OF COUNSEL
*The Legal Practice and Management Report*

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## In This Issue



*Lawyers' New Year's Resolutions …*

# Enhanced Diversity, Workplace Culture, Collaboration, and Other 2021 Goals

Broken any New Year's resolutions yet? Don't worry. You're not alone. It's a safe bet that many people who resolved, for example, to cut back on alcohol—which some say has been helping them get through these "uncertain times"—started the first morning of 2021 with a Bloody Mary or mimosa at brunch. Or maybe you didn't feel the need to resolve to do anything. Or perhaps you are among the few, the brave, who always follow through on your annual aspirations and achieve what you resolve to do.

Of course many law firm leaders create lists of resolutions, often detailed ones framed as "strategic plans," and many successful professionals of all stripes do indeed stick to their ambitious promises to themselves and their firms.

Last month, as we often do at the end of a year, *Of Counsel* asked several law firm

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leaders, senior lawyers, and a few administrators what they resolved for their firms or their practices—changes or enhancements they intend to make. We also asked a law firm consultant what law firms *should* be resolving to do and achieving in 2021. As one would imagine, nearly every one of the respondents immediately expressed a desire to be rid of 2020 and get back to face-to-face meetings with clients and colleagues—sans the computer screen.

OF COUNSEL



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"First, we will continue to be thankful that, compared to so many Americans, we've been fortunate in that 2020 was a strong year for our firm," says Steven Nataupsky, managing partner of the intellectual property firm Knobbe Martens, based in Irvine, CA. "And then, getting people safely back into the office is the top priority because it's hard to maintain culture when everyone is just staring at a Zoom camera. There's nothing like sitting around the same table brainstorming ideas to protect an invention."

In general, the attorneys and administrators interviewed for this article—including some who aren't quoted—articulated a determination to push past the challenges COVID-19 presented and, in fact, seize opportunities that emerged as a result of it. Collectively, the sentiment registered as a rallying cry: Damn the pandemic. Full speed ahead.

"The digital transformation our firm and many others are experiencing [during the pandemic] is amazing," says Emily Clark, a senior lawyer at the London-headquartered global giant Bird & Bird. "There have been so many awful things about this year but the silver lining is the huge growth in the digital way we work. So in 2021 I'd like to see how we can harness that to the best effect and build on that growth."

## Focus on Diversity

Another aspiration, again mentioned by several of those interviewed, dealt with a desire for more diversity within their respective law firms. "We will not allow the COVID-19 pandemic to revert us back to the dark days of 2008, when the economic recession so profoundly impacted the pipeline of diverse attorneys," says Andy Colon, the chief talent officer at Cleveland-based Thompson Hine. "We made great strides in the diversity, equity and inclusion realm in 2020 and, in 2021, we are aimed to maintain and enhance the

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*Taylor's Perspective …*

# Trump's Defeat: Hot Practice Areas—Potential for Societal Good

Law firms have been preparing for an increase in activity since before that first Saturday in November when millions of people breathed a collective sigh of relief as the election was called for Joe Biden—or, as many prefer to think of it, against Donald Trump. It's not breaking news that lawyers, especially those with practices that are heavily regulatory, will be especially busy with the change of administrations.

"It will be a heightened regulatory environment," says Howard Schweitzer, CEO of Cozen O'Connor Public Strategies, an ancillary government relations consultancy of Philadelphia's Cozen O'Connor law firm. "Any regulatory practice is going to have more business not less. That's the bottom line."

That's especially true in the health care, environmental, transportation, and financial services industries and, at many law firms with a robust presence in those areas, hiring will increase to meet demand generated by a more hands-on regulatory government.

What's more, we're beginning to see growth in corporate consolidations. "Since mid-November there's been an uptick in mergers and acquisitions," says Louis Lehot, founder of L2Counsel, a law firm based in Palo Alto, CA. "Every lawyer I talk to is saying that those companies that were thinking about selling are moving ahead to do that quickly. With a new administration there could be an increase in capital gains taxes – as the Biden campaign was clear they wanted to do that. So some people are thinking. *Before taxes go up, we should look at monetizing our business at the lower rate*.'"

Additionally, antitrust lawyers will also be busier as the Biden administration will likely push for tighter enforcement in that area, continuing the trend started in the outgoing administration. As David Kesselman, co-managing partner of the Manhattan Beach, CA-based antitrust boutique Kesselman Brantly Stockinger, characterizes it: "[There's] a movement afoot to reinvigorate antitrust enforcement and antitrust law."

On the environmental front, Biden's team will probably offer enticements for greater investment in cleaner energy, boosting the need for legal counsel in this economic sector. "This will present extensive new investment, innovation, and project development opportunities for many companies on the forefront of this change, as well as opportunities to provide input to help shape, as well as respond to, an expected ambitious regulatory program addressing greenhouse gas emissions," according to Gary Guzy, co-chair of the energy group at Washington's Covington & Burling, as quoted recently by reporter Aebra Coe in *Law360*.

But anyone who follows the legal marketplace knows all of this: When Democrats

control the executive branch, the regulatory framework tightens its enforcement belt and lawyers' phones ring more often.

## More Important than Profits

But let's look a little deeper at the change in the White House and, given the political leanings of Millennials and Gen Zers, the nation's shifting political winds. At a grander level than asking which practice areas will be hot, the question is: In the big picture, what does this change mean or should mean to law firms?

Simply put, it means opportunity. Just as certain large global law firms (we know which ones they are) supported the Trump administration and, by extension, its ideology and agenda, law firms that lean more toward the politically progressive end of the spectrum can support a different agenda. That means politically enlightened law firms can stand up and push for the types of changes this country needs—and in the case of global warming, what the world needs.

Many law firms have the finances, government relations teams, pro bono programs, and other resources to make a difference—even if that means a dip in profits per partner. Some lawyers and partnerships get it; too many don't.

Some law firms take certain action because "it's the right thing to do," as Peter Fontaine, Cozen's environmental practice leader, says in this issue's back-page *Of Counsel* Interview. "We all want profits and we all want to make more money and provide for our families, but sometimes I think that can become a little myopic."

This is no time for myopia. With the health of millions of American citizens in jeopardy and without adequate and affordable—*or any*—health insurance, there's never been a better time for the United States to join the rest of the developed world and move toward a single-payer health insurance system. If not now in the midst of a pandemic, then when will we get Medicare for All? Law firms can use their creativity, connections, and clout to advance what a vast majority of Americans say they want in poll after poll—despite a multi-million-dollar disinformation campaign by wealthy health care corporations, as well as some law firms, against universal health care. Support for this feasible health insurance overhaul—see the Congressional Budget Office's December report on this—might not bring in revenues to lawyers but it will bring good will.

Given the murder of George Floyd and so many other Black Americans last year—and every year—and the protests sparked by the violence, now more than ever is the time for reform within law enforcement agencies and, more broadly, for a commitment to political measures that support racial equality. Lawyers are extremely smart and talented and can help with this. Their law firms can offer support.

