

THE LAW FIRM OF THE FUTURE

What Every Managing Partner Needs to Know About Expense Right-Sizing

May 17, 2023

by

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The MPF Webinar Series: Building the Law Firm of the Future

What Every Managing Partner Needs to Know About Expense Right-Sizing

An MPF Webinar with Bill Mech and Rob Mattern

May 17, 2023 – 2:00-3:00pm ET



Welcome



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- Registrant Survey Results and Audience Polling Questions
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Today's Guests



Bill Mech, CLM

Chief Operating Officer - Goldberg Kohn Ltd.
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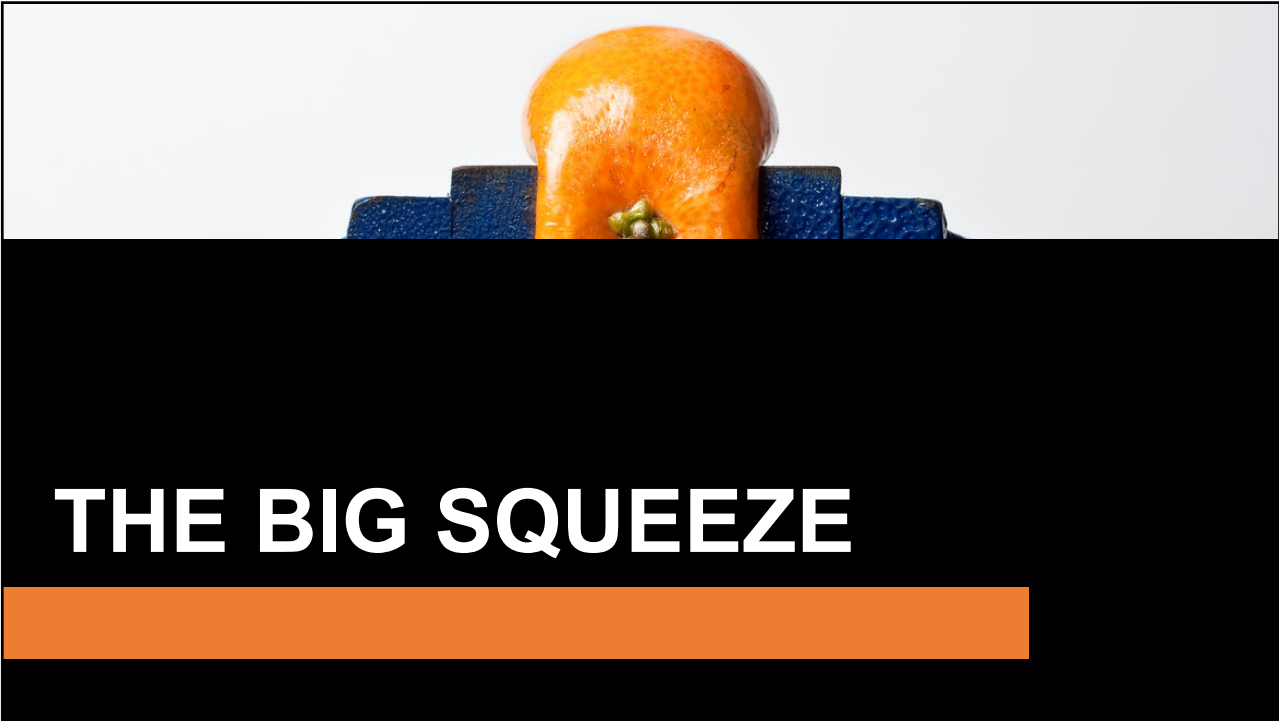
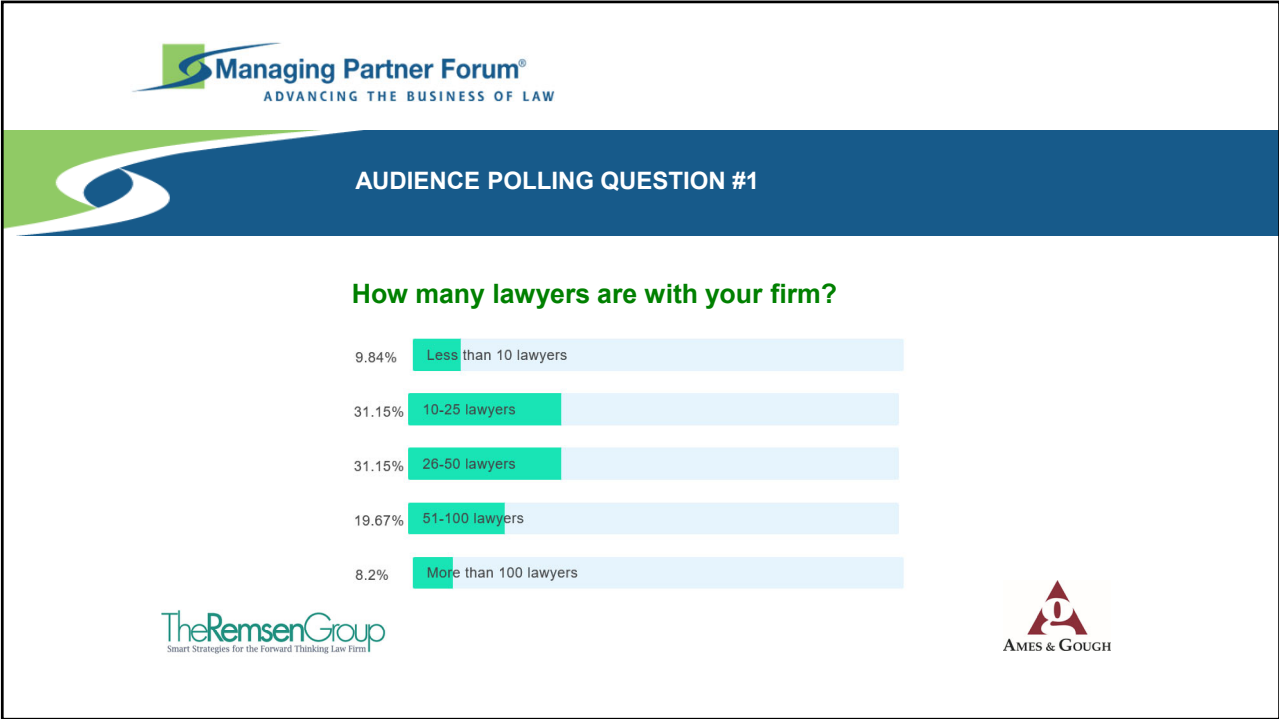
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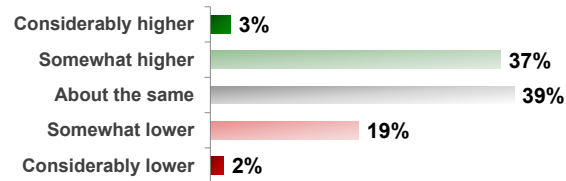


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REGISTRANT QUESTION #1

What do you project to be your firm's total profitability in 2023, compared to 2022?

