
</tr>
<tr>
<td>Share your assumptions, needs, expectations, and limitations with candor and confidence</td>
<td>Ask: What would you like to go about achieving your learning goals?</td>
<td>Discuss: Implications for the relationship</td>
</tr>
<tr>
<td>Discuss options and opportunities for learning</td>
<td>Ask: How would you like to go about achieving your learning goals?</td>
<td>Discuss: Learning and communication styles</td>
</tr>
<tr>
<td>Discuss the implications of each other's styles and how that might affect the mentoring relationship</td>
<td>Ask: What is the most useful kind of assistance I can provide?</td>
<td>Discuss the implications of each other's styles and how that might affect the mentoring relationship</td>
</tr>
</tbody>
</table>

As intimated by the forgoing chart, initially, a mentorship is not a contemplated friendship or job opportunity.30 To keep the relationship focused on the mentor’s guidance, the mentor may ask the mentee to provide proposed meeting agendas.31 In addition to setting the meeting tone, the pre-meeting agenda review affords the mentor time to plan the offered advice.
Similarly, an organization facilitating a formal mentoring program may periodically provide its pairings with suggested conversation questions to foster regular communication and ensure the discussion of desired topics.32

Above all, honesty of both the mentor33 and the mentee34 is crucial to a successful mentoring relationship. As a mentor, the provision of straightforward, candid advice is most beneficial to the mentee. Part of the first meeting may thus include preparing the mentee to hear what is needed, not what is wanted, during the relationship. Additionally, if upon understanding the mentee’s mentorship goals the mentor cannot provide the desired guidance, the mentor should inform the mentee of the mismatched skillsets and connect the mentee with a better-aligned mentor, if possible. Similarly, to grow, the mentee must solicit and accept critical feedback and inform the mentor of the true mentorship objectives. Regarding the latter, for example, a mentor cannot best assist a mentee with obtaining a job in another city if the mentor believes the mentee wants to advance at the mentee’s current company.

In sum, meaningful mentoring relationships are not accidental. Rather, establishment of a vibrant mentorship requires education of the mentor and mentee regarding their respective roles35 and a strong commitment to a mutually agreeable plan of action.36

IV. The Power of Mentoring & Benefits to the Business

The reported benefits of business mentoring are impressive and include increased productivity, diversity, morale and retention, personal growth, access to organizational resources and rewards, improved technical skills, increased cross-generation collaboration, and a heightened awareness of company culture, policies and expectations, all of which positively increase the bottom line.37

More specifically:

- The productivity of managers who are mentored increases by 88%;

- 35% of employees without regular mentoring seek another job within twelve months;

- 95% of mentoring participants say that mentorship motivates them to do their very best; and

- Mentored workers annually earn $5K - $22K more than their nonmentored counter-parts.38
THE BUSINESS CASE FOR MENTORING

Indeed, “[m]entoring has long been recognized as a tool in career development,” with evidence that “mentored individuals often earn higher performance evaluations, higher salaries, and faster career progress than non-mentored individuals,” creating higher job satisfaction and commitment.39

This is particularly true for women, minorities and seniors, who experience increased self-confidence, improved communication skills, and truer self-assessments as a result of mentorships.40

Programs targeting such employees have the ability to transform a company’s culture, creating diverse management teams more reflective of workforces and markets.41 Such transformation of a company’s leadership composition is often critical to its bottom line, as clients and vendors are demanding a diverse labor force.42 It is thus no longer simply politically correct and morally right to provide mentorship to women, minorities and seniors; rather, it is oftentimes a necessity for a company to remain financially viable.43

Given the foregoing significant mentorship benefits, the question should shift from whether to host a mentoring program to how soon to establish one to best nurture your business and its employees.

V. Mentoring Program Resources

Many resources exist to assist with the establishment or improvement of a mentoring program. For example, organizations devoted to the practice of mentoring such as the National Mentoring Resource Center44 and the National Mentoring Partnership45 offer a plethora of resources including guides, handouts, training resources, management resources, program policies and procedures, and recruitment and marketing tools. Likewise, research is readily available regarding top corporate mentoring programs proven successful within companies such as Sodexo, Time Warner Cable and Caterpillar.46 The critical questions asked by such companies when formulating and evaluating their mentoring programs are also on the Web.47 With the accessibility of such vibrant materials, a company need not reinvent the wheel, and instead, can enjoy the synergies from the tried and true mentorships that already exist that can serve as the foundation for a new, or improved, mentoring program.
VI. Summary: Effective Mentoring Requires Planning, Education & Facilitation

As shown above, successful mentoring relationships are not accidental. The most effective pairings are intentionally established partnerships, executed through an agreed upon and thought out plan, by mentors and mentees aware of and educated regarding their respective roles, committed to regular communication and interaction. Thus, to establish or improve your program or pairing, thoughtfully create, implement and execute the roadmap that optimizes mentorship functionality, results and enjoyment.
THE BUSINESS CASE FOR MENTORING


7 Id.

8 Id.


11 Id.

12 Id.


16 Id.


THE BUSINESS CASE FOR MENTORING


43 Id.


Practical Tips and Ethical Traps for Attorneys Using Social Media

By Todd C. Scott

If you are an attorney in practice today, it is very likely that you are using social media for work or personal use. According to the ABA’s 2014 Legal Technology Survey Report, a whopping 81% of attorneys report that they use social media, in some form or another.

Of the various social media platforms out there, LinkedIn and Facebook are by far the most popular platforms in use by attorneys. Among the firms that use social networks, almost all of them – 98 percent – report using LinkedIn as an online presence. Facebook use among lawyer’s is also very strong, with 58% of lawyers who use social media reporting having a Facebook account. Use of Twitter by attorneys is much less, with 19% of lawyers reporting that their firms used Twitter in 2013. Even then, only 6% of individual lawyers reported having interacted on Twitter.

LinkedIn’s popularity is an obvious attraction for any lawyer who wants to maintain a minimal online presence. By subscribing at no cost, and supplying the site with basic information about your firm, your work experience, and the type of legal matters you typically handle, prospective clients and referring attorneys have a way to quickly find important and valuable information about you or your firm using a quick Google search. The same goes for a basic, Facebook site used to advertise the firm’s availability to provide legal services.

However, as social media platforms, LinkedIn and Facebook are meant to go beyond what a basic, online advertorial website has to offer. Like all social media platforms, LinkedIn and Facebook are designed in a way to encourage the public to interact with subscribers, applying easy-to-use features that not only give readers access to your detailed firm information, but allows the reader to publicly engage with you by endorsing your services, or as in the case of Facebook, posting information directly on your Facebook home page.

For many attorneys using social media, having happy clients and trusted friends engage with you publicly in an online forum is advertising gold that can’t be matched by any number of pre-paid print ads. In the 2014 ABA survey, 19% of lawyers using social media said ‘yes’ when asked whether a client had ever retained them as a result of social media.

But if used incorrectly, the same features found on a social media web platform can create an ethical nightmare for an attorney who may not be aware of the implications. For example, if a lawyer invites the public to post legal questions on his or her Facebook site, is a client-attorney relationship formed once and a web reader takes the lawyer up on the offer? According to the **ABA Ethics Opinion 10-457**, such an invitation may trigger the ethical duties owed to prospective clients, and the attorney may be conflicted out of representing other parties related to the prospective client’s matter.

The following is a brief list of some of the ethical concerns that may be triggered through an attorney’s use of social media.
What You Post May be Advertising

Since platforms like LinkedIn and Facebook are primarily attractive to lawyers because of their ability to reach the general public with information about the lawyer’s services, there is no denying that these web sites can easily be perceived as advertising vehicles, and therefore, their content should be restricted by local advertising rules. Lawyers using social media platforms should familiarize themselves with rules restricting advertising in their jurisdiction, generally found in ABA Model Rule 7.1 Communications Concerning a Lawyer’s Services which prohibits lawyers from making false or misleading communications about the lawyer or the lawyer’s services. This can be particularly troublesome when websites such as LinkedIn or Avvo invite lawyers to identify “specialties” or “expert” in their profile – terms that are highly regulated under most lawyer advertising rules. Rule 7.2 Advertising can change drastically from jurisdiction to jurisdiction and what might be allowed in some jurisdictions – such as client testimonials – may be strictly avoided in others.

Solicitation Online is Still Solicitation

Rules restricting attorney contact with an unknown person, such as ABA Model Rule 7.3 Solicitation of Clients, can come into play in the unusual world of social media where people who have never met each other have somehow “friended” through online platforms. The rule is straightforward: a lawyer shall not by in-person, live telephone, or real time electronic contact solicit professional employment from individuals who are not related to the attorney, and who are not another attorney, or have not had a previous relationship with the lawyer. So even though someone may be following your posts on Facebook, your communication to the individual for the purpose of pecuniary gain using the tools designed to promote online interaction may be considered solicitation and prohibited under the rules. Again, read your local rules and ethics opinions for guidance on the acceptable use of social media communication.

Don’t Disclose Confidential Information

Of all the advice mentioned here, this one may seem like the biggest no-brainer of them all. But there are numerous cases of lawyers getting in trouble for ethical lapses after they have revealed some information about their activities online that was a violation of ABA Model Rule 1.6 Confidentiality of Information. In 2012, a Georgia lawyer was publicly reprimanded for posting online personal and confidential information about a client which the lawyer had obtained in the course of the representation. The post was in response to negative reviews of the lawyer that the client had posted on three “consumer Internet pages.” The lawyer identified the client by name, identified the employer of the client, stated how much the client had paid, identified the county where the client’s divorce had been filed, and stated that the client had a boyfriend. It’s easy to get caught up in the instant online journaling that goes on every day in the world of Facebook. After all, many people who choose to follow you online have done so because they find your life as a lawyer to be interesting. But it’s important not to forget that many of the facts and circumstances that may be interesting to others online are private and should remain confidential.

Avoid Inviting the Entire World to Become Your Client

Attorneys who post information online inviting consumers to contact them with their legal questions may be setting themselves up for inadvertent or unintended client-attorney relationships. Such
unintended relationships can become disastrous if the “client” – after using the lawyer’s social media page or attorney web site to ask legal questions and divulge private information – is waiting for a response from the attorney that will never come. **ABA Ethics Opinion 10-457 Attorney Web Sites** is very useful for helping lawyers understand that invitations like “Tell us about your case…” will trigger additional responsibilities for the lawyer if an individual takes a lawyer up on the offer. Instead of having an open invitation online, it is better to simply include your contact information along with a disclaimer that Information that is provided to you without an initial consultation will not necessarily be kept secret or confidential, and that no attorney/client relationship is entered into until agreed upon by both you and the prospective client.