With people all across this nation going hungry, losing their jobs and their homes, and fighting to stay ahead of debt collection agencies, as the ultra-rich continue to get obscenely richer taking advantage of multiple tax cuts and loopholes, we need income equality. Law firms can help with this.

Considering the suffering caused by hurricanes and other storms, massive burning infernos, land erosion, droughts, heat waves, and other devastating events caused or intensified by climate change—which threatens the lives of our children, grandchildren, and future generations—we need to take strong and immediate action. The U.S. government as well as governments around the world must move quickly, and law firms should also do what they can to help save the planet. Thousands of scientists tell us that time is running out.

May we all take the steps we can to effect positive change and enhance people's lives in 2021—and beyond. If you've read this far, I'll now step down from my soapbox and simply say, thank you for indulging me. I also welcome your feedback: stevetaylor77@comcast.net. ■

—Steven T. Taylor

# A Lucrative Micro-Niche: Anti-Aging and Regenerative Medicine

Some five years back I became involved in sitting on the Board of a group of private clinics in Western Canada, one of the largest players in the anti-aging and regenerative medicine field. Shortly after getting involved, the CEO asked me to attend a morning get-together wherein he was interviewing three law firms with extensive healthcare practices looking for some guidance on a matter of litigation risk prevention. I will never forget the experience. The first two attorneys entered the meeting, a partner and associate from a large international firm, and after some brief small talk over coffee, the CEO asked, "tell me, how much do you know about BHRT?" Looking a bit sheepish the partner responded, "can you kindly help us with that acronym?" The CEO explained, "it stands for Bio-identical Hormone Replacement Therapy." The two attorneys now looked somewhat uncomfortable until the partner once again explained, "I'm not sure exactly how much experience we've had in that area, but I can assure you that we have the largest healthcare practice in the entire country and can be up to speed in no time." The CEO's response . . . "Thanks for coming in guys."

That lesson repeated itself, many times and in many ways throughout my consulting with law firms, such that I continue to explain how important it is, to not just be industry-focused, but to become an expert in selective micro-niches within an industry. And anti-aging, life extension, regenerative medicine, longevity . . . or Biogerontology, the scientific name dedicated to the biology of aging, is a micro-niche in the HealthCare (and overlapping Life Sciences) industry which is still "emerging," but growing quickly.

The real shocker came just in September, when a geneticist at the University of California, Los Angeles reported


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(*https://www.nature.com/articles/d41586-019-02638-w*) in a published study how for the first time it might be possible to *reverse the body's epigenetic clock*, which measures a person's biological age. For one year, nine healthy volunteers took a cocktail of three common drugs — a growth hormone and two diabetes medications — and on average shed 2.5 years of their biological ages, measured by analyzing markers on a person's genomes.

As an area of focus for attorneys, some $200 billion was spent in 2018 in the anti-aging industry. And that is expected to get much, much bigger. With the aging of the population, novel anti-aging medicines (like 3D printed organs, young blood parabiosis, genome sequencing, senolytic therapeutics, to stem cells and new nutraceuticals to treat age-related diseases) the field is fast becoming one of the next big disruptions in the healthcare market.

One of the few that I could identify who have staked out a position in this niche is the California-based Cohen Healthcare Law Group (*https://cohenhealthcarelaw.com*). This firm specializes in focusing on micro-niches like anti-aging practices, biotech and nutraceutical companies, medical device companies, telemedicine ventures, and emerging healthcare technologies—handling everything from medical practice business formations, mergers, and dispute resolution, to e-commerce, licensing agreements, and IP protection.

The anti-aging micro-niche presents numerous opportunities for those who might choose to focus on developing this kind of practice. Skilled corporate lawyers can help companies with securities offerings, mergers and acquisitions, IPOs, and SEC compliance as well as form strategic alliances to spread financial risk and help construct and negotiate the contractual agreements required during a product's lifecycle. Clients will likely need the full range of FDA services including regulatory approval, pre- and post-approval of marketing, compliance and enforcement, clinical trials, drug and device safety, crisis management, and due diligence. And, of course, there will always be a need for litigators with industry-specific experience with Hatch–Waxman litigation, consumer fraud litigation, and commercial and contract disputes.

And while traditional doctors, such as endocrinologists (who specialize in hormones) and geriatricians (who focus on the elderly) are specifically trained to treat age-related conditions such as hormone imbalances, not all anti-aging doctors have a degree or advanced expertise in what they practice. In fact, anti-aging isn't a specialty that is yet recognized by the American Board of Medical Specialties, meaning doctors can't officially be board-certified in it. It has its own professional society founded in 1992, the American Academy of Anti-Aging Medicine (A4M) which boasts over 24,000 members worldwide and offers a certificate in anti-aging medicine, available to any M.D.

Now once a doctor sets up an anti-aging practice, she stands to make significant revenues. Many age-fighting treatments aren't covered by insurance, which means the M.D.s prescribing them are paid out-of-pocket, and that can add up to thousands per patient. Is it any wonder that doctors of all stripes, from emergency-room medicine to radiology, are flocking to this lucrative new specialty?

Blood transfusions. Placenta stem cells. Senolytics. These are just some of the innovative ways that corporations are tackling mortality and increasing the human lifespan and just a few of the many interesting growth companies working in this market space include:

- One particular startup that stirred up a bit of controversy is **Ambrosia**, which is a private clinic where patients aged 30–80 can pay $8,000 to get blood plasma from younger individuals.
- **AgeX Therapeutics** founded in 2017 is at work on various technologies along with pipeline drugs to explore pluripotent stem cells which have the ability to produce any

cell/tissue needed in the body to repair itself and replicate indefinitely making them self essentially immortal.

- **Celularity** has taken in around $290 million since being founded in 2016. It seeks to "make 100 years old the new 60" with stem cells taken from the placenta to create drug therapeutics for diseases from cancer to Crohn's disease, to diabetic peripheral neuropathy.
- **Elevian** has raised $9.3 million and is working on developing drugs that target GDF11 to treat age-related diseases.
- **Human Longevity Inc**. uses machine learning to provide personalized health assessments from DNA sequencing and a battery of testing including whole-body MRIs.
- **Juvenescence AI** in a joint venture with deep learning drug discovery company **Insilico Medicine**, working on developing both pharmaceutical and nutraceutical products that target senescent cells.
- Two companies, **LyGenesis** and **Prellis Biologics** are working through the complexities in creating a human organ composed of interconnecting tissues looking to achieve organ regeneration.
- **Rejuvenate Bio** is helping dogs grow older alongside man since being founded in 2017. Their proposed therapy involves genetically inserting a new piece of DNA into the animal's cells, which then produces a beneficial protein with the potential to stop the progression of mitral valve disease.
- **ResTORbio,** a 2017 spinout from Novartis is trying to commercialize a drug platform that may prolong lifespan, enhance immune function, ameliorate heart failure, enhance memory and delay the onset of age-related diseases.
- **Unity Biotechnology** targets senescent cells that cause inflammation and other age-related diseases and has had many notable healthcare investors including ARCH Venture Partners, Mayo Clinic Ventures, WuXi Healthcare Ventures, Jeff Bezos' Bezos Expeditions, and Peter Thiel's Founders Fund.