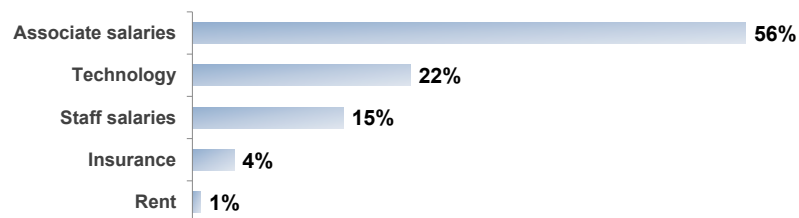


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REGISTRANT QUESTION #2

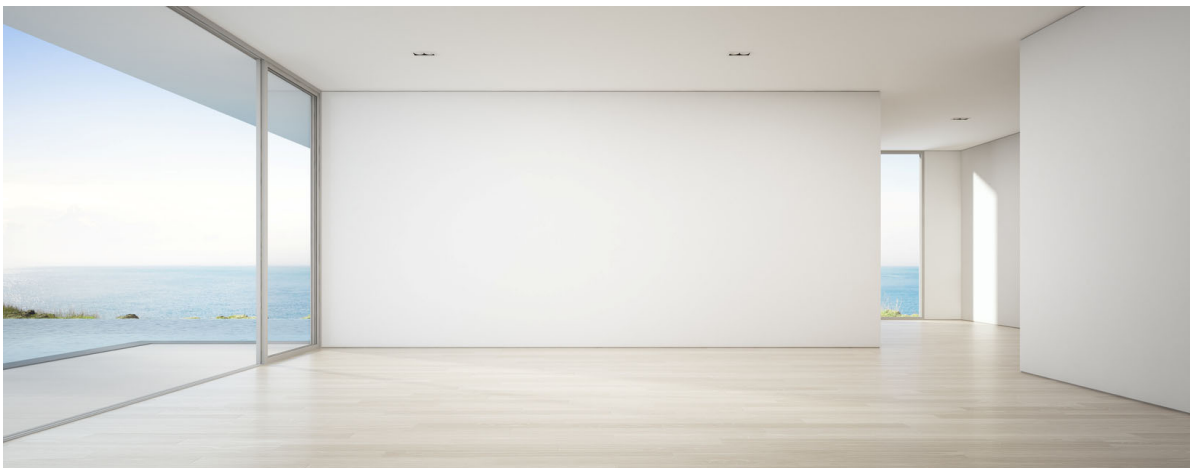
From the list below, which expense category is increasing most rapidly at your firm?

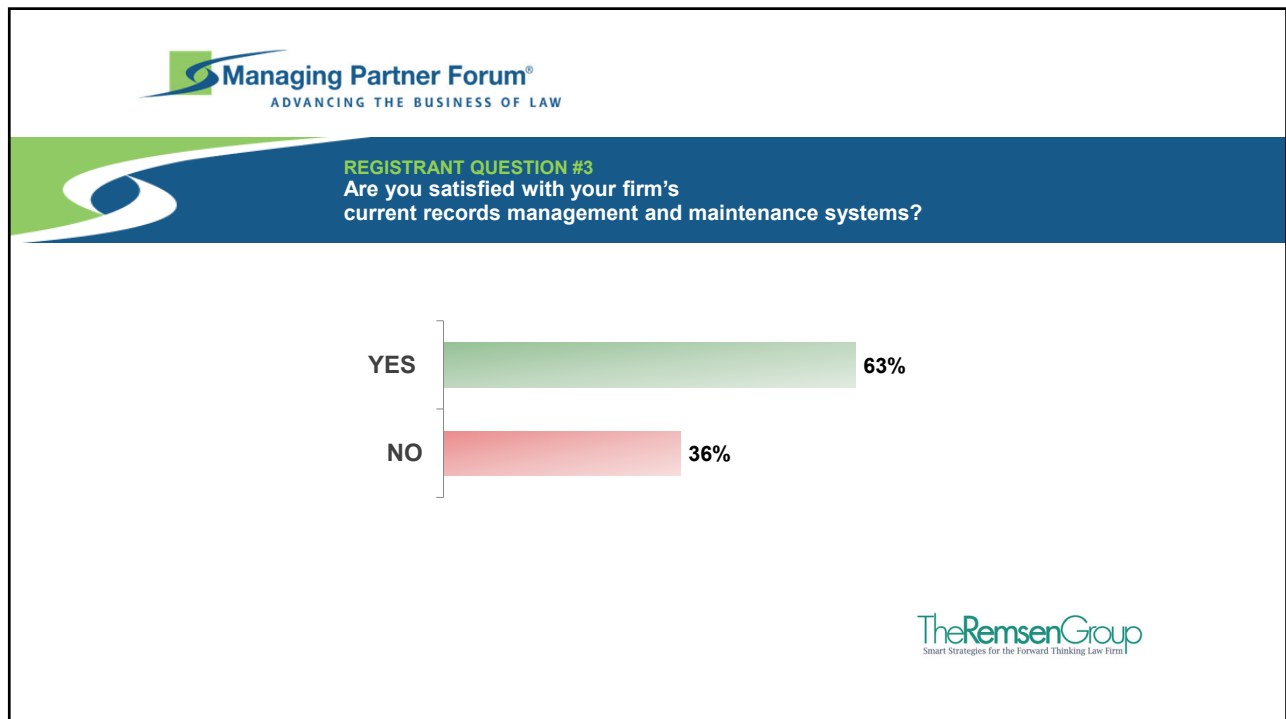


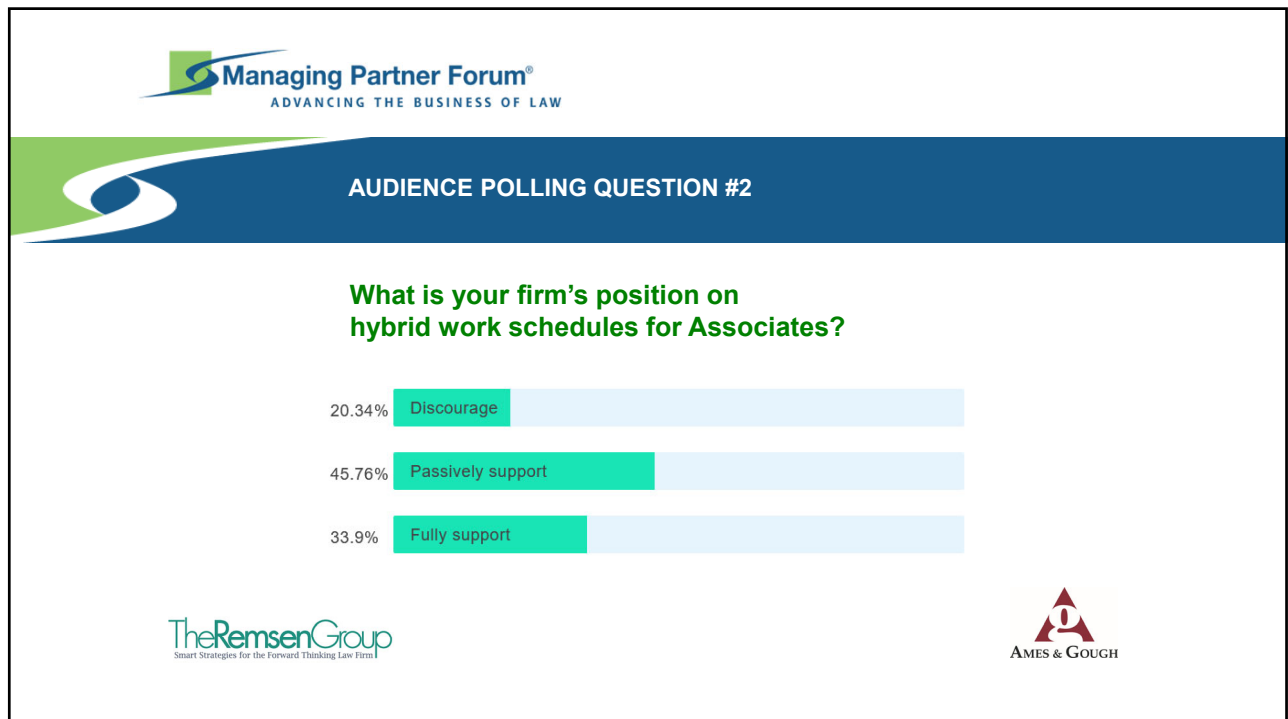
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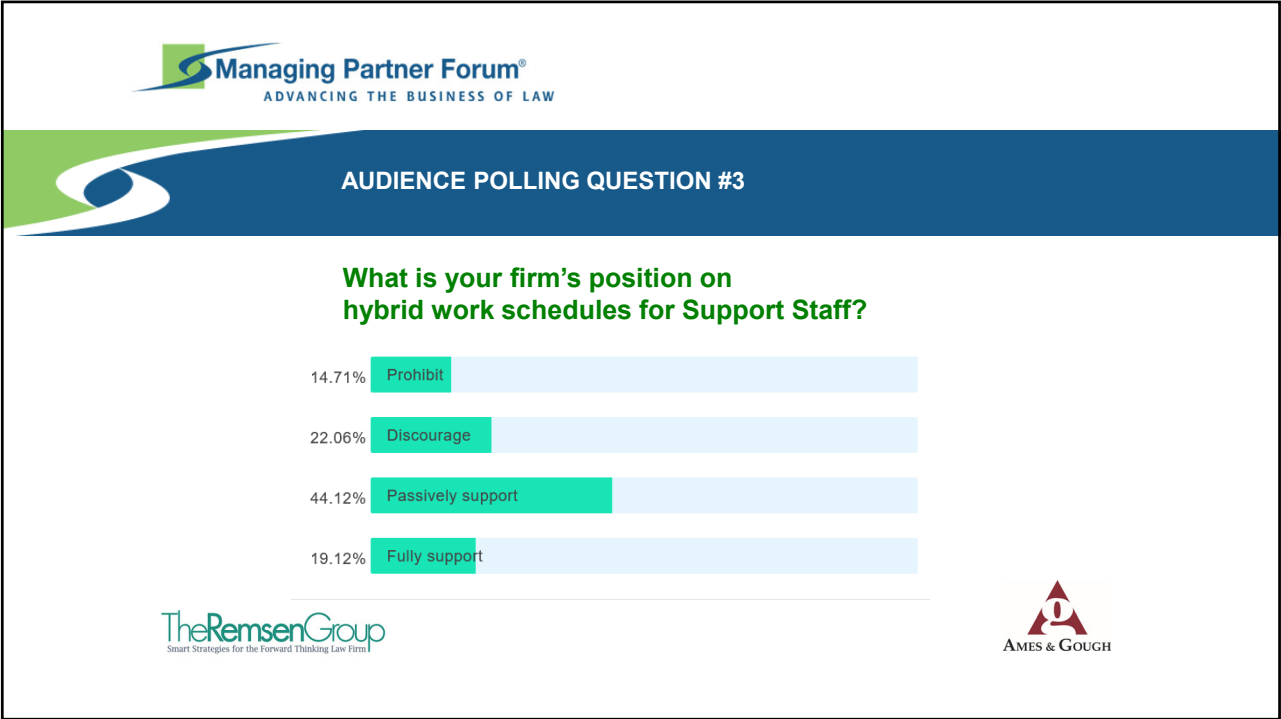