Social media, like most new online tools, can be a valuable thing for the development of your law practice. And considering the convenience and affordability of such a powerful tool, it may be hard to avoid using it more often for communicating information about your legal services. But keep in mind that the ease-of-use and instantaneous nature of social media often put the lawyer in a situation where important decisions about what the public will see are made in haste. Information about the firm that previously – before the days of internet – would have taken weeks to carefully parse out, is now quickly publicized by anyone in the firm with a Facebook page. Therefore, lawyers should take the time to examine their social media habits, as well as the information and disclaimers they currently use, and formulate a new policy so that social media will be used in the firm responsibly and ethically.

*Todd C. Scott is VP of Risk Management for Minnesota Lawyers Mutual Insurance Company. For more information about lawyer’s use of social media, or any other ethics, legal technology, or practice concern, Todd can be reached at: tscott@mlmins.com.*
How to Zealously Advocate for Yourself and Create a Brand
Kate Harmon, Esquire │ Elliott Greenleaf, P.C.
Demetra Liggins, Esquire │ Thompson & Knight LLP & Corporate Homie, LLC

Beginning in law school, aspiring lawyers are taught about a lawyer’s ethical mandate to zealously advocate for her or his clients. What is rarely taught is that lawyers should zealously advocate for themselves. Gone are the days where a lawyer will start, spend and end a decades-long career with the same firm or organization. The natural trajectory of many lawyers’ careers may involve multiple lateral moves to other firms or organizations and/or transitions from private practice to in-house companies or even public service. Knowing how to effectively brand and advocate for oneself is a necessary skill that each lawyer should develop to make the most of potential career opportunities.

Young lawyers are often hyper-focused on obtaining their first position with a firm or organization such that they do not consider the long-term implications that their actions (or inaction) may have on their career. Further, young lawyers often feel out of their depth when starting out and may lack the confidence or resources to take control of their reputations. Every lawyer has a brand with various dimensions and that brand has a direct impact on professional development and career trajectory. Mentorship and sponsorship are integral to creating, managing and, when necessary, rehabilitating one’s brand.

Branding is all about shaping others’ perceptions of you. Perceptions are not always accurate, but perceptions are all that matter. Intentionally branding oneself to fully capitalize on one’s unique strengths is a practice that requires focus and attention. Focus on both the inward-facing (inside organization) and outward facing (outside your organization) dimensions to one’s professional brand is key to having a strong, positive brand.
Sponsorship and colleagues’ opinions are key to developing one’s inward professional brand. With regard to one’s inward professional brand, the opinions of the following are important: one’s (i) partners’ and supervisors; (ii) colleagues; and (iii) support staff or subordinates. Performance evaluations are a good indicator of how one is perceived. Additionally, within an organization, one’s brand is largely communicated by word of mouth thereby making effectively and actively manage one’s brand important. Sponsorship can play a key role in that pursuit. Obtaining a sponsor, an individual with authority within your organization who will advocate for you and will intentionally use their influence to help you advance, can be an important part of one’s brand. Choice of sponsor will reflect upon the young lawyer and the brands of the young lawyer and her or his sponsor will become linked from the organization’s perspective. Mindfully choosing to pursue a sponsor relationship can be an effective tool in managing one’s brand.

Networking is key to developing one’s outward professional brand because it involves nearly all connections one makes. A service-oriented approach to networking is a positive way to build a brand and shape others’ perceptions.

One’s outward professional brand can also be positively impacted through intentional and effective use of mentoring. Mentors are often outside of one’s organization and generally are individuals with relevant experience who are willing to provide support and assistance. As a young lawyer progresses through her or his career, another avenue through which to manage one’s brand is by paying it forward an mentoring someone else.

Once one has created a positive brand, maintaining the brand is equally important and requires one to be intentional. Ways to manage one’s brand include managing up, down and across, intentional use of social media and involvement in one’s community, bar association
and/or professional organizations. Further, ensuring one stays connected with colleagues and clients both through social media and otherwise is integral to managing one’s brand. Other ways to manage one’s brand include: (i) regularly updating one’s forms, databases and checklists; (ii) being ahead of the curve in one’s practice area; (iii) providing relevant and timely updates to colleagues and clients on matters that may impact and/or interest them; and (iv) effective use of one’s mentor and sponsor relationships.

Mistakes are common and consequently knowing how to rehabilitate one’s brand is also critical. The old cliché is true – everyone makes mistakes. As soon as one makes or discovers a mistake, taking responsibility is vital. One must then determine the message that one desires to come from the mistake experience and who the best people (partners, sponsors, support staff, mentors) are to help disseminate that message. Learning from one’s mistakes is a fundamental step and using mistakes as opportunities for growth and change are key aspects of brand rehabilitation, as is the strategic use of mentorship and sponsorship.

Developing the substantive knowledge and practical skills required of lawyers are obvious, critical components of a lawyer’s career. Advocating for oneself and developing an effective professional brand is a less obvious but still critical component for the long-term success of a lawyer. Being mindful and intentional about creating, managing and, when necessary, rehabilitating one’s brand will aid a young lawyer in leading a successful and rewarding career.
Reflecting on the celebration of a great leader, Dr. Martin Luther King, Jr.’s quote “I have decided to stick with love. Hate is too great a burden to bear.” reminds me of a March 2017 conversation I had with my friend Jessica Muroff. She said, “I have time for nothing but love.” She explained, “if I allow myself to dwell on certain challenges, they will be all-consuming. Instead, I choose to show others love.” That conversation was life-changing. While I had previously strived to be positive, there were times that I dwelled on the negative and felt angry. While human, reflecting back, I allowed a dark Eeyore cloud to depress my mood when I could have focused on the positive. Following the conversation with Jess, I decided that I, too, have time for nothing but love.
I HAVE TIME FOR NOTHING BUT LOVE

Identification of Internal Cheerleader & Naysayer

One of the ways I identified to show people love was to determine my personal hero who excels at it, Dr. Laura Osteen, and the opposite who does not. Dr. Osteen now acts as my internal “love-o-meter” and is pictured at the onset of each difficult situation. A national leadership guru, Dr. Osteen is genuine and authentic and makes everyone feel special, heard, empowered and inspired. Quite literally, her last Facebook message read, “when it rains on your hardwood floors, sometimes the only thing you can do is dance the night away on them.” It would be an honor if people had a “Dr. Osteen experience” when interacting with me. Oppositely, I never want someone to feel like they met my internal naysayer.

Creation of Optimal Interactions

With these two internal polestars, I intentionally try to create an optimal experience for the people with whom I interact. For example, since deciding that I have time for nothing but love, I verbalize compliments instead of silently observing someone’s awesomeness. I force myself to tell the stranger on the elevator that his outfit is sharp and the speaker returning from the podium that she delivered a riveting keynote. I respond to emails sent by a friend to a group to let her know she is doing an awesome job leading the organization and I forward emails recognizing a colleague regarding how proud I am of his achievement. If a recipient replies to my email requesting information that was included in my message, I don’t inform the sender of the error, I copy, paste and resend the information.
This past week, I used my nothing-but-love mindset when picking-up a birthday cake order first thing Monday morning. The bakery had the cake ready, but had not yet written the personalized message on top. Problematically, all of the icing was hardened from being in the fridge on Sunday when the bakery was closed and it would take too long to make new icing to use for writing. So, the bakery wrote “Happy Birthday, Connie!” on a ribbon and laid it across the cake. It wasn’t what I wanted. As I worried that my friend might question the specialness of her ribbon-laid cake, I considered explaining to the staff why bakeries should have writing icing on hand during all bakery hours. Then, I reminded myself that ending the conversation in such a negative way is not the experience with which I wanted to leave the staff. This is especially true given that I had no idea how the mistake occurred (what if the bakery was short-staffed that morning?) or if I was speaking with the responsible party (versus a co-worker not responsible for icing?). So, instead of providing negative feedback as I might have pre-March 2017, I smiled and told the bakery my friend would love her cake (she did!). The staff looked relieved and I felt joy seeing their smiles that would not have come from an explanation of Bakery 101.

A similar experience occurred when recently waiting for a morning meeting. After 10 minutes, I sent a friendly text asking if the colleague was on her way and informing her of how to reach my assistant and me if further location or parking directions were needed. When no response was received, I texted that I would wait an additional 10 minutes and was excited if she could still make it and understood if that was no longer possible. After another 10 minutes, I texted that I was leaving and hoped everything was okay. That afternoon, the colleague responded with her apologies – a family member was unexpectedly hospitalized and due to the stress of the situation, she forgot to cancel our meeting. I was extra glad that my messages extended love, not judgment. My day was fine not going as planned – while I waited, the “extra” time was used to enjoy a rare sit-down breakfast and send necessary email responses. More importantly given what happened, I would have looked like, and felt like!, a jerk had my messages been negative.
I HAVE TIME FOR NOTHING BUT LOVE

The Challenge: Show Grace

Inspirational posts about not knowing how others are feeling and extending grace are often shared. But, how often is that mindset actually practiced? Analyze it. Do you consistently show others love? If not, make *that* your challenge this week. It’s promised that the joy and inner peace you’ll experience from making someone’s day will far outweigh any short-term satisfaction you may (or may not!) experience if you abandon love.

#SpreadYourSunshine #ShineItForward #ShineBeyondTheGlassCeiling #MentoringMatters
At the beginning of the year, I went to the gym. Not exactly a novel January 1st idea. The workout was noteworthy, however, because I did not go to start losing the ever-elusive “10 pounds,” a past go-to New Year’s resolution. I went for mental health and happiness, one of my 2019 focuses.

Last fall was exceedingly busy. The packed schedule from September through November is always a challenge. In 2018, though, the addition of awesome professional opportunities and a baby tipped the scales. To save time, I quit the workouts enjoyed since middle school to exclusively focus on the workload of my then three-person law office.

What was then unknown to me, however, is that I did not create additional time, I worsened my situation. Although physical benefits are most-often associated with exercise, physical activity has significant mental health benefits, including stress reduction. Since I unwittingly eliminated a major stress-relief outlet, stress had no where to go, bottling-up inside me and manifesting in physical health issues.

The first month or so, nausea was a frequent symptom. Then chronic “ear infections” ensued. By late October, the pain radiated from my ear down my jaw, making it difficult to talk and chew.

About every two weeks, I visited the doctor. Prescriptions included antibiotics, nasal sprays, new techniques for using them, pain relievers, heating pads, liquid diets, and a flying ban to avoid bursting an eardrum. Eventually, I was referred to a specialist.