With the oncoming Silver Tsunami, the process of aging and the business of helping people to live longer could become the biggest and most complex micro-niche of the coming decade. Advances in AI, genetics, and a variety of other disciplines along with automation technology are helping to drive innovation while lending credibility to what seemed like science fiction rather than science fact just a few years ago. Around the world, prominent scientists are putting it all on the line because they believe we can beat diseases such as cancer and stop the cellular ravages of time so we can age more gracefully and extend our lifespan. ■

—Patrick McKenna

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# Three Ways Law Firms Can Guard against Burnout

We're all nearing the end of an emotional year, and when it comes to taking care of ourselves, there's been no shortage of advice—written by experts both in and outside the legal community. But the solution is not just about self-care; it's all of us caring for each other, and law firms can, and must, help.

## Emotions Are Real

Let's start by actually talking about emotions. For anyone uncomfortable with this idea, we know from science—biology, neurology, psychology, pick a field—that emotions are real and not imaginary.

Emotions, at the most basic level in all of us, are chemicals released by our brains in response to something. We look at our inbox: our brain releases chemicals that set off a physiological cascade inside our body—our eyes focus, our pulse ticks up, our stomach turns, and our hands tense. Just about every system in our body responds to the chemical and electrical cascade set off by our own biology.

That process kicks off automatically and unconsciously. It happens everywhere and affects everything. And it is happening all the time. So no wonder we're all so exhausted—our jobs are solving our clients' hardest problems, at six-minute increments, all day, day after day, year after year, over an entire career. And for attorneys who are female and minorities, we also take on hidden, and sometimes not so hidden, biases and microaggressions by the minute. All that's on top of everything else happening in our life and in our society. (Patricia Brown Holmes, "BigLaw Cannot Reap Diversity Rewards Without Inclusion," Aug. 31, 2020, available at *https://www.law360.com/articles/1305216*; Tiana Clark, "This Is What Black Burnout Feels Like," *BuzzFeed News*, Jan. 11, 2019)

As described so vividly in *Burnout: The Secret To Unlocking The Stress Cycle*, "emotions are tunnels. If you go all the way through them, you get to the light at the end. Exhaustion happens when we get stuck in an emotion." (Emily Nagoski, PhD, and Amelia Nagoski Peterson, DMA, *Burnout: The Secret To Unlocking The Stress Cycle* at 7 (2019)

Too often we all feel stuck inside the tunnel. Sometimes our emotions—worry, despair, grief, helplessness—freeze us. But other times our emotions launch us forward—validation by a client or colleague, calm with an organized week, and joy from a win in court or at a closing. We all need that help to find our way through the tunnel.

## Burnout's a Process

Burnout happens when we can't move through the tunnel: we feel overwhelmed and exhausted by everything left to do, and yet we feel we still are not doing "enough." And while we can all picture it, understanding the process is critical to solving it.

More than forty years ago, a famous psychologist defined burnout by three things: "(1) emotional exhaustion—the fatigue that comes from caring too much, for too long; (2) depersonalization—the depletion of empathy, caring, and compassion; and (3) decreased sense of accomplishment—an unconquerable sense of futility: feeling that nothing you do makes any difference." (*Burnout* at 7 (citing Herbert Freudenberger, "The staff burnout syndrome in alternative institutions*," Psychother. Theory Res. Pract.* 12:72–83 (1975))

Since then, research has confirmed that burnout happens most often in professionals like attorneys and "people who help people."

And the first part of burnout—emotional exhaustion—is closely tied to our health, relationships, and work, especially among women and minorities. (*Id.* (citing Blanchard, Truchot, et al., "Prevalence and Causes of Burnout"; Imo, "Burnout and Psychiatric Morbidity Among Doctors"; Adriaenssens, De Gucht, and Maes, "Determinants and Prevalence of Burnout in Emergency Nurses"; Moradi, Baradaran, et al., "Prevalence of Burnout in Residents of Obstetrics and Gynecology"; Shanafelt, Boone, et al., "Burnout and Satisfaction Among US Physicians." Another meta-analysis found a range of burnout among ICU professionals between 0 and 70 percent. Van Mol, Kompanje, et al., "Prevalence of Compassion Fatigue Among Healthcare Professionals"; Purvanova and Muros, "Gender Differences in Burnout.")

Worse still, a recent study found that women and people of color must go above and beyond to get the same recognition and respect as their male and white colleagues. Although burnout may not be the single reason for minority and female attrition at the highest ranks of law firms, it's certainly a factor, and one that can and should be controlled. (ABA Commission on Women in the Profession and Minority Corporate Counsel Association, "You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession," 2018)

In this dumpster fire of a year, now is the time to do more: it's not only the right thing to do because everyone deserves a healthy workplace, but also the healthier and greater diversity, the better the performance for everyone. (Danielle Braff, "The business case for diversity," *Crain's Chicago Business*, Oct. 30, 2020)

## 1. Foster Open Authentic Connections

Like water and food, human connection is a basic need. When connections are made, everyone feels seen and heard. "Start by listening to our colleagues" is the simple but clear lesson by Patricia Brown Holmes, the first African-American woman to lead and have her name on the door of a national law firm, a retired state court judge, a former federal and state prosecutor, and a cancer survivor. (Patricia Brown Holmes, "BigLaw Cannot Reap Diversity Rewards Without Inclusion," Aug. 31, 2020, available at *https://www.law360.com/articles/1305216*)

Open connections mean removing the barriers. Although bias is hard to eliminate altogether, it's possible to interrupt the bias. The first step is identifying bias that happens every day (prove-it againing, tightrope walking, maternal walling, tug-of-waring, gaslighting). Litigators would call it putting you on notice. The second step is interrupting whenever and wherever the bias happens. For instance, pay attention at a client meeting: Who's in the room? Who could lead the conversation? Who was invited to talk first? Who's talking the most? Who's taking notes? (Joan C. Williams and Sky Mihaylo, "How the Best Bosses Interrupt Bias on Their Teams," *Harvard Business Review*, Dec. 2019)

Authenticity is an essential part of inclusion. It means "being yourself," including the parts people might judge. Being your authentic self requires trust, knowing your thoughts and feelings will not be turned against you. Instead, you will be seen and heard for who you are and not just what the world puts on you. Validate it.

But the connection is key and not just the reason. Sometimes it's emotional support, like asking how are you doing, or what can I do? Sometimes it's information and education, like a partner helping an associate relearn how to do something together. And sometimes it's simply being there for each other.

## 2. Train Everyone about Our Differences

Let's be honest: the game is rigged by our differences. Since the beginning

women, minorities, and others have been systematically excluded from government and systems of power. But we needn't wait for the whole world to heal before we begin to change ourselves and one another.