A WORD ABOUT REAL ESTATE

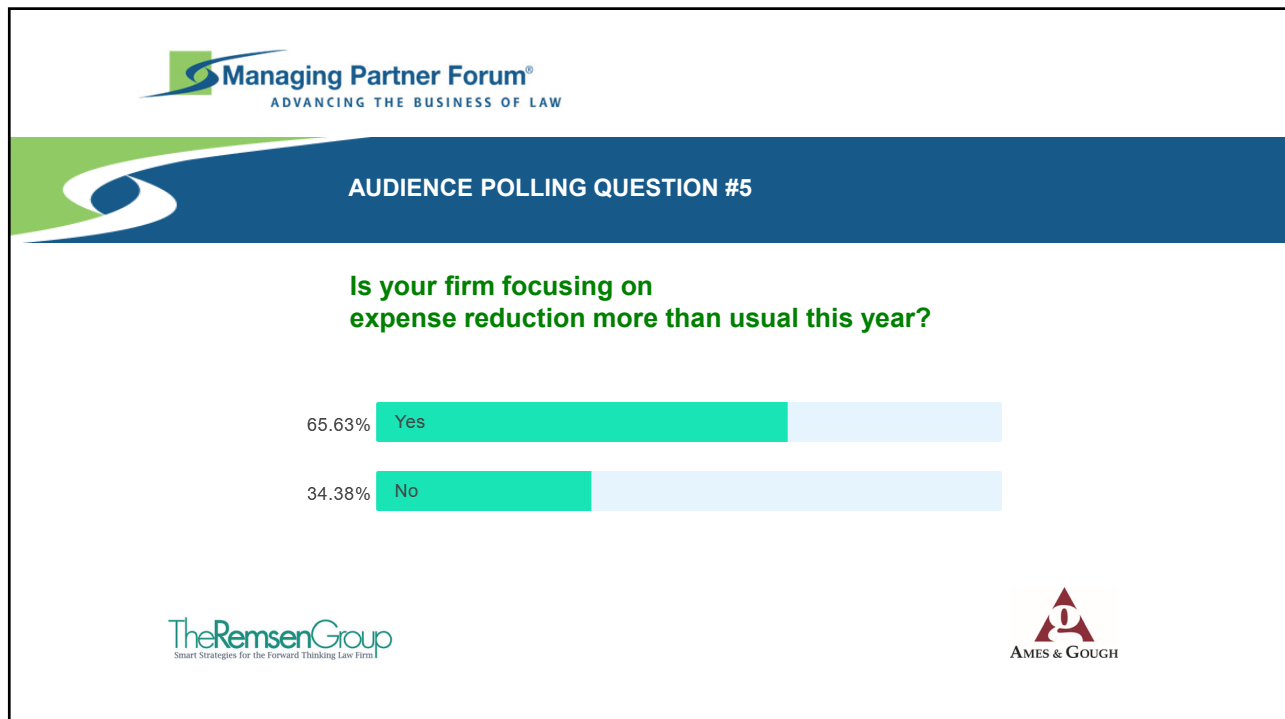
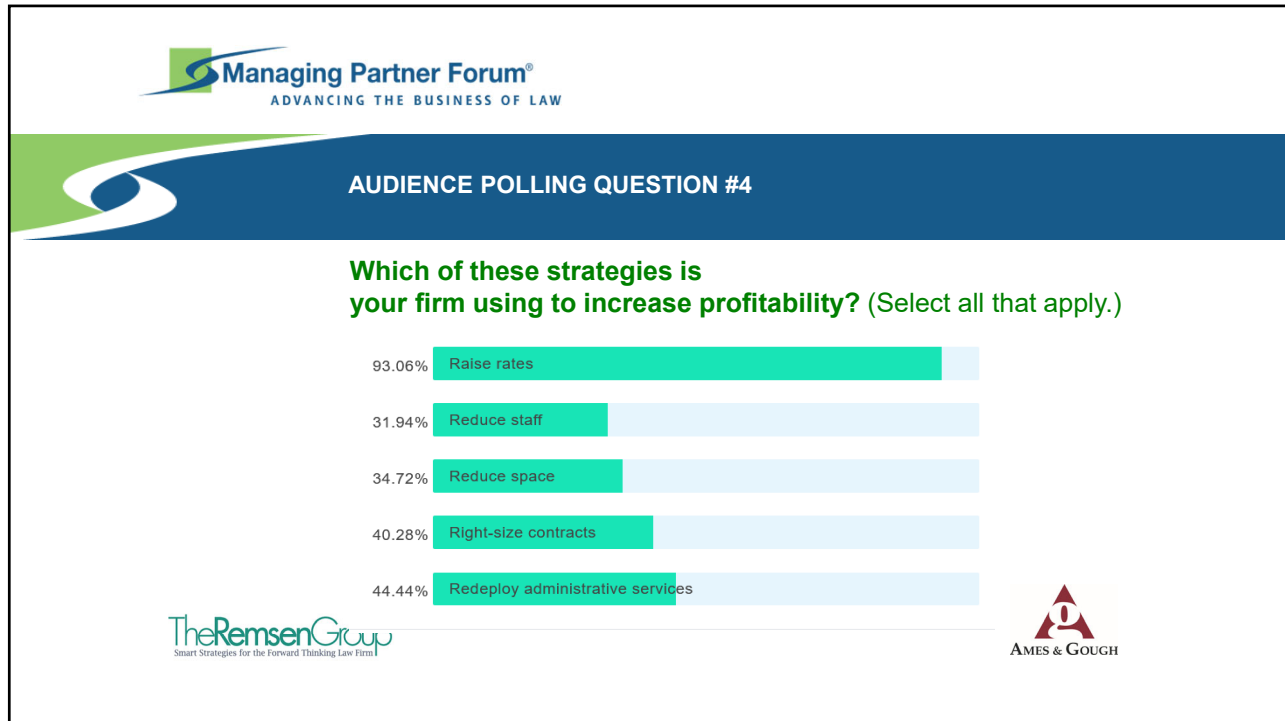








IMPROVING PROFITABILITY



EXPENSE MANAGEMENT



Top Areas for Expense Right-Sizing

- Staff Compensation
- Office Space
- Technology
- Service Providers



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- Your Feedback on Today's Session
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- Next MPF Webinar – June 21, 2023
- **SPECIAL MPF Webinar – June 15, 2023**



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An ALM Publication

Expense Right-Sizing In a Challenging Economy

By Rob Mattern

The economic outlook for firms heading into 2023 is, as we know, challenging. By the end of 2022, there was substantial slowing in demand growth, so much so that overall demand contracted by 0.1% by the end of the year, according to the latest data from Thomson Reuters. Transactional work was falling off and clients started pulling more work in-house, placing considerable strain on law firm financials which, quite frankly, were already under pressure from a 24-month long war for talent that resulted in the highest associate pay increases on record and ensuing increase in overhead.