Two days before my appointment, I read an article about a woman under extreme
stress. She visited her doctor complaining of ear and jaw pain, each time sent home with a diagnosis that “nothing was wrong.” I immediately instinctively knew that I shared this woman’s fate. The specialist confirmed my intuition 48-hours later when he concluded that although it felt like I had an ear infection and inner-ear fluid, they were mental ailments that did not physically exist. Leaving that doctor’s office, I knew the key to improved wellness rested with me.

5 Suggestions That Improved My Health & Happiness to Better Serve My Clients, My Family & Me

Self-Education: In 2018, I insatiably listened to audiobooks and podcasts focused on entrepreneurship and empowerment. For the first time, it was realized that although I have zero time to read, I have tons of time to listen. Hearing stories about additional entrepreneurs who overcame physical ailments caused by mental stress led to my epiphany when reading the above-referenced article that I had traveled down the same path. It's unlikely that my health would have soon improved without such self-realization and subsequent implementation of techniques learned this past year. Audiobooks that were especially helpful to me included: Drop the Ball by Tiffany Dufu, Girl Wash Your Face by Rachel Hollis, Option B by Sheryl Sandberg & Adam Grant, and Shoe Dog by Phil Knight. Podcasts included: How I Built This with Guy Raz, Rise with Rachel Hollis, and Skimm’d from the Couch by theSkimm.

Ask for Help: Additional tasks meant learning to ask others for help completing projects that I previously did and did well. For example, instead of planning our son’s first birthday party by myself as would have been my usual mode of operation, I asked my husband if he would create and mail the invitation, handle RSVP’s, and oversee additional aspects of the festivities. Working together was a lot more fun than working in isolation and balanced the work between us so that it was manageable, not overwhelming. Brainstorming with colleagues, regarding, for example, best practices for tackling your email inbox, will also equip you with tools not thought of alone in your office. One additional tip here – when possible, identify when assistance with tasks and/or mentorship is needed and proactively ask for it. As much as we may wish or think differently, others are not mind readers. To best allow them to assist you, verbalize your request and the anticipated amount of time necessary to complete it so that they can plan for such task and schedule adequate time to help you.
Use Mindfulness Apps: A significant hurdle last fall was an inability to divert my mind away from the stressor, such as challenging conversations with clients or overly aggressive opposing counsel. Although the thoughts expressed here had not yet come full circle, I was aware that stress triggered at least some of my symptoms. Yet, without a game plan, the stressful event remained on auto-loop with no relief in sight. Use of a mindfulness app is one resource that changed that and equipped me with tangible tools, including meditation guides, breathing techniques, and visualization maps, useful in successfully navigating recent stressful situations.

Free, top-ranked apps that may assist in your mindfulness journey include: Aura, Breethe, Buddhify, Calm and Headspace.

Engage in Release & Transition Techniques: Additional techniques can also reduce stress during the day. For example, substantial research evidences that the most efficient employees work for increments of approximately fifty minutes followed by a short break. Intentionally following such a schedule by setting an alarm on your phone can maintain energy throughout the day, prevent burnout, and facilitate longer productive work hours. To illustrate, although it may be tempting to power through motion drafting for four hours, the research is steadfast that forcing yourself to stop every fifty or so minutes, say for a glass of water and a quick walk around the block, will improve the quantity and quality of your work.

Similarly, your productivity can increase by properly transitioning from one task to the next, such as by: (1) closing your eyes; (2) quickly repeating the word “release” several times with the intent to release tension from your body; and (3) visualizing your intent for the next project on which you will work or experience to which you will transition. A time that this approach is particularly helpful to me is the transition between the office and home. Briefly visualizing the experience I want my family to have when we’re together instead of immediately rushing through the door has made me a better wife and mom upon arriving home.

One resource for learning such technique is Brendon Burchard, who details strategies for maximizing performance in all aspects of life through his The Brendon Show podcast, High Performance Habits book, and The High Performance planner.
Make Time for What Brings You Joy: What ever that may be!! This article is not intended to promote exercise if you despise physical activity. The point is that you must intentionally live life in a way that fosters well-being; you cannot practice law 24-hours a day. For me, Orangetheory Fitness classes are a part of being joyful; for you, a different tool may be best. What ever you choose, choose something! No matter how heavy the workload, attempting to work around-the-clock will not make you more productive, especially not over what is hoped is the long-haul of your solo or small firm career. Additionally, remember to scale the activity to fit your current season. Whereas I completed a full workout most days of the week when I had more time, I now give myself grace to workout less often and for shorter periods. What is most important is weekly engaging in at least one activity that in some way minimizes your stress, increases your happiness, and maximizes your productivity.

So, here’s to intentionally living your best 2019, friends - continue to #ShineItForward and #SpreadYourSunshine!

For additional helpful information like this:

Connect with Melanie
FB & LI: Melanie S. Griffin
Twitter: @melaniesgriffin
IG: @spreadingthefloridasunshine
melanie@spreadyoursunshine.com

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FB: Spread Your Sunshine
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IG: @spreadyoursunshine
www.spreadyoursunshine.com
Perfecting Your Panel Position: Advice for the New and for the Experienced

By Michelle Lore

Every insurance carrier is different and has its own methods for finding and keeping counsel on its defense panel roster. In fact, it can take years of perseverance before a lawyer or a firm finally makes it into this apparently coveted position. But it isn’t enough just to get on the panel. Lawyers and law firms that want to keep their spot on the roster need to avoid becoming complacent and should consciously work to nurture and solidify their relationship with the carrier. As discussed below, much of that involves good work and communication. But part of it also includes succession planning – training new lawyers within the firm to work as panel counsel as well, introducing them to insurance claims personnel and giving them opportunities to work on files. The idea is for these younger lawyers to be ready to slide into the panel spots that longtime defense panel members leave when they quit practicing.

Within some insurance companies, particularly smaller ones like Minnesota Lawyers Mutual, the claim handlers (most are attorneys themselves) are given carte blanche to choose the lawyer they want to defend an insured when a malpractice claim is asserted against an insured lawyer. The defense attorney must be a member of the insurer’s established defense panel roster, but as long as that is the case, the claim handler makes the choice.

So what do claim handlers look for in defense counsel? What attributes and actions cause them to hire one defense lawyer over another? What can lawyers do to ensure that they are the one that is at the top of the claim handler’s mind when he or she needs counsel for an insured in their jurisdiction? And what can younger, associate attorneys working with defense panel do to endear themselves to claim handlers?
The most important thing is to know the insurer you are working with. Ask the claim handlers what they want in terms of the level of communication and involvement in the file. What follows are the thoughts of one legal malpractice claim handler. It is likely that many of the tips provided are universal, such as keeping the claim handler up to date on facts that may change the liability or damages analysis on the claim. But others may vary from insurer to insurer, so communicate with the claim handler early on after receiving the file.

First, and this should go without saying, promptly return phone calls and emails from claim handlers. If you are in trial or on vacation, have someone in your office contact the claim handler and let him or her know you are out of the office but will be in touch as soon as you are able. Most claim handlers understand that they are not the only person you are working with. Communicate regularly regarding the status of the claim. If information comes to light during discovery that changes the outlook for the insured’s liability -- for better or for worse -- or greatly increases or decreases the potential damages at issue, let the claim handler know immediately. Don’t ever be in the position of having relayed to the claim handler all throughout discovery that a claim is defensible, and then suddenly, on the eve of trial, report that it should be settled for hundreds of thousands of dollars.

Similarly, keep the claim handler in the loop as to what activity is occurring in the file. The first time the claim handler learns of something -- for example, that you brought or defended a motion to compel -- should never be when he or she is reviewing the related entries on your invoice. And at least occasionally, rather than send an email, pick up the phone and call the claim handler when something comes up on a file.

Be sure your regular status reports are well thought-out and organized. If the claim is stayed or otherwise “on hold” and there is nothing new to report, let the claim handler know.
This is much preferred to sending a report that simply repeats what was reported previously, and then billing the insurer for it.

Most claim handlers want their file to closely resemble yours, so send them copies of pleadings, briefs and memos filed in the matter without being requested to do so. In fact, many claim handlers would like to see drafts of briefs and motion papers before filing. The claim handler may not have the time or inclination to review all of them – for example, they may not feel the need to review a motion to compel before it’s filed – but most still appreciate being given the opportunity to do so. Many claim handlers do want to review other, bigger filings, like summary judgment memos or appellate briefs, prior to filing. Often the claim handler may have insight that you did not consider. Plus, even a cursory review of the brief gives the claim handler a better feel for the claim and the arguments being asserted. Moreover, some are very good editors who can help you avoid embarrassing grammatical and typographical errors.

Similarly, run settlement releases by the claim handler before sending them to opposing counsel. While most experienced defense counsel have drafted numerous releases in malpractice cases and think they have it down to a science, it’s an important document, so it can never hurt to have one more set of eyes review it before it goes out.

With regard to claim handling, have a plan and be proactive. When you get a new assignment from an insurer, immediately take a look at the big picture. Is it a case that can be settled for a nominal amount quickly? Is it a situation that can be “repaired”? Is it a defensible claim with an unreasonable claimant that will have to go to trial? Consider what would be the best resolution of the problem and work towards that goal. Don’t just dive in by answering the Complaint and sending out discovery requests. Similarly, be conscious of how much time and money the claim is worth. Don’t spend $20,000 in your time analyzing a claim that came in with
a settlement demand of $15,000. Some claims can be settled early on without incurring a lot of time or cost, which is undoubtedly better for your client and for the insurer. Plus, the more claims you handle in a quick, cost-effective manner, the more files the claims handlers are likely to send you.

Likewise, get results. Good results generate more work. Claim handlers understand that you are not miracle workers, that some files generate a lot of fees because of the claimant’s action or unreasonableness, and that some claims just have to be tried. However, if you see a legitimate opportunity to resolve a claim early, either through a motion to dismiss or summary judgement or even settlement, talk with the claim handler about this.

When it comes to billing, send invoices regularly, preferably monthly. Most claim handlers are under pressure to maintain proper expense reserves. Failing to bill for six months and then suddenly mailing out an invoice for $30,000 not only gives the claim handlers “sticker shock,” it makes it difficult for them to properly monitor and evaluate the expense reserve on the file.

Check with your claim handler before engaging in large research projects. It may be that the insurer has a research bank it can delve into to get an answer to your research question, which will save you time and the insurer money. Moreover, it is best to let the claim handler know the reason for the project and provide an estimate of the time it will take. Contrary to the old adage, it is not better to ask for forgiveness rather than permission, at least not if the insurer is one you want to continue to work with.