Training helps us start. Through training and practice, we can learn about our biases, interrupt them, and make authenticate connections with each other. And the idea is that we *are* different from each other, and we are also different *like* each other. Just think about millennial training: "43 percent of all American millennials are non-White. But discussion about millennials and their ideas of 'success' are often deeply rooted in the experiences of privileged White men and women — think more Lena Dunham than Issa Rae." If their names don't ring a bell, training will help. (Tiana Clark, "This Is What Black Burnout Feels Like," BuzzFeed News, Jan. 11, 2019, quoting Reniqua Allen, "It Was All a Dream: A New Generation Confronts the Broken Promise to Black America" (2019)).

And learning how the game is rigged—seeing how the rules were set up, not just to treat some people unequally, but also to make the rules unequally—helps us change it. In the game, we are not our own enemy. Nor is the enemy the other people in the game. The enemy is the game itself, and we can change it together.

Invest in implicit bias, diversity, and inclusion training from professionals *outside* the firm who are experts and can offer a new perspective. But here's the caveat: we're not going to wipe out our shared history and bring the end of all gender, racial, and every other inequality. With training, we will make progress, every day, day after day, connection after connection, just as we see progress accelerating in our last hundred or so years.

## 3. Protect Time Off

We are all worse without rest, and everyone is better with time off. Finding time is not just a lawyer problem; it's about survival. We are not built to go on and on physically, but to rest and return. And if we don't take the time, our minds force mistakes on us and our bodies force us into exhaustion.

Just think about a surgeon who's been awake for twenty hours operating on you. Or a semitruck driver who's driving across the country on the highway next to you. Or a lawyer who's billed the twelfth hour editing your will. No one would pick these choices.

So protect time off—whether planned vacations, parental leave, a random day, or simply lunch—because it's the right thing to do. And the time on will be far more energized, more focused, more creative, and more enjoyable, as well as far less likely to make mistakes that will cost everyone later.

Working from home quickly turns into living at work. But small things can create big changes: respect an out-of-office alert, send the email Monday morning instead of Saturday night, check calendars for availability, and be clear what is needed and when. Ask and respect those same preferences of others. Even simple acts, like a phone call instead of an email, can go a long way.

Make no mistake that we are a client-service business. But when we step up for each other and protect time off, our clients are better because of it. And so are we. ■

—Joy Anderson, Kate Stimeling, and Brian Watson

*Joy Anderson, Kate Stimeling, and Brian Watson are attorneys at Riley Safer Holmes & Cancila LLP.*

# Cyberbreaches and "Disrupted" Communications: Key Issues for Boards and Their Lawyers

The onus of managing risk in every corporation ultimately falls on the CEO and the board of directors. Few events pose more sudden and systemic risks to corporate leadership than a significant cyber event. And the threat is only growing.

If reputations are gained by the teaspoon and lost by the gallon, cyber is exponentially more threatening. Effective CEOs, therefore, are thoroughly plugged into cybersecurity operations, those systems and procedures that, in today's lexicon, are aimed at mitigating the risk of company communications being "disrupted."

I know from conversations with CEOs and general counsels across the country that, besides being impugned on social media, their biggest fear is having their cyber systems hacked—and their "state secrets" exposed and exploited, or worse, their external and internal communications operations dismantled or gutted. When you can't tell the world you've been hacked because your email system is completely down, you're in trouble.

A cybersecurity breach or collapse can take a corporation down or dent its reputation with key constituencies almost as fast as you can say "GDPR," the acronym for General Data Protection Regulation, the European Union's (EU) new data regulatory regimen that—for good reason—is causing angst in C-suites and boardrooms across the world.

Many board members don't necessarily live in the world of disrupted communications, cyber ambushes, NGO assaults, blow-ups on Twitter, and all the rest. So, what's the appropriate role for board members these days on issues such as GDPR compliance?

The board's responsibility revolves around recognizing risk—and ensuring that the company is taking appropriate action and installing sufficient back-up systems to minimize that risk.

GDPR is a classic example: hundreds, if not thousands of American corporations are operating under the mistaken impression that they don't have to comply with the EU's new privacy regulations. Yet if companies depend on the creation or processing of data (and these days, what company doesn't?), there's a strong chance that they'll be subject to GDPR and the ongoing efforts of the EU and other government entities around the world to crack down on hacking and privacy violations.

Under GDPR, every data-driven company must appoint a designated data protection officer. Data protection best practices, moreover, now point to the creation of a board-level cyber risk committee, as well as toward the assurance of personal employee-level cybersecurity discipline among board officers themselves, since they're often the target of phishing. Finally, board members should keep in mind that the U.S. Cybersecurity Disclosure Act of 2017 requires board-level cybersecurity expertise.

The "European model" for antihacking and privacy protection is the way the world is going. Smart companies and board members need to stay a step ahead.

Athletic apparel retailer Under Armour's recent experience is sobering. When hackers breached Under Armour's MyFitnessPal app, it took the company some four weeks to detect the magnitude of it and another week beyond that to disclose it—a fairly quick response, compared to a lot of cyber hacks. Under Armour's data protection systems, all in all, held together quite well; the hackers failed to access such valuable user

information as location, birth dates, and credit card numbers.

Still, Under Armour's board members were no doubt surprised to learn that a big chunk of the company's passwords was protected by a relatively antiquated—and knowingly flawed—hashing scheme. As WIRED put it, "This means that attackers likely cracked some portion of the stolen passwords without much trouble to sell or use in other online scams."

Imagine the scene in Under Armour's boardroom when the IT executives tried to explain why certain passwords were rigorously protected and others weren't. "The situation, while not an all-time-worst data breach, was a frustrating reminder of the unreliable state of security on corporate networks," reported WIRED.

Former Department of Homeland Security Secretary Tom Ridge, now chair of Ridge Global Cybersecurity Institute, argues that protecting against cyber incidents is everyone's responsibility, from the people in the boardroom to entry-level employees. "Board members who are not as experienced with cybersecurity need to see it at the forefront of financial risks that could impact their bottom line," says Ridge. "We need to have more information-sharing and more conversations about cyber risk at the board level, and not just within companies' IT departments."

How can companies keep their board members attuned to the risks inherent in disruptive communications without intimidating or depressing them? The answers aren't easy, but there are constructive steps that perceptive companies can take to keep board members plugged in.

First and foremost is to provide board members with a steady diet of articles and expert commentaries on the changing cyber climate. Don't saddle them every other day with a 100-page treatise on the latest cyber hack nightmare. That will turn them off. Instead, e-mail or text them quick and easily-digested news summaries and samples of how a nasty hack was averted, or on the flip side, how company X was hurt by a sluggish response to cybercrime.

When a respected business outlet runs a story about the dangers inherent in disrupted communications, make sure your board members see it—with key passages highlighted. That way they'll be less shocked if and when the hazards hit you. And perhaps they'll be more inclined to help you undertake preventive measures now, during peacetime, and not wait until it's too late.

Second, consider adding board members to internal task forces on your areas of greatest vulnerability. They'll see first-hand how seriously risk management is being handled by the company. And they'll develop a greater appreciation for how rugged the real world of disrupted communications can be these days.

