CLOSING THE BARN DOOR: IS IT TOO LATE TO MITIGATE THE RISK OF MOBILE LAWYERS?

#ILTALSS #LSS19
TODAY’S CONVERSATION

Not “Done to Death”

Everybody’s Doing It

Everybody Oughta Do It
How Big is this Issue?

Big now; growing daily

“The average number of connected devices per consumer is 3.64” – SmartInsights, 8/2016

“Mobile will represent 20 percent of total IP traffic by 2021.” – Cisco Visual Networking Index, 3/28/2017
Emails: 4,804,618
Database formats: 3,047,306
PDFs: 2,154,264
Images: 1,117,026
Text documents: 320,166
Other: 2,242
Hackers Breach Law Firms, Including Cravath and Weil Gotshal

Investigators explore whether cybercriminals wanted information for insider trading
<table>
<thead>
<tr>
<th>Akin Gump</th>
<th>Goodwin Procter</th>
<th>Pillsbury Winthrop</th>
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<tr>
<td>Allen &amp; Overy</td>
<td>Hogan Lovells</td>
<td>Proskauer Rose</td>
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<td>Baker &amp; Hostetler</td>
<td>Hughes Hubbard</td>
<td>Ropes &amp; Gray</td>
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<td>Baker Botts</td>
<td>Jenner &amp; Block</td>
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<td>Cadwalader</td>
<td>Jones Day</td>
<td>Seward &amp; Kissel</td>
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<td>Cleary Gottlieb</td>
<td>Kaye Scholer</td>
<td>Shearman &amp; Sterling</td>
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<td>Covington &amp; Burling</td>
<td>Kirkland &amp; Ellis</td>
<td>Sidley Austin</td>
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<td>Cravath</td>
<td>Kramer Levin</td>
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<td>Debevoise</td>
<td>McDermott Will &amp; Emery</td>
<td>Sullivan &amp; Cromwell</td>
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<td>Vinson &amp; Elkins</td>
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<td>Morgan Lewis</td>
<td>Wachtell Lipton</td>
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<td>Ellenoff Grossman</td>
<td>Morrison &amp; Foerster</td>
<td>Weil Gotshal</td>
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<td>Freshfields</td>
<td>Nixon Peabody</td>
<td>White &amp; Case</td>
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<td>Fried Frank</td>
<td>Paul Hastings</td>
<td>Willkie Farr</td>
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<td>Gibson Dunn</td>
<td>Paul Weiss</td>
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## Everybody’s Doing It: Tech

<table>
<thead>
<tr>
<th>Dos</th>
<th>Don’ts</th>
<th>Maybes/Why Nots</th>
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<tbody>
<tr>
<td>MDM</td>
<td>Split tunneling</td>
<td>Privacy screens</td>
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<tr>
<td>Citrix/VPN</td>
<td>Network bridging</td>
<td>Mobile device metadata cleaning</td>
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<td>Encryption</td>
<td>Elevated rights</td>
<td>IM policy</td>
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<td>Two-factor authentication</td>
<td>Consumer/prosumer tech</td>
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<td>Metadata cleaning</td>
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### $$$ Built to Cost $$$

### $$$$
Is IT Accountable for Outcomes?

Or just ticking a box?
Changing Threat Environment
New Tech and Approaches

- DRM
- Geo-location
- Blockchain
- IoT-specific firewalls
- Clean loaner pools
- Easier security apps

With constrained budgets, where is the bang for buck?
DUTY OF COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

ABA Model Rule 1.1
DUTY OF COMPETENCE

To maintain “requisite knowledge and skill,” a lawyer must keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.

Comment 8 to ABA Model Rule 1.1
Attorneys using technology have a duty to take competent and reasonable measures to safeguard client data. This duty extends to *all* technology, including:

- Smartphones
- Cloud storage of information
- Laptops
- Tablets
- Remote access tools
- Wireless networks
- USB drives
- Paper-based information
DUTY OF CONFIDENTIALITY

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

*ABA Model Rule 1.6(a)*
Comment 18 to Model Rule 1.6 notes five factors to consider when determining “reasonable” measures:

- Sensitivity of the information
- Likelihood of disclosure if additional safeguards aren’t in place
- Cost of additional safeguards
- Difficulty of implementing the safeguards
- The extent to which additional safeguards would adversely impact the ability to represent our client (i.e., making a device so secure that it’s excessively difficult to use it)
“When you upload, submit, store, send or receive content...you give Google (and those we work with) a worldwide license to use...modify, create derivative works...communicate, publish, publicly perform, publicly display and distribute such content.”

- From Google’s Terms of Service
"We will share personal information with companies, organizations or individuals outside of Google if we have a good-faith belief that access, use, preservation or disclosure of the information is reasonably necessary to: meet any applicable law, regulation, legal process or enforceable governmental request."
14,168
Search Warrants
79%
The Nugget Round

Julia’s Golden Nuggets

Joy’s Golden Nuggets

- Security tools have a short shelf-life
- You could always do more with more budget, so you must understand your organizational threat landscape
- It’s not enough to tick the box
- Make it easy to do the right thing
Thanks!!

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