Moreover, if you provide your claim handler with an e-mail update of something that happened on a matter and the claim handler responds with “Thanks for the update,” consider not billing for reading the four-word, non-substantive response. Having that show up on an invoice
may cause the claim handler to stop responding to your e-mails, which in turn can leave you wondering if he or she is receiving them. If the claim handler provided substantive information or generated additional questions with her response, it is perfectly appropriate to bill for that.

Be conscious of expert costs as well. Most claim handlers want to know an expert’s hourly rate and if possible, an idea of how much time the expert will need to spend on a project or report. Unfortunately, some experts see insurance companies as cash cows. Claim handlers must rely on defense counsel to find reputable, cost-effective experts. They expect you to work with experts when possible to control costs, and be willing to support them in the event there is a legitimate dispute over an expert’s invoice or time spent on a matter.

Keep in mind that claim handlers have to answer to their supervisors as to the legitimacy of the fees and costs incurred in defending a claim. If you are clear with them and are able to articulate the necessity of the fees and costs incurred – yours and an expert’s – they in turn are able to justify those amounts to their supervisors.

If you are an associate and work with partners who serve as insurance defense counsel, there are things you can do to cement your spot on the roster as well. In fact, much is being written and spoken these days on the topic of succession planning, in part because of our rapidly aging lawyer population and the attendant issues this raises for clients and law firms. Many of these aging attorneys have served in the capacity of insurance defense panel counsel for years, and have developed solid relationships with the carriers they work for. It’s imperative -- for the firm and for the insurers -- that panel counsel take the time and make the effort to ensure there are other, younger lawyers within the firm that are ready and able to take over for them when they either expectedly, through retirement, or unexpectedly, in the case of illness or death, are no longer able to practice law.
Perhaps the best thing younger lawyers can do to make their own name with the carrier is to do good work. Take the time to learn and understand the law in the malpractice area, both the procedural aspects and the substantive law. Excel at the projects you are assigned, and request that your senior attorney include you in the signature line of memos and briefs so claim handlers become familiar with your name and your work. In addition, if you see a legitimate way to resolve a claim or come up with a valid argument or defense that the senior partner on the file has not thought of, don’t be afraid to talk with him or her about it. Be respectful but confident.

In addition, take as many opportunities as possible to meet and talk to the claim handlers you work with. Be assertive. Request permission from the senior partners that you be allowed to attend events where claim handlers will be present. Attend the carrier’s defense panel seminar if it has one. As noted above, most insurance defense panel attorneys who want the firm’s relationship with the carrier to continue indefinitely realize the importance of succession planning. It’s imperative that the claims people they work with regularly get to know others in the firm, particularly the younger lawyers who will take over for them when they leave the practice. And if the senior lawyers have not been thinking about it, they need to be, so younger lawyers should not be afraid to point this out.

In the end, it’s quite simple, and likely universal among claim handlers and insurers. Doing quality work, being responsive, and developing a good rapport with the people you work with makes it far more likely that they will continue to hire you in the future. This holds true for established panel counsel, as well as the up and coming professional liability lawyers.

*Michelle M. Lore was employed as a claim attorney with Minnesota Lawyers Mutual Insurance Company from 2011-2017. Prior to that, she worked an associate editor for Minnesota Lawyer, and was in private practice before that, primarily litigating employment discrimination claims. She is a member of the 4th District Ethics Committee in Minnesota.*
From a young age, my Grandma, like many others, encouraged a hand-written note for most life events - to show gratitude, sympathy, thoughtfulness, celebration, and a host of additional emotions and occasions. At her encouragement, this art-form was used to connect with family and friends, both locally and across the miles.

As an attorney, this practice continued. Cards and tokens of remembrance were sent in celebration of bar passages, trial victories and partnerships, to lift up mentees struggling with the profession, and to remind others that they brighten this world by the positive change they effect every day. They were sent out of genuine concern and love for others. An unintended consequence is that they made my practice of law successful. The following is why.

Social media and electronic communications are powerful tools for broadening communications and superficially learning about others, an alternative news source. They are not effective ways to deepen worthwhile relationships. Those require genuine human connection. In-person meals, phone calls, hand-written notes and other actions that allow meaningful one-on-one interaction are the gateway to the soul, what is required to truly bond with another.

Beyond enriched relationships, the influence of more deeply connecting with others is evidenced by a colleague who religiously sends five hand-written notes per day to empower and inspire others. She is the #1 salesperson in her region at her company, a title held for four consecutive years.
To experience how letter-writing can enrich your life and practice, consider the following:

**Keep a Stash**
Letter-writing is easiest when you have a supply on hand. Stock-up on a core group of "occasion" cards, including birthday, sympathy, congratulations, wedding, baby, and thinking of you. Expense is not necessary; bulk-rate and 99 cent cards work just as well as bedazzled messages. The focus is outreach to inform the recipient of your care and appreciation.

**Make an Appointment & Fill the Crevices**
Extra-curricular tasks fall by the wayside when treated as such. Like client work, connecting with others is critical to a thriving law practice. To integrate both, a colleague calendared a two-hour appointment each Friday during which marketing activities were completed. The appointment was valued like an important client meeting, and only missed in case of actual emergency. Also strategically fill small gaps of time – instead of logging onto social media when you have a few extra minutes, use that time to complete a note or two.

**Strategically Use Social Media**
Like human connection, an online presence contributes to a successful law practice; it simply is not a replacement. To achieve balance, determine the appropriate amount of time to use social media and limit your online participation to that daily period. When online, critically analyze your contacts' lives and what offline follow-up communication is appropriate. For example, an online posting regarding a promotion is a wonderful opportunity to send a hand-written congratulatory note celebrating that achievement.
Include Your Call to Action
If the purpose of the note is to further your relationship with the recipient, inform the recipient that you will follow-up in the coming weeks regarding connecting for breakfast/lunch/etc. If the recipient reaches out to you first, great! If the recipient simply receives your card, you can follow-up regarding a subsequent meeting without feeling awkward.

Avoid Using “I”
The recipient is the cornerstone of your communication, not you. “Meeting with you was fabulous,” is more genuine and impactful than “I enjoyed our meeting.” Both sentences attempt the same message; the former achieves celebration of the recipient, your true intention. “I” is rarely needed, and should be used sparingly.

Happy letter writing and best wishes spreading your sunshine through authentic connections with others!
Very truly yours,
Melanie S. Griffin, Esq.
Founder, Spread Your Sunshine

For more helpful information like this:

Connect with Melanie
FB & LI: Melanie S. Griffin
Twitter: @melaniesgriffin
IG: @spreadingthefloridasunshine
melanie@spreadyoursunshine.com

Connect with Spread Your Sunshine
FB: Spread Your Sunshine
Twitter: @sunshine_women
IG: @spreadyoursunshine
www.spreadyoursunshine.com
Issues in Cyber Coverages for Law Firms and Their Clients Alike

I. Overview of Cyber Coverages and Uses for Law Firms (20 minutes)

A. Types of Coverages
B. Types of Cyber Threats, Frequency and Dollar Amounts
C. Malpractice Insurance v. Cyber Coverages
D. Issues in First Party and Third Party Cyber Coverages
E. Nature of Cyber Coverages and Services Provided
F. Recent Claims
G. Claim Trends

II. Cyber Insurance Underwriting and Program Design (20 Minutes)

A. Underwriting Challenges
B. Standardized terms and Lack of Them
C. How industry meets need for the largest risks

III. Placing Cyber Coverages (20 Minutes)

A. Growing Appreciation for Need for Cyber Coverages
B. Incomplete understanding of cyber coverages
C. Education Component – need for cyber insurance, types of coverages available, what is covered and why, what is excluded and why.
D. Trends in Claims Against Brokers.

IV. Notable Legal Developments for 2019 (10 minutes)

A. Policy Construction Issues
B. Sales Practices/Disclosure Issues
C. Regulatory Issues

V. Questions (10 Minutes)
Cyberclaims and litigation against insurance professionals

Technology such as cloud computing, machine learning, "internet of things" and autonomous vehicles are changing society. Along with these rapid societal changes, cyberthreats are evolving more quickly than chief information security officers can deploy systems to anticipate and prevent breaches. While these breaches were once considered threats only for larger corporations, they since have become problems for smaller companies and individuals as well.

This increased risk of cyberevents presents a fertile market for the insurance industry to create new products. Insurance professionals who aim to serve the needs of their corporate clients (whether large or small) must market and provide advice about these new products.

The numerous vectors for cyberattacks — and the uncertainty surrounding how these new insurance products will respond to cyberclaims — has increased the risk of litigation against insurance professionals.

This analysis will briefly discuss uncertainty related to cyberinsurance policies, litigation against insurance agents and brokers, the evolving duty to advise clients about cyberinsurance, and risk management considerations to avoid litigation.

Cyberinsurance Policies

Although there are exceptions, courts have generally decided that commercial general liability insurance does not cover cyberevents. To avoid confusion, many insurance carriers now affirmatively exclude cyberclaims from CGL policies.

Carriers are clearly communicating to insureds that they must obtain separate coverage addressing today’s cyberrisks in the form of cyberinsurance policies.

Unfortunately, the language in these policies is not standardized and is customizable depending on the carrier. Claims filed under them are frequently challenged in court, and each new court decision provides some answers — but also more confusion.

Confusion regarding coverage can easily arise when a social engineering vector causes an insured to wire funds to unintended recipients. A vector is the term used in the cybersecurity industry to describe the method of a cyberattack. Is the attack a cyberevent, criminal fraud, employee error or all of the above?

In Medidata Solutions v. Federal Insurance Co., through a sophisticated scheme of spoofed emails, a Medidata employee was tricked into wiring $4.8 million to an overseas account. Medidata held a $5 million insurance policy with Federal. The policy contained a “Crime Coverage Section” addressing loss caused by various criminal acts, including computer fraud coverage and funds transfer fraud coverage.¹
Relying on the policy, Federal argued that Medidata’s loss was not covered by the computer fraud clause, because the emails did not require access to Medidata’s computer system, a manipulation of those computers, or input of fraudulent information.

In challenging causation, Federal argued that “there is no direct nexus” between the spoofed emails and the fraudulent wire transfer. Federal also challenged coverage under the funds transfer fraud clause because the bank wire transfer was voluntary and with Medidata’s knowledge and consent.

The court explained that “a thief sent spoofed emails armed with a computer code into the email system that Medidata used.” To achieve the spoof, the thief’s computer code changed data in email addresses. The fraud tricked several high level employees to consent to the wire transfers out of Medidata’s own bank account.

Ultimately, the court found coverage under the computer fraud clause and funds transfer fraud clause.