The unfortunate combination of falling demand and growing cost of headcount combined to trigger a significant decline in productivity across the market. Thomson Reuters' industry benchmarks show this productivity loss means that the average lawyer in 2022 produced \$98,000 less in total fees.

This is not a tenable situation. It is not surprising, then, that layoffs have marked the end of 2022 and beginning of 2023 — Cooley, Strook, Goodwin and Gunderson are just a few of the big names that have been transparent about their layoffs.

Is it all doom and gloom? Of course not. In challenging times there is always opportunity.

For starters, analysts also warn of “over-correcting” when it comes to firm lay-offs. No firm wants to take the route of layoffs, however, long term when the market bounces back, firms could find themselves unprepared. This is similar to what happened when the financial crisis hit in 2008, similar market conditions caused firms to also lay off attorneys — but when the economy came roaring back, many firms were left holding their hats without sufficient capacity to handle a bullish market.

What are other strategies firms can take to rein in expenses during a challenging, down market to avoid further layoffs? Look no further than the firm's back-office operations. Below is a brief overview of five areas where your firm can not just “cut costs” but actually improve operations while doing so. This is expense “right-sizing.”

1. Administrative Services

When it comes to administrative support, many firms simply have too many people, doing the wrong tasks at the wrong cost. Even before COVID, the administrative support model was broken. Legal secretaries are an aging (and well-compensated) pool of existing support staff, 20%-40% of whom are expected to retire in the next five years and their replacements are becoming hard to find, with many candidates not suited with the specialized skill set needed in a modern law practice. COVID shifted the expectations attorneys have of their administrative support, but the model has been resistant to change causing attorneys year-over-year to be taking on more administrative burden, not less. This productivity loss was less than optimal but cannot be maintained in a challenged market.

Law firms must take the opportunity to restructure, realign, retool, and rethink their administrative support models. Some leading edge, Am Law 100 firms have taken the path of reinventing it: Fish & Richardson announced the elimination of its litigation secretary role; Morgan Lewis offered a buyout package to all of its legal secretaries nationwide; Fox Rothschild offered 300 support staff separation packages as part of a practice-specific support model; and Reed Smith reduced its secretarial personnel and aim to retrain its remaining secretarial staff into an executive assistant role.

Many of these firms can eliminate these roles because they have created practice-specific support who provide more legal expertise than a traditional secretary, centralized their administrative support in-house by separating its main administrative functions into pools, or have outsourced their main support functions to a service provider who provides expertise in a variety of support services.

In general, these are the three prevailing models where firms can cut significant costs while also improving critical services to the firm's attorneys.

2. Outsourcing Contracts

Reducing operating expenses is a key benefit and driver of outsourcing. Outsourced labor providers leverage their business models and scale to offer services at a lower overall cost than law firms can by hiring labor, onboarding, training, and providing ongoing performance evaluations to labor resources directly.

Utilizing outsourced labor services introduces the ability for firms to flex their labor resources as business needs dictate with no financial impact. A well-structured outsourced labor contract allows for flexibility at any time and without severance or other separation benefit costs. Additionally, outsourcing service providers, at least theoretically, can more quickly source, hire, onboard and train labor resources when the need exists.

But it's important that firms get the best value and performance from your outsourcing service providers. According to the most recent **Altman Weil Law Firms in Transition Survey**, only 37.1% of firms report significant improvement when outsourcing to non-law firm vendors.

Here are the steps we advise firms to take to ensure they achieve a successful engagement with their provider:

- An unbiased assessment of in-house services. Should you even outsource? Will it save you money, will the performance improve?
- Choosing the right partner. Understanding firm's unique cultural needs and goals
- Access to industry-wide data, benchmarks
- Leveraging a competitive RFP
- Culturally attuned transition
- Relationship and contract monitoring

The most important step here is taking this service to the market and running a competitive Request for Proposal process. Not only will your firm do its due diligence and learn about new offerings and new providers, but even when firms remain with their current provider, savings can be upwards of 30% by creating a competitive situation.

3. Output

Even before the shift to work-from-home, most firms were likely over-equipped with MFDs (Multi-functional Devices) and/or printers, doing too little volume, and with a contract that allowed little or no flexibility.

This situation has been significantly exacerbated. As we now face a long-term, more dispersed workforce, firms must also consider how to support the volume of prints & scans performed at home offices — from a service and supplies perspective. In addition, they also must adjust their in-office output capacity to handle a fluctuating labor force.

Firms must address this overcapacity and put in place a strategic, flexible plan that will reduce costs now and in the long run.

4. Off-site Records Storage

Digital transformation is a strategic requirement for law firm operations, but meanwhile legacy paper is costing firms not only in terms of significant dollars but increased risk as well. The cost of off-site records storage has become increasingly burdensome with new add-ons of fuel surcharges, handling fees on top of permanent withdrawal and destruction charges that create a deeper hole year after year to climb out of.

There has never been a better time to examine your off-site situation to ensure your contract(s) allows for cost-effective destruction and a way out of off-site records storage permanently.

We advise firms take a three-pronged approach to successfully get out of off-site records altogether:

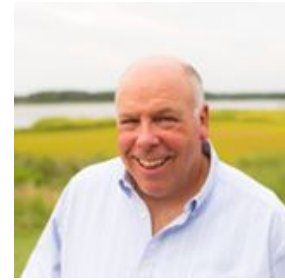
- Formulate a game plan to digitize inbound paper on the front-end to stop the flow of paper off-site
- Create an implementable information governance policy with retention schedules that will allow you to destroy records that have met their retention period.
- If you don't have one, negotiate a competitive off-site records storage contract. This will usually entail creating a competitive situation.

5. Legal Research: LexisNexis, Westlaw

Negotiating your legal research contracts is an area where many firms can gain six figure savings without losing any services.

Law firms historically overpay for legal research because of the lack of transparency in the pricing tactics of the leading providers in the space, LexisNexis and Westlaw, period. Firms are challenged to make informed decisions to control the costs of their legal research contracts because of the lack of transparency in their pricing and bundling practices of leading products that increase the complexity of procuring just the right content. As a result, duplicative content, significantly overpaying market rate, and underutilized resources are just a few of the common problems library services face when it comes to legal research.

In conjunction with the demands of the hybrid marketplace, firms have abundant opportunities to right-size their expenses and increase services to end users considering the new environment. It will take creativity, in-depth analysis, excellent negotiation and change management skills but the results will be worth it — a leaner, more flexible administrative operation supported by service providers and their associated contracts that will lay the foundation for future success.



Rob Mattern is President and Founder of Mattern Associates, LLC, a legal business process consulting and cost recovery solutions firm. A member of this newsletter's Board of Editors, Mattern publishes widely, including in American Lawyer, Legal Management magazine and Wall Street Journal.

How to Handle Records for a Successful Digital Transformation



Digital Transformation Is Key for the Law Firm of the Future

COVID has changed the way law firms and business in all sectors function, forcing firms to discover new ways to operate their practices and serve their clients with nearly all their attorneys and support staff working remotely.

Many of the changes are permanent, and it now befalls law firms to define their opportunities in the paradigm shift and make their operations more efficient and competitive, i.e., become the law firm of the future.

