

THE LAW FIRM OF THE FUTURE

WHAT EVERY MANAGING PARTNER NEEDS TO KNOW ABOUT INFORMATION GOVERNANCE

An MPF Webinar – December 1, 2021

by

Ella K. Gower, Esq.

Managing Partner, Miller Starr Regalia

Andy Hoedt

Executive Director, Miller Starr Regalia

Rob Mattern

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Nathan Curtis

Consultant, Mattern

Uri Gutfreund

Law Firm Group Leader, Risk Strategies Company

John Remsen, Jr.

President, TheRemsenGroup

MPF WEBINAR

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TheRemsenGroup
Smart Strategies for the Forward Thinking Law Firm

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MPF Webinar Series: The Law Firm of the Future



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

What Every Managing Partner Needs to Know about Information Governance

An MPF Webinar with Ella Gower, Andy Hoedt, Rob Mattern and Nathan Curtis

December 1, 2021 – 2:00-3:00pm ET



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Welcome



Uri Gutfreund

National Law Firm Practice Leader, Risk Strategies Company
Founder, MP Roundtable



John Remsen, Jr.

President and CEO, Managing Partner Forum
President, TheRemsenGroup



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Ella Kay Gower, Esq.
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Rob Mattern
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Nathan Curtis
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MPF PROGRAMS IN 2022

- MPF Webinar Series – First Wednesday @ 2pm ET
- *The MPF Weekly* – Friday mornings
- MPF Website – www.ManagingPartnerForum.org
- MPF Listserv and Conference Calls
- The MPF 2022 Leadership Conference – May 4-5, 2022 *
- The MPF 2022 Fall Symposium – October 6, 2022 *



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MPF Fall Symposium
Passing the Torch: Guiding Your Law Firm through Succession
On-Demand Recording and Handout Materials



Ida Abbott
President
Ida Abbott Consulting



August Aquila
Chief Executive Officer
Aquila Global Advisors



Whitney Cunningham, Esq.
Managing Partner
Aspey Watkins & Diesel



Uri Gutfreund
Nat'l Law Firm Practice Leader
Risk Strategies Company



Tracy Kepler
Risk Control Consulting Director
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Gary S. Lesser, Esq.
Managing Partner
Lesser, Lesser Landy & Smith



Eileen M. Letts, Esq.
Chief Administrative Partner
Zuber Lawler



Donald L. Mrozek, Esq.
Chairman Emeritus
Hinshaw & Culbertson



Morris Tabush
Founder & President
Tabush Group



Raymond J. Werner, Esq.
Of Counsel
Saul Ewing Arnstein & Lehr

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TODAY'S WEBINAR

- Registrant Survey Results – 88 law firm leaders
- Today's Topic – **What Every Managing Partner Needs to Know About Information Governance**
- Audience Polling Questions, Question Box
- Next MPF Webinar – January 5, 2022



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AUDIENCE POLLING QUESTION #1

How many lawyers are with your firm?

3.13%	Less than 10 lawyers
31.25%	10-25 lawyers
34.38%	26-50 lawyers
21.88%	51-100 lawyers
9.38%	More than 100 lawyers