In a similar case, Travelers prevailed in a computer fraud claim case against its policyholder, American Tooling Center Inc. After receiving emails that appeared to be from one of its vendors, ATC authorized payments to a bank account it believed belonged to the vendor. But the emails were fraudulent, and the fraudsters received the payments.

ATC sought coverage from Travelers under the computer fraud provision of its policy. Travelers argued that ATC did not incur a covered loss under the policy. Specifically, it contended “computer fraud” encompasses a digital attack vector that causes loss but does not encompass the use of a digital vector to defraud the organization through an employee’s behavior.

The court decided that although spoofed emails were used to impersonate a vendor and dupe ATC into transferring funds, they did not constitute the “use of any computer to fraudulently cause a transfer.”

There was no infiltration or “hacking” of ATC’s computer system. The emails themselves did not directly cause the funds transfer; rather, ATC authorized the transfer based upon the information received in the emails. Hence, the court ruled that Travelers was not liable for losses from an email-based theft scheme.

The Medidata and American Tool cases illustrate the lack of agreement regarding what is and what is not covered under cyberrelated policies. Underwriters and courts are still grappling with what is considered a “cyberclaim.” This creates a significant problem for insurance professionals who offer cyberinsurance policies to clients.

**Litigation against insurance professionals**

Though it did not involve a sophisticated cyberevent, the fallout from a data breach experienced by Perpetual Storage, a Colorado Casualty Insurance Company insured, illustrates the exposure insurance professionals may face.
Perpetual Storage stored certain records, including hard copies, microfilm, microfiche and magnetic computer tape on behalf of the University of Utah. Backup tapes containing personal information of 1.7 million patients were stolen from a Perpetual Storage employee’s car.

The university said the theft caused it to incur more than $3 million in costs, consisting of one year of credit monitoring expenses for each impacted patient, printing and mailing costs, phone bank costs and other miscellaneous expenses.

Colorado Casualty filed a declaratory judgment action, contending that Perpetual Storage’s policy did not cover the university’s credit monitoring expenses or notice costs. Perpetual Storage file a third-party claim against its insurance broker alleging, among other things, negligent procurement of insurance, breach of fiduciary duty and failure to advise.³

After three years of litigation, the parties stipulated to a dismissal of all claims, counterclaims, cross-claims and third-party claims.

In 2011, an Illinois corporation engaged in electronic commerce sued its insurance broker alleging reduced revenues for a period of seven months due to a cyberattack that destroyed the corporation’s electronic commerce capability. The agent procured a policy that included “Business Income Extension for Web Sites” coverage for only the first seven days of lost revenue.

The corporation filed claims against the insurance broker for negligence and breach of contract.⁴ After several years of litigation, this case also ended with a dismissal by stipulation.

In a 2016 case, a Louisiana hotel alleged breach of contract, disputing the coverage limit of a cybersecurity policy issued through underwriters at Lloyd’s of London. The hotel also named the insurance agent in the suit.

The hotel alleged that when it sought cyberinsurance coverage, it required a policy that would cover operational fraud and operational reimbursement amounts for fraudulent charges and the cost of replacing payment cards as a result of a cyberattack.

The agent procured a policy with total policy limits of $3 million; however, unbeknownst to the hotel, the policy contained a sub-limit of $200,000 for operational fraud and operational reimbursement amounts.

The retail agent filed a third-party claim against the wholesale broker who claimed to have specialized in cyberpolicies.⁵ The parties quickly resolved the dispute and filed a joint motion to dismiss, which the court granted.

These cases are examples of situations in which a policy to cover cyberexposure was warranted based on the client’s business operations. But what if the insured does not specifically request a cyberinsurance policy?
If every company, large or small, is theoretically at risk of a cyberbreach, then insurance professionals may have an affirmative duty to advise corporate clients about cyberrisks and available coverage.

**Duty to advise**

Generally, an insurance agent or broker who undertakes to procure insurance for another and fails to do so may be held liable for damages resulting from the failure. As a general proposition, insurance agents and brokers do not have a duty to advise insureds as to the coverage needs. However, a well-developed body of case law has established an exception to this general rule. The exception applies if a “special relationship” exists between the broker and client, thereby triggering an enhanced duty of care to advise the client about the amount of coverage needed to completely meet its insurance needs.

Case examples supporting a finding of a special relationship include situations in which:

- The agent misrepresented the nature of the coverage being offered or provided, and the insured justifiably relied on that representation in selecting the policy.
- The agent voluntarily assumed the responsibility of selecting the appropriate insurance policy for the insured (by express agreement or promise to the insured).
- The agent professed expertise in a field of insurance being sought by the insured, and the insured relied on that expertise.
- The agent or broker exercised broad discretion to service the insured’s needs and received compensation above the customary premium paid for the expert advice provided.
- The agent was intimately involved in the insured’s business affairs or regularly gave the insured advice or assistance in maintaining proper coverage.

If an insurance professional has a corporate client and a special relationship exists, then there is arguably a duty to advise the client about the availability of cyberinsurance policies.

**What is at stake?**

Cyberevents in which thousands of people have their personally identifiable information stolen (including events involving Equifax, Home Depot, Target, Yahoo) garner extensive media coverage. Less attention is paid to attacks carried out using other vectors, like ransomware, which prevents a company from accessing information unless a ransom is paid.

In 2017, the WannaCry and Petya ransomware attacks impacted thousands of computers and blocked user access to data systems unless and until users made ransom payments. And ransomware attacks have already been reported in 2018.

In January, Hancock Regional Hospital was hit with a ransom demand for bitcoin from hackers who encrypted data files associated with the hospital’s most critical information systems.
After notifying the FBI, its attorneys, cybersecurity specialists and the cybersecurity insurance company, the hospital made the decision to pay the hackers for decryption keys to access the data files and restore its information technology network.

Another troublesome vector is a denial of service attack that disrupts customers’ access to an organization’s system, such as an attack that affected Twitter, Netflix and Sony’s PlayStation Network.14 There is also the social engineering vector in which an employee is tricked into transferring funds or confidential information.

These types of cyberattacks cause business interruptions that could lead to losses amounting to hundreds of thousands of dollars. While larger corporations may survive such an attack, smaller uninsured companies may be forced to shutter.

And companies may pursue litigation against the insurance professional who failed to procure adequate insurance. If found liable, an insurance professional may have to pay the difference between the coverage that should have been in force, but for the error, and the actual net insurance recovery, if any.

**Issues to consider**

With all of this in mind, insurance professionals should appreciate the demand and need for cyberinsurance policies for every company that relies on computers and the internet — essentially every company. Although cyberinsurance is still relatively new, there are many insurance professionals who have in-depth experience and knowledge in this area.

But beware: The risk of litigation is extremely high if an insurance professional claims expertise in cybersecurity and the client suffers a breach that results in a denied claim.

Likewise, when an insurance professional is intimately involved in the insured’s business affairs (for example, handles all the insurance needs for the client or regularly provides advice in maintaining proper coverage), then the agent should advise about cyberrisks, in writing, and engage a broker with far more knowledge.

In addition, when offering a cyberpolicy, insurance professionals should take great pains to review the language of the policy with the client. The client should understand what is, and what is not, covered. Because courts are still grappling with the language in some policies, there are no guarantees. At the very least, the insurance professional and the client should review the policy’s exclusions and definitions.

The definitions of “confidential information” and “personally identifiable information” are the most fundamental in a cyberinsurance policy.

Some policies define confidential information broadly as any information from which an individual may be uniquely and reliably identified or contacted. This may include an individual’s name, address, telephone number, social security number, account relationships,
account numbers, account balances, account histories or passwords. Under such a definition, an individual’s name, on its own, could be considered PII.

In contrast, other policies may identify very specific items that are considered confidential information that may mirror state-specific definitions of PII. For example, Florida defines personal information as an “individual’s first name or first initial and last name in combination with any one or more of the following data elements for that individual: a Social Security number; a driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity; a financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual’s financial account,” etc.

Beware of the exclusions for contractual liability; criminal conduct; terrorism, hostilities and claims arising from “acts of foreign enemies”; and exclusions for unauthorized collection of customer data. These exclusions could have unintended consequences.

A criminal conduct exclusion would bar any claims that resulted from a social engineering scheme. An exclusion for terrorism could bar cyberbreaches that resulted from foreign actors or governments.

Similarly, an exclusion for unauthorized collection of consumer data could affect any company engaged in online activities, especially activities in which consumer financial data is collected.

Although not a bulletproof defense in litigation, an insurance professional could attempt to limit the scope of services, in writing, to exclude any advice regarding cyberinsurance. From a business perspective, an agent or broker may not want to refer clients to competitors to evaluate cyberrisks.

**Embrace the Future**

Like many industries, insurance will change and evolve as society embraces new internet-reliant technologies. Insurance professionals will have to understand how new technology and the advent of cyberspace will affect their clients. Failing to embrace, evolve and implement strategies to offer insurance products for the cyberage will expose insurance professionals to litigation.

**Notes**


8 See, e.g., *Fitzpatrick* at 452.


13 *Cyber-attack shuts down US Regional Hospital’s online system*, 2018 WLNR 1733059.

14 *Widespread Assault Internet attack disrupts service Web-traffic manager Dyn Inc. struck twice*, 2016 WLNR 32536680.

15 This commentary is not intended to provide an exhaustive risk analysis for insurance professionals; it is only the tip of the iceberg. The opinions expressed are those of the author and do not necessarily reflect the views of the firm, its clients or any of its or their respective affiliates. This commentary is for general information purposes and is not intended to be and should not be taken as legal advice.
Trial Masters – Knowledge We Wish We Had Years Ago

Dick A. Semerdjian
Schwartz Semerdjian Cauley & Moot LLP
San Diego, CA

**Jury Selection – The Often-Overlooked Make It or Break It Phase of a Trial:** the discussion will provide tools when facing the daunting job of voir dire. There is no question that jury selection can play a huge role in winning or losing a lawsuit. This is the time for the trial attorney to establish a relationship with the jury and learn as much information as possible. The presentation will include best practices and real live trial stories about the do’s and don'ts of jury selection.

Ahsaki Baptist
Federal Express Corporation
Memphis, TN

**Presentation Technology:** Presentation software has advanced over the years with features that let you present, annotate, highlight, expand and animate documents for trial all on your iPad. For example, you can highlight deposition testimony, enlarge key words or phrases, and link them to video clips of the testimony for the jury to see. You may have already been using this process in your practice, but generally these clips and excerpts are prepared before trial and can be time consuming to create. There are new programs that allow you to do this at trial, which helps you react to testimony immediately at your fingertips and is great for cross examination.