Third, show your board members the efforts you're making to strike down the silos. When a disrupted communications crisis hits, you're going to need everyone on board right away: from the general counsel's office and public affairs to the folks in information technology and human resources. If they haven't worked together in a crisis environment—even a simulated one—it could lead to a lack of trust and backbiting.

Managing risk these days is managing disrupted communications—and the way-too easily disrupted world that comes with it.

## Should We Empower Companies to Retaliate against Hackers?

Reflecting on the past decade, this much should be obvious: Regulation cannot keep up with the pace of technological change. This makes cybersecurity—the thin wall that protects everything from our identity and intellectual property to our financial capital—an exceedingly crucial protective barrier in our society and economy.

As a communications strategist who advises companies besieged by cybercrime, I can attest that those protective walls are getting violated far too often. Since 2017, the rate of identity breaches has increased more than 400%. On top of their often-disabling impact on brand reputation, data breaches exact painful financial costs. Equifax's infamous breach cost the company more than a half-billion dollars. Cybersecurity costs financial services companies, on average, some $2,300 per employee, a number that has tripled over the last four years.

But can companies and their board members be too zealous in fighting cybercrime?

A recent bipartisan bill, the Active Cyber Defense Certainty Act (ACDCA), offers to "allow use of limited defensive measures that exceed the boundaries of one's network," giving authorized entities the legal authority to "retrieve and destroy stolen files," "monitor the behavior of an attacker" and "disrupt cyberattacks without damaging others' computers," among other things. Is the ACDCA a realistic antidote to cyber fraud? Or, by empowering companies to retaliate against hackers, is ACDCA's solution potentially as corrosive as the problem? A walkthrough of what the experts have been saying on this subject may prove instructive.

The debate over how far to go in strengthening cybersecurity is likely to roil corporate boardrooms and legislative chambers.

Argues Paul Ferrillo, a Greenberg Traurig partner and the author of Navigating the Cybersecurity Storm: A Guide for Directors and Officers, "ACDCA's term of art, 'active cyber defense,' is in the eye of the beholder. Does it mean that under ACDCA a company is entitled to install a purely defensive measure such as a 'honeypot' to figure out who is attacking its network—and from where? Or, as some observers say, does active cyber defense enable a company to 'hack back' against an attacker's computer system? Or does it depend on certain contingencies? In my view, ACDCA as presently constituted is not explicitly clear on this point."

Still, Ferrillo believes that a properly conceived ACDCA has the potential to become a constructive instrument in the battle against cybercrime. Active defensive measures like honeypots and machine-learning solutions, if correctly deployed, can be critically important tools, he notes. Still, before any institution seeks to hack back against an adversary, it would be wise to consult with experts and attorneys.

Cybersecurity expert George de Urioste, the chief financial officer of 4iQ, likens a company's efforts to protect its cyber assets to a property owner using video surveillance technology to safeguard their possessions.

"It is generally accepted in our society that a property owner has the right to 'see' anyone on their premises and seek identification," de Urioste says. "Should a crime occur, video is often used to establish attribution of criminal activity to share with law enforcement. I would strongly advocate for the ACDCA, at a minimum, to affirm a property owner's right to unmask the cybercriminal via 'identity threat intelligence.'" This aligns with the explanation of the bill offered by lawmakers, who wrote in a FAQ document that it would allow entities to "establish attribution of an attack" and "monitor the behavior of an attacker."

"Every cybercriminal knows the effectiveness of surreptitious activity revolves around masking their identity," explains de Urioste. "If we can fight back by bringing some sunshine onto the dark web, a major first step of proactive defense will be established." The impetus behind ACDCA, de Urioste says, points to "meta issues about economics and safety. Digital criminal activity grows exponentially; it will be with us forever.

Private leaders see the economic impact; they constantly need to increase their cyber defense spending. Public leaders increasingly

hear the outcry from consumers who are harmed by digital breaches. They want private leaders to assume greater responsibility and accountability. It all adds up to an urgent moment for greater empowerment, as intended by ACDCA principles."

Given the enormity of these risks, notes risk management expert Kenneth J. Peterson, the Founder and CEO of Churchill & Harriman, Inc., companies have an obligation to explore a range of aggressive options and contingencies as contemplated by the ACDCA.

"All offensive tactics meant to collect actionable threat intelligence executed within the law and in accordance with regulations should be on the table and considered," Peterson says. "Boards are frustrated that the investments they've made to improve their enterprise risk posture have not wholly protected them."

Jon Frankel, a cybersecurity attorney and shareholder at the tech and privacy law firm ZwillGen, contends that the authority embodied in those ACDCA principles "is only as great as a company's ability to accurately attribute an attack and avoid damaging other computers. Companies must understand that they cannot deploy active cyber defense measures without correctly attributing the attack. It seems unlikely a company will know without any doubt who the perpetrator is, especially because hackers are good at concealing their identities by attacking through proxy servers or a series of compromised computers that belong to innocent third parties. Companies must ensure that they have accurately attributed an attack to avoid targeting innocent third parties and/or violating international law."

A muscular undertaking demands a paradigm shift in approach. De Urioste advocates cyber vigor, a commitment by companies to stay a step ahead of bad actors. In my view, cyber vigor means worse-case scenario planning on the front end, and an equally smart range of tactics following an actual attack.

In a blog post outlining the tenets of cyber vigor, de Urioste offers a three-point prescription. First, know your adversary. What are your company's digital "greatest hits," and who would profit from pilfering them? "If you don't know," he writes, "you are flying blind." Do your homework and don't be afraid to let your imagination—and your crisis contingency scenarios—run wild. Second, determine your compromised data, including that which has been stolen or leaked from your suppliers and vendors. Third, establish the vulnerability of your employee attack surface. It's the consumer data breaches that grab headlines and cause the most handwringing, but less-publicized employee password breaches often trigger the biggest headaches for companies.

Company accounts hold the potential to "unlock valuable corporate data, leaving the door wide open for adversaries to walk out with whatever trade secrets they want," de Urioste warns.

In peacetime, the solutions are more mundane. Among the strategic communications elements that institutions should prepare in advance of any cyberbreach or cybercrime are:

- Sophisticated holding statements approved by the counsel's office;
- A compelling protocol to respond to earned media inquiries;
- A detailed social media response strategy, based on sample scenarios, "conversations," and responses;
- Talking points to address customers, employees, investors, media, and other key constituencies;
- A responsive email to general customers and business partners;
- Comprehensive instructions for identity theft monitoring service enrollment; and
- A website FAQ page.

In the future, a more proactive approach will likely become the norm—and legislative prescriptions are starting to move in that direction. Playing "whack-a-mole" in the

wake of an attack won't sufficiently protect the brand or business operations.

## For Smart Companies, There Is Business Life after Cyberattacks

It is, perhaps, a sobering sign of our times that cyberattacks—data breaches or ransomware assaults—don't automatically undermine a company's value as either a business or as a partner.