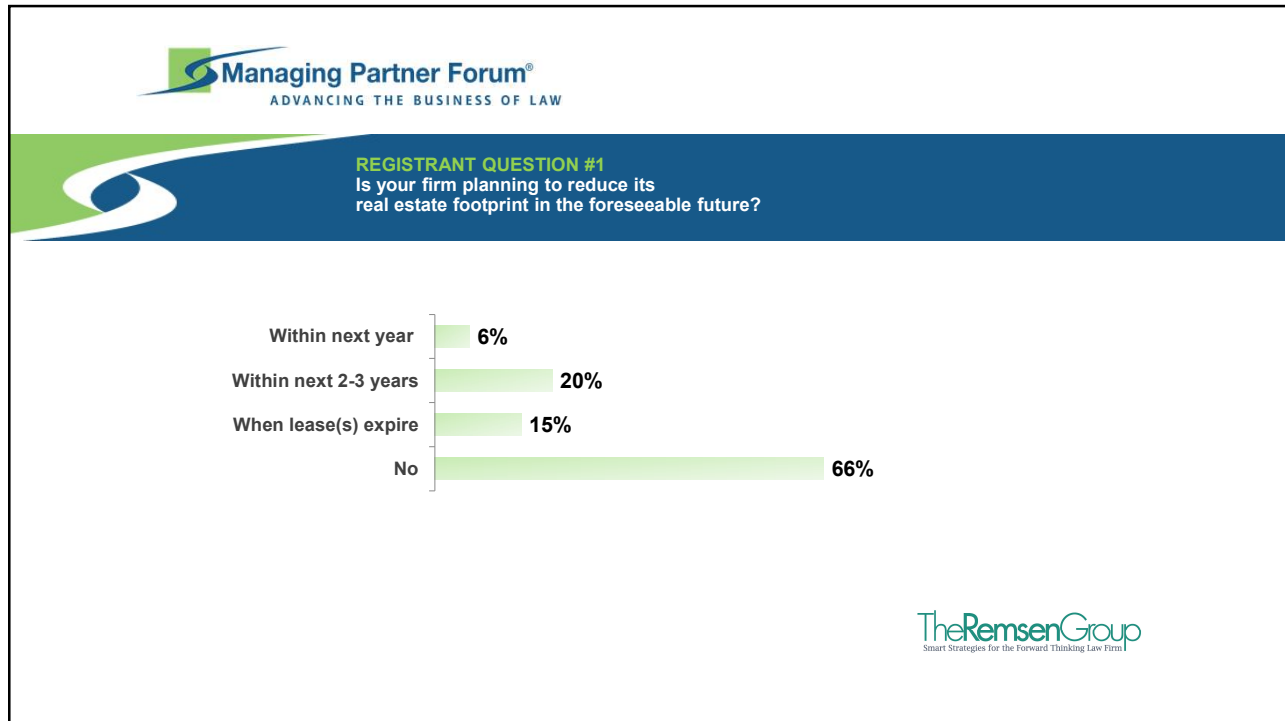
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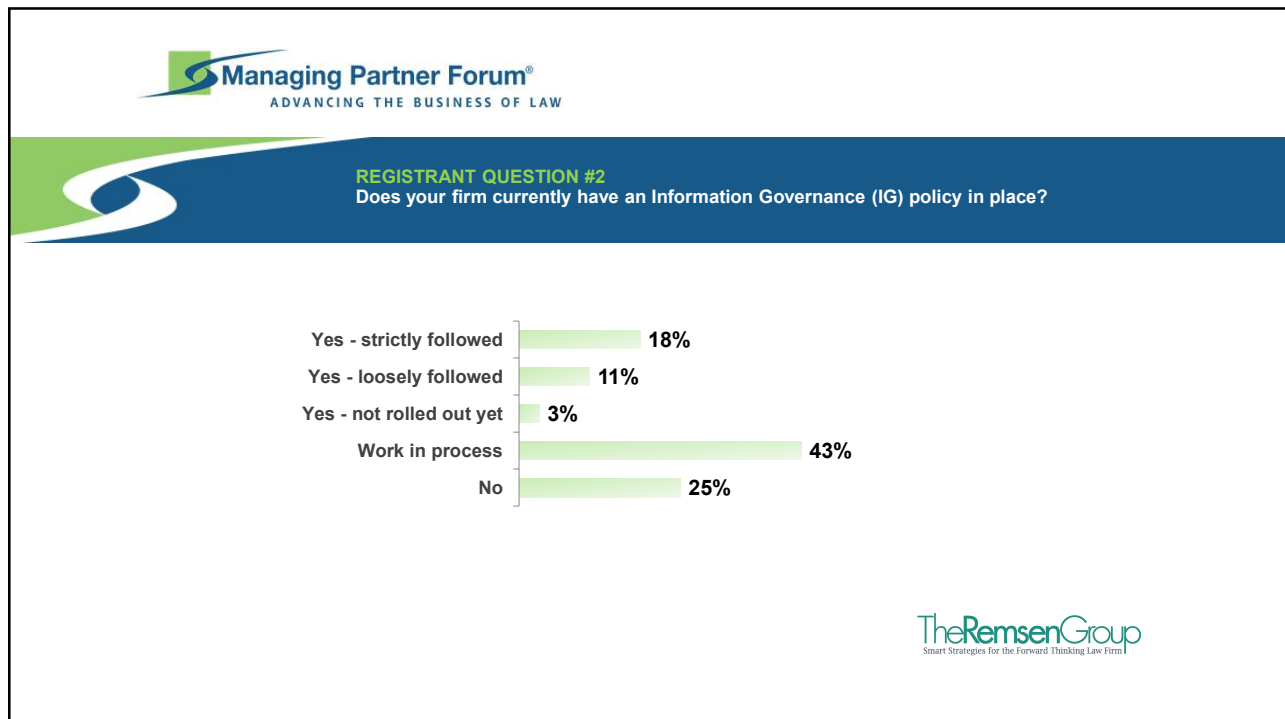


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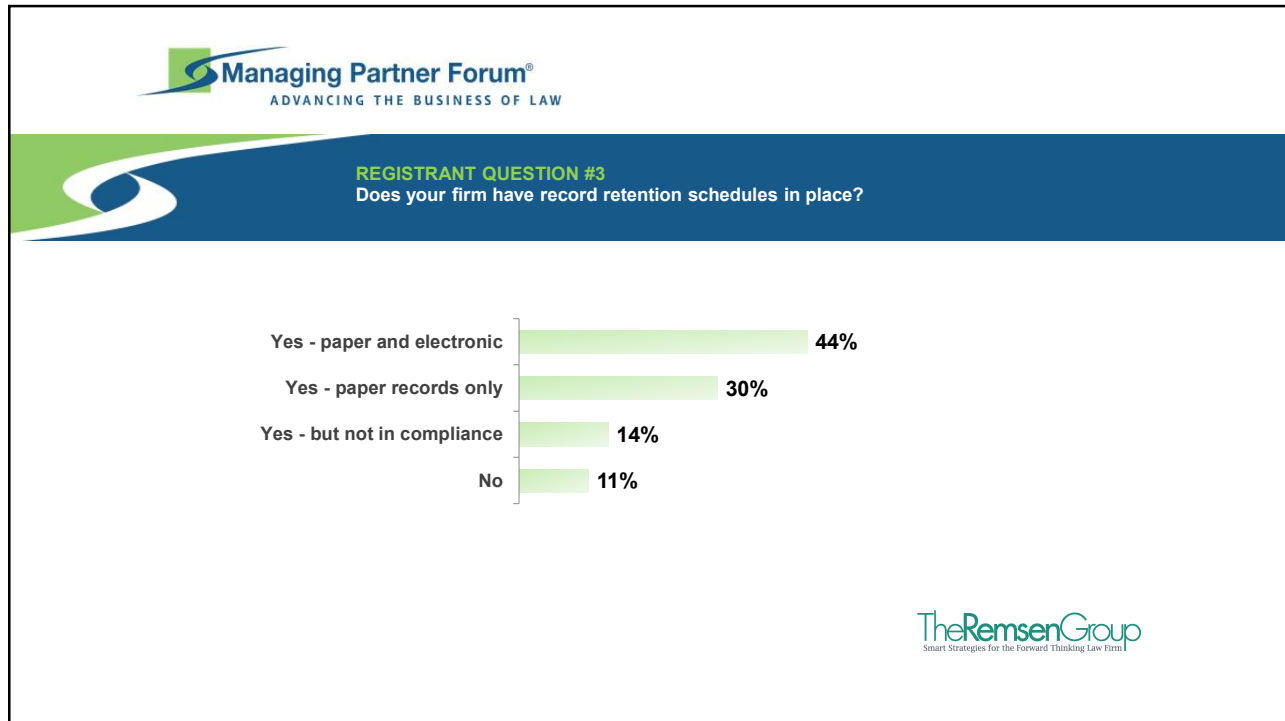