Digital transformation is the key element to firms' success. Prior to the pandemic, only 19% of in-house legal teams were well positioned to support enterprise digital efforts, with law firms themselves faring even worse.¹

One of the unexpected outcomes of COVID was that large law firms prospered. Profits per equity partner grew more than 20% last year through November for the Am Law 100, according to a report by Georgetown Law and Thomson Reuters Institute. That's more than double the growth rate in 2019. And U.S. productivity overall soared because of digital transformation in Q2 and Q3 2020, causing the largest increase in productivity in over 60 years—and this includes the legal market. One of the keys to that success was that firms were willing to adopt technology forward-thinking positions that were previously off the radar.²

Administrative Support Services: The New Way Forward



What happened to administrative support during COVID?

COVID forced law firms to change alongside a rapidly changing world. The change, while sudden, was successful for most firms and provided an opportunity to restructure for today's world. Law firm staff report that their firms transitioned effectively to remote work¹, and, on top of this, 2020 and 2021 were two of the most profitable years on record.²

Lawyers liked the shift to remote work. In fact, 86% of lawyers prefer to continue working remotely, which is proving to be an important factor for lawyers when choosing a firm.³ It is no surprise, then, that firms are adopting a hybrid model to attract and retain lawyers and talented support staff.

The pandemic triggered changes to not just *where* attorneys work, but *how*. Lawyers were forced to upskill their technical skills—so much so that lawyers

are doing a good deal of what were the staples of a legal secretary's work, at least those tasks that had not already been replaced by technology.

These tasks, such as transcribing dictated letters, compiling and typing notes scribbled onto a legal pad, answering lawyer phones, maintaining lawyer calendars, filing hard-copy files, and managing incoming and outgoing mail are relics from a previous generation. Notes are now taken using a laptop, documents can be edited on the go using a cell phone or tablet, dictation software transcribes the audio for end users, voicemail systems transcribe and deliver messages to a lawyer's inbox, electronic calendars and reminders alert lawyers to upcoming meetings and allow them to schedule with a click of a button, and document management systems have eliminated the need to maintain a hard-copy filing system.

1. The Legal Industry's Handling of the Disruption Caused by COVID-19 The Findings Report" Loeb Leadership, May 2020. 2. American Lawyer Am Law 100 rankings 2021-2022
3. 2022 Georgetown Law State of the Legal Market

Today's increasingly tech savvy lawyers are seeking specialized support such as graphic design, high-level proofreading, and advanced word processing skills, and are relying less on their secretaries for administrative duties. At the same time, remote work is allowing lawyers to shift their working hours to times that work for them and their clients, resulting in more after-hours support needs.

This is where the changes raise a tougher challenge for firms. Lawyers began experiencing the impact of skill deficiencies in their secretarial support or the impact of needing after-hours support when their assigned support was not available.

But this was already a problem in administrative support. The lawyer-secretary function as a relationship has been eroding for years. For a decade or more, administrative support staff have been challenged with providing increasingly technical and advanced support to attorneys.

Meanwhile, the lawyer-to-secretary ratio is expected to double to 13-1, and remote work is challenging

firms' abilities to monitor, manage, and train staff. Legal secretaries are an aging (and well-compensated) pool of existing support staff, 20-40% of whom are expected to retire in the next five years and their replacements are becoming hard to find, with many candidates not suited with the specialized skill set needed in a modern law practice.

Because they either do not have capable support or do not have available support, almost half (47%)⁴ of lawyers have reported burnout from a heavier workload during the pandemic and have noted longer working hours caused, in part, by increased administrative duties.

Junior- and mid-level associates are the most affected (67%), citing heavier workloads and workrelated responsibilities causing a decline in their well-being.⁵

Many of these administrative duties can and should be taken on by a more cost-effective resource, but instead, the current administrative model has shifted these duties to associates, and firms are beginning to see the impact.

Administrative Support is Broken. Here's What to Do.

Law firms must take the opportunity to restructure, realign, retool, and rethink their administrative support models. To do so, some leading edge, AmLaw 100 firms are starting by reducing their secretary positions and beginning to reinvent it: Fish & Richardson⁶ announced the elimination of its litigation secretary role; Morgan Lewis offered a buyout package to all of its legal secretaries nationwide; Fox Rothschild offered 300 support staff separation packages as part of a practice-specific support model⁷; and Reed Smith reduced its secretarial personnel and aim to retrain its remaining secretarial staff into an executive assistant role.⁸

Many of these firms are able to eliminate these roles because they have created practice-specific support who provide more legal expertise than a traditional secretary, centralized their administrative support in-house by separating its main administrative functions into pools, or have outsourced their main support functions to a service provider who provides expertise in a variety of support services.

In general, these are the three prevailing models firms are leveraging to reinvent their administrative support: decentralized, centralized (insourced), and centralized (outsourced). We provide more on these below.



4. "ANALYSIS: Attorney Burnout Abating, But Not Extinguished". 2022. News.Bloomberglaw.Com. <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-attorney-burnout-abating-but-not-extinguished>. 5. "ANALYSIS: Survey Finds Lawyer Burnout Rising, Well-Being Falling". 2022. News.Bloomberglaw.Com. <https://news.bloomberglaw.com/business-and-practice/analysis-survey-finds-lawyer-burnout-rising-well-being-falling?context=article-related>. 6. "Staff Layoffs At Fish & Richardson As Secretary Roles 'Transition' | The American Lawyer". 2022. The American Lawyer. <https://www.law.com/americanlawyer/2022/09/19/staff-layoffs-at-fish-richardson-as-secretary-roles-transition/>. 7. "Fox Rothschild Offers Separation Package To 300 Support Staff Amid Firmwide Realignment | The Legal Intelligencer". 2022. The Legal Intelligencer. <https://www.law.com/thelegalintelligencer/2021/06/17/fox-rothschild-offers-separation-package-to-300-support-staff-amid-firmwide-realignment/>. 8. "How Legal Secretarial Roles Are Evolving In Big Law | Law.Com International". 2022. Law.Com International. <https://www.law.com/international-edition/2021/09/07/how-legal-secretarial-roles-are-evolving-in-big-law/?region=/international-edition/region/latin-america/>.

Modifying the Traditional Support Model (Decentralized)

Some firms have taken the approach to transform traditional support roles into new roles with narrowly focused duties, which allows firms to offer targeted support to attorneys without providing much disruption to the way the firm is currently operating. However, with this method, many lawyers are still relying on local support, which creates uneven utilization (e.g., New York staff are 85% utilized and Los Angeles are 45% utilized) rather than utilizing the full administrative staff of the firm. Additionally, because the staff are highly specialized, many administrative tasks are still left to lawyers.

Pros:

- Easier to implement
- Firms can retain many existing staff
- Increased utilization of technology
- More advanced support for attorneys

Cons

- Siloed offices result in uneven utilization of staff
- Lawyers do not have a single point of contact for support
- Work can be passed around due to uninteresting work or lack of capacity
- Staff are still expected to be proficient in a wide range of tasks
- Limited availability after hours

Insourced Model (Centralized)

Some firms have created “pods” or “teams” within their offices to support specialized functions (i.e., billing support, word processing, and other pools of staff fulfilling a narrow group of tasks) within the firm, some have moved administrative functions to “centers of excellence” or “operations centers” in lower cost real estate and labor markets, and some are embracing a fully remote team allowing them to recruit across the nation.

This model allows firms to utilize their firmwide support staff to function as one to support the firm’s entire legal staff. Staffing can also be staggered to provide more coverage after hours without reducing its support during normal office hours. Firms can designate coordinators to distribute work received throughout the firm to better allocate work and increase staff utilization. This model still gives the firm full control over the operation of the department.

Pros:

- Increasing efficiencies by centralizing and distributing work based on operator skill set and available resources
- Improves end-user satisfaction through more skilled resources
- Improves access to resources for end users
- Allows firms to further increase attorney-to-secretary ratios while providing lawyers with the support they need
- Provides a single contact point for end users

Cons

- Firm retains management and benefit costs for staff
- Requires transferring, hiring, and training staff
- Firm responsible for developing new workflows and processes



Outsourced Model (Centralized)

Some firms have decided to partner with a service provider who is experienced in providing administrative support services. Service providers typically customize each solution based on firm culture, preference, or needs, but the two most common solutions are:

- Providing virtual support from an off-site service provider facility
- Service provider staff providing onsite support at a firm facility

This takes the onus of managing and training support staff off the firm's plate and provides all the efficiency and utilization benefits of an insourced model. It also provides a management structure that reports directly into the firm with contractual obligations to meet service level agreements related to end-user satisfaction, productivity, and maintaining a highly skilled team.