Although studies suggest that, on balance, the share value of breached companies underperform the market, corporations with strong fundamentals have not only recovered from cyber muggings but flourished. JP Morgan Chase and Home Depot are just two examples of corporations that were victimized by lethal cybercrime and gone on to realize even greater success.

The market tends to discount high-profile cyberattacks, perhaps because the business community sees companies that have weathered such assaults as zealously determined not to let them happen again. In advising corporate CEOs and general counsels, I often point out there are only two kinds of companies: those that have been hacked—and those that are going to be hacked.

It's not unlike the old saw about the brakemen that coupled and decoupled rail cars a century ago. It wasn't hard to pick out the wizened veterans; they only had eight or nine fingers. Their (literal) hands-on experience may have left them permanently scarred—but also wise and cautious. They made for the best brakemen because they understood the cost. Their less experienced colleagues may have had all their fingers intact, but they weren't trusted the way the seasoned men were.

No one who's tried to plug a cyberbreach is missing fingers, but—take it from someone who's counseled companies through hundreds of cyber assaults—they've probably missed a few nights' sleep. Since cyberattacks often affect huge swaths of customers, vendors, suppliers, and other stakeholders (not to mention attract tough media coverage), they're exhausting to quell. But the quelling must be done the right way—aggressively and forthrightly.

Ask Charles Kallenbach, an attorney who earned his cyber spurs as counsel to Heartland Payment Systems during HPS' notorious 2009 hack, one of the most malevolent data breaches in history. If the TJX hack of 2005 compromising some 45 million records was the first significant cyberattack, then Heartland marked the start of Cyber 2.0.

"We felt we were well prepared for an attack, and we had a number of important defenses in place. But the hackers were able to exploit a very small weakness—and wreak havoc. Heartland's stock price per share plummeted from the high teens to $3.50, and I was hyperventilating into a paper bag," says Kallenbach.

Heartland was targeted a decade ago by sinister hackers who knew what they were doing and who infiltrated dozens of other publicly traded companies. After the attack, the company went on the offensive, instituting a range of safeguards to deter future assaults. Heartland was sold to a payments industry competitor in 2016—for a healthy $100 per share.

"For companies that use and guard valuable personal data, best practices should include expanding information security capabilities, such as plugging their vulnerabilities, expanding their data loss prevention program, increasing their data breach insurance coverage, all while retaining crises communications experts, as well as attorneys who specialize in data security before being attacked. Companies can start with an audit by an information security firm that can point to the most obvious data security lapses. It's also a good idea to make sure that outside counsel retains the data firm to protect

attorney-client privilege for their report," Kallenbach prescribes.

Adds Jonathan Armstrong, a data security expert at London-based Cordery, "Cybercrime, like war and taxes, is an inevitable fact of life. We need to prepare for when not if. That's harder than it used to be as the attacks are more sophisticated but also since today's corporations aren't islands—they rely on vendors and partners to do what they do. You need to try and control your data—whether it's on your systems or third parties—but you also need to prepare for the inevitable. That means proper war gaming so you're battle-ready when the next breach happens."

Publicly traded companies (and their stock prices) naturally get the most attention during and after cyber assaults, but privately held companies that bounce back from attacks deserve credit, too. One of them is InsynQ, a Washington State–based cloud-hosting service that partners with accounting and other professional service firms.

InsynQ was hit by a withering ransomware attack from anonymous sources in July of 2019. To contain the spread of malware, InsynQ essentially shut down its network, a move that precluded customers from accessing their accounting data for three days. It wasn't an easy decision, but by taking down its network, InsynQ may well have stopped a contagion from destroying the company—and damaging its clients, too.

The cybercrime containment lessons that InsynQ learned on the fly, and the technology and business solutions it devised may stand them in good stead. In early September, the company announced it was adding a heavy hitter as chief information security officer, Michael Marrano, author of The Human Firewall Builder: Weakest Link to Human Firewall in Seven Days. Marrano's addition could make them a safer and more reliable partner than, say, a competitor that has never experienced an attack.

No one wants to lose their fingers or be forced to hyperventilate into a paper bag to get through a crisis. Smart companies that get bruised in a cyber fight may end up being stronger for it. But only if they learn their lessons and take steps to minimize the prospects of it happening again. ■

—Ian Lipner

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# New Year's Resolutions

*Continued from page 2*

successes we've achieved by implementing an aggressive data-driven, strategic action plan with a multi-directional approach."

Thompson Hine has created its Inclusion, Diversity, Equity, and Awareness ("IDEA") Committee to help advance its diversity goals. "This task force," Colon adds, "will meet quarterly with [many of the firm's leaders] to brainstorm 'best practices' in the recruitment, retention, and advancement of diverse attorneys within our firm. These meetings will be spearheaded by diversity leaders from the legal industry and the firm's diversity team."

Large law firms that tend to hire several attorneys every year are better positioned to augment its non–white-male ranks, provided they are committed to that as a goal, as Thompson Hine clearly is. For smaller firms, it's more difficult. In Los Angeles at 10-attorney Kesselman Brantly Stockinger, leadership intends to meet that challenge.

"We have resolved to increase our diversity and focus on [diversity-related] issues that are ongoing within the legal community," says co-managing partner David Kesselman of the antitrust boutique, Kesselman Brantly Stockinger, located in Manhattan Beach, CA. "We have that at the forefront of our 2021 plans."

Kesselman adds that he and his partnership plan on tapping into the current and near-future focus federal regulators have and will continue to have on antitrust enforcement. "It feels like there's a real movement afoot to reinvigorate antitrust enforcement and antitrust law," he says. "Our hope is to be in a position to harness that energy and advise companies that need our help on antitrust compliance and also represent those that have been injured in the marketplace."

## Thinking Big & Collaboration

This year marks the 100th anniversary of the founding of Detroit's Harness Dickey, a national IP firm. CEO William Coughlin intends to do what he can to make "our 100th year a truly epic year for our firm," he says, adding that he and his partners want to continue their efforts to execute a grand vision.

"We will continue to work to help accelerate human progress through intellectual property rights," Coughlin says. "So it is an aspirational mission to be sure, but it's the right kind of aspiration for an intellectual property firm, in my humble view. We can make a difference through protecting the technologies and the brands and creativity of clients in a way that can make a difference in the world."

In the Bay Area, Pankit Doshi, the managing partner of both the San Francisco and Silicon Valley offices of LA-based McDermott Will & Emery, points to heightened collaboration as a goal for 2021. "We want to seize opportunities to grow our respective offices together, recruit together, cross-sell, collaborate, focus on our firm's visibility in our markets, and chief of above all else, make sure that we continue to serve our clients at an A+ level."

Collaboration also serves as a key objective for Kate Spelman, the co-chair of the consumer law practice at Chicago-based Jenner & Block. The centerpiece of that resolution is to build upon the multidisciplinary nature of attorneys across the firm—that is, those outside of her 20-attorney practice group—who often handle consumer law-related matters.