The most important thing to know about presenting evidence, with or without presentation software, is practice makes perfect. This starts with preparing your witness and preparing your exhibits. Be prepared with pointers, laser pens, and other necessary aids for the use of the exhibit. Know how to set up and work courtroom equipment and make sure everyone on your team knows how to make it work.

Knowing where to stand, courtroom logistics, and being self-aware are the best practice tools to use that do not require technology. Keep a good rhythm and know when to say when. If your presentation software is not working, do not troubleshoot in front of the jury, move on or use backup paper documents. When you have already made a great point, know when to stop and not ask that extra question that usually negates your point or gives the witness the opportunity to rehabilitate themselves. Finally, read the jury. If opposing counsel has spent half the day with one witness, perhaps you want to spend less time and ask fewer questions. They will appreciate you for it in deliberation.

Tim Bouch
Leath, Bouch & Crawford
Charleston, SC

**Opening statements:** Most psychologists say, and many studies show, that people are the most attentive and learn more during the first ten minutes of a presentation than any other part. I say five. Get a jury’s attention at the start. You must (1) reduce the factual dispute to its bare essentials,
and (2) highlight your theme. Define the controversy, present your case theory, and drive home your theme.

What do I mean by all this. Defining the controversy is self-apparent. Use the perspective as through your client’s eyes. Characterize or reframe the issues. Do not let your opponent’s version go unchallenged. The case theory is “what happened”; what entitles your client to prevail. The theme is “why” it happened. The theme must appeal to the jury’s sense of right and wrong, moral indignation perhaps, of one party’s conduct. The theme is the emotional drive which causes the jury to reach the proper conclusion; from your perspective at least.

Think of your opening statement as a conversation. You are seated on the edge of a table trying to convince someone that Garibaldi’s, or RPM, or Per se is the best restaurant in town. To do this, you would not stand behind a podium. You would not read from notes. A conversation is much more effective than a lecture, a sermon, or an oration. After all, you do not want to lecture or to talk down the jurors, or even argue with them. You want to analyze the evidence not, for, but with them. You know your objective: to persuade the jury to reach a verdict favorable to your client.

Kathleen Strickland
Ropers, Majeski, Kohn & Bentley PC
San Francisco, CA

Advice for young lawyers: Listen to others and work hard. Partners will respect your work ethic, which will garner results. Information is the key to success. The more you know, the more you can share that information with others, difficult colleagues and partners, in a teaching tone, not in any arrogant fashion. They will come to respect your opinions garnered from your hard work.

Whether you join ABA/TIPS or a local bar association, be active and work. That really is how people get to know you. Keep in touch with college and law school friends, as they may able to be a source of referrals. For clients, be their trusted advisor, available 24/7 without the clock running. And don’t be afraid to try a case. It is fun. Believe in yourself that you can do it. The work will come. And always be true to yourself, trustworthy, and sincere.

Joel W. Mohrman
McGlinchey Stafford PLLC
Houston, TX

Thematic Trials: People understand the world and incidents through stories. Piles of evidence and winsome witnesses cannot compensate for the explanatory power of a story well told. This is especially true in trials where the parties are offering competing versions of what happened. It is vital that you select a theme for your case, preferably early on. The theme should:

- Be one to three sentences long;
- Convey the essence of your case in persuasive, clear, everyday language;
- And, if possible, cast the other side as the bad guy who did or didn’t do something that caused the problem.
The language used is key. You should use words that are memorable and descriptive. By choosing a theme and wording early on in the case you can then insert this language into discovery, briefs and depositions. In this way you begin to control the case because language can create its own reality. Your language becomes the lingo which describes the case for the jury and judge.

At hearings and at trial consider how you can reinforce your theme with simple visual aids. Complexity is your enemy here. Your visuals should be quickly understandable without significant explanation. The combination of powerful stories reinforced by visuals has been shown to create the highest level of persuasion and retention in juries.
THE BUSINESS CASE FOR MENTORING

BY: MELANIE S. GRIFFIN

While the term “mentoring” is often used, establishment of meaningful mentoring relationships and programs is a true art form that when effectively implemented, yields significant gains for both the mentoring pair and the firm/company investing in such resources. The following highlights mentoring subtleties that make a critical difference in the success of the relationship, including: how mentorship differs from coaching and sponsorship, formal and organic relationships, reverse mentoring, optimal mentor pairings, effective communication, the benefits of mentoring, and useful mentoring resources.

I. Types of Mentoring Relationships

“Mentoring” is broader than often described and takes many forms beyond traditional, formal, one-on-one pairings. The following is an overview of those relationships, including the differences between coaching, mentoring and sponsorship; formal versus informal pairings; and reverse, or millennial or reciprocal, mentorships.

A. How Mentoring Differs from Other Professional Relationships

Coach. Mentor. Sponsor. Each plays a vital, yet different, role in the development of a professional. Eloquently explained, “[a] coach talks to you, a mentor talks with you, and a sponsor talks about you.” (Emphasis added.)
Further examining the importance of each relationship, a business coach, like a sports coach, assists with learning a new skill, overcoming a challenge, or improving performance. The pairing is often short-term, focusing on perfection of a specific task that once achieved ends the partnership.

Generally longer-term and more broadly-focused, a mentor enhances a “mentee’s professional performance and development.” Through this relationship, advice, guidance and support boost confidence, allowing the mentee to improve performance, navigate corporate politics, and enjoy increased competence and self-worth.

Transcending a mentor, a sponsor uses personal power and reputation to advocate for another’s advancement achieved, at least in part, as a result of the sponsor’s influence. Usually a leader with the ability to control the behavior of others, a sponsor generally differs from a mentor in the following ways:

<table>
<thead>
<tr>
<th>Mentors</th>
<th>Sponsors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can sit at any level in the hierarchy</td>
<td>Must be senior managers with influence</td>
</tr>
<tr>
<td>Provide emotional support, feedback on how to improve, and other advice</td>
<td>Make sure their people are considered for promoting opportunities and challenging assignments</td>
</tr>
<tr>
<td>Help mentees learn to navigate corporate politics</td>
<td>Give proteges exposure to other executives who may help their careers</td>
</tr>
<tr>
<td>Focus on mentees’ personal and professional development</td>
<td>Protect their proteges from negative publicity or damaging contact with senior executives</td>
</tr>
<tr>
<td>Serve as role models</td>
<td>Fight to get their people promoted</td>
</tr>
<tr>
<td>Strive to increase mentees’ sense of competence and self-worth</td>
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Given the inspiration mentoring infuses into a career that can blossom into a sponsorship, the often unexplained nuances of the art of mentoring are next explored.

B. Formal v. Organic Mentoring Relationships & the Role of Differing Personality Types

When envisioning mentoring, a formal program facilitated by a business or organization often comes to mind. Such programs are usually structured, founded to accomplish a specific business objective, and measured to determine if such goal is met. Pairs are often strategically matched to meet the business objective and last for a designated length of time, generally nine to twelve months.

Informal mentoring relationships, on the other hand, are usually based on chemistry between the mentor and mentee and arise naturally when the two meet, recognize their commonalities, and agree to enter into a mentorship together. While, as discussed below, the pair can establish the criteria of their relationship to maximize its effectiveness, such matches often have unspecified goals and unknown outcomes. They also often last longer, sometimes evolving into a friendship. The two types of mentoring relationships are well-summarized in the following chart:
Many report heightened enjoyment from informal mentorships due to the genuine human connection between the mentor and mentee. To wit, the benefits received by protégés in formal programs typically fall short of the benefits bestowed upon mentees “involved in naturally occurring, informal mentoring relationships” as a result of the social attraction that “may be absent in formally assigned mentoring pairings.” Formal programs excel, though, in creating meaningful mentoring opportunities for introverted individuals who are less likely to attempt to initiate a mentoring relationship than their socially-skilled peers. Such programs are thus important for noticing and appropriately preparing high potential introverts for advanced leadership positions.

As shown, wonderful benefits are associated with both formal and informal mentoring. Organizational leadership thus must facilitate the mentorships best suited for the business while taking into account the personality types of its key talent to be developed.

C. Reverse Mentoring, or Millennial or Reciprocal Mentorships

Equally as powerful as a traditional mentoring pair where a more seasoned executive mentors a younger professional is a match through which a younger colleague mentors an older peer, often referred to as reverse, millennial or reciprocal mentoring. Millennial mentors are often particularly adept at teaching their senior counterparts about technology, the Web, computers, social media, and current business trends, including catering to new markets, development of fresh products and services, and organizational and social change.

First popularized more than a decade ago by GE Chairman Jack Welch, reverse mentoring benefits include: closure of the knowledge gap for both parties, such as business terminology and best industry practices for the younger employee and online
marketing for the senior counter-part; empowerment and development of both emerging and established leaders; and a cohesive cross-generation workforce. 19 Given technology’s revolution of the workplace, millennials provide a fresh perspective critical to the success of the organization. 20 Simply, when the boss is willing to learn new techniques from the organization’s freshest members, office relationships are improved and strengthened.

II. Optimal Mentorship Pairing: Find the Spark! & Focus on Goals

Organizations facilitating formal mentoring programs frequently attempt to match mentees with mentors with any number of identical traits, including gender, ethnicity, profession, marital and familial status, interpersonal skills, and leadership styles. Many times, however, such matches fail, as too many criteria complicate pairing and oftentimes, create categorically-ideal matches that lack a human connection. 21

The best practice is thus to make achievement of the mentee’s goals. 22 the point of the relationship, the focus of the pairing, while also considering if a “spark” exists between the mentee and mentor. 23

Indeed, a good mentor is a trusted advisor who provides sound advice. 24 Such person may be older or younger, and in the mentee’s chosen profession or not. This is especially true for beginner and intermediate-level mentees. Although their inquiries are uniquely phrased, distilled, they constitute a core set of questions that can be answered by a myriad of professionals, in their field or not, such as guidance on interview preparation, salary negotiation, business development, networking, work-life balance, avoidance of professional mistakes, and career best practices. 25

Answering such questions requires general business knowledge from a successful, productive professional, not an overly complicated matching process.