Pros:

- Increased utilization of firm staff
- Provides a single point of service for lawyers
- Further reduced costs for real estate and labor
- Allows firms to benefit from best practices learned from the service provider's industry experience
- Provides access to service provider's training
- Some service providers offer "on-demand" services that allow after hours support on an as-needed basis

Cons:

- Firm loses insight into the department
- Some lawyers are hesitant to use outsourced personnel

How to Decide Which Path is Best for Your Firm

The best time to start measuring what your support staff are doing was 20 years ago. The second best time is now.

Firms can start by measuring the effectiveness of their in-house operation and benchmark it against what an outsourcing provider may offer.

Measuring productivity and task tracking for non-lawyer staff is critical to right-sizing your support staff as well as managing them in a hybrid environment. Having this data then allows firms to make informed decisions regarding the number of staff, the alignment of staff, and the allocation of tasks.

The easiest way to collect this data is putting in place a workflow management tool, such as those offered by BigHand or ServiceNow, to evaluate and track what your staff are doing so that you can adjust as the post-COVID dust settles—identifying the practices requiring the most support and what types of support they are utilizing so the firm can tailor solutions to meet lawyers' needs. The biggest benefit of implementing these software platforms is that they allow ongoing monitoring so that firms can adjust staff according to overall workflow trends.

For firms that want immediate data to act on, there are survey and analysis tools, such as RevelationLegal, that use a questionnaire to provide a one-time look at what staff and lawyers are doing to allow a data-driven approach based on where things are today. While a survey tool provides firms with the immediate results for data that the firm was not tracking previously, these

tools are not a substitute for a workflow management and tracking tool that allows long-term monitoring and optimization of your staff.

Without properly evaluating and measuring, it is nearly impossible to determine if support staff are being utilized by their assigned lawyers, if they are working on billable tasks that would be better allocated to a different role or vice versa, or if they do not have enough work. Additionally, although the firm's goal is to increase the effectiveness of administrative support, firms also need to track what non-billable tasks their attorneys are working on to identify support gaps that cut into their billable hours, extend their days, and/or lead to exhaustion. With this data, you can begin investigating why attorneys are completing these tasks instead of administrative staff or why billable tasks are being assigned to administrative staff.



Act on the Data Using the Mattern Method®: The Four Rs

Retool

Firms need insight into their workflows and oversight over the work assigned to support staff to ensure that it is being distributed and completed effectively. Establishing best practices, structured work distribution, and implementing a tracking tool for ongoing monitoring is critical.

In addition to ensuring the work goes to the right place, firms need to ensure their support staff have the right skills. Unlike lawyers, support staff do not typically receive ongoing training and evaluation of their skill sets in relation to the demands or evolution of their positions. Using the data the firm collects, the firm has the information needed to identify the tasks delegated to support staff, what staff are completing what tasks, and receive lawyer feedback on the tasks completed to help firms evaluate and identify training needs of its staff to get the most out of its talent.

With the right talent, firms can better utilize new technology it invested in during the pandemic⁹ to allow even more efficient completion of tasks by automating many of the manual processes still utilized by traditional secretarial support.

Rethink

Support staff are responsible for a variety of tasks, including calendar management, travel arrangements, email management, transcription, document formatting, PDF conversion, printing, photocopying, time entry, and more. Due to high ratios of lawyer to support staff, support staff face a high volume of tasks with competing deadlines that are often difficult to manage, prioritize, and complete efficiently. This can not only make the position undesirable to qualified personnel, but also reduce lawyer utilization of support staff due to delayed turnaround or inaccurate work.

Though firms still need a presence in the office for client-facing tasks, the days of 20-year lawyer-secretary relationships are long gone.¹⁰ In today's workplace, lawyers require different support. In today's digital world, virtual meeting software, such as Zoom, Teams, WebEx make it possible to collaborate in real time, VPNs and Dual Authentication make it possible to ensure security of firm data while also providing all firm employees with access to firm applications on the firm's network, and digital mail solutions (and generally less paper), makes it easier to provide support and accomplish these tasks from anywhere.

Restructure & Realign

Seventy-seven percent (77%) of firms have lawyers working outside of standard office hours, creating a need for increased after-hours support and new ways to allocate work. To maximize the benefit of support staff, lawyers need to know who and where to go for support as well as when they can get it.¹¹

More than half of law firm staff do not believe work is submitted effectively and 35% do not believe that it is distributed evenly. Seventy-three percent (73%) of support staff note that they move work internally at least once per week with 50% doing so because of workload/capacity and 20% because the work was incorrectly allocated. In addition, BigHand reported that less interesting work is often passed from assistant to assistant without any justification.¹²

Three quarters of firms have already restructured or created support teams, a third of firms have increased their reliance on outsourcing, and a third are looking to outsource their support functions.¹³



9. Technology adoption overall was the second highest YoY expense for law firms in the years of the pandemic (second only to recruiting) 10. <https://www.bighand.com/en-us/resources/whitepapers/the-legal-resource-management-report/> 11. <https://www.bighand.com/en-us/resources/whitepapers/the-legal-resource-management-report/> 12. "Legal Support Staff Survey" 2019. BigHand 13. <https://www.bighand.com/en-us/resources/whitepapers/the-legal-workflow-management-report/>

Finding the Right Solution

There is no one-size-fits-all approach. Each firm is different and each practice and lawyer also come with their own unique needs and approach to their work. Each firm needs to ask questions about its culture, attorneys, and the working environment they want to foster:

- Are you able to effectively manage, train, and schedule support staff in each office?
- Do you need to hire support staff in all your offices? In the most expensive and most competitive markets?
- Do you need assigned support for each lawyer?
- Do you need a single role supporting all the administrative tasks for your firm?
- How are your assignments allocated?
- What is the utilization of support staff in each office? Each practice group?

More and more firms are recognizing that they should stop thinking of administrative support in terms of ratios and instead think of administrative support as an all-inclusive solution for the firm. Due to the increased

specialization of many functions carried out by traditional legal secretaries—legal research, document/word processing, graphic design, presentation creation, proofreading, billing support, and database management—it is becoming nearly impossible to find candidates who possess all of these skills.



Which is Right for your Firm?

This is an opportunity to re-think a broken support system and make a significant impact. The needs of attorneys have drastically changed during the past 10 years and even more over the past two. Secretaries are not completing the same tasks they did before and lawyers are demanding more specialized support for their practices. This is the moment for change.

Firms should initiate change with a data-driven approach. This is the first step to innovating and modernizing a new administrative support model that works. Firms also need to engage their legal staff to ensure that their needs are considered and that the solution fits in with the culture of the firm. Focus groups, surveys, and observation on-site in firm offices are the keys to determining how to tailor your support staff for your firm.

Where firms do not have the administrative expertise, industry knowledge, or time to evaluate data and make these changes, bringing in an unbiased consultant to

evaluate the operation is one way to find the solution that works best for the culture. Consultants work closely with your firm, speak with your administration, lawyers, and support staff to evaluate their needs and any problems they are experiencing with the existing model. Consultants can also advise firms on what workflow tool to use to create the best workflows, what data to measure, and how to use that data to continually improve its operation. They also bring industry knowledge of best practices, knowledge of the best software to increase efficiency, current market rates, and can provide a targeted RFP if your firm decides to investigate the market for any services.

In the end, the most important thing is to get it right. Firms have the momentum for this change now and it is critical to develop a strategy and solution based on hard data that will result in lawyer buy-in. As the evolution of hybrid accelerates across the market, we are excited to be part of what the future will bring.