"One of my main goals for this next year is to create a cohesive platform to bring together all of the different, great attorneys that we

have at the firm who are already doing consumer law-related work in a number of different ways," she says. "I want to make the platform a little more cohesive so that it's very visible both internally and externally and, of course, accessible to our clients so that we're providing the highest level of service to them. We plan to find more ways to leverage the intersections between consumer law and other practice groups as new laws and issues emerge."

Spelman also wants to do as much as possible to groom young talent. "Another goal that I've been thinking about is how to promote junior associates within our consumer law group and strengthen that pipeline of junior attorneys who work within our group."

## Consultant's Recommendations

Although these and other resolutions are worthy ones to implement, it's always good to get the views of non-lawyers who work in the profession. *Of Counsel* turned to a well-known, national law firm consultant, who asked for anonymity, to weigh in on what law firms should also be resolving to do. "I tell my [law firm] clients," he/she says, "that 2021 had better be the year you take a good hard look at your underperforming attorneys and issue them an ultimatum: Ship up or you'll be shipped out. I can think of more than a few firms I work with that have seen profits dip, which causes a range of problems, primarily because they won't do this."

She/he also says firms should plan on avoiding the mistakes many made during the Great Recession regarding marketing: "I know that some lawyers want to pull back their marketing spend when the economy dips—and we've only seen the beginning of the effects of this economic plunge, in my opinion as well as in the forecasts of people a lot smarter than I am. I tell them, 'Don't do it. You need to be smart about your market outreach efforts but you shouldn't be afraid to upgrade your website, co-sponsor community events, and write and speak to get or keep your brand out there.'"

Finally, he says, many law firms, including some of those he/she advises, need to renew their commitment to community service and closely examine who they are aligning themselves with, including an assessment of their political relationships. "I know of several firms that should resolve to increase their pro bono efforts, and I know of a few who took hits to their brand because over the last four or five years they actively supported an incompetent, ethically challenged—and that's putting it gently—president and his administration."

When informed about the 2021 resolutions the attorneys outlined, the consultant, who was the last source interviewed for this article, expresses praise and support. "What they told you are all very good goals, and I applaud them for their aspirations and wish them well in achieving those objectives," she/he says. ■

—Steven T. Taylor

## *Of Counsel* Interview

*Continued from page 24*

to know him quite well. He's a smart, responsive, and creative lawyer, whom we trust to handle our most significant legal matters. I wouldn't hesitate to recommend Pete to anyone requiring a capable and tireless lawyer to handle a significant legal exposure."

Recently *Of Counsel* talked with Fontaine about his career, his most significant case, his likes and dislikes about the legal profession, and other topics. What follows is that edited interview.

### Advocate, Writer, Environmentalist

***Of Counsel:*** Why did you want to become a lawyer?

**Peter Fontaine:** No one in my family had been a lawyer. My dad was a first-generation college student in his family. I guess I came around to wanting to go to law school for a couple reasons. I was always a pretty good arguer and advocate. And, I enjoyed writing, which I thought would be a good skill set to bring to the field of law. I also wanted to use my skills to help people and to have a career where I was interacting with other people and coming up with solutions that would be helpful. I always found that I felt best when I was in a position to help and to provide whatever I could bring to the table to make a situation better. So, I thought law was a good direction to go in.

I always was somebody who very much enjoyed the outdoors and was concerned about environmental problems. Having grown up in the late 60s and early 70s, I was a young kid when the environmental movement really took off, and it had a big impact on me. I was born on Cape Cod and lived there until I was nine, and then we moved to New Hampshire and I spent a lot of time outdoors.

So when I decided to go to law school I learned about environmental law and thought that that was really a good marriage of some of my personal interests and skills. And, what better place to study law than in Washington, DC at George Washington University where we had great faculty and opportunities to work in the field while going to law school? It really was a combination of things that inspired me to pursue a legal career and attend GW.

***OC:*** Did you go to the EPA right after law school?

**PF:** I had a professor at GW, Professor Arnold Reitze, who steered me toward getting some practical experience. I ended up clerking with the United States Environmental Protection Agency after my second year of law school. And I really loved it. After that I got an offer through the honors program to come in as a full-time lawyer in the Office of Enforcement. It was an interesting time because it was in the fall of 1990, which coincided with the reauthorization of the Clean Air Act, one of the nation's landmark and probably most important environmental statutes. That new law had many new programs and requirements that had to be implemented by EPA, so there was an opportunity to hit the ground running and work on a new statutory mandate; it was very exciting for me to be there. As a young lawyer, I had an opportunity to work on Clean Air Act matters, and that was really great.

### Gaining Experience, Building Network

***OC:*** How long were you there and where did you go after that?

**PF:** I was at the EPA for four and a half years, from 1990 to the middle of 1994. I worked my way through a couple of different positions, including on a new multimedia task force that the Office of Enforcement had set up. I ended up being a special assistant to the director of the Office of Civil Enforcement at the agency.

But then I started to get a little restless. I wanted more variety and more opportunity to really dig into cases and to be in a position to use my legal skills as opposed to administrative skills. My wife wanted to move back home to the Philadelphia area, so we made the big decision to move out of Washington, DC.

I landed a job with a law firm in Philadelphia that unfortunately no longer exists, but it was a very good firm of about 120 lawyers, called Cohen Shapiro. They had a talented environmental group, so I joined that group in 1994.

I ended up leaving after only about a year. I had an opportunity to go to another firm and Cohen Shapiro actually hit some rough waters economically. It was a law firm that was in a lot of turmoil. Some significance lawyers had left and it was struggling. An opportunity came up for me to go to another firm in Philadelphia called Eckert Seamans, which still exists. It's a Pittsburgh-based firm, and they had a Philadelphia office that I joined as a young associate. I was there for about three years.

I went to another firm after that called Montgomery McCracken, which is another Philadelphia firm. I was there for four years and was elected to partner. Then an opportunity presented itself for me in 2002 to go to Cozen O'Connor, which was in the process of diversifying its services and was building a real estate practice and a corporate practice and they didn't have an environmental capability. So, I came over and started the environmental practice and I've been here ever since.

## Standing Up for Academic Freedom

***OC:*** When you think about some of the cases you've handled over the years, what's one that really stands out in your mind as being intriguing or intellectually stimulating or perhaps very helpful to a person or the common good?

**PF:** Okay, here's a case that stands out. In 2011 I was asked to represent a climate scientist at Penn State University, Dr. Michael Mann who had been at the University of Virginia and left in 2005 to accept a faculty position at Penn State. Then several years later there was a false controversy that arose when emails from climate scientists were stolen from a university in the UK called East Anglia. They were stolen on the eve of the 2009 Copenhagen Climate negotiations by the UN. They were posted on the Internet and a couple of emails were cherry-picked. It's still not known who did it, but whoever it was weaponized the emails to make it seem like the research on paleo climate, which is the study of the diverse climate before the temperature records, had improprieties. It was a false controversy but it actually resulted in a lot of work investigating that.