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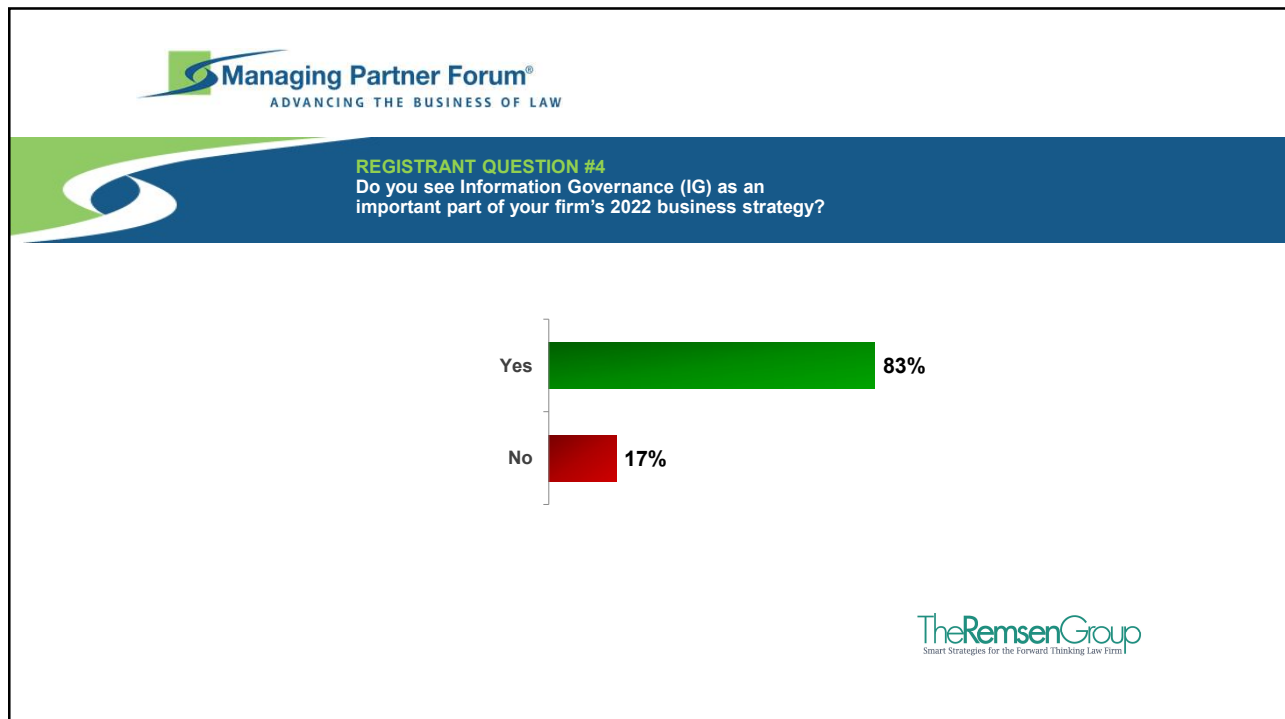


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How Mattern Helps MidLaw

- Current State Assessment
- Benchmarking of Current Operation and Cost Recovery Revenue
- Unbiased Recommendations
- Custom Request for Proposal Process
- Contract Negotiation
- Change Management
- Implementation Oversight
- Ongoing Contractual Monitoring & Maintenance