4 Steps to Address Records in Your Digital Transformation

Technology adoption has always been a challenge for firms, but when forced, firms were successful in leveraging it to create a remote workforce—and the surprise was that it worked. Nearly half of the current workforce is now remote.³ In law firms, nearly 67% of lawyers report that they would like to continue working remotely even post-pandemic, even for a few days per week⁴; a Cushman & Wakefield study stated that firms may be looking to reduce upwards of 40% of their in-office personnel.⁵

As law firms likewise look forward to a world with more distributed workforces, firms have large opportunities for real estate reduction and technology enabled workflows that will make them more competitive against the rising sector of alternative legal service providers (ALSPs). These opportunities cannot be fully leveraged without addressing how we interact with the paper that moves our businesses.

In this white paper, we address firms' digital transformation as it pertains to records. This plan includes 4 steps:



Get Out of Off-site Storage: Lay the Groundwork Now

Traditionally, the way that law firms addressed their glut of paper records was to send them off-site to a records storage vendor (a less popular option was to create your own storage facility to house records). Other realistic options simply did not exist at the time. With nowhere else to turn to place hard copy records, firms generally turned to service providers who could store their records for them.

The problem was that for years, firms were sending hard copy storage off to these warehouses and, in many cases, had no long-term plan for how to address them once they sent them off-site. Out of sight, out of mind as the saying goes. Storage accumulated steadily over time and never reduced.

Now firms are paying the price – quite literally – for those past necessities. But there is a way out. Mattern's approach helps firms structure current off-site storage contracts to get out of off-site records permanently.

Reductively, digital storage, where possible, is dramatically less expensive than physical real estate storage. The cost to store vast amounts of data is significantly cheaper than in your friendly local warehouse.

Consider that 1 TB of data on the cloud would cost you perhaps less than \$10-15 per month. And also consider that 1 TB can hold approximately 6.5 million pages of documents.⁶ If you wanted to physically store 6.5 million pages, that's the equivalent of approximately 3,250 cubic feet of storage (assuming 2,000 pages per box). If we estimate storage as \$0.20 per cubic foot (which is a decent midpoint number), that's \$650 per month in storage costs. When you consider that many large law firms have in the hundreds of thousands of cubic feet of storage, it is easy to see how the dollars add up.

But most firms are handcuffed by their contracts to move on these opportunities. A particularly stubborn aspect of most off-site records contracts are the permanent withdrawal fees, the stumbling block most firms come up against.

Mattern's approach helps firms reduce permanent withdrawal fees to \$0, enabling firms' business objectives of getting out of off-site records altogether. We recently helped Chamberlain Hrdlicka do this. In the near term, the firm reduced its permanent

3. https://www.nber.org/system/files/working_papers/w27344/w27344.pdf 4. Altman Weil Law Firms in Transition 2020 5. Cushman & Wakefield Bright Insight 2020 6. <https://www.dropbox.com/features/cloud-storage/how-much-is-1tb#:~:text=1%20TB%20gives%20you%20the,files%2C%20PDFs%2C%20and%20presentations>.



withdrawal fees by 82% during the term of the agreement which will, at the contract's expiration, be reduced by 100% while still being liable for a reduced retrieval fee.

It is estimated the firm will save 40% over its current storage and service costs through the life of the agreement. Cumulatively, the savings will allow Chamberlain Hrdlicka to implement the changes they need to ensure a streamlined, reduced off-site storage practice for all their locations well into the future.

On the other hand, firms will also want to look at records storage and Information Governance (IG) from a holistic point of view. Mattern assisted Am law 100 firm, Holland & Knight implement an IG program while also helping the firm drive down its off-site holdings

as part of this. Key terms of their agreement included:

- Lowered the firm's storage, service, and shredding costs by an estimated 34.5%
- Reduced their permanent withdrawal fees by close to \$1 million
- Allowed the firm to destroy up to 96% of their off-site holdings over the course of the agreement
- Kept rates locked for the first 3 years with sporadic minimal increases
- Performance standards with penalties for non-compliance and a detailed termination process

This brings us to the importance of addressing IG when looking at off-site records.

Digitization Requires Information Governance

Governance and security are critical to digitization. Any plan for digitization must start with putting information governance and security policies in place. These policies provide the roadmap for how to address all records, digital or otherwise.

Firms cannot effectively govern paper scattered in non-firm locations. Transitioning to an electronic-first mindset as it relates to the declaration of records is the cornerstone of an effective information governance policy.

Law firm operations have always been paper-centric – but this now presents logistical and information security challenges. Setting up and managing a system where attorneys and support staff working remotely can request and receive paper documents from the firm's records department is complicated

and poses significant risk to data privacy. Having paper documents scattered in various, non-firm locations in an unsecure, remote environment is the stuff of an information security administrator's nightmare.

And cyber security risks to law firms are very real. As cautionary tales, in 2020, two high profile law firms (Seyfarth Shaw LLP and Fragomen, Del Rey, Bernsen & Loewy, LLP) both disclosed security incidents where clients' information was put at risk.⁷ And these two firms were not alone. Cyber attacks on law firms are becoming the norm as law firms make for attractive targets given the nature of their clientele.⁸

Consider that an effective information governance policy will need to address a complex range of issues from information lifecycle, to retention schedules, security, ease of document access, file nomenclature and taxonomy, and of course, records disposition. Further, think about the breadth of types of files and subject matters that your firm handles, each of which may require its own considerations.

Then consider the regulatory landscape that we live in today, which includes regulatory requirements such as HIPAA, CCPA, GDPR, Sarbanes-Oxley and so on. Your policy will need to effectively address all these items and more. If your firm does not have the internal resources or expertise to address the range of requirements of an effective policy, you may need to seek outside help.



7. <https://www.law360.com/articles/1326001> (discussing cyber security attacks on law firms) 8. Ibid.



Further, without comprehensive policies in place, you will end up with two repositories of records (hard copy off-site and digital) with all sorts of confusion about how to manage it all. With effective governance policies in place, information can be searched and retrieved quickly and effectively in a single, safe repository, overall adding to attorney productivity.

Moreover, as part of your governance policies, you will need retention schedules in place to define a roadmap for reducing your hard copy records footprint. This is a critical component of getting out of the off-site record game in a legally defensible manner.

Mattern's expertise has helped firms along the spectrum of their information governance initiatives, from Holland & Knight cited above who wrapped IG and off-site records together, to smaller firms that require full development and implementation of information governance practices and best standards. Some firms do not have an approved information governance policy, and therefore, had no established user expectations regarding the proper handling of

electronic and paper records. Mattern develops these policies.

At the other end of the spectrum, sometimes larger Am law 100 firms need assistance in implementation of their information governance programs. As is a common case, in one recent client engagement, the firm's legacy standard practices had not always been adhered to, nor was the integrated use of company systems. One key element of Mattern's plan was the successful implementation of retention schedules that would first require discerning the location of all information assets – email, network shares, archives, DMS, physical media, and 3rd party cloud storage or file sharing tools.

In the end, the firm implemented an information governance program that allowed for defensible management of all information assets regardless of media or location. This ushered in uniform user behavior integrated with the firm's technology systems to create less paper and thus, send minimal paper off-site in the future.

A Two-Pronged Approach: Back File Conversion and Upfront Digital Workflow

Firms must look at a two-pronged approach to their records. As we pointed out already, firms spent years sending records off-site. As such, there are mountains of hard copy records to contend with. The two prongs are back-file, or off-site records and day-forward, or on-site records.

Mattern recommends that law firms do not attempt to digitize their back-file records. Instead, the focus of digitization should be on day-forward documents. Below, we will discuss why that is the case.

However, we should note that in certain limited circumstances there can be benefits of a back-file conversion, particularly in the new digital operational model. Such limited circumstances would be for those high usage files that firms retrieve regularly. A back-file conversion allows authorized users instant access to documents from anywhere, including mobile devices. The information security and governance benefits of a back-file conversion are also a key reason for firms to consider this option.

It is important to note that the cost of back-file conversions can be very high, which is why it should only be used in those limited circumstances. But,

when it is warranted, the long-term benefits of eliminating physical document storage can offset the upfront cost. Outside of the obvious physical storage, consider savings associated with retrieval, transportation, and ever-increasing permanent withdrawal fees, in addition to improvements in soft costs achieved through increased productivity. Given the steep initial investment, one strategy of some firms is to limit back-file scanning to material that is still housed on-site, treated as project work to be completed as time permits.