Moreover, a mentor with traits different from the mentee’s may broaden the mentee’s depth through alternative perspectives and skillsets, best helping the mentee grow and advance. 26 For example, a mentor of the opposite gender may most effectively foster the development of the mentee’s weaknesses in a way that a mentor of the same sex cannot.
THE BUSINESS CASE FOR MENTORING

Based on the forgoing, the most successful mentoring programs will consider replacing lengthy mentor applications with recruitment of knowledgeable, compassionate, enthusiastic mentors, who take mentoring seriously, are committed to lifelong-learning and invest in the gratification and success of the mentee, and have the talent and expertise to best cultivate and nurture the mentee.27

III. Effective Mentoring Communications: The Critical First Meeting

It is commonplace at the end of a formal mentoring program to hear that although the pair was initially excited to work together, they failed to meaningfully connect during their relationship. Such failure is often the result of an ineffective initial meeting.28

To facilitate a successful mentoring relationship, at the outset, the mentor and mentee must be prepared to agree upon their roadmap. Discussion topics may include: who will initiate conversation – the mentor or the mentee; preferred method(s) of communication – in-person, email, phone conference, Skype/GoToMeeting/etc., or social media; expected response period – within 24 hours, the week, etc.; whether your communications are confidential; frequency of interaction – weekly, monthly, quarterly, etc.;

length of the relationship if not established, and if it is, whether such relationship may be extended; critical dates – for example, known periods of unavailability or a key project deadline for which guidance is sought; discussion topics; taboo inquiries, such as regarding personal life; anticipated connections; contemplated activities; desired programs and events to attend; and ideal goal achievement. Consider using the following prompts29 during the initial strategy session:

As intimated by the forgoing chart, initially, a mentorship is not a contemplated friendship or job opportunity.30 To keep the relationship focused on the mentor’s guidance, the mentor may ask the mentee to provide proposed meeting agendas.31 In addition to setting the meeting tone, the pre-meeting agenda review affords the mentor time to plan the offered advice.
Similarly, an organization facilitating a formal mentoring program may periodically provide its pairings with suggested conversation questions to foster regular communication and ensure the discussion of desired topics.32

Above all, honesty of both the mentor33 and the mentee34 is crucial to a successful mentoring relationship. As a mentor, the provision of straightforward, candid advice is most beneficial to the mentee. Part of the first meeting may thus include preparing the mentee to hear what is needed, not what is wanted, during the relationship. Additionally, if upon understanding the mentee’s mentorship goals the mentor cannot provide the desired guidance, the mentor should inform the mentee of the mismatched skillsets and connect the mentee with a better-aligned mentor, if possible. Similarly, to grow, the mentee must solicit and accept critical feedback and inform the mentor of the true mentorship objectives. Regarding the latter, for example, a mentor cannot best assist a mentee with obtaining a job in another city if the mentor believes the mentee wants to advance at the mentee’s current company.

In sum, meaningful mentoring relationships are not accidental. Rather, establishment of a vibrant mentorship requires education of the mentor and mentee regarding their respective roles35 and a strong commitment to a mutually agreeable plan of action.36

### IV. The Power of Mentoring & Benefits to the Business

The reported benefits of business mentoring are impressive and include increased productivity, diversity, morale and retention, personal growth, access to organizational resources and rewards, improved technical skills, increased cross-generation collaboration, and a heightened awareness of company culture, policies and expectations, all of which positively increase the bottom line.37

More specifically:

- The productivity of managers who are mentored increases by 88%;
- 35% of employees without regular mentoring seek another job within twelve months;
- 95% of mentoring participants say that mentorship motivates them to do their very best; and
- Mentored workers annually earn $5K - $22K more than their nonmentored counter-parts.38
THE BUSINESS CASE FOR MENTORING

Indeed, “[m]entoring has long been recognized as a tool in career development,” with evidence that “mentored individuals often earn higher performance evaluations, higher salaries, and faster career progress than non-mentored individuals,” creating higher job satisfaction and commitment.39

This is particularly true for women, minorities and seniors, who experience increased self-confidence, improved communication skills, and truer self-assessments as a result of mentorships.40

Programs targeting such employees have the ability to transform a company’s culture, creating diverse management teams more reflective of workforces and markets.41 Such transformation of a company’s leadership composition is often critical to its bottom line, as clients and vendors are demanding a diverse labor force.42 It is thus no longer simply politically correct and morally right to provide mentorship to women, minorities and seniors; rather, it is oftentimes a necessity for a company to remain financially viable.43

Given the foregoing significant mentorship benefits, the question should shift from whether to host a mentoring program to how soon to establish one to best nurture your business and its employees.

V. Mentoring Program Resources

Many resources exist to assist with the establishment or improvement of a mentoring program. For example, organizations devoted to the practice of mentoring such as the National Mentoring Resource Center44 and the National Mentoring Partnership45 offer a plethora of resources including guides, handouts, training resources, management resources, program policies and procedures, and recruitment and marketing tools. Likewise, research is readily available regarding top corporate mentoring programs proven successful within companies such as Sodexo, Time Warner Cable and Caterpillar.46 The critical questions asked by such companies when forming and evaluating their mentoring programs are also on the Web.47 With the accessibility of such vibrant materials, a company need not reinvent the wheel, and instead, can enjoy the synergies from the tried and true mentorships that already exist that can serve as the foundation for a new, or improved, mentoring program.
VI. Summary: Effective Mentoring Requires Planning, Education & Facilitation

As shown above, successful mentoring relationships are not accidental. The most effective pairings are intentionally established partnerships, executed through an agreed upon and thought out plan, by mentors and mentees aware of and educated regarding their respective roles, committed to regular communication and interaction. Thus, to establish or improve your program or pairing, thoughtfully create, implement and execute the roadmap that optimizes mentorship functionality, results and enjoyment.
THE BUSINESS CASE FOR MENTORING


7 Id.

8 Id.


11 Id.

12 Id.


16 Id.


43 ld.


Cyberclaims and litigation against insurance professionals

Technology such as cloud computing, machine learning, "internet of things" and autonomous vehicles are changing society. Along with these rapid societal changes, cyberthreats are evolving more quickly than chief information security officers can deploy systems to anticipate and prevent breaches. While these breaches were once considered threats only for larger corporations, they since have become problems for smaller companies and individuals as well.

This increased risk of cyberevents presents a fertile market for the insurance industry to create new products. Insurance professionals who aim to serve the needs of their corporate clients (whether large or small) must market and provide advice about these new products.

The numerous vectors for cyberattacks — and the uncertainty surrounding how these new insurance products will respond to cyberclaims — has increased the risk of litigation against insurance professionals.

This analysis will briefly discuss uncertainty related to cyberinsurance policies, litigation against insurance agents and brokers, the evolving duty to advise clients about cyberinsurance, and risk management considerations to avoid litigation.

Cyberinsurance Policies

Although there are exceptions, courts have generally decided that commercial general liability insurance does not cover cyberevents. To avoid confusion, many insurance carriers now affirmatively exclude cyberclaims from CGL policies.

Carriers are clearly communicating to insureds that they must obtain separate coverage addressing today’s cyberrisks in the form of cyberinsurance policies.

Unfortunately, the language in these policies is not standardized and is customizable depending on the carrier. Claims filed under them are frequently challenged in court, and each new court decision provides some answers — but also more confusion.

Confusion regarding coverage can easily arise when a social engineering vector causes an insured to wire funds to unintended recipients. A vector is the term used in the cybersecurity industry to describe the method of a cyberattack. Is the attack a cyberevent, criminal fraud, employee error or all of the above?

In Medidata Solutions v. Federal Insurance Co., through a sophisticated scheme of spoofed emails, a Medidata employee was tricked into wiring $4.8 million to an overseas account. Medidata held a $5 million insurance policy with Federal. The policy contained a “Crime Coverage Section” addressing loss caused by various criminal acts, including computer fraud coverage and funds transfer fraud coverage.
Relying on the policy, Federal argued that Medidata’s loss was not covered by the computer fraud clause, because the emails did not require access to Medidata’s computer system, a manipulation of those computers, or input of fraudulent information.

In challenging causation, Federal argued that “there is no direct nexus” between the spoofed emails and the fraudulent wire transfer. Federal also challenged coverage under the funds transfer fraud clause because the bank wire transfer was voluntary and with Medidata’s knowledge and consent.

The court explained that “a thief sent spoofed emails armed with a computer code into the email system that Medidata used.” To achieve the spoof, the thief’s computer code changed data in e-mail addresses. The fraud tricked several high-level employees to consent to the wire transfers out of Medidata’s own bank account.

Ultimately, the court found coverage under the computer fraud clause and funds transfer fraud clause.

In a similar case, Travelers prevailed in a computer fraud claim case against its policyholder, American Tooling Center Inc. After receiving emails that appeared to be from one of its vendors, ATC authorized payments to a bank account it believed belonged to the vendor. But the emails were fraudulent, and the fraudsters received the payments.

ATC sought coverage from Travelers under the computer fraud provision of its policy. Travelers argued that ATC did not incur a covered loss under the policy. Specifically, it contended “computer fraud” encompasses a digital attack vector that causes loss but does not encompass the use of a digital vector to defraud the organization through an employee’s behavior.

The court decided that although spoofed emails were used to impersonate a vendor and dupe ATC into transferring funds, they did not constitute the “use of any computer to fraudulently cause a transfer.”

There was no infiltration or “hacking” of ATC’s computer system. The emails themselves did not directly cause the funds transfer; rather, ATC authorized the transfer based upon the information received in the emails. Hence, the court ruled that Travelers was not liable for losses from an email-based theft scheme.

The Medidata and American Tool cases illustrate the lack of agreement regarding what is and what is not covered under cyberrelated policies. Underwriters and courts are still grappling with what is considered a “cyberclaim.” This creates a significant problem for insurance professionals who offer cyberinsurance policies to clients.

**Litigation against insurance professionals**

Though it did not involve a sophisticated cyberevent, the fallout from a data breach experienced by Perpetual Storage, a Colorado Casualty Insurance Company insured, illustrates the exposure insurance professionals may face.
Perpetual Storage stored certain records, including hard copies, microfilm, microfiche and magnetic computer tape on behalf of the University of Utah. Backup tapes containing personal information of 1.7 million patients were stolen from a Perpetual Storage employee’s car.

The university said the theft caused it to incur more than $3 million in costs, consisting of one year of credit monitoring expenses for each impacted patient, printing and mailing costs, phone bank costs and other miscellaneous expenses.

Colorado Casualty filed a declaratory judgment action, contending that Perpetual Storage’s policy did not cover the university’s credit monitoring expenses or notice costs. Perpetual Storage file a third-party claim against its insurance broker alleging, among other things, negligent procurement of insurance, breach of fiduciary duty and failure to advise.³

After three years of litigation, the parties stipulated to a dismissal of all claims, counterclaims, cross-claims and third-party claims.

In 2011, an Illinois corporation engaged in electronic commerce sued its insurance broker alleging reduced revenues for a period of seven months due to a cyberattack that destroyed the corporation’s electronic commerce capability. The agent procured a policy that included “Business Income Extension for Web Sites” coverage for only the first seven days of lost revenue.

The corporation filed claims against the insurance broker for negligence and breach of contract.⁴ After several years of litigation, this case also ended with a dismissal by stipulation.