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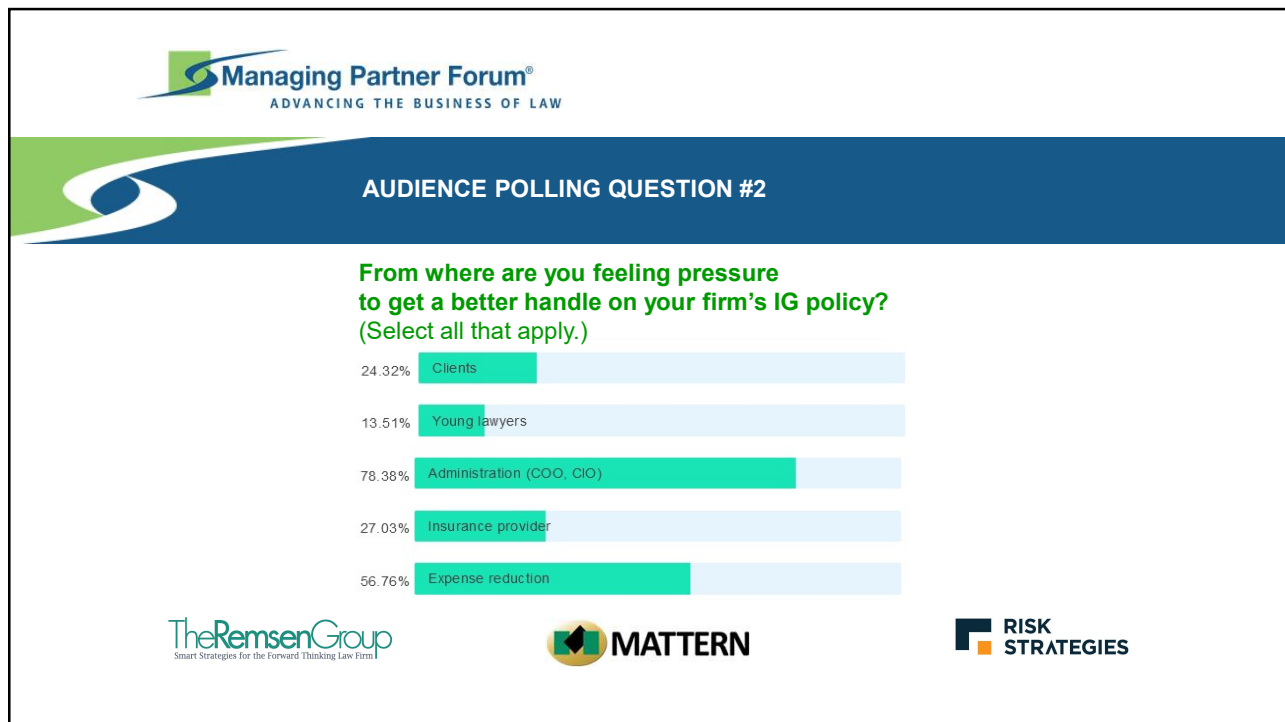
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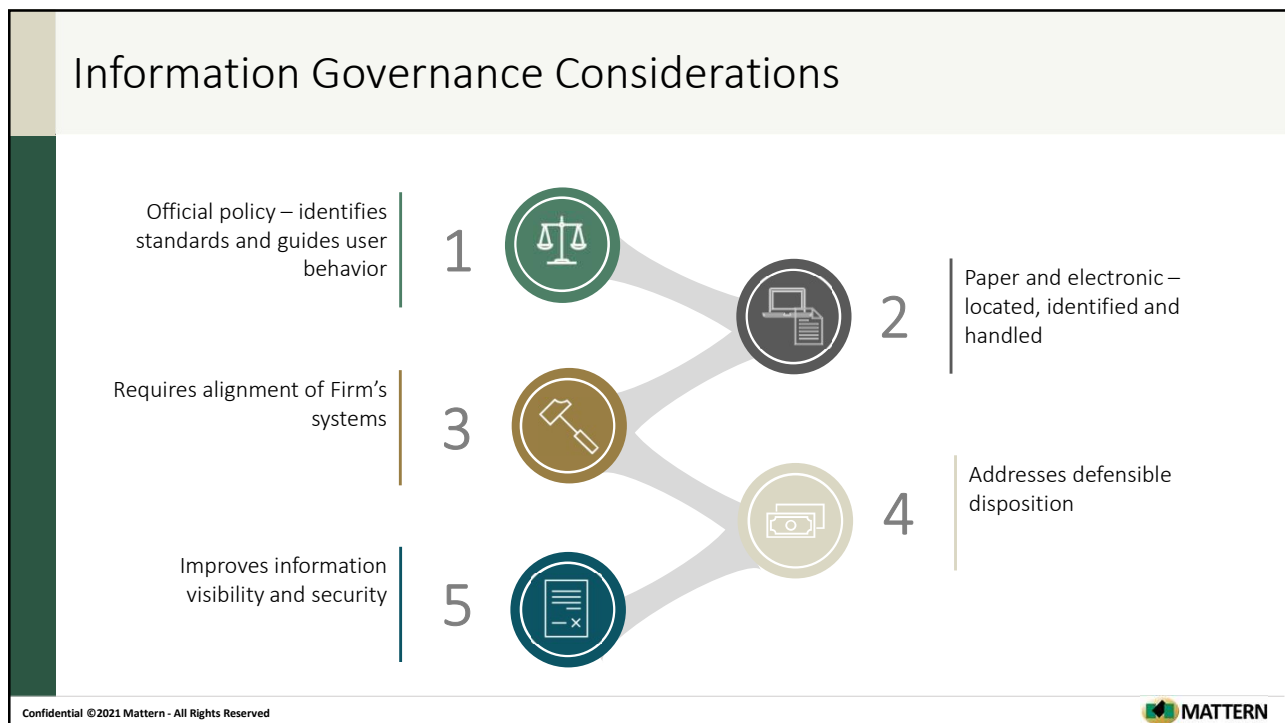
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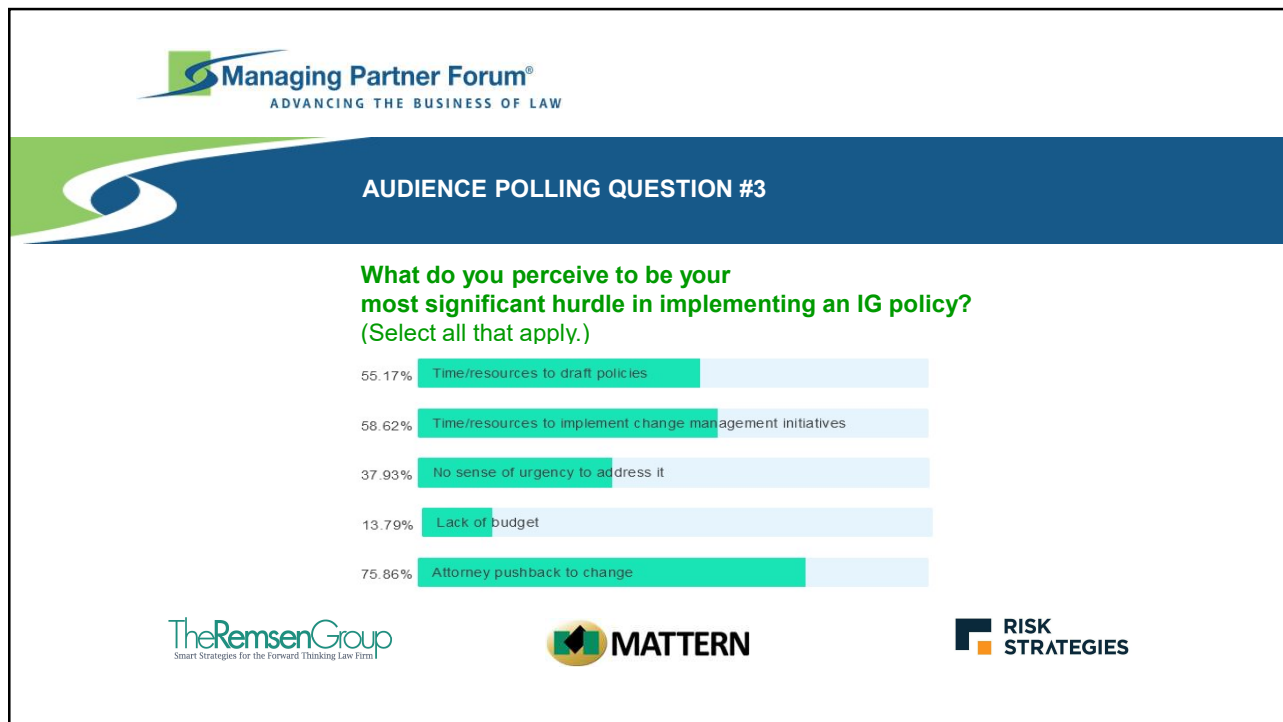
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Areas of Focus and Change Management