Upfront Digital Workflow vs. the Costs of Storage

One of the biggest reasons for focusing on day-forward materials instead of back-file is cost. Firms must also do all that they can to stem the tide of records going off-site. Again, the policy should provide guidance on this, but if no policy has been formally adopted, then take measures to ensure firm-wide adoption of practices that assist in limiting the volume of paper that gets sent off-site or eliminate the practice altogether. Because, while storage is cheap, it is not cheaper than digital storage. Further, once that storage has been sent off-site, there are additional costs beyond simply storing it.

A firm has essentially two choices with what to do with the storage. First, it can leave the storage there and wait for it to become ready for destruction, which is the right choice at this point. The firm will have to pay additional dollars to retrieve and destroy it. Here is a quick example of one box's costs, using the \$0.20 per cubic foot example from earlier (1 file box equals 1.2 c.f.) and assuming the best-case scenario that this box can be destroyed at the end of its life cycle without content review:

Item	Fee
Storage for 10 years	\$33.02
Retrieval Fee in 10 years	\$3.91
Destruction Fee in 10 years	\$6.52
Total	\$43.45

**All fees include 3% YOY escalator*

A subset of the above example considers a firm leaving its record in storage for 10 years, but addressing the file in a different manner. This is a realistic example that Mattern finds with most off-site holdings that exceed 10 years in storage. In this scenario, content detail is lacking or nonexistent and most of this material requires some form of "flip-the-lid" review to verify contents are eligible for destruction. This does not take into account labor expense for firm Records staff to review contents and assumes material is destroyed on-site at the firm, which also requires permanent withdrawal with the storage provider in order to stop the clock on storage expenses.

Item	Fee
Storage for 10 years	\$33.02
Retrieval Fee in 10 years	\$3.91
Handling Fee in 10 years	\$2.41
Destruction Fee in 10 years	\$6.52
Permanent Withdrawal Fee in 10 years	\$6.52
Delivery Fee in 10 years	\$26.10
Total	\$78.48

**All fees include 3% YOY escalator*

Thus, each box would cost anywhere between \$43 to \$78 to address, assuming that no other services were utilized, such as storage provider labor to perform the flip-the-lid review in our subset example. If there were other services, obviously those costs go up.

The other option is that once it is sent off-site, the firm could decide to digitize it, which is the wrong choice. To digitize that same box, you typically have several fees involved with any off-site records vendor: (1) the cost to retrieve that box, (2) a setup fee – which will usually be inclusive of a certain number of pages, such as 50 pages, (3) the cost per page to digitize any pages over the included amount – we are going to assume roughly 2,000 pages in a box, (4) the cost to then destroy that box. We can assure you that no matter what provider you use, the total cost for all of this will exceed the amount you would pay for just leaving that box in storage for 10 years. To prove it, let us play it out using the sample costs from the above example:

Item	Fee
Retrieval Fee	\$3.00
Setup Fee (incl. 50 pages)	\$15.00
Cost to Scan Remaining 1,950 Pages (\$0.10/page)	\$195.00
Destruction Fee	\$5.00
Total	\$218.00

**Most providers do not charge permanent withdrawal fees as part of back-file imaging projects*

Thus, as you can see, once you send a box off-site, the options are pay some or pay more.



There is an important lesson here. As we have discussed, there are two sets of records that firms must manage. The records that already exist off-site and the day forward records. The above case study is instructive for both situations. It makes the case for not sending day forward records off-site if you can because, once you do, you are locked into the costs of ingesting it into the off-site provider's inventory, the costs of permanently withdrawing it, and year-over-year escalators.

It also makes the case that for all records already off-site, the strategy ought to be: let sleeping dogs lie. Leave those files alone until they are ready to destroy,

then destroy them. Do not attempt to start a massive look-back digitization program unless you feel the overwhelming compulsion to burn money.

The way to handle day forward files, if you want to avoid the off-site records trap, is to digitize on the front end. To do that, there is obviously a front-end cost to digitize, but once done you are free to do whatever you wish with the information. With a digital record there is no cost to destroying it, calling it back from storage, sending it back to storage, etc. The record now exists in your firm's document management repository, which affords you flexibility.

Two Components of Upfront Digitization: Technology and Workflow

In order to digitize, there are two components. First, is the technology. Your firm will need the proper equipment with which to scan the records and a defined repository to store said records. Second, is the process by which you will digitize the records. This entails labor as well as a roadmap to follow.

First, let's look at the technology (i.e., equipment and repository) component. Equipment means scanning equipment. This is a minimal cost. You can either obtain a dedicated scanner(s) or utilize existing multi-function devices ("copiers" or MFDs) to handle the work. When deciding which to use, investigate the options. Dedicated scanners have certain advantages over MFDs.

Simply put, tabletop scanners are devoted to this singular task and given this specialized purpose, perform this task well. MFDs are multi-use devices but, in terms of strict scanning capabilities, do not have the same functionality as a dedicated scanner. For instance, quality tabletop scanners will auto detect issues such as double feeds even down to the presence of "Sign Here" sticky notes and stop, allowing the operator to separate pages and/or sticky notes and resume scanning.

Dedicated scanners will also retain all images in progress in paper jam events, not to mention more robust image quality settings (despeckle, deskew, exposure and contrast). MFDs, on the other hand, will either carry on without noticing that sticky notes cover underlying text, or miss pages due to double feeds, or jam and lose all images in progress. Mattern would recommend utilizing a dedicated scanner if the intention is to set up a full-service, front-end scanning operation. From a quality and workflow perspective,

dedicated scanners are superior to piecing together a digitization solution utilizing one's existing MFD fleet.

Next, you will need to come up with a process. As noted, this entails labor and a roadmap. Labor is either going to be labor that already exists and will be tasked to handle these responsibilities in addition to other regular responsibilities. Or it is something you will need to add. If you already have the onsite personnel equal to the task, the labor could be viewed not as an additional cost, but an existing one. However, if you must add staff, then you are looking at additional costs.



In such a case, you will have to examine the scale of the digitization you intend to do in the context of the cost of the additional labor as compared to that cost avoidance per box you do not send off-site as well as other factors. In our earlier example, that was \$43.45 if the box sits there for 10 years, in a best-case scenario with no other services on the box, then is destroyed. So, if your firm avoids sending 1,000 boxes per year off-site, you potentially save \$43,450 by not sending those boxes off-site. But that does not account for the added utility (and unquantifiable costs) of having a digital record, which should lead to more efficient working.

Cultural Change + Leadership

Of course, the above outlined plan is all well and good, but enacting these tenets is not a simple snap of the fingers. And even when expertly crafted, the plan will need wide adoption within the firm. Thus, in the background, while all the above is being devised, the firm should address cultural change, and this is best handled through assembling a steering committee of representatives from a cross section of firm administration and practice areas. This is essential to consider the various ways in which administrative and practice groups operate so that policies can be molded with their needs in mind to deliver the greatest chance for success.

Further, there must be active investment, from the top down, to having people work digitally. In fact, in a 2018 study by McKinsey, various factors were examined about enterprises who were successful in digital transformations. While there were several key factors, 4 of the 10 were dedicated to management leadership, with active engagement increasing the odds of success by anywhere from 1.6x to 3.1x.¹⁰ The study went on to highlight that having the right, digital-savvy leaders in place was key – with 70% of respondents highlighting that top teams changed when leaders were familiar with digital



technologies.¹¹ Thus, firm management needs to be actively involved, and people need to know that what firm leadership is selling isn't just lip service. The firm needs to match its actions to its words. Aggressively pursue your policy and let people know you mean business.

A Fully Digitized Law Firm of the Future

Pandemic or no pandemic, law firms have lagged their corporate counterparts regarding digital transformation for too long. Firms that successfully face the business mandate to fully digitize and become a law firm of the future will reap the rewards

of streamlined client service, while repositioning long-discussed plans for addressing information security and data governance to the front burner along the way.

10. McKinsey Study "Unlocking success in digital transformations" 2018