In a 2016 case, a Louisiana hotel alleged breach of contract, disputing the coverage limit of a cybersecurity policy issued through underwriters at Lloyd’s of London. The hotel also named the insurance agent in the suit.

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The agent procured a policy with total policy limits of $3 million; however, unbeknownst to the hotel, the policy contained a sub-limit of $200,000 for operational fraud and operational reimbursement amounts.

The retail agent filed a third-party claim against the wholesale broker who claimed to have specialized in cyberpolicies.⁵ The parties quickly resolved the dispute and filed a joint motion to dismiss, which the court granted.

These cases are examples of situations in which a policy to cover cyberexposure was warranted based on the client’s business operations. But what if the insured does not specifically request a cyberinsurance policy?
If every company, large or small, is theoretically at risk of a cyberbreach, then insurance professionals may have an affirmative duty to advise corporate clients about cyberrisks and available coverage.

**Duty to advise**

Generally, an insurance agent or broker who undertakes to procure insurance for another and fails to do so may be held liable for damages resulting from the failure. As a general proposition, insurance agents and brokers do not have a duty to advise insureds as to the coverage needs.\(^6\)

However, a well-developed body of case law has established an exception to this general rule. The exception applies if a “special relationship” exists between the broker and client, thereby triggering an enhanced duty of care to advise the client about the amount of coverage needed to completely meet its insurance needs.\(^7\)

Case examples supporting a finding of a special relationship include situations in which:

- The agent misrepresented the nature of the coverage being offered or provided, and the insured justifiably relied on that representation in selecting the policy.\(^8\)
- The agent voluntarily assumed the responsibility of selecting the appropriate insurance policy for the insured (by express agreement or promise to the insured).\(^9\)
- The agent professed expertise in a field of insurance being sought by the insured, and the insured relied on that expertise.\(^10\)
- The agent or broker exercised broad discretion to service the insured’s needs and received compensation above the customary premium paid for the expert advice provided.\(^11\)
- The agent was intimately involved in the insured’s business affairs or regularly gave the insured advice or assistance in maintaining proper coverage.\(^12\)

If an insurance professional has a corporate client and a special relationship exists, then there is arguably a duty to advise the client about the availability of cyberinsurance policies.

**What is at stake?**

Cybереvents in which thousands of people have their personally identifiable information stolen (including events involving Equifax, Home Depot, Target, Yahoo) garner extensive media coverage. Less attention is paid to attacks carried out using other vectors, like ransomware, which prevents a company from accessing information unless a ransom is paid.

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Another troublesome vector is a denial of service attack that disrupts customers’ access to an organization’s system, such as an attack that affected Twitter, Netflix and Sony’s PlayStation Network. There is also the social engineering vector in which an employee is tricked into transferring funds or confidential information.

These types of cyberattacks cause business interruptions that could lead to losses amounting to hundreds of thousands of dollars. While larger corporations may survive such an attack, smaller uninsured companies may be forced to shutter.

And companies may pursue litigation against the insurance professional who failed to procure adequate insurance. If found liable, an insurance professional may have to pay the difference between the coverage that should have been in force, but for the error, and the actual net insurance recovery, if any.

**Issues to consider**

With all of this in mind, insurance professionals should appreciate the demand and need for cyberinsurance policies for every company that relies on computers and the internet — essentially every company. Although cyberinsurance is still relatively new, there are many insurance professionals who have in-depth experience and knowledge in this area.

But beware: The risk of litigation is extremely high if an insurance professional claims expertise in cybersecurity and the client suffers a breach that results in a denied claim.

Likewise, when an insurance professional is intimately involved in the insured’s business affairs (for example, handles all the insurance needs for the client or regularly provides advice in maintaining proper coverage), then the agent should advise about cyberrisks, in writing, and engage a broker with far more knowledge.

In addition, when offering a cyberpolicy, insurance professionals should take great pains to review the language of the policy with the client. The client should understand what is, and what is not, covered. Because courts are still grappling with the language in some policies, there are no guarantees. At the very least, the insurance professional and the client should review the policy’s exclusions and definitions.

The definitions of “confidential information” and “personally identifiable information” are the most fundamental in a cyberinsurance policy.

Some policies define confidential information broadly as any information from which an individual may be uniquely and reliably identified or contacted. This may include an individual’s name, address, telephone number, social security number, account relationships,
account numbers, account balances, account histories or passwords. Under such a definition, an individual’s name, on its own, could be considered PII.

In contrast, other policies may identify very specific items that are considered confidential information that may mirror state-specific definitions of PII. For example, Florida defines personal information as an “individual’s first name or first initial and last name in combination with any one or more of the following data elements for that individual: a Social Security number; a driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity; a financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual’s financial account,” etc.

Beware of the exclusions for contractual liability; criminal conduct; terrorism, hostilities and claims arising from “acts of foreign enemies”; and exclusions for unauthorized collection of customer data. These exclusions could have unintended consequences.

A criminal conduct exclusion would bar any claims that resulted from a social engineering scheme. An exclusion for terrorism could bar cyberbreaches that resulted from foreign actors or governments.

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Like many industries, insurance will change and evolve as society embraces new internet-reliant technologies. Insurance professionals will have to understand how new technology and the advent of cyberspace will affect their clients. Failing to embrace, evolve and implement strategies to offer insurance products for the cyberage will expose insurance professionals to litigation.

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   G. Claim Trends

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   C. Regulatory Issues

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   A. Growing Appreciation for Need for Cyber Coverages
   B. Incomplete understanding of cyber coverages
   C. Education Component – need for cyber insurance, types of coverages available, what is covered and why, what is excluded and why.
   D. Trends in Claims Against Brokers.

IV. Notable Legal Developments for 2019 (10 minutes)
   A. Policy Construction Issues
   B. Sales Practices/Disclosure Issues
   C. Regulatory Issues

V. Questions (10 Minutes)
Trial Masters – Knowledge We Wish We Had Years Ago

Dick A. Semerdjian
Schwartz Semerdjian Cauley & Moot LLP
San Diego, CA

Jury Selection – The Often-Overlooked Make It or Break It Phase of a Trial: the discussion will provide tools when facing the daunting job of voire dire. There is no question that jury selection can play a huge role in winning or losing a lawsuit. This is the time for the trial attorney to establish a relationship with the jury and learn as much information as possible. The presentation will include best practices and real live trial stories about the do’s and don’ts of jury selection.

Ahsaki Baptist
Federal Express Corporation
Memphis, TN

Presentation Technology: Presentation software has advanced over the years with features that let you present, annotate, highlight, expand and animate documents for trial all on your iPad. For example, you can highlight deposition testimony, enlarge key words or phrases, and link them to video clips of the testimony for the jury to see. You may have already been using this process in your practice, but generally these clips and excerpts are prepared before trial and can be time consuming to create. There are new programs that allow you to do this at trial, which helps you react to testimony immediately at your fingertips and is great for cross examination.

The most important thing to know about presenting evidence, with or without presentation software, is practice makes perfect. This starts with preparing your witness and preparing your exhibits. Be prepared with pointers, laser pens, and other necessary aids for the use of the exhibit. Know how to set up and work courtroom equipment and make sure everyone on your team knows how to make it work.

Knowing where to stand, courtroom logistics, and being self-aware are the best practice tools to use that do not require technology. Keep a good rhythm and know when to say when. If your presentation software is not working, do not troubleshoot in front of the jury, move on or use backup paper documents. When you have already made a great point, know when to stop and not ask that extra question that usually negates your point or gives the witness the opportunity to rehabilitate themselves. Finally, read the jury. If opposing counsel has spent half the day with one witness, perhaps you want to spend less time and ask fewer questions. They will appreciate you for it in deliberation.

Tim Bouch
Leath, Bouch & Crawford
Charleston, SC

Opening statements: Most psychologists say, and many studies show, that people are the most attentive and learn more during the first ten minutes of a presentation than any other part. I say five. Get a jury’s attention at the start. You must (1) reduce the factual dispute to its bare essentials,
and (2) highlight your theme. Define the controversy, present your case theory, and drive home your theme.

What do I mean by all this. Defining the controversy is self-apparent. Use the perspective as through your client’s eyes. Characterize or reframe the issues. Do not let your opponent’s version go unchallenged. The case theory is “what happened”; what entitles your client to prevail. The theme is “why” it happened. The theme must appeal to the jury’s sense of right and wrong, moral indignation perhaps, of one party’s conduct. The theme is the emotional drive which causes the jury to reach the proper conclusion; from your perspective at least.

Think of your opening statement as a conversation. You are seated on the edge of a table trying to convince someone that Garibaldi’s, or RPM, or Per se is the best restaurant in town. To do this, you would not stand behind a podium. You would not read from notes. A conversation is much more effective than a lecture, a sermon, or an oration. After all, you do not want to lecture or to talk down the jurors, or even argue with them. You want to analyze the evidence not, for, but with them. You know your objective: to persuade the jury to reach a verdict favorable to your client.

Kathleen Strickland  
Ropers, Majeski, Kohn & Bentley PC  
San Francisco, CA

Advice for young lawyers: Listen to others and work hard. Partners will respect your work ethic, which will garner results. Information is the key to success. The more you know, the more you can share that information with others, difficult colleagues and partners, in a teaching tone, not in any arrogant fashion. They will come to respect your opinions garnered from your hard work.

Whether you join ABA/TIPS or a local bar association, be active and work. That really is how people get to know you. Keep in touch with college and law school friends, as they may able to be a source of referrals. For clients, be their trusted advisor, available 24/7 without the clock running. And don’t be afraid to try a case. It is fun. Believe in yourself that you can do it. The work will come. And always be true to yourself, trustworthy, and sincere.

Joel W. Mohrman  
McGlinchey Stafford PLLC  
Houston, TX

Thematic Trials: People understand the world and incidents through stories. Piles of evidence and winsome witnesses cannot compensate for the explanatory power of a story well told. This is especially true in trials where the parties are offering competing versions of what happened. It is vital that you select a theme for your case, preferably early on. The theme should:

- Be one to three sentences long;
- Convey the essence of your case in persuasive, clear, everyday language;
- And, if possible, cast the other side as the bad guy who did or didn’t do something that caused the problem.
The language used is key. You should use words that are memorable and descriptive. By choosing
a theme and wording early on in the case you can then insert this language into discovery, briefs
and depositions. In this way you begin to control the case because language can create its own
reality. Your language becomes the lingo which describes the case for the jury and judge.

At hearings and at trial consider how you can reinforce your theme with simple visual aids.
Complexity is your enemy here. Your visuals should be quickly understandable without significant
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