OFFICE SERVICES

- Reprographics/Imaging
- Mail Processing
- Digital Mailroom
- Courier/Messenger
- Hospitality
- Supplies Management
- Multifunction Devices/Printers
- Managed Print Services
- Litigation Support/e-Discovery

ADMINISTRATIVE SERVICES

- Legal and Non-Legal Administrative Resources
- Document Processing
- Reception
- Cost Recovery

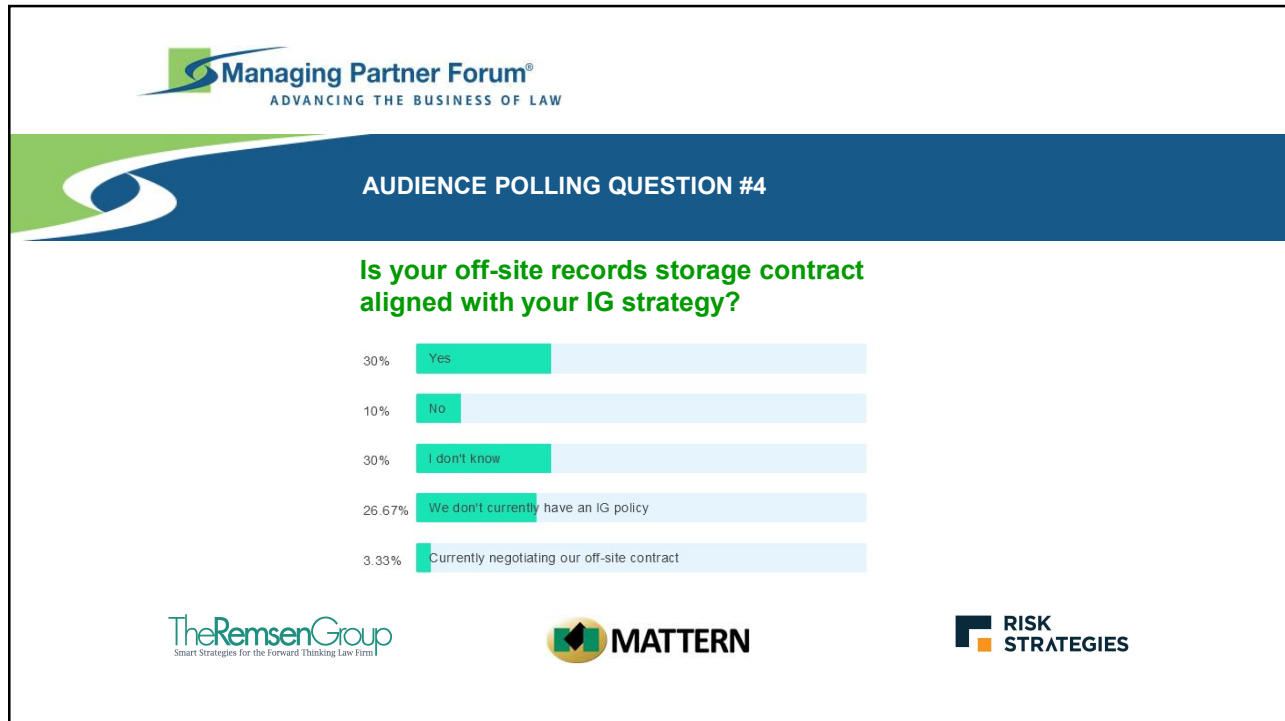
RECORDS AND INFORMATION GOVERNANCE

- Information Governance Policy Development
- Records Management Workflow Analysis
- Off-site Records Storage
- Digital Transformation