In 2010 the attorney general for Virginia, Ken Cuccinelli, subpoenaed the University of Virginia with a civil investigative demand [requiring] UVA to turn over all of Dr. Mann's emails, which he had compiled in conducting his research during his six or seven years as a faculty member there. Incidentally, Dr. Mann is a preeminent scientist. He was just elected to the National Academies of Science, which gives you an indication of his standing in the scientific community. The Cucinelli subpoenas were rebuffed by UVA, and ultimately they were able to convince the court that it was an improper fishing expedition by Cucinelli.

But shortly after that another organization was formed, the American Tradition

Institute, which was a libertarian, free-market, very, very conservative organization. It submitted a Freedom of Information Act request to UVA seeking the same emails of Dr. Mann. UVA was in the process of working out disclosing these emails to the American Tradition Institute, and it was going to have a very damaging impact on academic freedom and the right of scholars to have free exchanges of ideas with cooperating colleagues and others with whom they're doing research and scholarly activities. It was quite clear that the purpose of the group in trying to obtain those emails was to attempt to damage reputations and further extend this false controversy of there being questions about the research.

So long story short, I represented Dr. Mann in that case, intervened in the case on his behalf, and over the next couple years we were able to convince UVA that disclosing the emails would cause irreparable damage to the principles of academic freedom and to Dr. Mann's specific academic freedom and in fact the standing of faculty at state colleges and universities in Virginia. We convinced the court that the email exchanges are the raw materials of scholarship that should be protected under a specific provision in the Virginia Freedom of Information Act.

***OC:*** That's a fascinating case, Pete. How did it turnout?

**PF:** We prevailed at the trial court level and then it went up on appeal to the Virginia Supreme Court, and we prevailed again. The case, which was handed down in 2014, stands for the proposition that there is a very important interest in protecting academics and scholars who are doing research. At least under Virginia laws, those correspondences and emails that lead to research and published science should be protected.

I never thought that I would be litigating Freedom of Information Act cases, but it ends up being one of the high points of my career because it will have a long-standing impact and reinforce this notion that Freedom of Information laws are important for a variety of reasons, but they shouldn't be used in a way to subvert academic pursuits and academic research. I think there's a whole question as to whether public universities should be subject to State Freedom of an Information Act laws.

That's one case that I'm particularly proud of and I have to say that it wasn't just me. Several lawyers within the University of Virginia office of general counsel deserve much of the praise for achieving that result.

## The Bad, The Good

***OC:*** Thank you for that great example of your work. To shift gears … what is it about the legal profession or working as a lawyer that you don't like? What is something you'd like to see change?

**PF:** I think there's increasing economic pressure on law firms, at least large law firms, to continuously work as hard as possible to increase profits. We all want profits and we all want to make more money and provide for our families, but sometimes I think that can become a little myopic. I believe there is a need to balance those profit motives with the need to focus on quality-of-life issues and the satisfaction that people have in working in a professional organization.

I have been very happy at Cozen O'Connor; it's an exceptionally well-run law firm. Michael Heller and our management team have done a terrific job. So it's not a specific criticism of the firm, but profession-wide I do think that there's a lot of economic pressure and too often I find that to be something that takes away from the enjoyment in practicing law. I think we need to do some things because that's the right thing to do. I've been lucky because I have had opportunities to do that at Cozen O'Connor, to take on matters that might not be the most profitable, to say

the least, but are important for larger reasons. I feel lucky in that regard.

***OC:*** Now let's flip it over and talk about what you really appreciate about the legal profession and being a lawyer. What is it that you like?

**PF:** I think that lawyers in the legal profession really make a huge difference in our civil society. It sounds cliché but I do think that lawyers serve a very vital role in protecting society and protecting core values, which, let's face it, are sometimes under assault. So the opportunity to serve in what I think is still a noble profession and to be able to work on cases that make a difference and work with people who are exceptionally talented—my colleagues that I work with in our environmental practice are all just terrific people and very, very smart lawyers who have interesting perspectives on legal problems and challenges. I just find it to be extremely stimulating. I've been at this for 30 years now and I still like getting up in the morning and working on solving problems with clients and with colleagues, and that's very rewarding to me.

I had a conference with my financial planner today, and we were talking about where things stand right now. I'm 56 years old, and as I said, I've been doing this for 30 years. He asked me, "Are you going to retire soon?"

I was taken aback and I said, "No, I don't have any plan of retiring soon because I still enjoy what I'm doing."A big part of that is being able to work on things and work out solutions with clients and my colleagues; I really enjoy what I do. Specifically, with environmental law, I love the intersection of science and policy and law. As we learn more about the interaction of humans and the environment and the impact on human health and the environment, we increasingly see that it's a constantly evolving area. I like the science aspect of it and the dynamic nature of it.

***OC:*** In the environmental arena the changes that have taken place in the last four years have been monumental, and I'm sure that things are going to change quite a bit for you and your practice group. What's going to change in your practice?

**PF:** First and foremost I think that there will be a much greater emphasis in the Biden Administration on the values associated with protecting the environment and human health. I think that's going to result in a concerted administrative effort to unwind the fairly extensive effort by the Trump administration to roll back various environmental laws and regulations ranging from methane emissions from the natural gas sector to fuel economy standards in the motor vehicle sector to the Clean Power Plan in the electricity sector to mercury standards. The list goes on. There have been literally dozens of rules that have been repealed or modified by the prior administration that the Biden Administration is going to work to restore pretty quickly.

***OC:*** So that will generate work for you and the team you lead? Are going to be busy?

**PF:** Yes, we'll be very busy, and we're more than ready to help clients however we can. ■

—Steven T. Taylor

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## Of Counsel *Interview …*

# Environmental Lawyer Serves Clients at the Intersection of Climate Change and Energy Needs

Over the years, perhaps more than most other practice areas, the environmental law area has seen dynamic change and growth with myriad twists and turns that require lawyers in the space to work hard to keep pace by tracking the ever-evolving regulatory framework and learning new strategies and skills. And, as we enter 2021 with a new administration, new changes and challenges will continue to keep environmental lawyers very active.

Nearly two decades ago, Philadelphia's Cozen O'Connor set out to expand the range of services they offer clients by diversifying their scope of practice. The firm brought in Peter Fontaine to develop and grow an environmental law group—and it seems that was a very smart move, considering the high regard colleagues and counterparts have for Fontaine and his team.

As chair of Cozen's environmental and climate change practices, Fontaine has earned a reputation within the profession as a thought leader on climate change. What's more, he gets what so many others don't get: Climate change constitutes an "existential threat" to the planet, as he told *Of Counsel* last fall when interviewed for an article about a distinction the firm received for its record on climate change matters. [See the lead story in the November issue regarding *The 2020 Law Firm Climate Change Scorecard*, generated by Yale law students.]

Clearly, clients value the expertise and experience Fontaine brings to their matters. "Pete has represented [our company] for a number of years in several complex regulatory and litigation matters," says Paul Wise, president of Lancaster, PA-based Eurofins Environment Testing America. "I've gotten

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