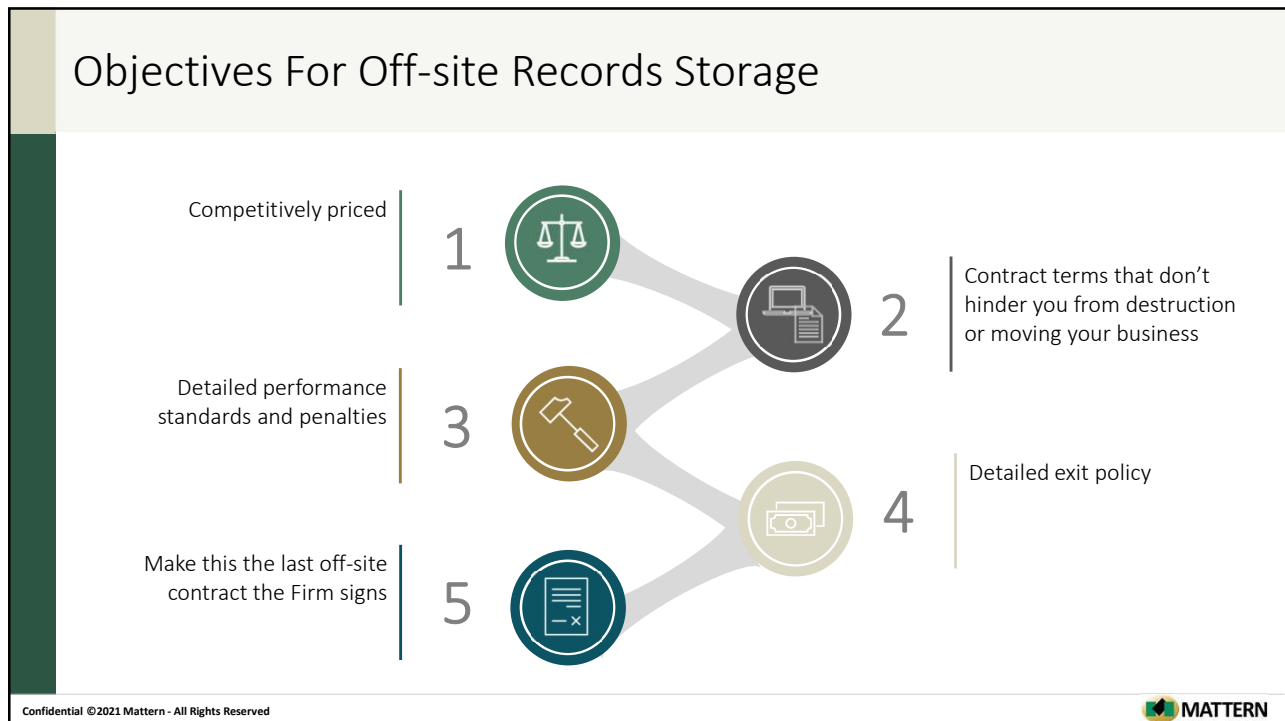
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Digital Transformation

To Do's

- IG Policy/Retention Schedules
- Upfront Digital Workflow
- Off-site Contracts that allow cost-effective destruction

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MPF OBSERVATIONS

- Don't Fight the Tide...Accelerated by COVID
- Invest Wisely in Technology. Be Strategic.
- Train Your People...and Train Them Some More!
- Skillfully Manage the Change Process
- Pick Up a Few Quick Victories and Showcase Success
- Enforce Compliance...Easier Said than Done!

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 **RISK STRATEGIES**

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Faculty Biographical Profiles

Nathan Curtis

Mattern – Richmond, Texas

Ella Gower, Esq.

Miller Starr Regalia – Walnut Creek, California

Uri Gutfreund

Risk Strategies Company – Teaneck, New Jersey

Andy Hoedt

Miller Starr Regalia – Walnut Creek, California

Rob Mattern

Mattern – Philadelphia, Pennsylvania

John Remsen, Jr.

TheRemsenGroup – Atlanta, Georgia





**Nathan Curtis, IGP
Consultant**

ncurtis@matternassoc.com



Nathan Curtis, IGP, a Lean Six Sigma Yellow Belt, brings over 20 years of experience working with law firms in the U.S. and overseas in developing industry-first solutions across Information Governance, Litigation Support, Digital Imaging, and traditional Office Services. As a consultant for Mattern, Nathan is focused on emerging technologies and their application in the legal environment, driving results through Mattern's customized RFP process, and overseeing service, technology and policy implementations.

For more information, visit Mattern's website, www.matternassoc.com, and connect with Nathan on [LinkedIn](#).



**MILLER STARR
REGALIA**

Ella Gower

Managing Shareholder



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PRACTICE AREAS

Common Interest Development

Ella is the managing shareholder at Miller Starr Regalia and is Chair of the Common Interest Development Practice Group. She advises residential, commercial, and mixed-use development clients on land sharing issues and assists clients with real estate transactions.

Ella Gower is the managing shareholder at Miller Starr Regalia. As Chair of the Common Interest Development Practice Group, Ella prepares governing documents and related easement and land sharing agreements for residential, commercial and mixed-use developments. The developments include high-rise mixed-use condominium projects, mixed-use planned developments, master planned communities, senior housing projects and cohousing communities.

She advises clients regarding issues related to the Subdivision Map Act, Subdivided Lands Act, Commercial and Industrial Common Interest Development Act, Davis-Stirling Act and the Right to Repair Law (SB 800). She regularly assists clients with obtaining local and state project approvals.

EDUCATION

J.D., University of California, Davis, School of Law (2006)

B.A., University of California, Davis, Political Science - Public Service and History (2002)

ASSOCIATIONS

Alliance of Chief Executives

American Land Title Association (ALTA)

Building Industry Association (BIA), Bay Area

- Vice Chair - Associates
- Executive Board
- Past President, Department of Real Estate Committee

California Building Industry Association (CBIA)

- Chair, Department of Real Estate Committee
- Past Vice-Chair, Department of Real Estate Committee
- Legal Affairs Committee



California Land Title Association (CLTA)

Contra Costa County Bar Association (CCCBA)

East Bay Leadership Council (EBLC) - Board of Directors

Kennedy-King Memorial Scholarship Fund - Board of Directors

Pro Bono Attorney for Unaccompanied Minors

PUBLICATIONS

"How I Made Managing Partner," *Law.com*, June 28, 2021

Chapter 28 (previously Chapter 25B), "Common Interest Developments," *Miller & Starr, California Real Estate 4th* (co-author)

"Separate But Not Equal: The New Commercial Industrial Common Interest Development Statute," *Miller & Starr, California Newsalert*, reprinted in part from Volume 24, Number 4, March 2014

"Massachusetts S.C. Addresses 'In for One, In for all' Rule," American Land Title Association *The Docket*, June 2013

"What's In A Name: In California, Borrowers May Be Liable For Purely Innocent 'Bad Faith' Waste," Miller Starr Regalia's The Title & Escrow File blog, January 10, 2013 (co-author)

"California Court of Appeal Rules Developer Liable for 'Bad-Faith' Waste," American Land Title Association *The Docket*, November 2012

"Marketability of Title: In Reaffirming Hocking, the Court of Appeal in Dollinger Draws a Clear Distinction Between Market Value and Marketable Title," Miller Starr Regalia's The Title & Escrow File blog, October 11, 2012 (co-author)

"Top Lawsuits Impacting the Title Industry," American Land Title Association *TitleNews*, July 2012 (co-author)

"California Suit Addresses Lien Priority," American Land Title Association *The Docket*, December 2011 (co-author)

"Top Lawsuits Impacting the Title Industry," American Land Title Association *TitleNews*, May 2011 (co-author)

"Agents Must Comply With Closing Instructions After Close of Escrow," American Land Title Association *The Docket*, September 2010 (co-author)

"Top Lawsuits Impacting the Title Industry," American Land Title Association *TitleNews*, May 2010 (co-author)

"Nationwide Life Insurance Company v. Commonwealth Land Title Insurance Company: What steps must an insurer take to make certain restrictions 'expressly excepted' from coverage when an ALTA 9 Endorsement is issued?" *California Land Title Association eNews*, December 2009 (co-author)

SPEECHES & PRESENTATIONS

"Lean In Circle," BIA Bay Area Professional Women in Building (PWB), August 7, 2018 (Moderator)



**MILLER STARR
REGALIA**

“Ten Ways to Lose Your Shirt Through Fraud,” California Land Title Association Annual Convention, April 2013

“They Said I Could, Trust Me,” American Land Title Association Annual Convention, October 2012

“Mock Trial,” California State Bar Real Property Retreat, May 2011



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Uri Gutfreund is The National Law Firm Practice Leader at Risk Strategies Company, a top 25 national insurance brokerage and The Founder and Moderator of The Managing Partner Round Table, a regional peer to peer professional development group. This unique program has quickly become a leading venue for thought leaders in the legal industry.

At Risk Strategies, Uri is responsible for the development and execution of all insurance and risk management services to the company's law firm clients. He oversees all of law firm specialty areas including: Health, Professional Liability, Property and Casualty, Cyber and EPLI. His practice leadership combines 20 years personal experience with cutting edge innovation remaking law firm insurance programs using the latest technology, peer benchmarking, and real time best practices to serve the company's law firm clients.

He is a Registered Professional Liability Underwriter since 2001 and a frequent speaker and writer on law firm leadership, law firm business practices, and insurance and risk management at national and regional conferences.

Selected Publications and Presentations:

- "Everything You Need to Know about Insurance For Your Firm in 60 Minutes", Speaker of the Month, St. Louis, Atlanta, 2016
- "2015 Tax Deduction Opportunity: 5 Steps to Overpay For Your Professional Liability Insurance", 2015
- "Is Your Firm the Next Target for Hackers?", Business of Law Conference 2015
- "Change or Be Eliminated: Why Every Administrator Should Become a CFO", Business of Law Conference, 2015
- "Disability Insurance for Law Firms - It's All in the Details". Association of Legal Administrators - Annual Conference Speaker, 2015.
- "Errors, Omissions & Scares-PLI! Professional Liability Insurance Unmasked." Association of Legal Administrators - Annual Conference Speaker, 2014.
- "Buying and Selling a Law Practice" Westchester Bar Association Speaker, 2014.
- "Suing for your fees: Three insurance considerations to safely collect what's rightfully yours." 2013.

- Lowering your professional liability premium: How to correctly answer the four critical application questions. 2013.
- Lateral Hiring (Almost) Never Works – The Experts Say Why and What You Can Do About It. 2013.
- Five questions to determine if you need a new insurance broker. 2013.
- Partnership Agreement and Buy Out Insurance – What you wish you knew before your partner got disabled. 2013
- Today's Growing Insurance Need: EPLI Coverage. Law Office Administrator, The Newsletter for Legal Office Managers, 2012.
- The top three office insurance errors for law firms. The fix is simple and inexpensive. 2012.
- The four methods to determine your professional liability insurance limits. The most important but least deliberated annual decision. 2012.
- The four blunders that law firm partners make in buying health insurance. Are you guilty as charged? 2012.
- How to fix your partnership agreement now so you don't fight about insurance later. 2012.
- Stop buying health insurance, start buying Health Care – Your Four Point Strategy for 2012. 2012.
- Renting Out Extra Space? Set Up Protective Walls – The Renter can put the Firm at Risk. Law Office Administrator, The Newsletter for Legal Office Managers, 2011.
- Risk analysis in order: A lateral hire can bring big malpractice issues. Law Office Administrator, The Newsletter for Legal Office Managers, 2011.
- Law Firm Landlord – 5 General Liability strategies to keep the rent money and avoid the risk – Part II. 2011.
- Law Firm Landlord – 5 strategies to keep the rent money and avoid the liability risk – Part I. 2011.
- The 10 Point Professional Liability Insurance Comparison Checklist (Part 2). 2011.
- The New Business of Law: Ideas and Solutions for Effective Management. Legal Resource Group, 2010.
- The 10 Point Professional Liability Insurance Comparison Checklist. 2010. .
- 7 Habits of Highly Effective Professional Liability Insurance Applications. 2010.
- The 5 shopping steps for your professional liability insurance. 2010.
- Evaluating Health Insurance for Partners. 2010.
- Same Page Risk Management. 2010
- Do Contributions Matter? PART I. 2009.
- Look before you Lateral – and the tips to do it right. 2009.
- 10 Ways to Protect Yourself From Frivolous Lawsuits, Fox News, 2007
- Professional Liability Coverage for Counselors – Attorneys, Westchester Women's Bar Association, 2006.
- Solving Your Health Insurance Dilemma – It's All About Custom Design. New York Association of Legal Administrators (pg.27) 2006.
- Risk Management. New York Association of Legal Administrators (pg. 6) 2005.



Andy Hoedt
Executive Director
Miller Starr Regalia
Walnut Creek, California
925.935.9400
andy.hoedt@msrlegal.com



Andy Hoedt is the Executive Director at Miller Starr Regalia. Andy oversees the firm's day-to-day operations including technology, human resources, facilities, accounting and marketing.

Andy joined MSR in May 2020, moving from the fintech industry to the legal industry. Andy worked in fintech for seven years, as the Director of Revenue Operations for a global payments company.

Andy started his career as a Director of Finance for a minor league baseball team, while earning Accounting and Economic degrees at the University of Oregon.

Rob Mattern
President

rmattern@matternassoc.com



Rob Mattern is President and Founder of Mattern, LLC, the leader in law firm operations consulting. Since 1997, Mattern has been providing unbiased strategies for measurably improving the efficiency and cost-effectiveness of law firms' in-house and outsourced administrative resources, office services and information governance. Mattern has successfully led nearly 500 engagements among the Am Law 200 to mid-size firms. Additionally, they produce key industry surveys, including the bi-annual and highly regarded Cost Recovery Survey, and the eDiscovery and Litigation Support Survey.

The firm publishes widely including the *American Lawyer*, *Wall Street Journal*, *Law360*, *Law Technology News* and *Legal Management* magazine. Rob is an editorial board member of *Law Journal Newsletter's Accounting & Financial Planning for Law Firms*, and is a frequent speaker at key industry events.

For more information, visit Mattern's website, www.matternassoc.com, and connect with Rob on [LinkedIn](#).



BIOGRAPHICAL PROFILE

John Remsen, Jr. - President

John Remsen, Jr., is widely recognized as one of the country's leading authorities on law firm leadership, management, marketing and business development. Since 1997 TheRemsenGroup has consulted with more than 400 law firms and thousands of law firm leaders to help them develop and implement long-term strategic objectives to improve cohesiveness, profitability, and sustainability.

John is a frequent speaker and author on law-firm leadership and marketing topics. He has spoken at national and regional conferences of the American Bar Association, the Association of Legal Administrators, the Legal Marketing Association, and numerous state and local bar associations. His articles have appeared in dozens of highly respected legal publications, including the *ABA Journal*, *Law Practice Management*, *Law Practice Today*, *Law360*, *Legal Management*, *Marketing for Lawyers*, *Marketing the Law Firm*, *Managing Partner*, *National Law Review* and *New York Law Journal*.

Since 1988, John has been an active member of the Legal Marketing Association, and he has served as President of LMA's Southeastern Chapter, Executive Editor of *Strategies* (LMA's newsletter) and a member of LMA's national Board of Directors. He is also an active member of the Association of Legal Administrators and a popular speaker at ALA meetings and conferences.

In 2002, John created The Managing Partner Forum, a highly acclaimed conference series and community for managing partners and law firm leaders. More than 1,200 firm leaders from 900 law firms from 43 states have participated in 26 conferences. In addition, John distributes *The MPF Weekly*, an electronic newsletter to more than 10,500 firm leaders throughout the U.S., Canada and 28 other countries.

John's influence was underscored when he was inducted as a Fellow of the College of Law Practice Management in 2013, in recognition of his 25 years of demonstrated expertise in law firm leadership and management. Founded in 1994, the College honors those who "inspire excellence and innovation in law practice management." Membership is by invitation only and includes just 200 individuals.

And the College was not alone: in 2016, John was recognized by LawDragon as one of the "Top 100 Consultants and Strategists" to the legal profession; and in 2017, John was recognized as one of the world's top "leaders and influencers" in the business of law by the Association of International Law Firm Networks.

A native of West Palm Beach, Florida, John holds an MBA from The University of Virginia (1985) and a bachelor's degree in Business Administration from the University of Florida (1980). Prior to enrolling in graduate school, John was Executive Director of The Florida Council of 100, an organization comprised of Florida's top CEOs and other business leaders.

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

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

